2009-2010

SENATE
JUDICIARY II

MINUTES

MEMBERSHIP

Senate Judiciary II Committee
2009-2010 Biennium

Senator Fletcher Hartsell, Chairman
Room 518, LOB
733-7223

Senator Austin Allran, Vice Chair
Room 516, LOB
733-5876

Senator Ed Jones, Vice Chair
Room 623, LOB
733-3032

Senator Don Vaughan, Vice Chair
Room 622, LOB
733-5856

Senator Tom Apodaca
Room 1127, LB
733-5745

Senator Bob Atwater
Room 312 A, LOB
715-3036

Senator Doug Berger
Room 526, LOB
715-8363

Senator Stan Bingham
Room 2117, LB
733-5665

Senator Julia Boseman
Room 309, LOB
715-2525

Senator Charlie Dannelly
Room 2010, LB
733-5955

Senator Katie Dorsett
Room 2106, LB
715-3042

Senator Don East
Room 1120, LB
733-5743

Senator James Forrester
Room 1129, LB
715-3050

Senator Eddie Goodall
Room 332, LOB
733-7659

Senator Jim Jacumin
Room 1113, LB
715-7823

Senator Joe Sam Queen
Room 1117, LB
733-3460

Senator John Snow
Room 2111, LB
733-5875

Senator A. B. Swindell
Room 629, LOB
715-3030

Committee Assistant:

Gerry Johnson

Research Staff:

Brenda Carter
Kory Goldsmith
Jeffery Hudson
Jennifer McGinnis

2009-2010 Biennium

Leg. Day: H-114/S-112

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H0008	Pierce	PROHIBIT CELL PHONES IN PRISON.	*S	Re-ref Com On Appropriations/ Base Budget	03-12-09	04-01-09
0009=	Pierce	NO TEXTING WHILE DRIVING.	*SR	Ch. SL 2009-135	04-20-09	05-19-09
H0022=	Weiss	ENHANCE YOUTH EMPLOYMENT PROTECTIONS.	*SR	Ch. SL 2009-139	03-24-09	05-27-09
H0023=	Weiss	STRENGTHEN CHILD LABOR VIOLATION PENALTIES.	*SR	Ch. SL 2009-351	03-24-09	04-06-09
H0043	Glazier	SCHOOL BD. MEMBERS/ FAILURE TO DISCHARGE DUTY.	SR	Ch. SL 2009-107	03-03-09	05-28-09
H0085	Burr	INCREASE RAFFLE PRIZE LIMIT.	*SR	Ch. SL 2009-49	03-26-09	05-26-09
H0191=	Ross	GENERAL STATUTES CLARIFYING CORRECTION.	*S	Pres. To Gov. 8/ 11/2009	05-07-09	08-07-09
H0266	E. Floyd	USE OF DEADLY FORCE BY LEO/COLLECT & PUBLISH.	*SR	Ch. SL 2009-106	05-20-09	06-02-09
H0274=	Ross	CLARIFYING CHANGES TO STATE LAW.	*S	Pres. To Gov. 8/ 11/2009	03-24-09	08-06-09
H0312	Hurley	INCREASE SPOUSAL YEAR'S ALLOWANCE/ CONFORM LNG.	*SR	Ch. SL 2009-183	04-27-09	06-11-09
H0388	Earle	CAMPAIGN DISCLOSURE.	*S	Ref To Com On Judiciary II	05-14-09	
H0440	Folwell	THE NICHOLAS ADKINS SCHOOL BUS SAFETY ACT.	*SR	Ch. SL 2009-147	04-13-09	05-27-09
)473	Hurley	MAGISTRATE CAN CARRY GUN IN COURTHOUSE.	*S	Pres. To Gov. 8/7/ 2009	03-31-09	06-02-09
nJ559	E. Warren	CERTAIN NOTARIAL ACTS VALIDATED.	*SR	Ch. SL 2009-358	04-16-09	06-09-09
H0578	Bryant	PARTITION SALES/ COMMRS., SELLERS, BUYERS.	*S	Pres. To Gov. 8/ 11/2009	05-19-09	07-21-09
H0578	Bryant	PARTITION SALES/ COMMRS., SELLERS, BUYERS.	*S	Pres. To Gov. 8/ 11/2009	07-27-09	08-03-09
H0581=	Bryant	PARTITION SALES/ EXTEND REPORT & ANSWER TIMES.	*SR	Ch. SL 2009-362	04-15-09	06-30-09
H0615	Martin	BUSINESS TRUSTS.	*SR	Ch. SL 2009-174	05-14-09	06-11-09
H0616=	Allen	OFFENSE FOR PORTABLE TOILETS/PUMPER TRUCKS.	*SR	Ch. SL 2009-37	04-30-09	05-19-09
H0629	Sutton	SMALL CLAIMS COURT/ TRIALS.	*SR	Ch. SL 2009-359	04-21-09	06-22-09
H0630	Sutton	SUMMARY EJECTMENT/ TRIALS.	*SR	Ch. SL 2009-246	04-21-09	06-18-09
H0686	Tucker	MODERNIZE DO NOT CALL NOTICE PROCEDURES.	*SR	Ch. SL 2009-122	04-16-09	06-02-09
H0722	Hilton	PARAPHERNALIA CONTROL ACT.	*SR	Ch. SL 2009-205	05-20-09	06-09-09
H0765	Stam	REVISE ELECTIVE SHARE STATUTES.	*SR	Ch. SL 2009-368	04-13-09	06-30-09

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H0775=	England	ALT. TESTIMONY/ CHILDREN AND ADULTS WITH DISAB.	*S	Pres. To Gov. 8/7/ 2009	05-14-09	07-29-09
0794	Martin	SUBSTITUTION OF TRUSTEES.	*SR	Ch. SL 2009-176	05-20-09	06-11-09
H0799	Rhyne	UNEQUAL SHARES/ JOINT TENANCY SURVIVORSHIP.	*SR	Ch. SL 2009-268	05-04-09	06-15-09
H0800	Ross	RENUNCIATION AMENDMENTS.	*SR	Ch. SL 2009-48	04-16-09	05-19-09
H0885	Ross	TARGETED PICKETING.	*SR	Ch. SL 2009-300	05-19-09	06-18-09
H0889=	Haire	CHANGE PENALTY FOR MISD. DEATH BY VEHICLE.	*S	Pres. To Gov. 8/ 11/2009	08-03-09	08-06-09
H0960	Glazier	SANITARY DISTRICT QUICK TAKE.	*SR	Ch. SL 2009-85	05-19-09	05-28-09
H1037	Glazier	PERMIT ACCESS TO CAPITAL DEFENDANTS.	SR	Ch. SL 2009-91	04-30-09	05-28-09
H1039	Glazier	GUILTY PLEA FORM REVISIONS.	*SR	Ch. SL 2009-86	04-30-09	05-28-09
H1057=	Blue	ABOLISH CERTAIN DEFICIENCY JUDGMENTS.	*SR	Ch. SL 2009-441	05-14-09	07-21-09
H1058=	Blue	INCREASE STATUTORY HOMESTEAD EXEMPTION.	*SR	Ch. SL 2009-417	05-19-09	07-14-09
H1077=	Wiley	VENUE/MUNICIPALITIES IN MULTIPLE DISTRICTS.	*SR	Ch. SL 2009-398	05-19-09	07-14-09
H1091	Rhyne	CLARIFY ACTION FOR DIVORCE/INCOMPETENT SPOUSE.	SR	Ch. SL 2009-224	05-05-09	06-18-09
H1098	Frye	PROTECT SEARCH AND RESCUE ANIMAL.	*SR	Ch. SL 2009-460	05-19-09	07-02-09
1109	Hill	STATE FAIRGROUNDS SPECIAL POLICE/MUTUAL AID.	SR	Ch. SL 2009-94	05-20-09	06-02-09
H1112	Goodwin	AMEND BIRTH REGISTRATION REQUIREMENTS.	*SR	Ch. SL 2009-285	05-20-09	06-17-09
H1117	Tucker	SEX OFFENDER CAN'T DRIVE BUS WITH CHILDREN.	S	Pres. To Gov. 8/7/ 2009	08-04-09	08-06-09
H1132	Hilton	RENEW CONCEALED CARRY PERMIT/30 DAY LIMIT.	*SR	Ch. SL 2009-307	05-19-09	06-08-09
H1168	Glazier	TITLE PROTECTION/ SOCIAL WORKERS.	*SR	Ch. SL 2009-88	05-20-09	05-28-09
H1189	Insko	DHHS/TRACKING OUTPATIENT COMMITMENTS.-AB	*SR	Ch. SL 2009-315	06-24-09	07-07-09
H1261	Mackey	PROTECT OUR KIDS/ CYBER BULLYING MISDEMEANOR.	*S	Pres. To Gov. 8/ 11/2009	05-19-09	08-06-09
H1272	Goodwin	TECHNICAL/CLARIFYING CHANGES/JUVENILE CODE.	SR	Ch. SL 2009-38	05-07-09	05-19-09
H1299	Rapp	VIRTUAL VISITATION/ FAMILY LAW.	*SR	Ch. SL 2009-314	05-20-09	07-07-09
H1327	Folwell	SCHOOLS NOTIFIED OF CRIM. INTELL. INFO.	*SR	Ch. SL 2009-93	05-20-09	05-28-09
H1347	Mobley	CHIEF COURT COUNSELOR	*SR	Ch. SL 2009-320	05-20-09	06-29-09

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		DELEGATION.				
H1368	Love	AMEND FUTURE ADVANCES STATUTES.	*SR	Ch. SL 2009-197	05-20-09	06-11-09
1377	Folwell	TAXPAYER OPTIMIZATION ACT.	*S	Ref To Com On Judiciary II	05-20-09	
H1390	Mackey	WILLS/BEQUESTS TO DRAFTING ATTORNEY.	*SR	Ch. SL 2009-182	05-20-09	06-11-09
H1438	Spear	VIDEOCONFERENCE TECH. IN COURT PROCEEDINGS.	SR	Ch. SL 2009-270	05-20-09	06-29-09
H1447	Wiley	CRIME STOPPERS TIPS ARE CONFIDENTIAL.	*S	Ref To Com On Judiciary II	05-20-09	
H1449	Weiss	JUVENILE CODE REVISIONS.	*SR	Ch. SL 2009-311	05-20-09	07-02-09
H1463	Dickson	EXPAND ACCESS/ CONFIDENTIAL INTERMEDIARIES.	*S	Placed On Cal For 5/19/2010	05-07-09	08-06-09
S0007	Julia Boseman	ALLOW HUNTING ON SUNDAY.	S	Ref To Com On Judiciary II	01-29-09	
S0012	Charlie S. Danne	BAN MOBILE PHONE USE WHILE DRIVING.	S	Re-ref Com On Judiciary II	05-11-09	
S0022=	James Forrester	BAN TEXTING WHILE DRIVING.	*S	Re-ref Com On Appropriations/ Base Budget	02-03-09	04-01-09
S0044	Eleanor Kinnaird	APPEALS OF QUASI-JUDICIAL LAND-USE DECISIONS.	*SR	Ch. SL 2009-421	02-04-09	05-06-09
S0074	Ed Jones	INCREASE PENALTY/2ND DEGREE MURDER.	S	Re-ref Com On Appropriations/ Base Budget	02-05-09	04-06-09
S0094	Tony Foriest	FELONY TO ASSAULT PROBATION/PAROLE OFFICER.	S	Re-ref Com On Appropriations/ Base Budget	02-10-09	05-05-09
S0096=	Stan Bingham	NO "TEXTING" WHILE DRIVING.	S	Ref To Com On Judiciary II	02-11-09	
S0127=	Fletcher L. Hart	PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS.	*SR	Ch. SL 2009-8	02-12-09	02-25-09
S0131	Don Vaughan	PENALTY FOR DWI CONVICTION/BAC .20 OR HIGHER.	*S	Re-ref Com On Appropriations/ Base Budget	02-12-09	03-30-09
S0138	William R. Purce	SALVIA DIVINORUM UNLAWFUL.	*S	Pres. To Gov. 8/6/ 2009	02-12-09	04-29-09
S0140	John Snow	AMEND DOMESTIC CRIM. TRESPASS.	*S	Re-ref Com On Judiciary I	02-12-09	03-03-09
S0143	John Snow	CONTINUE CHILD SUPP./ 21 YRS/COLLEGE STUDENTS.	S	Ref to the Com on Juvenile Justice, if favorable, Judiciary III	02-12-09	05-07-09
S0144	John Snow	LIMIT LIABILITY/ DOMESTIC VIOLENCE SHELTERS.	*S	Ref To Com On Judiciary II	02-12-09	03-30-09
S0178	Larry Shaw	REPEAL BAN G.S. 95-98.	S	Ref To Com On Judiciary II	02-17-09	
S0220=	Fletcher L. Hart	GENERAL STATUTES COMM. TECHNICAL CORRECTIONS.	*S	Pres. To Gov. 8/ 11/2009	02-19-09	05-07-09
S0241=	William R. Purce	ALT. TESTIMONY/	S	Re-ref Com On	02-19-09	05-20-09

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		CHILDREN AND ADULTS WITH DISAB.		Judiciary I		
0262	Doug Berger	EXPUNCTIONS/PURGE ONLINE DATABASES.	*S	Pres. To Gov. 8/ 11/2009	02-23-09	03-30-09
0277=	Doug Berger	STRENGTHEN CHILD LABOR VIOLATION PENALTIES.	S	Ref To Com On Judiciary II	02-24-09	
S0285=	Fletcher L. Hart	REWRITE FOREIGN MONEY JUDGMENTS LAWS.	SR	Ch. SL 2009-325	02-25-09	03-30-09
S0307	Ed Jones	REGULATE OWNERSHIP & USE OF CERTAIN REPTILES.	*SR	Ch. SL 2009-344	02-25-09	03-30-09
S0372	Julia Boseman	CLARIFICATION OF NUISANCE ABATEMENT LAWS.	*S	Re-ref Com On Judiciary III	03-04-09	05-12-09
S0380	Charlie S. Danne	COLLECTION OF DATA/ DMV REPORTS.	*S	Re-ref Com On Judiciary III	03-04-09	03-19-09
$ S0403	**Doug Berger**	**VICTIMS COMPENSATION AMENDMENT.**	***S**	**Re-ref Com On Appropriations/ Base Budget**	**03-05-09**	**04-06-09**
S0454	John Snow	DOT/FIBER-OPTIC CABLE.	S	Ref To Com On Judiciary II	03-09-09	
S0481	Fletcher L. Hart	TRUSTEE'S POWER TO APPOINT TO OTHER TRUST.	*SR	Ch. SL 2009-318	03-10-09	04-15-09
S0482	Fletcher L. Hart	CLARIFICATIONS TO TRUST CODE.	*SR	Ch. SL 2009-222	03-10-09	04-15-09
S0483	Fletcher L. Hart	CLARIFY JUDICIAL CREATION OF TRUST.	SR	Ch. SL 2009-267	03-10-09	04-15-09
S0584=	John Snow	AMEND PRIVATE PROTECTIVE SERVICES ACT.	*SR	Ch. SL 2009-328	03-12-09	04-20-09
S0589	Larry Shaw	PLAN TO ELIMINATE MANDATORY MIN. SENTENCES.	S	Ref To Com On Judiciary II	03-16-09	
S0612=	Bob Atwater	PARTITION SALES/ EXTEND REPORT & ANSWER TIMES.	S	Re-ref Com On Judiciary II	03-17-09	05-12-09
S0612=	Bob Atwater	PARTITION SALES/ EXTEND REPORT & ANSWER TIMES.	S	Re-ref Com On Judiciary II	05-13-09	
S0613=	Bob Atwater	PARTITION SALES/ COMMRS., SELLERS, BUYERS.	S	Ref To Com On Judiciary II	03-17-09	
S0614=	Bob Atwater	PARTITION SALES/ NOTICE, CREDIT, APPRAISAL.	S	Ref To Com On Judiciary II	03-17-09	
S0617=	Fletcher L. Hart	STALKING LAW CONFORMING CHANGES.	SR	Ch. SL 2009-58	03-17-09	03-31-09
S0639	Doug Berger	CLARIFY WC CLAIM DEADLINE/INS. GUARANTY ASSN.	S	Ref To Com On Judiciary II	03-18-09	
S0643	A. B Swindell	AMEND DRUG EXAM REGULATION.	*S	Pres. To Gov. 8/ 11/2009	03-18-09	05-05-09
$ S0693=	**Katie G. Dorsett**	**PUBLIC GUARDIANSHIP/ TRAINING/EDUCATION.**	**S**	**Ref To Com On Judiciary II**	**03-24-09**	

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S0709	Austin M. Allran	HOME IMPROVEMENT FRAUD.	*S	Re-ref Com On Judiciary III	03-24-09	05-04-09
0710	Austin M. Allran	FALSE PRETENSES/ INCREASE SOME PENALTIES.	S	Re-ref Com On Appropriations/ Base Budget	03-24-09	04-30-09
S0714=	Doug Berger	OFFENSE FOR PORTABLE TOILETS/PUMPER TRUCKS.	S	Re-ref Com On Appropriations/ Base Budget	03-24-09	03-31-09
S0807	Ed Jones	PUBLIC SAFETY REGISTRATION.	*S	Ref to the Com on Wildlife Resources, if favorable, Finance	03-25-09	06-08-09
S0819=	Fletcher L. Hart	ABOLISH CERTAIN DEFICIENCY JUDGMENTS.	S	Ref To Com On Judiciary II	03-25-09	
S0843	Charles W. Alber	NONDISCRIMINATION IN STATE EMPLOYMENT.	S	Ref To Com On Judiciary II	03-25-09	
S0850	Don Vaughan	LIENS/CONDOMINIUMS AND PLANNED COMMUNITIES.	S	Ref To Com On Judiciary II	03-25-09	
S0851=	Don Vaughan	SUPERVISION OF CERTAIN DEFENDANTS.	*SR	Ch. SL 2009-452	03-25-09	04-16-09
S0852	Don Vaughan	ALCOHOL SCREENING DEVICE TEST RESULTS.	S	Ref To Com On Judiciary II	03-25-09	
S0853	Don Vaughan	MOTION FOR APPROPRIATE RELIEF/ NEW REQUIREMENT.	*S	Pres. To Gov. 8/5/ 2009	03-25-09	04-21-09
S0854=	Don Vaughan	VENUE/MUNICIPALITIES IN MULTIPLE DISTRICTS.	S	Ref To Com On Judiciary II	03-25-09	
S0880	Bob Atwater	CERTIFICATES OF REHABILITATION.	S	Ref To Com On Judiciary II	03-26-09	
)884	Fletcher L. Hart	CIG SAF AMEND/DHHS ELEC. SUPERVISION.	*S	Pres. To Gov. 8/ 11/2009	03-26-09	05-11-09
S0925	Tom Apodaca	MISREPRESENTATION OF BOTTLED NC SPRING WATER.	S	Ref to the Com on Agriculture, if favorable, Judiciary I	03-26-09	04-29-09
S0926	Tom Apodaca	MISBRANDING OF BOTTLED NC SPRING WATER.	S	Ref To Com On Judiciary II	03-26-09	
S0928	Doug Berger	THE CASTLE DOCTRINE.	*S	Ref to the Com on Judiciary I, if favorable, Ways and Means/ Broadband Connectivity, if favorable, Appropriations	03-26-09	05-12-09
S0929	Doug Berger	NO SET ASIDE OF BOND FORFEIT/ACTUAL NOTICE.	*SR	Ch. SL 2009-437	03-26-09	05-11-09
S0930	Doug Berger	WORKERS' COMP/ FIREFIGHTER OCCUPAT'L DISEASES.	S	Ref To Com On Judiciary II	03-26-09	
S0967	Fletcher L. Hart	CREATION OF YADKIN RIVER TRUST.	*SF	Failed 2nd Reading	03-26-09	04-15-09
S0969	Joe Sam Queen	AMEND PURPOSE/CHILD PLACING/CHILD CARE	*SR	Ch. SL 2009-408	03-26-09	05-06-09

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2009-2010 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		LAWS.				
S0978	Stan Bingham	FIREARMS QUALIFY SITES/EXPAND COMMSN. POWERS.	*S	Pres. To Gov. 8/5/ 2009	04-01-09	05-12-09
0987	Malcolm Graham	SAFE STORAGE OF FIREARMS.	S	Ref To Com On Judiciary II	03-26-09	
S1007=	David W. Hoyle	AMEND HOME INSPECTOR LICENSURE LAWS.	*S	Pres. To Gov. 8/ 11/2009	03-26-09	05-11-09
S1013	Doug Berger	CITIZENS' RIGHT TO KNOW ACT/PRETRIAL RELEASE.	S	Ref To Com On Judiciary II	03-26-09	
S1031	Katie G. Dorsett	LIMIT NECESSITIES DOCTRINE/HEALTH CARE DEBT.	S	Ref To Com On Judiciary II	03-31-09	
S1062	Julia Boseman	STRENGTHEN DOM. VIO. PROTECTIVE ORDERS/ PETS.	*SR	Ch. SL 2009-425	03-31-09	05-06-09
S1062	Julia Boseman	STRENGTHEN DOM. VIO. PROTECTIVE ORDERS/ PETS.	*SR	Ch. SL 2009-425	05-11-09	05-12-09
S1076	John Snow	MODIFY CRIM. JUSTICE PARTNERSHIP PROGRAM.	*SR	Ch. SL 2009-349	03-31-09	05-05-09
S1076	John Snow	MODIFY CRIM. JUSTICE PARTNERSHIP PROGRAM.	*SR	Ch. SL 2009-349	05-06-09	05-07-09
S1077	John Snow	EXPAND PAROLE OFFICERS' DELEGATED AUTHORITY.	*S	Re-ref Com On Judiciary III	03-31-09	05-05-09
S1077	John Snow	EXPAND PAROLE OFFICERS' DELEGATED AUTHORITY.	*S	Re-ref Com On Judiciary III	05-06-09	05-07-09
l078	John Snow	DELAY BOND/ PROBATIONER ARRESTED FOR FELONY.	*SR	Ch. SL 2009-412	03-31-09	04-29-09
S1082	John Snow	JUVENILE RECORDS/ PROBATION RISK ASSESSMENT.	*S	Ref to the Com on Juvenile Justice, if favorable, Judiciary III	03-31-09	04-20-09
S1087=	John Snow	CONTINUOUS ALCOHOL MONITORING SYSTEMS.	S	Re-ref Com On Judiciary I	03-31-09	04-20-09
S1089	John Snow	LOW-RISK PROBATIONERS MAY BE UNSUPERVISED.	*SR	Ch. SL 2009-275	03-31-09	05-07-09
S1090	John Snow	AMEND CIVIL PROCEDURE RULE 4.	S	Ref To Com On Judiciary II	03-31-09	
S1091	John Snow	CLARIFY WT. MEASUREMENT/METH TRAFFICKING.	*SR	Ch. SL 2009-463	03-31-09	04-30-09

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Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	February 24, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 127	Prudent Management of Institutional Funds.	Senator Hartsell

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II Committee
Tuesday, February 24, 2009, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 127	Prudent Management of Institutional Funds.	Senator Hartsell

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE
Tuesday, February 24, 2009 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 10:00 AM on February 24, 2009, in Room 1124 of the Legislative Building. Fourteen members of the committee were present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

After welcoming remarks, Senator Hartsell introduced the staff and then invited the members and Sergeant-at-Arms to introduce themselves. He then recognized Paige Lavgisch and thanked her for serving as page.

SB 127 (Prudent Management of Institutional Funds.) Senator Forrester moved to accept the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. As this was Senator Hartsell's bill, Senator Allran, Vice-Chair, was asked to preside. Senator Hartsell explained the bill. Questions from committee members were answered by Senator Hartsell and Mr. Floyd Lewis of the General Statutes Commission. Mr. Tim McDowell, representing the North Carolina Independent Colleges and Universities, Inc., spoke on the bill. Senator Jones moved for a favorable report. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Sen. Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Wednesday, February 25, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

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

S.B. **127** Prudent Management of Institutional Funds.

Draft Number:	15038
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

February 25, 2009
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	NCICU
David Heinen	NC Center For Nonprofits
Jim Johnson	Blount Street Advisors
[signature]	NC Bar Association
LIZ ARIAS	Atty, Womble Carlyle
ANN LOVE	OVILE
Faith Everett	Carolina Justice Policy Center
Nathan Batts	NCBA
[signature]	NCBA
Kevin Howell	N.C. State Univ.
Anita Watkins	UNC GA
Erin Schuettpelz	UNC GA

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — Feb. 26, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chris Kukla	Ctr for Responsible Lending
Pamela Schare	NCASA
DAVID RICE	MANNING FULTON
Allen Hardison	CRSWMA
Dwayne Pinkney	UNC - Chapel Hill

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 127*
PROPOSED COMMITTEE SUBSTITUTE S127-CSRV-1 [v.1]

2/19/2009 4:57:58 PM

Short Title: Prudent Management of Institutional Funds. (Public)

Sponsors:

Referred to:

February 12, 2009

A BILL TO BE ENTITLED

AN ACT TO ENACT THE UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT AND TO MAKE RELATED AMENDMENTS TO THE NORTH CAROLINA UNIFORM TRUST CODE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 36B of the General Statutes is repealed.

SECTION 2. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 36E.**

"**Uniform Prudent Management of Institutional Funds Act.**

"**§ 36E-1. Short title.**

This Chapter may be cited as the Uniform Prudent Management of Institutional Funds Act.

"**§ 36E-2. Definitions.**

The following definitions apply in this Chapter:

(1) Charitable purpose. – The relief of poverty, the advancement of education or religion, the promotion of health, scientific, benevolent, literary, governmental, or municipal purposes, or any other purpose the achievement of which is beneficial to the community.

(2) Endowment fund. – An institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. The term does not include assets that an institution designates as an endowment fund for its own use.

(3) Gift instrument. – A record or records, including an institutional solicitation or a response to an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.

(4) Institution. – Any of the following:

a. A person, other than an individual, organized and operated exclusively for charitable purposes;

b. A government or governmental subdivision, agency, or instrumentality, to the extent that it holds funds exclusively for a charitable purpose; or

c. A trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.

(5) Institutional fund. – A fund held by an institution exclusively for charitable purposes. The term includes tangible assets but does not include:
a. Program-related assets;
b. A fund held for an institution by a trustee that is not an institution; or
c. A fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise only upon violation or failure of the purposes of the fund.

(6) Person. – An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(7) Program-related asset. – An asset held by an institution not primarily for investment.

(8) Record. – Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"**§ 36E-3. Standard of conduct in managing and investing institutional fund.**

(a) Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

(b) In addition to complying with the duty of loyalty imposed by law other than this Chapter, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(c) In managing and investing an institutional fund, an institution:
(1) May incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution; and
(2) Shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

(d) An institution may pool two or more institutional funds for purposes of management and investment.

(e) Except as otherwise provided by a gift instrument, the following rules apply:
(1) In managing and investing an institutional fund, the following factors, if relevant, must be considered:
a. General economic conditions;
b. The possible effect of inflation or deflation;
c. The expected tax consequences, if any, of investment decisions or strategies;
d. The role that each investment or course of action plays within the overall investment portfolio of the fund;
e. The expected total return from income and the appreciation of investments;
f. Other resources of the institution;
g. The needs of the institution and the fund to make distributions and to preserve capital; and
h. An asset's special relationship or special value, if any, to the charitable purposes of the institution.
(2) Management and investment decisions about an individual asset must be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment

strategy having risk and return objectives reasonably suited to the institutional fund and to the institution.

(3) Except as otherwise provided by law other than this Chapter, an institution may invest in any kind of property or type of investment consistent with this section.

(4) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.

(5) Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio in order to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of this Chapter.

(6) A person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds. This subdivision does not apply to a volunteer who is not compensated beyond reimbursement for expenses.

"**§ 36E-4. Appropriation for expenditure or accumulation of endowment fund; rules of construction.**

(a) Subject to the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

(1) The duration and preservation of the endowment fund;

(2) The purposes of the institution and the endowment fund;

(3) General economic conditions;

(4) The possible effect of inflation or deflation;

(5) The expected total return from income and the appreciation of investments;

(6) Other resources of the institution; and

(7) The investment policy of the institution.

(b) To limit the authority to appropriate for expenditure or accumulate under subsection (a) of this section, a gift instrument must specifically state the limitation.

(c) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income," "interest," "dividends," or "rents, issues, or profits," or "to preserve the principal intact," or words of similar import:

(1) Create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and

(2) Do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection (a) of this section.

"**§ 36E-5. Delegation of management and investment functions.**

(a) Subject to any specific limitation set forth in a gift instrument or in law other than this Chapter, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

(1) Selecting an agent;
(2) Establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and
(3) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

(c) An institution that complies with subsection (a) of this section is not liable for the decisions or actions of an agent to which the function was delegated.

(d) By accepting delegation of a management or investment function from an institution that is subject to the laws of this State, an agent submits to the jurisdiction of the courts of this State in all proceedings arising from or related to the delegation or the performance of the delegated function.

(e) An institution may delegate management and investment functions to its committees, officers, or employees as authorized by law of this State other than this Chapter.

"**§ 36E-6. Release or modification of restrictions on management, investment, or purpose.**

(a) If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

(b) The superior court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of the restriction will further the purposes of the fund. The institution shall notify the Attorney General of the application, and the Attorney General must be given an opportunity to be heard. To the extent practicable, any modification must be made in accordance with the donor's probable intention.

(c) If a particular charitable purpose or restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the superior court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. The institution shall notify the Attorney General of the application, and the Attorney General must be given an opportunity to be heard.

(d) If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution may release or modify the restriction, in whole or part, if:

(1) The institutional fund subject to the restriction has a total value of less than one hundred thousand dollars ($100,000);
(2) More than 10 years have elapsed since the fund was established; and
(3) The institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

The institution must provide written notice of the proposed release or modification of the restriction to the Attorney General not less than 60 days before releasing or modifying the restriction. The Attorney General may make application to the superior court to contest the institution's determination that the restriction should be released or modified within 60 days of receipt of the institution's written notice.

"**§ 36E-7. Reviewing compliance.**

Compliance with this Chapter is determined in light of the facts and circumstances existing at the time a decision is made or action is taken, and not by hindsight.

"**§ 36E-8. Application to existing institutional funds.**

This Chapter applies to institutional funds existing on or established after the effective date of this act. As applied to institutional funds existing on the effective date of this act, this Chapter governs only decisions made or actions taken on or after that date.

"**§ 36E-9. Relation to Electronic Signatures in Global and National Commerce Act.**

This Chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et seq., but does not modify, limit, or supersede Section 101 of that act, 15 U.S.C. § 7001(a), or authorize electronic delivery of any of the notices described in Section 103 of that act, 15 U.S.C. § 7003(b).

"**§ 36E-10. Conflict with other law; exemptions.**

(a) To the extent that the provisions of this Chapter are inconsistent with the provisions of Chapter 36C, Chapter 36D, Chapter 37A, or Chapter 55A of the General Statutes, the provisions of this Chapter shall control.

(b) The provisions of this Chapter do not apply to funds other than endowment funds held by a government or governmental subdivision, agency, or instrumentality.

"**§ 36E-11. Uniformity of application and construction.**

In applying and construing this Chapter, consideration may be given to promoting uniformity of interpretation with respect to its subject matter among the states that enact it."

SECTION 3. Article 4 of Chapter 36C of the General Statutes is amended by adding a new section to read:

"**§ 36C-4-405.2. Spending rules applicable to charitable trusts.**

Subject to the intent of a settlor specifically expressed in a trust instrument, including a document making a gift to a charitable trust after it is established, a trustee of a charitable trust may appropriate for expenditure or accumulate so much of the trust property as the trustee determines is prudent for the uses, benefits, purposes, and duration for which that charitable trust is established. In making a determination to appropriate or accumulate trust property, a trustee shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

(1) The duration and preservation of the trust;
(2) The purposes of the trust;
(3) General economic conditions;
(4) The possible effect of inflation or deflation;
(5) The expected total return from income and the appreciation of investments;
(6) Other resources of the trust; and
(7) The investment policy of the trust."

SECTION 4. G.S. 36C-4-413 reads as rewritten:

"**§ 36C-4-413. Cy pres.**

(a) Except as otherwise provided in ~~subsection (d)~~subsections (c1) and (d) of this section, if a charitable trust becomes unlawful, impracticable, impossible to achieve, or wasteful:

(1) The trust does not fail, in whole or in part;
(2) The trust property does not revert to the settlor or the settlor's successors in interest; and
(3) The court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes.

(b) The settlor or a trustee of a charitable trust, the Attorney General, a beneficiary, or any other interested party may maintain a cy pres proceeding under Article 2 of this Chapter.

(c) Repealed by Session Laws 2007-106, s. 17.1, effective October 1, 2007.

(c1) If a trustee of a charitable trust determines that a restriction contained in the trust instrument, including a document making a gift to a charitable trust after it is established, relating to the management, investment, or purpose of the trust or gift is unlawful, impracticable, impossible to achieve, or wasteful, the trustee may release or modify the restriction, in whole or part, if:

(1) The trust property to which the restriction applies has a total value of less than one hundred thousand dollars ($100,000);

(2) More than 10 years have elapsed since the trust property to which the restriction applies was given to the charitable trust; and

(3) The trustee uses the trust property in a manner consistent with the charitable purposes expressed in the applicable trust instrument.

The trustee must provide written notice of the proposed release or modification of the restriction to the Attorney General not less than 60 days before releasing or modifying the restriction. The Attorney General may make application to the court to contest the trustee's determination that the restriction should be released or modified within 60 days of receipt of the trustee's written notice.

(d) This section is not applicable if the settlor has provided, either directly or indirectly, for an alternative plan in the event that the charitable trust is or becomes unlawful, impracticable, impossible to achieve, or wasteful. However, if the alternative plan is also a charitable trust and that trust fails, the intention shown in the original plan shall prevail in the application of this section."

SECTION 5. G.S. 116-36 is amended by adding a new subsection to read:

"(m) Chapter 36E of the General Statutes applies to an endowment fund authorized by this section."

SECTION 6. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the official comments to the Uniform Prudent Management of Institutional Funds Act and all explanatory comments of the drafters of this act as the Revisor deems appropriate.

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

State of North Carolina
General Statutes
Commission

9001 Mail Service Center
RALEIGH, NORTH CAROLINA
27699-9001

MEMORANDUM
February 23, 2009

TO: Senate Judiciary II Committee
FROM: General Statutes Commission
RE: **Senate Bill 127 (Prudent Management of Institutional Funds)** (proposed Committee substitute)

General Comments

This bill enacts the Uniform Prudent Management of Institutional Funds Act (UPMIFA) as a new Chapter 36E of the General Statutes. UPMIFA replaces the earlier Uniform Management of Institutional Funds Act (UMIFA), enacted in this State in 1985 as Chapter 36B of the General Statutes. Like UMIFA, UPMIFA is designed to provide guidance and authority to institutions within its scope concerning the management, investment, and expenditure of institutional funds, the delegation of investment authority, and the release of donor-imposed restrictions on the use or investment of institutional funds. UPMIFA has been enacted in 26 states and the District of Columbia and is expected to be introduced in 15 to 20 other states this year.

UPMIFA:

- Provides updated, more specific standards for the prudent management and investment of institutional funds and spending from endowment funds, balancing protection of donor intent with flexibility that will improve an institution's ability to cope with economic upturns and downturns.

- Eliminates UMIFA's provision that allows an institution to spend only amounts above "historic dollar value" (the value of contributed funds at the time of contribution) that the institution determines to be prudent and replaces this standard with better guidance on making prudent determinations about accumulating or spending endowment funds.

- Updates the provisions governing the delegation of management and investment functions.

- Provides a new procedure for releasing or modifying donor-imposed restrictions on the use or investment of smaller, older funds.

The bill also makes related amendments to the North Carolina Uniform Trusts Code and to G.S. 116-36 and authorizes the printing of drafters comments.

Specific Comments

Section 1 repeals Chapter 36B of the General Statutes, the "Uniform Management of Institutional Funds Act."

Section 2 enacts Chapter 36E of the General Statutes, the "Uniform Prudent Management of Institutional Funds Act."

Section 36E-1 provides that the new Chapter 36E may be cited as the "Uniform Prudent Management of Institutional Funds Act."

Section 36E-2 brings forward with some modifications UMIFA's definitions of "endowment fund," "gift instrument," "institution," and "institutional fund." The definition of "endowment fund" is modified to exclude otherwise unrestricted assets that an institution itself designates as "endowment" funds. The definition of "gift instrument" is updated to recognize electronic transactions. The definition of "institution" includes trusts that originally had both charitable and noncharitable interests after the noncharitable interests have terminated. The definition of "institutional fund" is modified in two respects: (i) the elimination of the non-Uniform, limited inclusion of funds held for certain community foundations by noncharitable trustees, which is made unnecessary by Sections 3 and 4 of the bill, and (ii) the deletion of an exclusion for funds other than endowment funds held by a governmental organization, which has been moved to Section 36E-10 (on exclusions from UPMIFA).

UPMIFA includes four definitions not found in UMIFA: "charitable purpose" (contained within the definition of "institution" in UMIFA), "person," "program-related asset," and "record" (derived from the Uniform Electronic Transactions Act). The definitions of "governing board" and "historic dollar value" are not brought forward because these terms are not used in UPMIFA.

Four of the definitions in Section 36E-2 differ from the definitions in UPMIFA. The definition of "charitable purpose" has been modified to conform to the definition of "charitable purpose" in the North Carolina Uniform Trust Code. The definition of "gift instrument" has been modified to include a response to an institutional solicitation. The definition of "institutional fund" has been modified to clarify that the term includes tangible assets. The definition of "program-related asset" has been modified by deleting "primarily to accomplish a charitable purpose of the institution and" immediately before "not primarily for investment" as unnecessary, because "institution" is defined, in pertinent part, as a person, other than an individual, "organized and operated exclusively for charitable purposes."

Section 36E-3 provides an updated standard of conduct for persons responsible for managing and investing institutional funds. The standard is based on the Uniform Prudent Investor Act (Article 9 of Chapter 36C of the General Statutes) and the Revised Model Nonprofit Business Corporation Act (on which Chapter 55A of the General Statutes is based).

Subsection (a) imposes the duty to comply with donor intent as expressed in the gift instrument and to consider the purposes of the institution and the institutional fund in managing and investing institutional funds. Subsection (b) requires each person responsible for managing and investing institutional funds to do so in good faith and with the care an ordinarily prudent

person in a like position would exercise under similar circumstances, in addition to complying with the duty of loyalty imposed by law other than UPMIFA. Subsection (c) requires an institution, in managing and investing institutional funds, to incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution and to investigate the accuracy of the information used in making investment and management decisions. Subsection (d) allows an institution to pool institutional funds for management and investment purposes.

Subsection (e) provides additional default guidelines for managing and investing institutional funds. Subdivision (1) lists factors that, if relevant, must be considered in managing and investing an institutional fund. Subdivision (2) adopts a portfolio approach to management and investment decisions. Subdivision (3) grants broad investment authority unless otherwise provided by law other than UPMIFA. Subdivision (4) requires asset diversification unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification. Subdivision (5) requires an institution to decide whether or not to retain property contributed to it within a reasonable period of time after the institution receives the property. Subdivision (6) requires a person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, to use those skills or that expertise in managing and investing institutional funds. Subdivision (6) has been modified to provide that it does not apply to a volunteer who is not compensated beyond reimbursement for expenses.

Section 36E-4 permits an institution to accumulate or make expenditures from an endowment fund, to the extent the institution determines is prudent, for the uses, benefits, purposes, and duration for which the fund is established. The institution must act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and must consider, if relevant, the factors listed in subsection (a). Accumulations and expenditures are subject to the intent of the donor expressed in the gift instrument. Any limitations on the institution's authority to accumulate or spend must be specifically stated in the gift instrument. Section 36E-4 also provides default rules of construction to use in determining a donor's intent.

The standard in Section 36E-4 replaces UMIFA's requirement that an institution maintain the "historic dollar value" of a gift. The historic dollar value is fixed at an arbitrary point in time, without regard to business cycles. With the passage of time, it becomes essentially meaningless as a prudent management guideline. For example, if the value of the original gift no longer represents the purchasing power it had at the time of the gift, reliance on the historic dollar value as a spending guide may cause the institution to spend too much. In addition, UMIFA is silent as to what happens if an endowment fund falls below its historic dollar value. Uncertainty over this issue is apparently a problem.

Section 36E-5 updates and adds greater detail to UMIFA's delegation authority. UPMIFA permits an institution to delegate management and investment functions to external agents if the institution exercises reasonable skill, care, and caution in selecting, instructing, and monitoring the agents. This authority is subject to any specific limitation set forth in a gift instrument or in law other than UPMIFA. An agent, in performing a delegated function, owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the

delegation. An institution that complies with the requirements for proper delegation is not liable for the decisions or actions of an agent to which the function was delegated. An agent submits to the jurisdiction of the courts of this State by accepting delegation of a management or investment function. Internal delegation is addressed by the law of this State other than UPMIFA.

Section 36E-6 permits a restriction on an institutional fund to be released or modified by (i) the institution with the written consent of the donor, or (ii) the superior court, under the circumstances listed in the section. Subsection (d), based on cy pres principles, is a new provision allowing the institution itself, under the conditions specified in the subsection, to release or modify a restriction on an institutional fund that has a total value of less than $100,000 and has existed for more than 10 years. The institution must give 60 days' advance notice to the Attorney General.

Section 36E-7 provides that compliance with UPMIFA is determined in light of the facts and circumstances existing at the time a decision is made or action is taken, not by hindsight.

Section 36E-8 provides that UPMIFA applies to institutional funds existing on or established after its effective date. However, as applied to existing institutional funds, UPMIFA governs only decisions made or actions taken on or after its effective date.

Section 36E-9 provides that UPMIFA preempts the federal Electronic Signatures in Global and National Commerce Act, except for certain enumerated sections. The effect of this section is to leave to state law the procedures for obtaining and validating an electronic signature.

Section 36E-10 provides that UPMIFA controls in situations where its provisions are inconsistent with provisions in Chapter 36C, the "North Carolina Uniform Trust Code," Chapter 36D, the "North Carolina Community Trust for Persons with Severe Chronic Disabilities Act," Chapter 37A, the "Uniform Principal and Income Act," or Chapter 55A, the "North Carolina Nonprofit Corporation Act." This section brings forward the exclusion currently found in the definition of "institutional fund" for funds other than endowment funds held by a government or governmental subdivision, agency, or instrumentality, but it omits the current exclusion for The University of North Carolina at the request of the University.

Section 36E-11 provides for uniformity of application and construction of UPMIFA.

Sections 3 and 4, respectively, add a new Section 36C-4-405 and amend G.S. 36C-4-413 to incorporate UPMIFA's endowment spending and new cy pres provisions for the benefit of charitable trusts not included within the scope of UPMIFA. These trusts are primarily charitable trusts managed by corporate trustees and individuals.

Section 5 amends G.S. 116-36, relating to endowment funds of The University of North Carolina, to provide that UPMIFA applies to an endowment fund authorized by that statute.

Sections 6 and 7, respectively, authorize the printing of drafters comments and provide that the bill is effective when it becomes law.

Principal Clerk ____
Reading Clerk ____

Revised Notice

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	February 26, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 94	Felony to Assault Probation/Parole Officer.	Senator Foriest
SB 140	Amend Domestic Crim. Trespass.	Senator Snow
SB 143	Continue Child Supp./21 Yrs/College Students.	Senator Snow
SB 144	Limit Liability/Domestic Violence Shelters.	Senator Snow

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	February 26, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 94	Felony to Assault Probation/Parole Officer.	Senator Foriest
SB 131	Penalty for DWI Conviction/BAC .20 or Higher.	Senator Vaughan

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II Committee
Thursday, February 26, 2009, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 94	Felony to Assault Probation/Parole Officer.	Senator Foriest
SB 140	Amend Domestic Crim. Trespass.	Senator Snow
SB 143	Continue Child Supp./21 Yrs/College Students.	Senator Snow
SB 144	Limit Liability/Domestic Violence Shelters.	Senator Snow

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE
Thursday, February 26, 2009 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 10:00 AM on February 26, 2009, in Room 1124 of the Legislative Building with sixteen members present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell welcomed and thanked pages Allaina Doyle, James Compton and Austin Hunter for serving. He then noted that Senate Bill 143 would not be heard by the committee at this meeting.

SB 140 (Amend Domestic Crim. Trespass.) Senator Snow was recognized to explain the bill. He then answered questions from the committee members. Ms. Colleen Kochanek, representing the North Carolina Coalition Against Domestic Violence, spoke on the bill. Senator Forrester moved for a favorable report with a referral to Appropriations. All voted and the motion carried.

SB 144 (Limit Liability/Domestic Violence Shelters.) Senator Snow was recognized to explain the bill. Senator Snow and Jeffery Hudson, committee staff member, answered questions from the committee members. Bruton Craig, representing Advocates for Justice, and Timothy Moose of the North Carolina Department of Correction spoke on the bill. Senator Dannelly moved for a favorable report. All voted and the motion carried.

SB 94 (Felony to Assault Probation/Parole Officer.) Senator Hartsell noted that the bill would be heard but would be continued. Senator Foriest was recognized to explain the bill. No action was taken at this meeting.

There being no further business the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

VISITOR REGISTRATION SHEET

February 26, 2007

SENATE JUDICIARY II
Name of Committee

Judiciary II
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Burton Craige	NC Advocates for Justice
Tim Moose	DOC
Mildred Spearman	NCDOC
David Boaz	MWC
Colleen Kochanek	NCCADV
John Madler	NC Sentencing Commission
Sara Thomas	NC SENT. COMM.
Brittany Farrell	NCFPC
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety
Leslie Arnold	SOG-Daily Bulletin
Jim Blackburn	NC Association of County Commissioners

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 2/26/09

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	NCIC4
CASANDRA WHITE	AOC
MIKE MANN	NCBAA

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 94

Short Title:	Felony to Assault Probation/Parole Officer.	(Public)
Sponsors:	Senator Foriest.	
Referred to:	Judiciary II.	

February 10, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A FELONY TO ASSAULT OR OTHERWISE ENDANGER A PROBATION OR PAROLE OFFICER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-16.10 reads as rewritten:

"**§ 14-16.10. Definitions.**

The following definitions apply in this Article:

(1) Court officer. – Magistrate, clerk of superior court, acting clerk, assistant or deputy clerk, judge, or justice of the General Court of Justice; district attorney, assistant district attorney, or any other attorney designated by the district attorney to act for the State or on behalf of the district attorney; public defender or assistant defender; court reporter; probation or parole officer; juvenile court counselor as defined in G.S. 7B-1501(18a); any attorney or other individual employed by or acting on behalf of the department of social services in proceedings pursuant to Subchapter I of Chapter 7B of the General Statutes; any attorney or other individual appointed pursuant to G.S. 7B-601 or G.S. 7B-1108 or employed by the Guardian ad Litem Services Division of the Administrative Office of the Courts.

(2) Executive officer. – A person named in G.S. 147-3(c).

(3) Legislative officer. – A person named in G.S. 147-2(1), (2), or (3)."

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

SENATE BILL 94:
Felony to Assault Probation/Parole Officer

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	February 25, 2009
Introduced by:	Sen. Foriest	**Prepared by:**	Jennifer McGinnis
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 94 would add probation and parole officers to the list of persons covered under Article 5A of Chapter 14, which makes it a felony to assault or threaten executive, legislative, and court officers.

CURRENT LAW: Article 5A currently provides that a person who assaults a legislative, executive, or court officer ("covered persons") or makes a violent attack upon their residence, office, temporary accommodation or means of transport shall be punished as a Class I felon, except in cases where a deadly weapon is used or serious bodily injury is inflicted in which case the person committing the act shall be punished as a Class F felon. The Article also provides that a person who knowingly and willfully makes a threat to inflict serious bodily injury against a covered person, or knowingly and willfully deposits for conveyance in the mail such a threat, shall be punished as a Class I felon.

Persons currently covered by the statute include: magistrates, clerks of superior court (acting, assistant, or deputy clerks), judges or justices of the General Court of Justice; district attorneys (assistant DAs and other attorneys designated by the DA to act for the State or on behalf of the DA); public defenders (and assistants); court reporters; juvenile court counselors; any attorneys or other individuals employed by or acting on behalf of the department of social services in certain proceedings under the juvenile code, and certain attorneys or other individuals appointed pursuant to the juvenile code or employed by the Guardian ad Litem Services Division of the Administrative Office of the Courts.

BILL ANALYSIS: The bill would add probation and parole officers to the list of persons covered under the statute, making it a felony to assault probation and parole officers (Class I or F dependent on nature of assault) or threaten them with serious bodily injury (Class I).

Other sections of the General Statutes currently cover assaults on probation and parole officers, either by specific reference or in that they apply to assaults on any person. In at least two instances, the penalties under other statutes are higher than those proposed under the bill. For reference, attached is a table of relevant statutes that would cover various types of assaults on probation and parole officers.

Only one other statute found addresses threats. GS 14-277.1 (Communicating threats) makes it a Class 1 misdemeanor to threaten to physically injure another or their child, sibling, spouse, or dependent, or to threaten damage to another's property if that threat is communicated to the other person and the person believes that the threat will be carried out.

EFFECTIVE DATE: The bill would become effective December 1, 2009, and apply to offenses committed on or after that date.

STATUTE	*OFFENSE*	*PUNISHMENT CLASSIFICATION*
GS 14-16.6(a) (*if amended by bill under consideration*)	Assault on Executive, legislative, or court officer (*bill would add probation or parole officers*)	Class I felony[1]
GS 14-16.6(b) (*if amended by bill under consideration*)	Assault on Executive, legislative, or court officer **w/ deadly weapon** (*bill would add probation or parole officers*)	Class F felony[2]
GS 14-16.6(c) (*if amended by bill under consideration*)	Assault on Executive, legislative, or court officer **that inflicts serious injury** (*bill would add probation or parole officers*)	Class F felony[2]
GS 14-33(a)	Simple assault, battery, or affray on any person	Class 1 misdemeanor[4]
GS 14-33(b)	Simple assault ... inflicting serious injury, with use of a deadly weapon, or against an officer or employee of the State or political subdivision	Class A1 misdemeanor[5]
GS 14-32(b)	Assault on any person w/ a deadly weapon & inflicting serious injury	Class E felony[3]
GS 14-34.2	Assault w/ deadly weapon upon governmental officers and employees	Class F felony[2]
GS 14-34.5	Assault w/ firearm on law enforcement, probation, or parole officer	Class E felony[3]
GS 14-34.7	Assault inflicting serious injury on law enforcement, probation, or parole office	Class F felony[2]

S94-SMRI-1(e1) v1

[1] The presumptive range of punishment for a Class I felony when there are no prior convictions is 4 to 6 months of community punishment.
[2] The presumptive range of punishment for a Class F felony when there are no prior convictions is 1 of intermediate or active punishment.
[3] The presumptive range of punishment for a Class E felony when there are no prior convictions is 20 to 25 months of intermediate or active punishment.
[4] The presumptive range of punishment for a Class 1 misdemeanor when there are no prior convictions is 1 – 45 days of community punishment
[5] The presumptive range of punishment for a Class A1 misdemeanor when there are no prior convictions is 1 – 60 days of community, intermediate, or active punishment

SENATE BILL 140

Short Title:	Amend Domestic Crim. Trespass.	(Public)
Sponsors:	Senators Snow; Atwater, Berger of Franklin, and Dorsett.	
Referred to:	Judiciary II.	

February 12, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE OFFENSE OF DOMESTIC CRIMINAL TRESPASS BY MAKING IT A FELONY FOR A PERSON WHO IS THE SUBJECT OF A VALID PROTECTIVE ORDER TO TRESPASS ON PROPERTY WHERE THE PROTECTED PARTY RESIDES AND THAT IS OPERATED AS A SAFE HOUSE OR HAVEN FOR DOMESTIC VIOLENCE VICTIMS WITHOUT REGARD AS TO WHETHER THE PERSON COVERED BY THE PROTECTIVE ORDER IS PRESENT ON THE PREMISES AND TO PROVIDE THAT IT IS AN AGGRAVATING CIRCUMSTANCE FOR FIRST DEGREE MURDER IF A DEFENDANT WHO IS THE SUBJECT OF A VALID PROTECTIVE ORDER COMMITS A MURDER ON THE PREMISES OF A SHELTER FOR VICTIMS OF DOMESTIC VIOLENCE WHERE THE PROTECTED PARTY IS RESIDING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-134.3 reads as rewritten:

"**§ 14-134.3. Domestic criminal trespass.**

(a) Any person who enters after being forbidden to do so or remains after being ordered to leave by the lawful occupant, upon the premises occupied by a present or former spouse or by a person with whom the person charged has lived as if married, shall be guilty of a misdemeanor if the complainant and the person charged are living apart; provided, however, that no person shall be guilty if said person enters upon the premises pursuant to a judicial order or written separation agreement which gives the person the right to enter upon said premises for the purpose of visiting with minor children. Evidence that the parties are living apart shall include but is not necessarily limited to:

(1) A judicial order of separation;

(2) A court order directing the person charged to stay away from the premises occupied by the complainant;

(3) An agreement, whether verbal or written, between the complainant and the person charged that they shall live separate and apart, and such parties are in fact living separate and apart; or

(4) Separate places of residence for the complainant and the person charged.

Except as provided in subsection (b) or (c) of this section, upon conviction, said person is guilty of a Class 1 misdemeanor.

(b) A person convicted of a violation of this section is guilty of a Class G felony if the person is trespassing upon property operated as a safe house or haven for victims of domestic violence and the person is armed with a deadly weapon at the time of the offense.

(c) It is unlawful for a person who is subject to a valid protective order that is enforceable under Chapter 50B of the General Statutes to enter property being operated as a

safe house or haven for victims of domestic violence where the protected party is residing after being forbidden to do so or to remain on the premises after being ordered to leave by the lawful occupant, unless the person enters upon the premises pursuant to a judicial order or written separation agreement that gives the person the right to enter upon the premises for the purpose of visiting with minor children. A person who violates this subsection is guilty of this offense regardless of whether any of the parties protected by the protective order are present on the property. A person who violates this subsection is guilty of a Class H felony."

SECTION 2. G.S. 15A-2000(e) is amended by adding a new subdivision to read:

"(12) The defendant was the subject of a valid protective order enforceable under Chapter 50B of the General Statutes at the time of the commission of the capital felony and committed the capital felony on the premises of a safe house or haven for victims of domestic violence where the protected party was residing."

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

SENATE BILL 140:
Amend Domestic Crim. Trespass

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	February 25, 2009
Introduced by:	Sen. Snow	**Prepared by:**	Brenda J. Carter
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 140 amends the law concerning domestic criminal trespass to make it a Class H felony for a person subject to a domestic violence protective order to enter or remain on the premises of a shelter where the protected party is residing, after that person has been forbidden to enter or has been asked to leave. The bill also makes it an aggravating circumstance for 1st degree murder if a defendant subject to a domestic violence protective order commits murder on the premises of a shelter where the protected party is residing.***

CURRENT LAW: **Domestic Criminal Trespass**: Under G.S. 14-134.3, a person is guilty of domestic criminal trespass if:

- the person enters a premises occupied by the person's present or former spouse, or a person with whom the defendant has lived as if married, after a lawful occupant of the premises has forbidden the person to enter;
- the person refuses to leave a premises occupied by the person's present or former spouse, or a person with whom the defendant has lived as if married, after a lawful occupant of the premises has ordered the person to leave.

An exception applies to persons entering upon the premises pursuant to the terms of a judicial order or a written separation agreement granting the person the right to enter for the purpose of visiting with minor children. ***Under current law, domestic criminal trespass is generally a Class 1 misdemeanor.*** However, if the property entered is a safe house for victims of domestic violence and the defendant is armed with a deadly weapon at the time of entry, then the offense is a Class G felony.

Domestic Violence Protective Orders: Under Chapter 50B of the General Statutes, any person residing in this State may seek relief by filing a civil action alleging domestic against himself or herself or a minor child who resides with or is in his or her custody. Domestic violence occurs when a person commits certain offenses against a person with who he or she has or has had a personal relationship. The term "personal relationship" includes current or former spouses, persons of the opposite sex who live or have lived together, parents and children, grandparents and grandchildren, persons who have a child in common, current or former household members, and persons of the opposite sex who are in a dating relationship. If the court finds that an act of domestic violence has occurred, the court is required to grant a protective order restraining the defendant from further acts of domestic violence. A protective order may include any prohibitions or requirements the court deems necessary to protect any party or any minor child. For example, the court may order a party to refrain from threatening, abusing, following, harassing, or otherwise interfering with the other party, order the eviction of a party from the residence, or award temporary custody of minor children. ***Under current law, violation of a valid protective order is generally a Class A1 misdemeanor.*** Higher penalties apply if the person commits a felony at a time when the person knows the behavior is prohibited by a valid protective order, or if the person knowingly violates a valid protective order after having been previously convicted of three violations. A person who, while in possession of a deadly weapon, knowingly violates a valid protective order by failing to stay away from a place or a person as directed in the order is guilty of a Class H felony.

BILL ANALYSIS: **Section 1** of the bill would amend the existing criminal trespass law by adding a new subsection that would make it unlawful for a person who is subject to a valid domestic violence protective order to enter or remain on property where the protected party is residing, when the property is being operated as a 'safe house' for victims of domestic violence. Violation of this new provision would be a Class H felony. As under current law, the person would be guilty of the offense if the person enters or remains on the premises after being forbidden to do so by the lawful occupant. The new provision also contains the existing exception for persons entering upon the premises pursuant to the terms of a judicial order or a written separation agreement for the purpose of visiting with minor children. The offense does not require that any parties protected by the protective order actually be present on the property.

Section 2 – Under G.S. 15A-2000, when a defendant is found guilty of 1st degree murder after the State has given notice of its intent to seek the death penalty, the court is required to conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment. In all cases in which the death penalty may be authorized, the judge must instruct the jury to consider any aggravating or mitigating circumstance which may be supported by the evidence. Aggravating circumstances which may be considered are set out in G.S. 15A-2000(e). This bill would add as an aggravating circumstance the fact that the defendant was the subject of a valid domestic violence protective order, and the capital felony was committed on the premises of a safe house for victims of domestic violence where the protected party was residing.

EFFECTIVE DATE: The bill would become effective December 1, 2009 and apply to offenses committed on or after that date.

S140-SMRV-3(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 143

Short Title:	Continue Child Supp./21 Yrs/College Students.	(Public)
Sponsors:	Senators Snow; Berger of Franklin and Dorsett.	
Referred to:	Judiciary II.	

February 12, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW CHILD SUPPORT PAYMENTS TO CONTINUE UNTIL THE AGE OF TWENTY-ONE IF THE CHILD IS ATTENDING A COMMUNITY COLLEGE OR COLLEGE OR UNIVERSITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-13.4(c) reads as rewritten:

"(c) Payments ordered for the support of a minor child shall be in such amount as to meet the reasonable needs of the child for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the parties, the child care and homemaker contributions of each party, and other facts of the particular case. Payments ordered for the support of a minor child shall be on a monthly basis, due and payable on the first day of each month. The requirement that orders be established on a monthly basis does not affect the availability of garnishment of disposable earnings based on an obligor's pay period.

The court shall determine the amount of child support payments by applying the presumptive guidelines established pursuant to subsection (c1) of this section. However, upon request of any party, the Court shall hear evidence, and from the evidence, find the facts relating to the reasonable needs of the child for support and the relative ability of each parent to provide support. If, after considering the evidence, the Court finds by the greater weight of the evidence that the application of the guidelines would not meet or would exceed the reasonable needs of the child considering the relative ability of each parent to provide support or would be otherwise unjust or inappropriate the Court may vary from the guidelines. If the court orders an amount other than the amount determined by application of the presumptive guidelines, the court shall make findings of fact as to the criteria that justify varying from the guidelines and the basis for the amount ordered.

Payments ordered for the support of a child shall terminate when the child reaches the age of 18 except:

(1) If the child is otherwise emancipated, payments shall terminate at that time;

(2) If the child is still in primary or secondary school when the child reaches age 18, support payments shall continue until the child graduates, otherwise ceases to attend school on a regular basis, fails to make satisfactory academic progress towards graduation, or reaches age 20, whichever comes first, unless the court in its discretion orders that payments cease at age 18 or prior to high school ~~graduation.~~graduation; or

(3) If the child is attending a community college or college or university as a full-time student, support payments shall continue until the child reaches age 21, unless the child ceases to attend school on a regular basis or fails to make

satisfactory academic progress towards graduation. After age 18, child support payments may be given directly to the child or paid directly towards the child's college expenses.

In the case of ~~graduation,~~graduation or attaining age ~~20,~~20 or where the child is no longer attending a community college or college or university as a full-time student, payments shall terminate without order by the court, subject to the right of the party receiving support to show, upon motion and with notice to the opposing party, that the child has not graduated or attained the age of ~~20.~~20 or that the child is still attending a community college or college or university as a full-time student.

If an arrearage for child support or fees due exists at the time that a child support obligation terminates, payments shall continue in the same total amount that was due under the terms of the previous court order or income withholding in effect at the time of the support obligation. The total amount of these payments is to be applied to the arrearage until all arrearages and fees are satisfied or until further order of the court."

SECTION 2. This act is effective when it becomes law, and applies to actions for child support on or after that date.

SENATE BILL 144

Short Title:	Limit Liability/Domestic Violence Shelters.	(Public)
Sponsors:	Senators Snow; Berger of Franklin and Dorsett.	
Referred to:	Judiciary II.	

February 12, 2009

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE CIVIL LIABILITY OF DOMESTIC VIOLENCE SHELTERS AND PERSONS ASSOCIATED WITH THOSE SHELTERS.

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 51.

"Limited Civil Liability of Domestic Violence Shelters and Persons Associated With the Shelters.

"**§ 1-610. Definitions.**

As used in this Article, the following terms mean:

(1) Client. – A person who is the victim of domestic violence, as defined in Chapter 50B of the General Statutes, or of nonconsensual sexual conduct or stalking, as defined in Chapter 50C of the General Statutes, and is using services or facilities of a shelter.

(2) Conduct. – One or more actions or omissions.

(3) Domestic violence. – As defined in G.S. 50B-1(a).

(4) Harm. – Injury, death, or loss to person or property.

(5) Perpetrator. – A person who has committed domestic violence and who bears one of the personal relationships specified in G.S. 50B-1(b) to the victim of domestic violence, or a person who has committed nonconsensual sexual conduct or stalking as defined in Chapter 50C of the General Statutes.

(6) Person associated with the shelter. – A person who is a director, owner, trustee, officer, employee, victim advocate, or volunteer connected with the shelter.

(7) Shelter. – A facility that meets the criteria set forth in G.S. 50B-9 and is funded through the Domestic Violence Center Fund providing shelter to victims of domestic violence, nonconsensual sexual conduct, or stalking.

(8) Victim advocate. – A person from a crime victim service organization who provides support and assistance for a victim of a crime during court proceedings and recovery efforts related to the crime.

(9) Volunteer. – An individual who provides any service at a shelter without expectation of receiving and without receiving any compensation or other form of remuneration, directly or indirectly, for the provision of the service.

"**§ 1-611. Immunity of a domestic violence shelter and any person associated with the shelter concerning torts committed on the shelter's premises.**

(a) Except as provided in subsection (b) of this section, no shelter and no person associated with the shelter is liable in damages in a tort action for any harm that a client or other person who is on the premises of the shelter sustains as a result of tortious conduct of a perpetrator that is committed on the premises of the shelter if the perpetrator is not a person associated with the shelter and if any of the following situations apply:

(1) The perpetrator illegally entered and illegally remained on the premises of the shelter at the time the perpetrator's tortious conduct caused the harm sustained by a client or other person who was also on the premises.

(2) The perpetrator legally entered the premises of the shelter and a person associated with the shelter instructed the perpetrator to leave the premises before the perpetrator caused the harm sustained by a client or other person who was also on the premises and, despite those reasonable steps, the perpetrator remained on the premises and committed the tortious conduct that caused the harm sustained by a client or other person who was on the premises.

(3) The perpetrator legally entered the premises of the shelter and a person associated with the shelter granted the perpetrator permission to remain on the premises after the person associated with the shelter in exercising the reasonable judgment and discretion of a prudent person under similar circumstances, determined that granting the person permission to remain on the premises did not appear to pose a threat of harm to a client or other person who was on the premises.

(b) The immunity established by this section does not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable."

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

SENATE BILL 144:
Limit Liability/Domestic Violence Shelters

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	February 26, 2009
Introduced by:	Senator Snow	**Prepared by:**	Jeff Hudson, Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 144 would, under certain circumstances, provide immunity to domestic violence shelters and persons associated with domestic violence shelters from tort actions related to harm caused to a client of the shelter while on the premises of the shelter.***

CURRENT LAW:

Determination of Liability

In a 2008 opinion, the North Carolina Court of Appeals set out the analysis for determining the liability of a domestic violence shelter in a case where a client of the shelter was murdered on the premises of the shelter by her abusive husband. Under this analysis, a court must determine if the shelter exercised reasonable care to protect the client from the foreseeable harmful actions of third parties.

Immunity

Similar immunity provisions exist in the General Statutes for volunteers performing services for charitable organizations or providing emergency services; engineers and architects who voluntarily provide their services during a disaster or emergency; and for various entities who conduct criminal history checks.

BILL ANALYSIS: Senate Bill 144 would provide that no shelter or person associated with the shelter is liable in tort for any harm caused to a client of the shelter or any other person who is on the premises that results from the tortious conduct of a perpetrator that is committed on the premises of the shelter if the perpetrator is not a person associated with the shelter and if any of the following situations apply:

- The perpetrator illegally entered and illegally remained on the premises of the shelter at the time the perpetrator harmed the client or other person on the premises.
- The perpetrator legally entered the premises of the shelter and a person associated with the shelter instructed the perpetrator to leave the premises before the perpetrator harmed the client or other person who was on the premises and the perpetrator remained on the premises and harmed the client or other person who was on the premises.
- The perpetrator legally entered the premises of the shelter and a person associated with the shelter granted the perpetrator permission to remain on the premises after the person associated with the shelter, in exercising the reasonable judgment and discretion of a prudent person under similar circumstances, determined that granting the person permission to remain on the premises did not appear to pose a threat of harm to the client or other person who was on the premises.

The protection provided by this immunity does not extend to gross negligence, wanton conduct, or intentional wrongdoing on the part of the shelter or person associated with the shelter.

EFFECTIVE DATE: Senate Bill 144 would become effective December 1, 2009, and apply to offenses committed and causes of action arising on or after that date.

Jennifer McGinnis, counsel to Senate Judiciary II, substantially contributed to this summary.

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	March 3, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 94	Felony to Assault Probation/Parole Officer. Presentation by Sentencing Commission	Senator Foriest

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II Committee
Tuesday, March 3, 2009, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 94	Felony to Assault Probation/Parole Officer.	Senator Foriest

Presentations: **Sentencing Commission**

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE
Tuesday, March 3, 2009 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 10:00 AM on March 3, 2009, in Room 1124 of the Legislative Building with fifteen members present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell introduced pages, Alex Clark, Cameron Martin and Brendan Smith and thanked them for serving.

Mr. John Maddler, Associate Director of the North Carolina Sentencing and Policy Advisory Commission, was recognized by Senator Hartsell to address the Committee regarding the purpose and principles of structured sentencing.

SB 94 (Felony to Assault Probation/Parole Officer.) Senator Hartsell named Senators Vaughan, Foriest, Atwater and Bingham as a Sub-Committee for Senator Foriest's bill. Senator Vaughan will chair the committee.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, March 03, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B.	**140**	Amend Domestic Crim. Trespass.	
		Sequential Referral:	None
		Recommended Referral:	Appropriations/Base Budget

TOTAL REPORTED: 1

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — March 3, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Lagos	Sentencing Commission Raleigh NC
Todd Barlow	North Carolina Advocates for Justice
Tim Moose	DOC
Jim Drennan	UNC-SOG
Patricia Lawler	NCACC
Lynn Everett	NCBA

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — March 3, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Patrick Bradkin	NMLS
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety
Wayne Yancey	Sen. Dorsett

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 94

Short Title:	Felony to Assault Probation/Parole Officer.	(Public)
Sponsors:	Senator Foriest.	
Referred to:	Judiciary II.	

February 10, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A FELONY TO ASSAULT OR OTHERWISE ENDANGER A PROBATION OR PAROLE OFFICER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-16.10 reads as rewritten:

"**§ 14-16.10. Definitions.**

The following definitions apply in this Article:

(1) Court officer. – Magistrate, clerk of superior court, acting clerk, assistant or deputy clerk, judge, or justice of the General Court of Justice; district attorney, assistant district attorney, or any other attorney designated by the district attorney to act for the State or on behalf of the district attorney; public defender or assistant defender; court reporter; probation or parole officer; juvenile court counselor as defined in G.S. 7B-1501(18a); any attorney or other individual employed by or acting on behalf of the department of social services in proceedings pursuant to Subchapter I of Chapter 7B of the General Statutes; any attorney or other individual appointed pursuant to G.S. 7B-601 or G.S. 7B-1108 or employed by the Guardian ad Litem Services Division of the Administrative Office of the Courts.

(2) Executive officer. – A person named in G.S. 147-3(c).

(3) Legislative officer. – A person named in G.S. 147-2(1), (2), or (3)."

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

SENATE BILL 94:
Felony to Assault Probation/Parole Officer

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	February 25, 2009
Introduced by:	Sen. Foriest	**Prepared by:**	Jennifer McGinnis
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 94 would add probation and parole officers to the list of persons covered under Article 5A of Chapter 14, which makes it a felony to assault or threaten executive, legislative, and court officers.

CURRENT LAW: Article 5A currently provides that a person who assaults a legislative, executive, or court officer ("covered persons") or makes a violent attack upon their residence, office, temporary accommodation or means of transport shall be punished as a Class I felon, except in cases where a deadly weapon is used or serious bodily injury is inflicted in which case the person committing the act shall be punished as a Class F felon. The Article also provides that a person who knowingly and willfully makes a threat to inflict serious bodily injury against a covered person, or knowingly and willfully deposits for conveyance in the mail such a threat, shall be punished as a Class I felon.

Persons currently covered by the statute include: magistrates, clerks of superior court (acting, assistant, or deputy clerks), judges or justices of the General Court of Justice; district attorneys (assistant DAs and other attorneys designated by the DA to act for the State or on behalf of the DA); public defenders (and assistants); court reporters; juvenile court counselors; any attorneys or other individuals employed by or acting on behalf of the department of social services in certain proceedings under the juvenile code, and certain attorneys or other individuals appointed pursuant to the juvenile code or employed by the Guardian ad Litem Services Division of the Administrative Office of the Courts.

BILL ANALYSIS: The bill would add probation and parole officers to the list of persons covered under the statute, making it a felony to assault probation and parole officers (Class I or F dependent on nature of assault) or threaten them with serious bodily injury (Class I).

Other sections of the General Statutes currently cover assaults on probation and parole officers, either by specific reference or in that they apply to assaults on any person. In at least two instances, the penalties under other statutes are higher than those proposed under the bill. For reference, attached is a table of relevant statutes that would cover various types of assaults on probation and parole officers.

Only one other statute found addresses threats. GS 14-277.1 (Communicating threats) makes it a Class 1 misdemeanor to threaten to physically injure another or their child, sibling, spouse, or dependent, or to threaten damage to another's property if that threat is communicated to the other person and the person believes that the threat will be carried out.

EFFECTIVE DATE: The bill would become effective December 1, 2009, and apply to offenses committed on or after that date.

STATUTE	*OFFENSE*	*PUNISHMENT CLASSIFICATION*
GS 14-16.6(a) (*if amended by bill under consideration*)	Assault on Executive, legislative, or court officer (*bill would add probation or parole officers*)	Class I felony[1]
GS 14-16.6(b) (*if amended by bill under consideration*)	Assault on Executive, legislative, or court officer **w/ deadly weapon** (*bill would add probation or parole officers*)	Class F felony[2]
GS 14-16.6(c) (*if amended by bill under consideration*)	Assault on Executive, legislative, or court officer **that inflicts serious injury** (*bill would add probation or parole officers*)	Class F felony[2]
GS 14-33(a)	Simple assault, battery, or affray on any person	Class 1 misdemeanor[4]
GS 14-33(b)	Simple assault ... inflicting serious injury, with use of a deadly weapon, or against an officer or employee of the State or political subdivision	Class A1 misdemeanor[5]
GS 14-32(b)	Assault on any person w/ a deadly weapon & inflicting serious injury	Class E felony[3]
GS 14-34.2	Assault w/ deadly weapon upon governmental officers and employees	Class F felony[2]
GS 14-34.5	Assault w/ firearm on law enforcement, probation, or parole officer	Class E felony[3]
GS 14-34.7	Assault inflicting serious injury on law enforcement, probation, or parole office	Class F felony[2]

S94-SMRI-1(e1) v1

[1] The presumptive range of punishment for a Class I felony when there are no prior convictions is 4 to 6 months of community punishment.
[2] The presumptive range of punishment for a Class F felony when there are no prior convictions is 1 of intermediate or active punishment.
[3] The presumptive range of punishment for a Class E felony when there are no prior convictions is 20 to 25 months of intermediate or active punishment.
[4] The presumptive range of punishment for a Class 1 misdemeanor when there are no prior convictions is 1 – 45 days of community punishment
[5] The presumptive range of punishment for a Class A1 misdemeanor when there are no prior convictions is 1 – 60 days of community, intermediate, or active punishment

PRINCIPLES OF STRUCTURED SENTENCING

Truthful Sentencing Policies

Sentence length imposed by the judge should bear a close and consistent relationship to the sentence length actually served.

Consistent and Certain Sentencing Policies

Offenders convicted of similar offenses, who have similar prior records, should generally receive similar sentences.

Rational Sentencing Policies

Sentence should be proportional to the severity of the crime as measured by the harm to the victim and the offender's prior record.

Priorities Set for the Use of Correctional Resources

Prisons and jails should be reserved for violent and repeat offenders, and community-based programs should be used for nonviolent offenders with little or no prior record.

Balance Between Sentencing Policies and Correctional Resources

Sentencing Policies should be supported by adequate prison, jail, and community resources.

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

FELONY PUNISHMENT CHART

PRIOR RECORD LEVEL

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

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

Revised: 08-04-95

MINIMUM AND MAXIMUM SENTENCES

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

FOR OFFENSE CLASSES B1 THROUGH E

	56-77	97-126	138-175	179-224	220-273	261-323	302-372
15-27	57-78	98-127	139-176	180-225	221-275	262-324	303-373
16-29	58-79	99-128	140-177	181-227	222-276	263-325	304-374
17-30	59-80	100-129	141-179	182-228	223-277	264-326	305-375
18-31	60-81	101-131	142-180	183-229	224-278	265-327	306-377
19-32	61-83	102-132	143-181	184-230	225-279	266-329	307-378
20-33	62-84	103-133	144-182	185-231	226-281	267-330	308-379
21-35	63-85	104-134	145-183	186-233	227-282	268-331	309-380
22-36	64-86	105-135	146-185	187-234	228-283	269-332	310-381
23-37	65-87	106-137	147-186	188-235	229-284	270-333	311-383
24-38	66-89	107-138	148-187	189-236	230-285	271-335	312-384
25-39	67-90	108-139	149-188	190-237	231-287	272-336	313-385
26-41	68-91	109-140	150-189	191-239	232-288	273-337	314-386
27-42	69-92	110-141	151-191	192-240	233-289	274-338	315-387
28-43	70-93	111-143	152-192	193-241	234-290	275-339	316-389
29-44	71-95	112-144	153-193	194-242	235-291	276-341	317-390
30-45	72-96	113-145	154-194	195-243	236-293	277-342	318-391
31-47	73-97	114-146	155-195	196-245	237-294	278-343	319-392
32-48	74-98	115-147	156-197	197-246	238-295	279-344	320-393
33-49	75-99	116-149	157-198	198-247	239-296	280-345	321-395
1-50	76-101	117-150	158-199	199-248	240-297	281-347	322-396
1-51	77-102	118-151	159-200	200-249	241-299	282-348	323-397
1-53	78-103	119-152	160-201	201-251	242-300	283-349	324-398
37-54	79-104	120-153	161-203	202-252	243-301	284-350	325-399
38-55	80-105	121-155	162-204	203-253	244-302	285-351	326-401
39-56	81-107	122-156	163-205	204-254	245-303	286-353	327-402
40-57	82-108	123-157	164-206	205-255	246-305	287-354	328-403
41-59	83-109	124-158	165-207	206-257	247-306	288-355	329-404
42-60	84-110	125-159	166-209	207-258	248-307	289-356	330-405
43-61	85-111	126-161	167-210	208-259	249-308	290-357	331-407
44-62	86-113	127-162	168-211	209-260	250-309	291-359	332-408
45-63	87-114	128-163	169-212	210-261	251-311	292-360	333-409
46-65	88-115	129-164	170-213	211-263	252-312	293-361	334-410
47-66	89-116	130-165	171-215	212-264	253-313	294-362	335-411
48-67	90-117	131-167	172-216	213-265	254-314	295-363	336-413
49-68	91-119	132-168	173-217	214-266	255-315	296-365	337-414
50-69	92-120	133-169	174-218	215-267	256-317	297-366	338-415
51-71	93-121	134-170	175-219	216-269	257-318	298-367	339-416
52-72	94-122	135-171	176-221	217-270	258-319	299-368	
53-73	95-123	136-173	177-222	218-271	259-320	300-369	
54-74	96-125	137-174	178-223	219-272	260-321	301-371	
55-75							

FOR OFFENSE CLASSES F THROUGH I

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

THE OFFENSE CLASSIFICATION CRITERIA

The Sentencing Commission was required by G.S. 164-41 to ".... classify criminal offenses into felony and misdemeanor categories on the basis of their severity." The Commission developed a classification criteria to guide the classification process and to ensure that there was a systematic and rational basis for the classifications. The Commission decided that the severity of an offense should be directly related to the harm to the victim that normally results or tends to result from the criminal conduct.

The Commission defined three general types of harms: 1) harms to person (including both physical and mental injury); 2) harms to property; and 3) harms to society (violations of public order and welfare, violations of judicial or governmental operations, and/or violations of public morality). Through considerable discussion and debate, the Commission grouped these harms into a ten-level hierarchy which served as the basis for the Commission's classifications (refer to the classification criteria on the following page). Once the classification criteria was established, the Commission reviewed the individual elements of all felonies in North Carolina and assigned each felony to a specific offense class based on how closely the elements of the crime matched the classification criteria.

The purpose of establishing the classification criteria was to create a rational and consistent philosophical basis for classifying offenses; to assure proportionality in severity; and to provide a guidepost for classifying new crimes in the future.

Under the classification criteria, the most serious offense classes (A through F) primarily involve personal injury, the risk of personal injury, serious societal injury or widespread societal injury. The lower offense levels (G through I) primarily involve property loss or less serious societal injury. The degree of harm is divided into three levels; injury to person, property or society; significant injury to person, property or society; and serious injury to person, property or society.

The Commission also assigned misdemeanor offenses to three classes: class 1, class 2 or class 3. The Commission did not create classification criteria for misdemeanors but relied on the maximum sentences previously set by the General Assembly. Generally, crimes which had previously been punishable by over six months were made class 1 misdemeanors, those previously punishable by more than 30 days and up to six months were made class 2 misdemeanors, and those previously punishable by 30 days or less were made class 3 misdemeanors. Assaultive misdemeanors were made Class A1 misdemeanors.

FELONY OFFENSE CLASSIFICATION CRITERIA*

CLASS	CRITERIA
A	• Reserved for First Degree Murder
	[Reasonably tends to result or does result in]:
B	• Serious debilitating long-term personal injury
C	• Serious long-term personal injury • Serious long-term or widespread societal injury
D	• Serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling
E	• Serious personal injury
F	• Significant personal injury • Serious societal injury
G	• Serious property loss: Loss from the person or from the person's dwelling
H	• Serious property loss: Loss from any structure designed to house or secure any activity or property Loss occasioned by the taking or removing of property Loss occasioned by breach of trust, formal or informal • Personal injury • Serious societal injury
I	• Serious property loss: All other felonious property loss • Societal injury
M	• All other misdemeanors

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* Personal injury includes both physical and mental injury.
Societal injury includes violations of public morality, judicial or government operations, and/or public order and welfare.

Note: The criteria were not used in the classification of the homicide offenses or drug offenses.

CLASSIFICATION OF A SAMPLE OF OFFENSES
(Effective 12/1/08)

CLASS A FELONIES	Maximum Punishment of Death or Life Without Parole
First-Degree Murder. (14-17)	
CLASS B1 FELONIES	**Maximum Punishment of Life Without Parole**
First-Degree Rape. (14-27.2)	First-Degree Sexual Offense. (14-27.4)
CLASS B2 FELONIES	**Maximum Punishment of 480 Months**
Second-Degree Murder. (14-17)	
CLASS C FELONIES	**Maximum Punishment of 261 Months**
Habitual Felon. (14-7.6)	Assault W/D/W/I/K/I/S/I. (14-32(a))
Second-Degree Rape. (14-27.3)	First-Degree Kidnapping. (14-39)
Second-Degree Sexual Offense. (14-27.5)	Embezzlement (amount involved $100,000 or more). (14-90)
CLASS D FELONIES	**Maximum Punishment of 229 Months**
Voluntary Manslaughter. (14-18)	First-Degree Arson. (14-58)
Malicious Use of Explosive or Incendiary. (14-49(a))	Armed Robbery. (14-87)
First-Degree Burglary. (14-51)	Sell or Deliver a Controlled Substance to a Person Under 16 But More than 13 Years of Age. (90-95(e)(5))
CLASS E FELONIES	**Maximum Punishment of 98 Months**
Intercourse and Sexual Offenses with Certain Victims (Substitute Parent/Custodian). (14-27.7)	Second-Degree Kidnapping. (14-39)
Assault W/D/W/I/S/I. (14-32(b))	Child Abuse Inflicting Serious Physical Injury. (14-318.4(a))
Assault W/D/W/I/K. (14-32(c))	Death by Vehicle. (20-141.4(a)(1))
Discharging Weapon Into Occupied Property. (14-34.1(a))	Sell or Deliver a Controlled Substance Within 1,000 Feet of a School. (90-95(e)(8))
Assault with a Firearm on a Law Enforcement Officer. (14-34.5)	
CLASS F FELONIES	**Maximum Punishment of 59 Months**
Involuntary Manslaughter. (14-18)	Burning of Certain Other Buildings. (14-62)
Assault Inflicting Serious Bodily Injury. (14-32.4)	Participating in Prostitution of a Minor. (14-190.19)
Assault W/D/W on Governmental Officer or Employee. (14-34.2)	Taking Indecent Liberties with Children. (14-202.1)
Assault I/S/I on a Law Enforcement Officer. (14-34.7)	Possess Weapon of Mass Destruction. (14-288.8)
Felonious Restraint. (14-43.3)	Habitual Impaired Driving. (20-138.5)
CLASS G FELONIES	**Maximum Punishment of 44 Months**
Second-Degree Burglary. (14-51)	Possession of Firearms, etc., by Felon. (14-415.1)
Second-Degree Arson. (14-58)	Sale of a Schedule I or II Controlled Substance. (90-95(a)(1))
Common Law Robbery. (14-87.1)	
CLASS H FELONIES	**Maximum Punishment of 30 Months**
Habitual Misdemeanor Assault. (14-33.2)	Obtaining Property by False Pretenses (amount involved less than $100,000). (14-100)
Breaking or Entering Buildings (w/felonious intent). (14-54(a))	Intimidating/Interfering with Witnesses. (14-226)
Fraudulently Setting Fire to Dwelling Houses. (14-65)	Hit and Run (resulted in injury). (20-166(a1))
Possessing Stolen Goods. (14-71.1)	Sale of a Schedule III, IV, V, or VI Controlled Substance. (90-95(a)(1))
Larceny of Property (worth more than $1,000). (14-72)	Possession W/I/M/S/D Cocaine. (90-95(a)(1))
Embezzlement (amount involved less than $100,000). (14-90)	Escaping From State Prison System (felon). (148-45(b))

SS I FELONIES	Maximum Punishment of 15 Months
cing or Entering Motor Vehicles. (14-56)	Possession W/I/M/S/D Marijuana. (90-95(a)(1))
Financial Transaction Card Theft. (14-113.9)	Possess Cocaine. (90-95(a)(3))
Forgery of Notes, Checks, Securities. (14-119(a))	Maintain Dwelling or Motor Vehicle for Keeping or Selling a Controlled Substance. (90-108(a)(7), (b))
Uttering Forged Paper or Instrument. (14-120)	Obtain a Controlled Substance by Fraud. (90-108(a)(10), (b))
CLASS A1 MISDEMEANORS	**Maximum Punishment of 150 Days**
Assault Inflicting Serious Injury or Using a Deadly Weapon. (14-33(c)(1))	Assault on a State Officer or Employee. (14-33(c)(4))
Assault on a Female. (14-33(c)(2))	Assault by Pointing a Gun. (14-34)
Assault on a Child Under 12 Years of Age. (14-33(c)(3))	Violation of a Valid Protective Order. (50B-4.1(a))
CLASS 1 MISDEMEANORS	**Maximum Punishment of 120 Days**
Breaking or Entering Buildings. (14-54(b))	Willful and Wanton Injury to Real Property. (14-127)
Larceny of Property (worth $1,000 or less). (14-72)	Communicating Threats. (14-277.1)
Unauthorized Use of a Motor Vehicle. (14-72.2)	Possession of Drug Paraphernalia. (90-113.22)
Worthless Checks for $2,000 or Less (closed account). (14-107(d)(4))	Misrepresentation to Obtain Employment Security Benefits. (96-18(a))
CLASS 2 MISDEMEANORS	**Maximum Punishment of 60 Days**
Simple Assault/Assault and Battery. (14-33(a))	Failure to Return Rental Property. (14-167)
Obtaining Property in Return for Worthless Check. (14-106)	Using Profane, Indecent or Threatening Language to Any Person Over Telephone. (14-196)
Worthless Check for $2,000 or Less. (14-107(d)(1))	Resisting Officers. (14-223)
Degree Trespass. (14-159.12)	Carrying Concealed Weapons. (14-269(a), (a1)/first offense)
ul and Wanton Injury to Personal Property. (14-160(a))	Disorderly Conduct. (14-288.4)
CLASS 3 MISDEMEANORS	**Maximum Punishment of 20 Days**
Concealment of merchandise in mercantile establishments (first conviction). (14-72.1)	Operate Motorboat Without Lifesaving Device. (75A-6)
Second-Degree Trespass. (14-159.13)	Possess Marijuana (1/2 ounce or less). (90-95(a)(3))
Intoxicated and Disruptive in Public. (14-444)	Hunting Without a License. (113-270.2)
Unsealed Wine/Liquor in Passenger Area. (18B-401)	Fishing Without a License. (113-271)
CONSPIRACY to commit an offense is classified as one class lower than the offense the person conspired to commit. (14-2.4)	
ATTEMPT to commit an offense is classified as one class lower than the offense the person attempted to commit. (14-2.5)	
SOLICITATION to commit an offense is classified as two classes lower than the offense the person solicited the other person to commit. (14-2.6)	
ACCESSORY BEFORE THE FACT punishable as the principal felon. (14-5.2)	
ACCESSORY AFTER THE FACT punishable as two classes lower than the felony the principal felon committed. (14-7)	

SCORING PRIOR RECORD/FELONY SENTENCING

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

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

II. CLASSIFYING PRIOR RECORD LEVEL

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

PRIOR RECORD LEVEL _____

DISPOSITIONS

ACTIVE PUNISHMENT

An active punishment requires that the offender be sentenced to the custody of the Department of Correction to serve the minimum and up to the maximum sentence imposed by the court.

INTERMEDIATE PUNISHMENT

An intermediate punishment requires a sentence of supervised probation with at least one of the following conditions:

1. Special Probation as defined in G.S. §15A-1351(a) which includes a period of active confinement followed by a period of probation. (This sanction is sometimes referred to as a split sentence.)
2. Residential Program assignment that requires the offender to reside in a facility for a specified period of time and to participate in activities such as counseling, treatment, social skills training, or employment training at the residential facility or other specified locations.
3. House Arrest With Electronic Monitoring assignment that requires the offender to remain at his or her residence unless the court or probation officer authorizes the offender to leave, and in which the offender shall wear a device which permits the supervising agency to monitor the offender's compliance with the conditions electronically.
4. Intensive Probation assignment 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.
5. Day Reporting Center assignment that requires the offender to report on a daily or other regular basis at specified times for a specified length of time to participate in activities such as counseling, treatment, social skills training, or employment training.
6. Drug Treatment Court Program assignment that requires the offender to comply with the rules adopted for the program pursuant to Article 62 of Chapter 7A of the General Statutes and to report on a regular basis for a specified time to participate in court supervision, drug screening or testing, and drug or alcohol treatment programs.

An intermediate punishment may also include a fine, restitution, or any other conditions of probation which are considered community punishments.

COMMUNITY PUNISHMENT

A community punishment is any authorized sentence that does not include an active punishment or an intermediate punishment. Community punishments may include, but are not limited to, one or more of the following:

1. Supervised or unsupervised probation.
2. Outpatient drug/alcohol treatment.
3. Community service.
4. Restitution.
5. Fines.
6. Any other authorized condition of probation except those defined as intermediate punishments.

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

MISDEMEANOR PUNISHMENT CHART

CLASS	PRIOR CONVICTION LEVEL		
	I No Prior Convictions	II One to Four Prior Convictions	III Five or More Prior Convictions
A1	C/I/A 1 - 60 days	C/I/A 1 - 75 days	C/I/A 1 - 150 days
1	C 1 - 45 days	C/I/A 1 - 45 days	C/I/A 1 - 120 days
2	C 1 - 30 days	C/I 1 - 45 days	C/I/A 1 - 60 days
3	C 1 - 10 days	C/I 1 - 15 days	C/I/A 1 - 20 days

A – Active Punishment I – Intermediate Punishment C – Community Punishment
Cells with slash allow either disposition at the discretion of the judge

NC SENTENCING AND POLICY ADVISORY COMMISSION
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SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	March 5, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 262	Expunctions/Purge Online Databases.	Senator Berger
SB 307	Regulate Ownership & Use of Certain Reptiles.	Senator Jones

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II Committee
Thursday, March 5, 2009, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 262	Expunctions/Purge Online Databases.	Senator Berger
SB 307	Regulate Ownership & Use of Certain Reptiles.	Senator Jones

Presentations: Questions and Answers from North Carolina Sentencing and Policy Advisory Commission

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE
Thursday, March 5, 2009 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 10:00 AM on March 5, 2009, in Room 1124 of the Legislative Building with fourteen members present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell introduced pages William Cooper, Brian Harris, Gabrina Johnson and Jessica Miller and thanked them for serving.

Mr. John Maddler and Ms. Susan Katzenelson of the North Carolina Sentencing and Policy Advisory Commission were recognized to again answer questions from the Committee regarding the purpose and principles of structured sentencing and the sentencing grid.

As Senator Hartsell needed to leave the meeting, Senator Don Vaughan was invited to preside.

SB 307 (Regulate Ownership & Use of Certain Reptiles.) Senator Snow moved to accept the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Jones was recognized to explain the bill. Senator Jones then invited Mr. Andrew Wyatt, President of the United States Association of Reptile Keepers to speak on the bill. After much discussion Senator Jones asked that the bill be withdrawn.

SB 262 (Expunctions/Purge Online Databases.) Senator Snow moved to accept the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Berger explained the bill. Ms. Casandra White and Troy Page representing the North Carolina Administrative Office of the Courts, along with Senator Berger, Senator Vaughan and Brenda Carter, Staff Attorney, answered questions of the Committee members.

Senator Bingham moved for a favorable report, unfavorable to original bill, favorable to the Proposed Committee Substitute with a referral to Finance. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, March 10, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

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

S.B. **262** Expunctions/Purge Online Databases.

Draft Number:	55159
Sequential Referral:	None
Recommended Referral:	Finance
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — March 5, 2009
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andrew Wyatt	VSARK
J. Kaczmarek	Sentencing Com.
Ilona Kusa	Apex JWC.
Alicia Davis	MWC
Troy Page	AOC
Casandra White	AOC
Faith Everett	CPJL
Mildred Spearman	NCDOC
David Lagos	Sentencing Comm'n
John Madler	
Steve Wall	DENR

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chaz Offenburg	Sen. Kinnaird
Erica Peterson	NCAg
Kelly Graham	NCAJF
Angie White	NCPC
Jerry Hardesty	NCPC
Mildred Spearman	NCDOC
Wayne Yancey	Sen Charlie Dannelly
PBD	"
LA	"
Sarah Preston	ACLU-NC
[illegible]	[illegible]

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
MIKE MANN	NCBA
Jim Blackburn	NC Association of County Commissioners
William Flowers	Legislative assistant
Raheem Simmons	Volunteer
Helen McLemi	NCRAE

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 262
PROPOSED COMMITTEE SUBSTITUTE S262-CSRV-3 [v.3]

3/4/2009 11:26:24 PM

Short Title: Expunctions/Purge Online Databases. (Public)

Sponsors:

Referred to:

February 23, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT AN ORDER TO EXPUNGE AN INDIVIDUAL'S RECORD SHALL BE FORWARDED BY THE CLERK OF COURT TO ALL APPLICABLE STATE AND LOCAL GOVERNMENT AGENCIES, TO REQUIRE A STATE GOVERNMENT AGENCY TO FORWARD NOTICE OF EXPUNCTION ORDERS RECEIVED BY THE AGENCY TO ANY PRIVATE ENTITY THAT DISSEMINATES CRIMINAL HISTORY RECORDS FOR COMPENSATION THAT IS LICENSED BY THE AGENCY TO ACCESS THE AGENCY'S CRIMINAL HISTORY RECORD DATABASE, TO PROVIDE THAT A PRIVATE ENTITY THAT DISSEMINATES CRIMINAL HISTORY RECORDS FOR COMPENSATION HAS A DUTY TO UPDATE THOSE HISTORIES BEFORE DISSEMINATING THEM AND IS SUBJECT TO BOTH CIVIL LIABILITY AND TO A CIVIL PENALTY FOR FAILURE TO CARRY OUT ITS DUTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-50.30(b) reads as rewritten:

"(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.~~ information and that the conviction 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, 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~~ conviction to expunge their records of the petitioner's 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.~~ agency; and when applicable, to the Division of Motor Vehicles, the Department of Correction, and any other State or local 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."

SECTION 2. G.S. 15A-145(c) reads as rewritten:

"(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~~ court. The court shall direct all law-enforcement agencies, the Department of Correction, ~~including~~ 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 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.~~ agency; and when applicable, to the Department of Correction, and any other State or local 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."

SECTION 2a. G.S. 15A-145(d) reads as rewritten:

"(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 or any person filing a civil action under G.S. 15A-150.1 has been previously granted a discharge."

SECTION 3. G.S. 15A-146(b) reads as rewritten:

"(b) The court may also order that the said entries, including civil revocations of drivers licenses as a result of the underlying charge, shall be expunged from the records of the court, and direct all law-enforcement agencies, the Department of Correction, ~~including~~ 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 entries, including civil revocations of drivers licenses as a result of the underlying charge being expunged. 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.~~ agency; and when applicable, to the Department of Correction and any other State or local 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 the 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. The costs of expunging these records shall not be taxed against the petitioner."

SECTION 3a. G.S. 15A-146(c) reads as rewritten:

"(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 an expungement under the provisions of this section and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted such expungement. The information contained in such files 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 or any person filing a civil action under G.S. 15A-150.1 has been previously granted an expungement."

SECTION 4. G.S. 15A-147 reads as rewritten:

"**§ 15A-147. Expunction of records when charges are dismissed or there are findings of not guilty as a result of identity theft.**

(a) If any person is named in a charge for an infraction or a crime, either a misdemeanor or a felony, as a result of another person using the identifying information of the named person and the charge against the named person is dismissed, a finding of not guilty is entered, or the conviction is set aside, the named person may apply by petition or written motion to the court where the charge was last pending on a form approved by the Administrative Office of the Courts supplied by the clerk of court for an order to expunge from all official records any entries relating to the person's apprehension, charge, or trial. The court, after notice to the district attorney, shall hold a hearing on the motion or petition and, upon finding that the person's identity was used without permission and the charges were dismissed or the person was found not guilty, the court shall order the expunction.

(b) No person as to whom such an order has been entered under this section 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 the person's failure to recite or acknowledge any expunged entries concerning apprehension, charge, or trial.

(c) The court shall also order that the said entries shall be expunged from the records of the court and direct all law enforcement agencies, the Department of Correction, the Division of Motor Vehicles, or any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the entries. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other charging agency; and, when applicable, to the Department of Correction, the Division of Motor ~~Vehicles~~ Vehicles, and any other State or local agency. The sheriff, chief, or head of such other charging agency shall then transmit the copy of the order with the 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. Upon receipt of a certified copy of the order, the agency must purge its records as required by this section. The costs of expunging these records shall not be taxed against the petitioner.

(d) The Division of Motor Vehicles shall expunge from its records entries made as a result of the charge or conviction ordered expunged under this section. The Division of Motor Vehicles shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged, including the assessment of drivers license points and drivers license suspension or revocation. Notwithstanding any other provision of this Chapter, the Division of Motor Vehicles shall provide to the person whose motor vehicle record is expunged under this section a certified corrected driver history at no cost and shall reinstate at no cost any drivers license suspended or revoked as a result of a charge or conviction expunged under this section.

(e) ~~Any~~ The Department of Correction and 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. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a

result of the charges or convictions expunged. Notwithstanding any other provision of law, the normal fee for any reinstatement of a license or privilege resulting under this section shall be waived.

(f) Any insurance company that charged any additional premium based on insurance points assessed against a policyholder as a result of a charge or conviction that was expunged under this section shall refund those additional premiums to the policyholder upon notification of the expungement."

SECTION 5. G.S. 15A-149(b) reads as rewritten:

"(b) The order of expunction shall include an instruction that any entries relating to the person's apprehension, charge, or trial shall be expunged from the records of the court and direct all law enforcement agencies, the Department of Correction, the Division of Motor Vehicles, or any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the entries. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other charging agency; and, when applicable, to the Department of Correction, the Division of Motor ~~Vehicles~~ Vehicles, and any other State or local agency. The sheriff, chief, or head of such other charging agency shall then transmit the copy of the order with the 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. Upon receipt of a certified copy of the order, the agency must purge its records as required by this section. The costs of expunging these records shall not be taxed against the petitioner."

SECTION 6. G.S. 90-96(b) reads as rewritten:

"(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 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~~ agencies, the Department of Correction, the Division of Motor Vehicles, and any other State or local government agencies identified by the petitioner as 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,~~appropriate; and when applicable, to the Department of Correction, Division of Motor Vehicles, and any other State or local government agency. ~~and the~~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."

SECTION 7. 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 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 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~~agencies, the Department of Correction, the Division of Motor Vehicles, and any other State or local government agency 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~~appropriate; and when applicable, to the Department of Correction, Division of Motor Vehicles, and any other State or local government agency. 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 or any person filing a civil action under G.S. 15A-150.1 has been previously granted cancellation and expunction of a judgment of conviction pursuant to the terms of this Article."

SECTION 8. G.S. 90-113.14(b) reads as rewritten:

"(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 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~~ agencies, the Department of Correction, the Division of Motor Vehicles, and any other State or local government agencies identified by the petitioner as 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~~ appropriate; and when applicable, to the Department of Correction, Division of Motor Vehicles, and any other State or local agency. 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."

SECTION 9. 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 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 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~~ agencies, the Department of Correction, the Department of Motor Vehicles, and any other State or local government 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~~ appropriate; and when applicable, to the Department of Correction, Division of Motor Vehicles, and any other State or local agency. 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 or any person filing a civil action under G.S. 15A-150.1 has been previously granted cancellation and expunction of a judgment of conviction pursuant to the terms of this Article."

SECTION 10. Article 5 of Chapter 15A of the General Statutes is amended by adding the following new sections to read:

"**§ 15A-150. State agency to notify licensed private entities of expunctions.**

When a State agency receives a certified copy of an order to expunge a record under G.S. 14-50.30, 15A-145, 15A-146, 15A-147, 15A-149, 90-96, or 90-113.14, the State agency, in addition to expunging its own records pursuant to the expunction order, shall also notify any private entity with which it has a licensing agreement for bulk extracts of data from the agency's criminal record database to delete the record in question.

"**§ 15A-150.1. Duty of private entity to expunge records upon notice of expunction and to update criminal history record information; civil liability.**

(a) A private entity that compiles and disseminates for compensation criminal history record information shall destroy and shall not disseminate any information in the possession of the entity with respect to which the entity has received notice that an order of expunction has been issued.

(b) 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 to 6809), a private entity

described by subsection (a) of this section that is licensed to access a State agency's criminal history record database:

(1) May disseminate that information only if, within the 90-day period preceding the date of dissemination, the entity: (i) originally obtains that information; or (ii) receives that information as updated record information to its database; and

(2) Shall notify the State agency if the entity sells any compilation of the information to another similar entity.

(c) A private entity 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.

"**§ 15A-150.2. Civil penalty: dissemination of certain criminal history information.**

(a) A private entity that compiles and disseminates for compensation criminal history record information shall not compile or disseminate information with respect to which the entity has received notice that an order of expunction has been issued under G.S. 14-50.30, 15A-145, 15A-146, 15A-147, 15A-149, 90-96, or 90-113.14.

(b) A district court may issue a warning to a private entity for a first violation of subsection (a) of this section. After receiving a warning for the first violation, the private entity is liable to the State for a civil penalty not to exceed one thousand dollars ($1,000) for each subsequent violation.

(c) The attorney general or appropriate district attorney may sue to collect a civil penalty under this section.

(d) A civil penalty collected under this section shall be deposited in the Civil Penalty and Forfeiture Fund established under G.S. 115C-457.1."

SECTION 11. This act becomes effective October 1, 2009.

SENATE BILL 262:
Expunctions/Purge Online Databases

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	March 4, 2009
Introduced by:	Sen. Berger of Franklin	**Prepared by:**	Brenda J. Carter
Analysis of:	PCS to First Edition S262-CSRV-3		Committee Counsel

SUMMARY: ***Senate Bill 262 amends the laws pertaining to the expunction of criminal records to require that the court send a certified copy of the expunction order to the Department of Correction, DMV, and any other State & local agencies identified by the petitioner, and direct those agencies to expunge their records of the petitioner's charge or conviction. The bill also requires that a State agency receiving an order of expunction notify any private entity with which it has a licensing agreement for data from the agency's criminal record database, and imposes a duty on the private entity to expunge its records and not disseminate any information for which it has received notice of expunction. The bill creates liability for a private entity that violates the expunction requirement and authorizes court costs and attorneys' fees for a prevailing party; it also creates civil penalties for a private entity that compiles and disseminates criminal history information after receiving notice of an order of expunction.***

CURRENT LAW: The terms 'expunction' and 'expungement' are used interchangeably, and both appear in the statutes. Expunction is a judicial process for removing records pertaining to a criminal case. The purpose of expunction is to clear the public record of entries so that a person who is entitled to expunction may omit reference to the charges to potential employers and others, and so that a records check for prior arrests and convictions will not disclose the expunged entries. In North Carolina, expunction is limited to specifically defined situations, and a person can generally be granted only one expungement in his or her lifetime. Each expunction statute specifically prescribes who may apply for an expungement and then specifies the conditions under which a court can order an expungement.

Under **G.S. 14-50.30** a person who is convicted of an offense under the Street Gang Suppression Act may apply for expunction, provide the person has not been previously convicted of any criminal offense, and the person was under the age of 18 at the time of the conviction. Expunction is not available if the person acted as an organizer, supervisor, or in any position of management with regard to a criminal street gang in engaging in a pattern of street gang activity, or if the person recruited minors under age 16 to participate in criminal street gang activity.

G.S. 15A-145 provides for the expunction of records for <u>first offenders</u> under the age of 18 at the time of conviction of a misdemeanor. A person who is convicted of a misdemeanor before reaching the age of 18 may petition to have that conviction expunged after 2 years, if there have been no other convictions. G.S. 15A-145 also provides for the expunction of records for <u>first offenders</u> 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 petition to have that conviction expunged after 2 years, if there have been no other convictions.

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, but not convicted of, any misdemeanor or felony offense can apply to have the charge expunged. Persons who have previously received an expungement, or persons who have previously been convicted of a felony, would not qualify under this provision.

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. The person can apply to have the charge expunged when: (1) the charge against the person is dismissed, (2) a finding of not guilty is made, or (3) the conviction is set aside. 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.

Under **G.S. 15A-149**, a person who is convicted of a crime and receives a pardon of innocence from the Governor may apply to the Court for an order to expunge from all official records any entries relating to the person's apprehension, charge, or trial.

Drug Offenses -- The N.C. Controlled Substances Act, the Toxic Vapors Act, and the Drug Paraphernalia Act provide for the conditional discharge and dismissal of proceedings for certain first-time offenders. Upon discharge and dismissal, an offender age 21 or under may apply for expunction of the record. **G.S. 90-96** provides for the expunction of records when a person age 21 or under 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. The person may apply to the court for an order to expunge official records relating to the person's arrest, indictment or information, or trial. An order of expunction will be granted if the court determines that the person was not over 21 at the time of any of the proceedings. A similar provision in **G.S. 113.14** applies to misdemeanor possession of controlled substances in violation of the Toxic Vapors Act and to possession of drug paraphernalia.

BILL ANALYSIS: Under existing law, when the court issues an order of expunction, it is required to forward a certified copy of the order to the sheriff, chief of police, or other arresting agency and to direct the law enforcement agencies to expunge their records of the petitioner's conviction as the result of a criminal charge. In some cases, the court is required to notify DMV. **Sections 1-9** of the bill extend this requirement to routinely include the Department of Correction, the Division of Motor Vehicles, and any other State or local agencies that are identified by the petitioner as bearing record of the charge or conviction. **Section 10** of the bill requires a State agency receiving a certified copy of an expunction order to expunge its own records and to also notify any private entity with which it has a licensing agreement for bulk extracts of data from the agency's criminal record database. It requires that a private entity that compiles and disseminates criminal history record information for compensation destroy and not disseminate any information for which it has received notice of an expunction order. Unless an exception applies, a private entity licensed to access a state agency's criminal history record database (1) may disseminate only that information that is received within the 90-day period preceding dissemination and (2) must notify the State agency if the entity sells any compilation of information to another similar entity. A private entity that violates these requirements would be liable for damages to the person who is the subject of the expunction, and the prevailing party would be entitled to recover court costs and reasonable attorneys' fees. The bill also provides for the imposition of a civil penalty upon a private entity that compiles and disseminates criminal history information for which it has received notice of an order of expunction. A district court may issue a warning for the first violation and may assess a civil penalty of up to $1,000 for each subsequent violation. The bill authorizes the Attorney General or the appropriate district attorney to sue to collect a civil penalty. Any civil penalty would be deposited in the Civil Penalty and Forfeiture Fund.

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

S262-SMRV-4(CSRV-3) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 307
PROPOSED COMMITTEE SUBSTITUTE S307-CSRIf-1 [v.4]

3/4/2009 4:52:30 PM

Short Title: Regulate Ownership & Use of Certain Reptiles. (Public)

Sponsors:

Referred to:

February 25, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGULATING THE USE OF CERTAIN REPTILES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 55 of Chapter 14 of the General Statutes reads as rewritten:

"Article 55.

"~~Handling~~ Regulation of ~~Poisonous~~ Certain Reptiles.

"**§ 14-416. ~~Handling~~ Mishandling of ~~poisonous~~ certain reptiles declared public nuisance and criminal offense.**

The intentional or negligent exposure of other human beings to unsafe contact with ~~reptiles of a venomous nature~~ venomous reptiles, large constricting snakes, or crocodilians ~~being~~ is essentially dangerous and injurious and detrimental to public health, safety and welfare, ~~the indulgence in and inducement to such exposure is hereby~~ and is therefore declared to be a public nuisance and a criminal offense, to be abated and punished as provided in this Article.

"**§ 14-417. Regulation of ownership or use of ~~poisonous~~ venomous reptiles.**

(a) It shall be unlawful for any person to own, possess, use, transport, or traffic in any venomous reptile ~~of a poisonous nature whose venom is not removed, unless such reptile is at all times kept securely in a box, cage, or other safe container in which there are no openings of sufficient size to permit the escape of such reptile, or through which such reptile can bite or inject its venom into any human being.~~ that is not housed in a sturdy and secure enclosure. Permanent enclosures shall be designed to be escape-proof, bite-proof, and have an operable lock. Transport containers shall be designed to be escape-proof and bite-proof.

(b) Each enclosure shall be clearly and visibly labeled 'Venomous Reptile Inside' with scientific name, common name, appropriate anti-venom, and owner's identifying information noted on the container. A written bite protocol that includes emergency contact information, local animal control office, the name and location of suitable anti-venom, first aid procedures, and treatment guidelines, as well as an escape recovery plan must be within sight of permanent housing, and a copy must accompany the transport of any venomous reptile.

(c) In the event of an escape of a venomous reptile, the owner or possessor of the venomous reptile shall immediately notify local law enforcement.

"**§ 14-417.1. Regulation of ownership or use of large constricting snakes.**

(a) As used in this Article, large constricting snakes shall mean: Reticulated Python, Python reticulates; Burmese Python, Python molurus; African Rock Python, Python sebae; Amethystine Python, Morelia amethistina; and Green Anaconda, Eunectes murinus; or any of their subspecies or hybrids.

(b) It shall be unlawful for any person to own, possess, use, transport, or traffic in any of the large constricting snakes that are not housed in a sturdy and secure enclosure. Permanent enclosures shall be designed to be escape-proof and shall have an operable lock. Transport containers shall be designed to be escape proof.

(c) Each enclosure shall be labeled clearly and visibly with the scientific name, common name, number of specimens, and owner's identifying information. A written safety protocol and escape recovery plan shall be within sight of permanent housing and a copy shall accompany the transport of any of the large constricting snakes. The safety protocol shall include emergency contact information, identification of the local animal control office, and first aid procedures.

(d) In the event of an escape of a large constricting snake, the owner or possessor shall immediately notify local law enforcement.

"**§ 14-417.2. Regulation of ownership or use of crocodilians.**

(a) All crocodilians, excluding the American alligator, shall be regulated under this Article. It shall be unlawful for any person to own, possess, use, transport, or traffic in any crocodilian that is not housed in a sturdy and secure enclosure. Permanent enclosures shall be designed to be escape-proof and have a fence of sufficient strength to prevent contact between an observer and the crocodilian and shall have an operable lock. Transport containers shall be designed to be escape-proof.

(b) A written safety protocol and escape recovery plan shall be within sight of permanent housing and a copy must accompany the transport of any crocodilian.

(c) In the event of the escape of a crocodilian, the owner or possessor shall immediately notify local law enforcement.

"**§ 14-418. Prohibited handling of reptiles or suggesting or inducing others to handle.**

(a) It shall be unlawful for any person to ~~intentionally~~ handle any reptile ~~of a poisonous nature whose venom is not removed, by taking or holding such reptile in bare hands or by placing or holding such reptile against any exposed part of the human anatomy, or by placing their own or another's hand or any other part of the human anatomy in or near any box, cage, or other container wherein such reptile is known or suspected to be.~~ regulated under this Article in a manner that intentionally or negligently exposes another person to unsafe contact with the reptile.

(b) It shall ~~also~~ be unlawful for any person to intentionally or negligently suggest, entice, invite, challenge, intimidate, exhort or otherwise induce or aid any person to handle or expose himself in an unsafe manner to any ~~such poisonous~~ reptile regulated ~~in any manner defined in~~under this Article.

(c) Safe and responsible handling of reptiles for purposes of animal husbandry, exhibition, training, transport, and education is permitted under this section.

"**§ 14-418.1. Registration of reptiles.**

The owner of any venomous reptile, large constricting snake, or crocodilian regulated under this Article shall register the location of the reptile's housing with local law enforcement. Registration shall be made by December 1, 2010, and shall be updated on an annual basis, and within 30 days of any change in the location of the reptile's housing. Local law enforcement may charge an annual registration fee not to exceed fifty dollars ($50.00) per housing location of reptiles regulated under this Article.

"**§ 14-419. Investigation of suspected violations; seizure and examination of reptiles; disposition of reptiles.**

In any case in which any law-enforcement officer or animal control officer has ~~reasonable grounds~~ probable cause to believe that any of the provisions of this Article have been or are about to be violated, it shall be the duty of ~~such~~ the officer and the officer ~~he~~ is ~~hereby~~ authorized, empowered, and directed to immediately investigate ~~such~~ the violation or impending violation and to ~~forthwith~~ seize the reptile or reptiles involved, and ~~all such~~

~~officers~~the officer is ~~are hereby~~ authorized and directed to deliver ~~such~~ the reptile or reptiles to the North Carolina State Museum of Natural Sciences or to its designated representative for examination ~~and test~~ for the purpose of ascertaining whether ~~said~~ the reptiles ~~contain venom and are poisonous.~~ are venomous reptiles, large constricting snakes, or crocodilians regulated under this Article. If the North Carolina State Museum of Natural Sciences or its designated representative finds that ~~said reptiles are dangerously poisonous,~~ a seized reptile is a venomous reptile, large constricting snake, or crocodilian regulated under this Article, the North Carolina State Museum of Natural Sciences or its designated representative shall ~~be empowered to dispose~~ determine final disposition of ~~said reptiles~~ the reptile in a manner consistent with the safety of the ~~public; but if~~public. If the Museum or its designated representative find that the ~~reptiles are not dangerously poisonous, and are not and cannot be harmful to human life, safety, health or welfare,~~ reptile is not a venomous reptile, large constricting snake, or crocodilian regulated under this Article, and either no criminal warrants or indictments are initiated in connection with the reptile within 10 days of initial seizure, or a court of law determines that the reptile is not being owned, possessed, used, transported, or trafficked in violation of this Article, then it shall be the duty of ~~such~~ the law enforcement officer ~~officers~~ to return the ~~said reptiles~~ reptile or reptiles to the person from whom they were seized within five days.

"§ 14-420. Arrest of persons violating provisions of Article.

If ~~the~~ an examination ~~and tests~~ made by the North Carolina State Museum of Natural Sciences or its designated representative ~~as provided herein show~~ conducted pursuant to this Article shows that ~~such reptiles are dangerously poisonous,~~ the reptile is a venomous reptile, large constricting snake, or crocodilian subject to this Article, it shall be the duty of the ~~officers~~ officer making the ~~seizure~~seizure~~, in addition to destroying such reptiles,~~ ~~also~~ to arrest all persons violating any of the provisions of this Article.

"§ 14-421. Exemptions from provisions of Article.

This Article shall not apply to the possession, exhibition, or handling of reptiles by employees or agents of duly constituted veterinarians, zoos, serpentariums, museums, laboratories, educational or scientific institutions, public and private, in the course of their educational or scientific work.

"§ 14-422. ~~Violation made misdemeanor.~~ Criminal penalties and civil remedies for violation.

(a) Any person violating any of the provisions of this Article shall be guilty of a Class 2 misdemeanor.

(b) If a person other than the owner of a venomous reptile, large constricting snake, or crocodilian, or other than the owners' agent or agents, suffers a life threatening injury or is killed as the result of a violation of this Article, the owner shall be guilty of a Class I felony.

(c) Any person intentionally releasing into the wild a nonnative venomous reptile, a large constricting snake, or a crocodilian shall be guilty of a Class 1 misdemeanor.

(d) Violations of this Article as set forth in subsections (b) or (c) of this section shall constitute wanton conduct within the meaning of G.S. 1D-5(7) and subject the violator to punitive damages in any civil action that may be filed as a result of the violator's actions."

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

SENATE BILL 307:
Regulate Ownership & Use of Certain Reptiles

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	March 5, 2009
Introduced by:	Sen. Jones	**Prepared by:**	Jennifer McGinnis
Analysis of:	PCS to First Edition S307-CSRI-1 [v.4]		Committee Counsel

SUMMARY: ***The proposed committee substitute (PCS) for Senate Bill 307 would add large constricting snakes and crocodilians (with the exception of the American alligator) to an existing Article that governs the handling of venomous reptiles. The PCS would also: (i) provide that negligent exposure, in addition to intentional exposure, of others to regulated reptiles constitutes a violation under the Article; (ii) provide additional requirements for caging, registration, and other protocols associated with these reptiles; (iii) clarify the process upon seizure of a regulated reptile; (iv) add new penalties and remedies for violations of the Article; and (v) make other technical, clarifying, and conforming changes.***

CURRENT LAW: Article 55 of Chapter 14 of the General Statutes, "Handling of Poisonous Reptiles", provides that it is unlawful for any person to:

- Own, possess, use, or traffic in any reptile of a poisonous nature whose venom is not removed unless the reptile is kept securely in a box, cage, or safe container without openings that would allow for escape or the biting of humans.
- Intentionally handle any reptile of a poisonous nature whose venom is not removed with bare hands or by holding the reptile against any exposed part of the body or by placing one's hand (or other part of the anatomy), or that of another person's, near any container housing a poisonous reptile.
- Induce others to handle reptiles of a poisonous nature.

The statute also provides that law enforcement or animal control officers with reasonable grounds to believe a violation of the Article exists must immediately investigate the violation, seize the reptile involved, and deliver the reptile to the North Carolina State Museum of Natural Sciences (Museum)or its designee to examine the reptile in order to ascertain whether the reptile is poisonous. If the Museum determines the reptile is dangerously poisonous, the Museum is empowered to dispose of the reptile in a manner consistent with public safety and law enforcement is directed to arrest the person from whom the reptile was seized. If the Museum determines the reptile is not venomous, the statute provides for return of the reptile to the person from whom the reptile was seized.

The statute provides that violations of the Article are punishable as a Class 2 misdemeanor.

The statute exempts museums, laboratories, educational or scientific institutions from the provisions of the Article.

BILL ANALYSIS: The PCS would add large constricting snakes (as listed in the bill) and all crocodilians (except the American alligator, which is already regulated by the State's Wildlife Resources Commission (WRC)) to coverage under the Article. The PCS would also prohibit the transport (in addition to owning, possessing, using, or trafficking) of the regulated reptiles except in compliance with the Article's requirements. Further, the PCS would:

- Provide that negligent exposure, in addition to intentional exposure, of others to regulated reptiles constitutes a violation under the Article.
- Provide additional requirements for caging and associated protocols as follows:
  - Venomous reptiles -- Permanent enclosures designed to be escape-proof, bite-proof, and have an operable lock; transport containers designed to be escape and bite-proof.
  - Large constricting snakes -- Permanent enclosures designed to be escape-proof and have an operable lock; transport containers designed to be escape-proof.
  - Crocodilians -- Permanent enclosures designed to be escape-proof, have a fence of sufficient strength, and have an operable lock; transport containers designed to be escape-proof.

  For venomous reptiles, enclosures must be clearly labeled as containing such a reptile, with identifying anti-venom information. Written bite or safety protocols (as applicable) and escape recovery plans must be kept within sight of a permanent enclosure and accompany transport. Immediate notification of escape to law enforcement would be required.
- Prohibit handling of a regulated reptile in any manner that intentionally or negligently exposes another to unsafe contact with the reptile, or inducement of another to unsafe contact with the reptile.
- Register the location of a regulated reptile's housing with local law enforcement by December 1, 2010 and update annually or within 30 days after a change of location. Local law enforcement may charge an annual registration fee not to exceed $50 per housing location.
- Change the standard under which law enforcement may seize a regulated reptile from "reasonable grounds" to "probable cause".
- Provide that if the Museum determines that a seized reptile is a reptile regulated under the Article, the Museum must determine the final disposition of the reptile and law enforcement must arrest the person in violation of the Article. If the Museum determines the reptile is not regulated under the Article, and either no criminal warrants or indictments are initiated in connection with the reptile within 10 days of seizure or a court determines that the reptile is not being handled in violation of the Article, the reptile must be returned to the person from whom it was seized.
- Add veterinarians, zoos, and serpentariums to the list of entities exempt from the Article's provisions.
- Provide additional penalties/remedies: (i) the owner of a regulated animal would be guilty of a Class I felony if another person suffers a life threatening injury or is killed as a result of a violation of the Article; (ii) a person would be guilty of a Class 1 misdemeanor for the intentional release of a nonnative regulated reptile into the wild; and (iii) in cases where violations of the Article result in a life threatening injury or death, or in the case of an intentional release into the wild, the violation would be deemed to constitute wanton conduct as defined under the statutes and subject the violator to punitive damages in any civil case filed as a result.

EFFECTIVE DATE: The PCS would become effective December 1, 2009, and apply to offenses committed on or after that date.

S307-SMRI-3(CSRI-1) v2

SENATE BILL 307:
Regulate Ownership & Use of Certain Reptiles

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	March 5, 2009
Introduced by:	Sen. Jones	**Prepared by:**	Jennifer McGinnis Committee Counsel
Analysis of:	PCS to First Edition S307-CSRI-1 [v.4]		

SUMMARY: ***The proposed committee substitute (PCS) for Senate Bill 307 would add large constricting snakes and crocodilians (with the exception of the American alligator) to an existing Article that governs the handling of venomous reptiles. The PCS would also: (i) provide that negligent exposure, in addition to intentional exposure, of others to regulated reptiles constitutes a violation under the Article; (ii) provide additional requirements for caging, registration, and other protocols associated with these reptiles; (iii) clarify the process upon seizure of a regulated reptile; (iv) add new penalties and remedies for violations of the Article; and (v) make other technical, clarifying, and conforming changes.***

CURRENT LAW: Article 55 of Chapter 14 of the General Statutes, "Handling of Poisonous Reptiles", provides that it is unlawful for any person to:

- Own, possess, use, or traffic in any reptile of a poisonous nature whose venom is not removed unless the reptile is kept securely in a box, cage, or safe container without openings that would allow for escape or the biting of humans.
- Intentionally handle any reptile of a poisonous nature whose venom is not removed with bare hands or by holding the reptile against any exposed part of the body or by placing one's hand (or other part of the anatomy), or that of another person's, near any container housing a poisonous reptile.
- Induce others to handle reptiles of a poisonous nature.

The statute also provides that law enforcement or animal control officers with reasonable grounds to believe a violation of the Article exists must immediately investigate the violation, seize the reptile involved, and deliver the reptile to the North Carolina State Museum of Natural Sciences (Museum)or its designee to examine the reptile in order to ascertain whether the reptile is poisonous. If the Museum determines the reptile is dangerously poisonous, the Museum is empowered to dispose of the reptile in a manner consistent with public safety and law enforcement is directed to arrest the person from whom the reptile was seized. If the Museum determines the reptile is not venomous, the statute provides for return of the reptile to the person from whom the reptile was seized.

The statute provides that violations of the Article are punishable as a Class 2 misdemeanor.

The statute exempts museums, laboratories, educational or scientific institutions from the provisions of the Article.

BILL ANALYSIS: The PCS would add large constricting snakes (as listed in the bill) and all crocodilians (except the American alligator, which is already regulated by the State's Wildlife Resources Commission (WRC)) to coverage under the Article. The PCS would also prohibit the transport (in addition to owning, possessing, using, or trafficking) of the regulated reptiles except in compliance with the Article's requirements. Further, the PCS would:

- Provide that negligent exposure, in addition to intentional exposure, of others to regulated reptiles constitutes a violation under the Article.
- Provide additional requirements for caging and associated protocols as follows:
    - Venomous reptiles -- Permanent enclosures designed to be escape-proof, bite-proof, and have an operable lock; transport containers designed to be escape and bite-proof.
    - Large constricting snakes -- Permanent enclosures designed to be escape-proof and have an operable lock; transport containers designed to be escape-proof.
    - Crocodilians -- Permanent enclosures designed to be escape-proof, have a fence of sufficient strength, and have an operable lock; transport containers designed to be escape-proof.

  For venomous reptiles, enclosures must be clearly labeled as containing such a reptile, with identifying anti-venom information. Written bite or safety protocols (as applicable) and escape recovery plans must be kept within sight of a permanent enclosure and accompany transport. Immediate notification of escape to law enforcement would be required.
- Prohibit handling of a regulated reptile in any manner that intentionally or negligently exposes another to unsafe contact with the reptile, or inducement of another to unsafe contact with the reptile.
- Register the location of a regulated reptile's housing with local law enforcement by December 1, 2010 and update annually or within 30 days after a change of location. Local law enforcement may charge an annual registration fee not to exceed $50 per housing location.
- Change the standard under which law enforcement may seize a regulated reptile from "reasonable grounds" to "probable cause".
- Provide that if the Museum determines that a seized reptile is a reptile regulated under the Article, the Museum must determine the final disposition of the reptile and law enforcement must arrest the person in violation of the Article. If the Museum determines the reptile is not regulated under the Article, and either no criminal warrants or indictments are initiated in connection with the reptile within 10 days of seizure or a court determines that the reptile is not being handled in violation of the Article, the reptile must be returned to the person from whom it was seized.
- Add veterinarians, zoos, and serpentariums to the list of entities exempt from the Article's provisions.
- Provide additional penalties/remedies: (i) the owner of a regulated animal would be guilty of a Class I felony if another person suffers a life threatening injury or is killed as a result of a violation of the Article; (ii) a person would be guilty of a Class 1 misdemeanor for the intentional release of a nonnative regulated reptile into the wild; and (iii) in cases where violations of the Article result in a life threatening injury or death, or in the case of an intentional release into the wild, the violation would be deemed to constitute wanton conduct as defined under the statutes and subject the violator to punitive damages in any civil case filed as a result.

EFFECTIVE DATE: The PCS would become effective December 1, 2009, and apply to offenses committed on or after that date.

S307-SMRI-3(CSRI-1) v2

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	March 10, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 241	Alt. Testimony/Children and Adults with Disab.	Senator Purcell
SB 285	Rewrite Foreign Money Judgments Laws.	Senator Hartsell

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II Committee
Tuesday, March 10, 2009, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 241	Alt. Testimony/Children and Adults with Disab.	Senator Purcell
SB 285	Rewrite Foreign Money Judgments Laws.	Senator Hartsell

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE
Tuesday, March 10, 2009 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 10:00 AM on March 10, 2009, in Room 1124 of the Legislative Building with thirteen members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell introduced pages Tyler Gartland, Andre's Ainolhayat and Zach Sullivan and thanked them for serving.

SB 241 (Alt. Testimony/Children and Adults with Disab.) Senator Purcell was recognized to explain the bill. Mr. Pete Powell and Ms. Catherine White, representing the Office of the Courts spoke on the bill. Senator Bingham moved for a favorable report. After continued discussion and comments from Dick Taylor, Academy of Trial Lawyers and Stephen Hughes, Public Defenders Office, Senator Hartsell, with Senator Purcell's agreement, noted that the Committee would hold the bill along with Senator Bingham's motion for further information and consideration.

SB 285 (Rewrite Foreign Money Judgments Laws.) As this was Senator Hartsell's bill, Senator Jones was invited to preside. Senator Hartsell noted that the bill was being presented for consideration and that no vote would be taken at this meeting. He then recognized Ms. Kory Goldsmith, Staff Attorney and Mr. Floyd Lewis from the General Statutes Commission to give additional explanation. The bill will be heard again at a later date.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — March 10, 2009
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Wayne Yancey	Sen Rucho/Ky
Cassandra White	AOC
Emily Doyle	NCPAPA
Julia Leggett	The Arc of NC
T Bowell	AOC
Faith Ouma	CPC
Floyd Lewis	General Statutes Commission
Dirk Dayton	NCAE
Staples Hughes	Appellate Defender
Todd Barlow	NC Advocates for Justice
Joe Stewart	NC Chamber
Ryan Couch	NCBA

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Blackburn	County Commissioners Assoc.
Kelly Graham	NCAJ
Patrick Ramer	NCACC
Anthony Wilson	NCACC.
[illegible]	NCAJ
Paul Pulley	NCAJ

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 241*

Short Title:	Alt. Testimony/Children and Adults with Disab.	(Public)
Sponsors:	Senators Purcell; Apodaca, Atwater, Dannelly, Dorsett, Forrester, Malone, and Snow.	
Referred to:	Judiciary II.	

February 19, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR ALTERNATIVE MEANS OF TESTIMONY FOR CHILDREN AND ADULTS WITH DISABILITIES AS RECOMMENDED BY THE JOINT STUDY COMMITTEE ON AUTISM SPECTRUM DISORDER AND PUBLIC SAFETY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 6 of Chapter 8C of the General Statutes is amended by adding a new section to read:

"**Rule 616. Alternative testimony of children and developmentally disabled.**

(a) Closed Circuit Testimony Permitted. – When a witness is either (i) under the age of 16 or (ii) developmentally disabled or mentally retarded, the court may, on its own motion or at the request of a party, order that witness's testimony be taken by closed circuit television in any action, whether civil or criminal in nature.

(b) Finding of Emotional Harm Required in Criminal Actions. – Closed circuit testimony may be permitted in criminal actions only if the court finds that there is a substantial likelihood that the witness will suffer emotional harm such that the witness could not reasonably communicate with the finder of fact if required to testify in open court. Such a finding shall be based upon clear and convincing evidence, which may include expert testimony.

(c) Finding of Best Interests of Witness in Civil Actions. – Closed circuit testimony may be permitted in civil actions only if the court finds by a preponderance of the evidence that permitting the witness to testify by closed circuit television is necessary to serve the best interests of the witness or enable the witness to communicate with the finder of fact. In making this finding, the court shall consider:

(1) The nature of the proceeding;
(2) The age and maturity of the witness;
(3) The relationship of the witness to the parties in the proceeding;
(4) The nature and degree of emotional trauma that the witness may suffer in testifying; and
(5) Any other relevant factor.

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

(1) Closed circuit testimony. – Transmission of witness testimony by closed circuit television which enables the defendant to observe and view the testimony and provides, by any appropriate electronic means, the defendant's right to assistance of counsel, including the right to immediate and direct communication with counsel during cross-examination.

(2) Developmentally disabled. – A person with a severe, chronic disability which:

a. Is attributable to a mental or physical impairment or combination of mental and physical impairments, including cerebral palsy, epilepsy, autism, or other neurological conditions;

b. Is manifested before the person attains age 22, unless the disability is caused by a traumatic head injury and is manifested after age 22;

c. Is likely to continue indefinitely;

d. Results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, capacity for independent living, learning, mobility, self-direction and economic self-sufficiency; and

e. Reflects the person's need for a combination and sequence of special interdisciplinary or generic care, treatment, or other services which are of a lifelong or extended duration and are individually planned and coordinated; or

f. When applied to children from birth through four years of age, may be evidenced as a developmental delay.

(3) Mentally retarded. – A person with significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before age 22."

SECTION 2. This act becomes effective December 1, 2009, and applies to any testimony given on or after that date.

SENATE BILL 241:
Alt. Testimony/Children and Adults with Disab

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	March 9, 2009
Introduced by:	Sen. Purcell	**Prepared by:**	Brenda J. Carter
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 241 provides procedures for taking the testimony of witnesses who are under the age of 16 or who are developmentally disabled or mentally retarded.***

CURRENT LAW: In North Carolina, certain proceedings in criminal matters may be conducted by audio and video transmission in which the parties can see and hear each other, including:

- A hearing to determine the need to continue custody of a juvenile
- Showing of Probable Cause. –oral testimony under oath or affirmation presented by a sworn law enforcement officer to the issuing official.
- A proceeding for initial appearance in a noncapital case, between the magistrate or other authorized judicial official and the defendant.
- First appearance before a district court judge
- A proceeding to determine, modify, or revoke conditions of pretrial release in a noncapital case.
- Arraignment in a noncapital case

BILL ANALYSIS: Senate Bill 241 would amend the NC Rules of Evidence, which govern proceedings in the courts of this State. The bill would authorize the court to permit testimony by closed circuit television in any civil or criminal action when the witness is a child under 16 or when the witness is a developmentally disabled or mentally retarded person of any age. The definitions of "developmentally disabled" and "mentally retarded" are substantially the same as those set out in Chapter 122C of the General Statutes (Mental Health). The bill would apply to persons with severe chronic disability attributable to mental or physical impairments that result in certain functional limitations, and to persons with significantly subaverage intellectual functioning. For persons meeting the requirements set out in the bill, testimony would be taken by closed circuit television which enables the defendant to observe and view the testimony, and which provides the defendant's right to assistance of counsel.

Criminal Actions – Closed circuit testimony would be permitted in criminal actions only if the court finds, based on clear and convincing evidence, that there is a substantial likelihood that the witness will suffer emotional harm such that the witness could not reasonably communicate with the finder of fact if required to testify in open court. The "clear and convincing evidence" requirement means that the evidence must be sufficient to prove that it is highly probable or probably certain that the witness would suffer emotional harm from testifying in open court.

Civil Actions – Closed circuit testimony would be permitted in civil actions if the court finds, by a preponderance of the evidence, that permitting the witness to testify by closed circuit television is necessary to serve the best interests of the witness or to enable the witness to communicate with the finder of fact. The court would be required to consider the nature of the proceeding, the age and maturity of the witness, the relationship of the witness to the parties in the proceeding, the nature and degree of emotional trauma that the witness may suffer in testifying, and any other relevant factor. The

"preponderance of the evidence" requirement means that the evidence must be sufficient to incline a fair and impartial mind to one side of the issue rather than the other; that it is more likely true than not that closed circuit testimony would be in the best interests of the witness.

EFFECTIVE DATE: The bill would become effective December 1, 2009 and apply to testimony given on or after that date.

BACKGROUND: The Confrontation Clause of the Sixth Amendment to the United States Constitution provides that "in all criminal prosecutions, the accused shall enjoy the right...to be confronted with the witnesses against him." A similar right is set out in Article 1, Section 23 of the NC Constitution, which provides that "In all criminal prosecutions, every person charged with crime has the right...to confront the accusers and witnesses with other testimony." In 1990, the U.S. Supreme Court ruled that testimony by closed circuit television would not necessarily violate that right under certain conditions. In Maryland v. Craig, 497 U.S. 836 (1990), the United States Supreme Court upheld a Maryland state statute permitting the use of one-way closed circuit testimony for a child witness alleged to be the victim of child abuse when the trial court had determined that the testimony by the child victim in the courtroom would result in the child suffering emotional distress such that the child could not reasonably communicate.

North Carolina courts have addressed the issue of remote child testimony in the case of State v. Stradford, 119 N.C. App 654 (1995), holding that such testimony was allowable under certain circumstances. In Stradford, two minor children, the alleged victims of sexual abuse, were permitted to testify via closed circuit television due to the children's probable inability to communicate if forced to testify in defendant's presence. The Court of Appeals held that such testimony was permissible and did not violate the Confrontation Clause because the remote testimony preserved the essence of effective communication, as the child witnesses (1) testified under oath (2) were subject to full cross-examination, and (3) were able to be observed by the judge and defendant as they testified.

Nine states provide statutorily for alternative testimony by adults with disabilities under certain circumstances.

S241-SMRV-5(e1) v2

SENATE BILL 285*

Short Title:	Rewrite Foreign Money Judgments Laws.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II.	

February 25, 2009

A BILL TO BE ENTITLED

AN ACT TO REWRITE THE LAW CONCERNING THE RECOGNITION OF FOREIGN MONEY JUDGMENTS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 18 of Chapter 1C of the General Statutes is repealed.

SECTION 2. Chapter 1C of the General Statutes is amended by adding a new Article to read:

"Article 20.

"North Carolina Uniform Foreign-Country Money Judgments Recognition Act.

"**§ 1C-1850. Short title.**

This Article may be cited as the North Carolina Uniform Foreign-Country Money Judgments Recognition Act.

"**§ 1C-1851. Definitions.**

The following definitions apply in this Article:

(1) Foreign country. – A government other than:

a. The United States;

b. A state, district, commonwealth, territory, or insular possession of the United States; or

c. Any other government with regard to which the decision in this State as to whether to recognize a judgment of that government's courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution.

(2) Foreign-country judgment. – A judgment of a court of a foreign country.

"**§ 1C-1852. Applicability; saving clause.**

(a) Except as otherwise provided in subsection (b) of this section, this Article applies to a foreign-country judgment to the extent that the judgment:

(1) Grants or denies recovery of a sum of money; and

(2) Under the law of the foreign country where rendered, is final, conclusive, and enforceable.

(b) This Article does not apply to a foreign-country judgment, even if the judgment grants or denies recovery of a sum of money, to the extent that the judgment is:

(1) A judgment for taxes;

(2) A fine or other penalty; or

(3) A judgment for alimony, support, or maintenance in matrimonial or family matters.

(c) A party seeking recognition of a foreign-country judgment has the burden of establishing that this Article applies to the foreign-country judgment.

(d) This Article does not prevent the recognition under principles of comity or otherwise of a foreign-country judgment to which this Article does not apply.

"**§ 1C-1853. Standards for recognition and nonrecognition of foreign-country judgment.**

(a) Except as otherwise provided in this section, a court of this State shall recognize a foreign-country judgment to which this Article applies.

(b) A court of this State shall not recognize a foreign-country judgment if:

(1) The judgment was rendered under a judicial system that, taken as a whole, does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(2) The foreign court did not have personal jurisdiction over the defendant; or

(3) The foreign court did not have jurisdiction over the subject matter.

(c) If a court of this State finds that any of the following exist with respect to a foreign-country judgment for which recognition is sought, recognition of the judgment shall be denied unless the court determines, as a matter of law, that recognition would nevertheless be reasonable under the circumstances:

(1) The defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend.

(2) The judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case.

(3) The judgment, or the cause of action or claim for relief on which the judgment is based, is repugnant to the public policy of this State or of the United States.

(4) Reserved for future codification.

(5) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court.

(6) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.

(7) The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment.

(8) The specific proceeding in the foreign court leading to the judgment was fundamentally unfair.

(d) If a foreign-country judgment for which recognition is sought is otherwise entitled to recognition under this Article but conflicts with a prior final and conclusive judgment, a court of this State shall recognize the judgment for which recognition is sought unless the court determines that nonrecognition would nevertheless be reasonable under the circumstances.

(e) If a foreign-country judgment for which recognition is sought is otherwise entitled to recognition under this Article but conflicts with a subsequent final and conclusive judgment, a court of this State shall deny recognition of the judgment for which recognition is sought unless the court determines that recognition would nevertheless be reasonable under the circumstances.

(f) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (b) of this section exists.

(g) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (c) of this section exists. The party seeking recognition of the judgment has the burden of establishing that, as a matter of law, recognition would nevertheless be reasonable under the circumstances.

(h) A party resisting recognition of a foreign-country judgment under subsection (d) or (e) of this section has the burden of establishing that another final and conclusive judgment

exists and that the other judgment conflicts with the judgment for which recognition is sought. Under subsection (d) of this section, the party resisting recognition also has the burden of establishing that nonrecognition of the judgment for which recognition is sought would be reasonable under the circumstances. Under subsection (e) of this section, the party seeking recognition of the foreign-country judgment has the burden of establishing that recognition would be reasonable under the circumstances.

(i) When a court of this State rules on recognition of a foreign-country judgment, the court shall state the facts specially and state separately its conclusions of law.

"**§ 1C-1854. Personal jurisdiction.**

(a) A foreign-country judgment shall not be refused recognition for lack of personal jurisdiction if any of the following exist:

(1) The defendant was served with process personally in the foreign country.

(2) The defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant.

(3) The defendant, before the commencement of the proceeding, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved.

(4) The defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, the foreign country.

(5) The defendant had a business office in the foreign country and the proceeding in the foreign court involved a cause of action or claim for relief arising out of business done by the defendant through that office in the foreign country.

(6) The defendant operated a motor vehicle or airplane in the foreign country and the proceeding involved a cause of action or claim for relief arising out of that operation.

(7) There was any other basis for personal jurisdiction that would be consistent with the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

(b) The list of bases for personal jurisdiction in subsection (a) of this section is not exclusive. The courts of this State may recognize reasonable bases of personal jurisdiction other than those listed in subsection (a) of this section as sufficient to support a foreign-country judgment.

"**§ 1C-1855. Procedure for recognition and nonrecognition of foreign-country judgment.**

(a) If recognition of a foreign-country judgment is sought as an original matter, the issue of recognition shall be raised by filing an action seeking recognition of the foreign-country judgment.

(b) If recognition or nonrecognition of a foreign-country judgment is sought in some other action, the issue of recognition may be raised by complaint, counterclaim, cross-claim, or affirmative defense.

"**§ 1C-1856. Effect of recognition of foreign-country judgment.**

(a) If the court in a proceeding under G.S. 1C-1855 finds that the foreign-country judgment is entitled to recognition under this Article then, to the extent that the foreign-country judgment grants or denies recovery of a sum of money, the foreign-country judgment is:

(1) Conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this State would be conclusive; and

(2) Enforceable in the same manner and to the same extent as a judgment rendered in this State.

(b) Article 17 of this Chapter does not apply to the enforcement of foreign-country judgments recognized under this Article.

"**§ 1C-1857. Stay of proceedings pending appeal of foreign-country judgment.**

If a party establishes that an appeal from a foreign-country judgment is pending or will be taken, the court may stay any proceedings with regard to the foreign-country judgment until the appeal is concluded, the time for appeal expires without an appeal being taken, or the appellant has had sufficient time to prosecute the appeal and has failed to do so.

"**§ 1C-1858. Statute of limitations.**

An action to recognize a foreign-country judgment must be commenced within the earlier of the time during which the foreign-country judgment is effective in the foreign country or 10 years from the date that the foreign-country judgment became effective in the foreign country.

"**§ 1C-1859. Uniformity of interpretation.**

In applying and construing this Article, consideration may be given to promoting uniformity of interpretation with respect to its subject matter among states that enact it."

SECTION 3. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the official comments to the Uniform Foreign-Country Money Judgments Recognition Act and all explanatory comments of the drafters of this act as the Revisor deems appropriate.

SECTION 4. This act is effective October 1, 2009, and applies to all actions commenced on or after that date in which the issue of recognition of a foreign-country judgment is raised.

State of North Carolina
General Statutes
Commission

9001 Mail Service Center
RALEIGH, NORTH CAROLINA
27699-9001

MEMORANDUM
March 9, 2009

TO: Senate Judiciary II Committee
FROM: General Statutes Commission
RE: **Senate Bill 285 (Rewrite Foreign Money Judgments Laws)**

General Comments

This bill is based on the Uniform Foreign-Country Money Judgments Recognition Act (new Uniform Act) as approved in 2005 by the National Conference of Commissioners on Uniform State Laws. The new Uniform Act replaces the earlier Uniform Foreign Money Judgments Recognition Act (old Uniform Act), enacted in this State in 1993 as Article 18 of Chapter 1C of the General Statutes, G.S. 1C-1800 et seq. Like the old Uniform Act, the new Uniform Act provides a process for the recognition of money judgments rendered in other countries.

The new Uniform Act continues the basic policies and approach of the old Uniform Act but updates the old Uniform Act to clarify its provisions and correct problems created by judicial interpretations. The new Uniform Act:

- Updates and clarifies the definitions.
- Reorganizes and clarifies the scope provisions.
- Allocates the burden of proof.
- Establishes a procedure for seeking recognition or nonrecognition of a foreign-country money judgment.
- Clarifies and, to a limited extent, expands the grounds for denying recognition.
- Establishes a statute of limitations for recognizing foreign-country money judgments.

The bill also authorizes the printing of drafters comments and provides an effective date and applicability provision.

Specific Comments

Section 1 repeals Article 18 of Chapter 1C of the General Statutes, the "North Carolina Uniform Foreign Money Judgments Recognition Act" (Article 18).

Section 2 enacts Article 20 of Chapter 1C of the General Statutes, the "North Carolina Uniform Foreign-Country Money Judgments Recognition Act" (new Article 20).

Section 1C-1850 provides that new Article 20 may be cited as the "North Carolina Uniform Foreign-Country Money Judgments Recognition Act."

Section 1C-1851 defines new terms "foreign country" and "foreign-country judgment" to replace the current terms "foreign state" and "foreign judgment" in order to clarify that new Article 20 does not apply to recognition of sister-state judgments. The definition of "foreign country" is substantially similar to the definition of "foreign state." The definition of "foreign-country judgment" is based on the definition of "foreign judgment", except that the part of the definition setting out the scope of Article 18 has been moved to Section 1C-1852 of new Article 20.

Section 1C-1852 provides applicability provisions and a saving clause. Subsections (a) and (b), consistent with Article 18, provide that new Article 20 applies to a foreign-country judgment that grants or denies recovery of a sum of money and that is final, conclusive and enforceable under the law of the foreign country where it was rendered, unless the judgment (i) is for taxes, (ii) constitutes a fine or other penalty, or (iii) is for alimony, support, or maintenance in matrimonial or family matters. Subsection (c), which is new, places the burden of proof of showing that new Article 20 applies to a foreign-country judgment on the party seeking recognition. Subsection (d), like current G.S. 1C-1807, provides that new Article 20 does not prevent a court from applying common law principles of comity or other applicable law to recognize a foreign-country judgment to which the new Article 20 does not apply.

Section 1C-1853 provides standards for recognition and nonrecognition of foreign-country judgments. Subsections (f) through (i) are entirely new. Subsection (a) requires the court to recognize a foreign-country judgment to which new Article 20 applies, except as otherwise provided in the section. Subsection (b) states mandatory grounds for denying recognition that are essentially the same as under Article 18.

Subsection (c) states additional grounds for denying recognition. A court that finds that any of these grounds exist must deny recognition of a foreign-country money judgment unless the court determines as a matter of law that recognition would nevertheless be reasonable under the circumstances. Under Article 18, in contrast, denial of recognition on these grounds is discretionary. The additional grounds stated in subdivisions (c)(7) and (c)(8) are new. This section does not bring forward current G.S. 1C-1804(b)(7) (allowing a court to deny recognition of a foreign-money judgment if the court that rendered the judgment would not recognize a comparable judgment of this State).

Subsections (d) and (e) adopt a modified last-in-time rule for recognition of conflicting foreign-country money judgments. Assuming judgments that are otherwise entitled to recognition, subsection (d) requires the court to recognize the later judgment unless the court determines that nonrecognition would nevertheless be reasonable under the circumstances, and subsection (e) requires the court to deny recognition of an earlier judgment unless the court determines that recognition would nevertheless be reasonable under the circumstances.

Subsections (f) through (h) allocate the burden of proof. Subsection (f) places on the party resisting recognition of a judgment under subsection (b) the burden of establishing that one of the mandatory grounds for nonrecognition exists. Subsection (g) similarly places on the party resisting recognition under subsection (c) the burden of establishing that one of the additional

grounds for nonrecognition exists. If such a ground is established, however, the party seeking recognition has the burden of establishing that, as a matter of law, recognition would nevertheless be reasonable under the circumstances. Subsection (h) places the burden on the party resisting recognition under either subsection (d) or (e) to establish that another final and conclusive judgment exists and that the other judgment conflicts with the judgment for which recognition is sought. A party resisting recognition under subsection (d) also has the burden of showing that nonrecognition of the later judgment would be reasonable under the circumstances; a party seeking recognition under subsection (e) has the burden of establishing that recognition of an earlier judgment would be reasonable under the circumstances.

Subsection (i) requires a court, when ruling on recognition of a foreign-country judgment, to state the facts specially and state separately its conclusions of law. When the court is the trier of fact, the facts will be stated in the findings of fact. When the court is ruling on a motion to dismiss, where the nonmovant's factual allegations are treated as true, or a motion for summary judgment, where there is no issue of material fact, the court will need to set out those facts that the court considered to be material.

Section 1C-1854 lists in subsection (a) bases for personal jurisdiction that are adequate as a matter of law to establish that the foreign court had personal jurisdiction over the defendant. These bases for personal jurisdiction are in substance the same as current law except that subdivision (a)(4) has been modified to include other forms of business organizations and subdivision (a)(7) is new. New subdivision (a)(7) provides that the foreign court has personal jurisdiction over the defendant if there was any other basis for personal jurisdiction that would be consistent with the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Subsection (b) clarifies that the bases for personal jurisdiction listed in subsection (a) are not exclusive; a court of this State may find that the foreign court had personal jurisdiction over the defendant on some other basis.

Section 1C-1855 sets out the procedures by which the issue of recognition or nonrecognition of a foreign-country judgment may be raised. If recognition is sought as an original matter, the issue of recognition must be raised by filing an action seeking recognition. If recognition or nonrecognition is sought in some other action the issue of recognition may be raised by complaint, counterclaim, cross-claim, or affirmative defense.

Section 1C-1856 sets out the effect of recognition of a foreign-country judgment. A judgment recognized under new Article 20 is conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this State would be conclusive, but in contrast to Article 18, it is enforceable in the same manner and to the same extent as a judgment rendered in this State. Under Article 18, a judgment once recognized must be enforced under Article 17 of Chapter 1C of the General Statutes, which is cumbersome and partly duplicates the provisions of Article 18.

Section 1C-1857 is substantively the same as current law in providing that the court may stay any proceedings with regard to a foreign-country judgment pending appeal of the foreign-country judgment.

Section 1C-1858 is new. It expressly provides that an action to recognize a foreign-country judgment must be commenced within the earlier of the time during which the judgment

is effective in the foreign country or 10 years from the date that the judgment became effective in the foreign country.

Section 1C-1859 provides for uniformity of application and construction of new Article 20.

Sections 3 and 4, respectively, authorize the printing of drafters comments and provide that the bill is effective when it becomes law.

Principal Clerk ____
Reading Clerk ____

MEETING CANCELLED

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	March 12, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 131	Penalty for DWI Conviction/BAC .20 or Higher.	Senator Vaughan
SB 277	Strengthen Child Labor Violation Penalties.	Senator Berger

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

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Senate Judiciary II Committee
Thursday, March 12, 2009, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

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Bills

SB 131	Penalty for DWI Conviction/BAC .20 or Higher.	Senator Vaughan
SB 277	Strengthen Child Labor Violation Penalties.	Senator Berger

Presentations

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 131

Short Title:	Penalty for DWI Conviction/BAC .20 or Higher.	(Public)
Sponsors:	Senators Vaughan; and Dorsett.	
Referred to:	Judiciary II.	

February 12, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE, IN ADDITION TO ANY OTHER PENALTIES IMPOSED BY THE PRESIDING JUDGE, THAT A PERSON CONVICTED OF DRIVING WHILE IMPAIRED BE IMPRISONED FOR A PERIOD OF TWENTY-FOUR HOURS IN A CONFINEMENT FACILITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-179 is amended by adding a new subsection to read:

"(f3) A defendant convicted of impaired driving and the evidence having shown that the defendant had an alcohol concentration of .20 or higher shall be imprisoned for a mandatory period of 24 hours. This period of imprisonment is to run consecutively, not concurrently, with any other penalty imposed under the provisions of this section."

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 241*

Short Title:	Alt. Testimony/Children and Adults with Disab.	(Public)
Sponsors:	Senators Purcell; Apodaca, Atwater, Dannelly, Dorsett, Forrester, Malone, and Snow.	
Referred to:	Judiciary II.	

February 19, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR ALTERNATIVE MEANS OF TESTIMONY FOR CHILDREN AND ADULTS WITH DISABILITIES AS RECOMMENDED BY THE JOINT STUDY COMMITTEE ON AUTISM SPECTRUM DISORDER AND PUBLIC SAFETY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 6 of Chapter 8C of the General Statutes is amended by adding a new section to read:

"**Rule 616. Alternative testimony of children and developmentally disabled.**

(a) Closed Circuit Testimony Permitted. – When a witness is either (i) under the age of 16 or (ii) developmentally disabled or mentally retarded, the court may, on its own motion or at the request of a party, order that witness's testimony be taken by closed circuit television in any action, whether civil or criminal in nature.

(b) Finding of Emotional Harm Required in Criminal Actions. – Closed circuit testimony may be permitted in criminal actions only if the court finds that there is a substantial likelihood that the witness will suffer emotional harm such that the witness could not reasonably communicate with the finder of fact if required to testify in open court. Such a finding shall be based upon clear and convincing evidence, which may include expert testimony.

(c) Finding of Best Interests of Witness in Civil Actions. – Closed circuit testimony may be permitted in civil actions only if the court finds by a preponderance of the evidence that permitting the witness to testify by closed circuit television is necessary to serve the best interests of the witness or enable the witness to communicate with the finder of fact. In making this finding, the court shall consider:

(1) The nature of the proceeding;
(2) The age and maturity of the witness;
(3) The relationship of the witness to the parties in the proceeding;
(4) The nature and degree of emotional trauma that the witness may suffer in testifying; and
(5) Any other relevant factor.

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

(1) Closed circuit testimony. – Transmission of witness testimony by closed circuit television which enables the defendant to observe and view the testimony and provides, by any appropriate electronic means, the defendant's right to assistance of counsel, including the right to immediate and direct communication with counsel during cross-examination.

(2) Developmentally disabled. – A person with a severe, chronic disability which:

a. Is attributable to a mental or physical impairment or combination of mental and physical impairments, including cerebral palsy, epilepsy, autism, or other neurological conditions;

b. Is manifested before the person attains age 22, unless the disability is caused by a traumatic head injury and is manifested after age 22;

c. Is likely to continue indefinitely;

d. Results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, capacity for independent living, learning, mobility, self-direction and economic self-sufficiency; and

e. Reflects the person's need for a combination and sequence of special interdisciplinary or generic care, treatment, or other services which are of a lifelong or extended duration and are individually planned and coordinated; or

f. When applied to children from birth through four years of age, may be evidenced as a developmental delay.

(3) Mentally retarded. – A person with significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before age 22."

SECTION 2. This act becomes effective December 1, 2009, and applies to any testimony given on or after that date.

Principal Clerk
Reading Clerk

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	March 19, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 22	Ban Texting While Driving.	Senator Forrester
SB 96	No "Texting" While Driving.	Senator Bingham
SB 380	Collection of Mobile Phone Data/DMV Reports.	Senator Dannelly

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II Committee
Thursday, March 19, 2009, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 22	Ban Texting While Driving.	Senator Forrester
SB 96	No "Texting" While Driving.	Senator Bingham
SB 380	Collection of Mobile Phone Data/DMV Reports.	Senator Dannelly

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE
Thursday, March 19, 2009 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 10:00 AM on March 19, 2009, in Room 1124 of the Legislative Building with fifteen members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell introduced pages Alan Bridges, Mitchell Smith, Tyler Smith, Kendra Douglas, Pharen Barron and Brianna Bowden and thanked them for serving.

SB 380 (Collection of Mobile Phone Data/DMV Reports.) Senator Dannelly was recognized to explain the bill. After questions from the committee members, Senator Dorsett moved for a favorable report. All voted and the motion carried.

SB 22 (Ban Texting While Driving.) Senator Snow moved to accept the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Forrester was recognized to explain the bill. Major Marc Nichols of the North Carolina Highway Patrol was invited to speak on the bill and give additional information. Senator Hartsell decided to somewhat combine Senate Bills 22 and 96 for purposes of discussion and information, noting that no vote would be taken on either bill at today's meeting. Mr. Harry Kaplan, representing AAA Carolinas and Mr. Henry Jones, representing Alliance of Automobile Manufacturers spoke in regard to both bills. The bills will be heard again at a later date.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Thursday, March 19, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **380** Collection of Mobile Phone Data/DMV Reports.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — **Name of Committee**

March 19, 2009 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Stan Pace	Verizon
Amy Fuller	Hunton & Williams
Sarah Preston	ACLU-NC
Kelley Graham	NC AJ
John Denning	All Kinds of Minds
David Boney	MWC
Wallace Hatcher	MWC
Tim Boone	Boone & Assoc.
Michelle Frazier	MFS
Wendy Kelly	SZD Wicker
Pam Gaptee	DMV - Traffic Records

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — March 19, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
JULIAN COUNCIL	DMV/TRAFFIC RECORDS 1100 NEW BERN AVE, RALEIGH
Johanna Reese	DOT
Dessie Jones	DMV
Charlotte Boyd	DMV
CHRIS BROOKS	DOJ/DMV
MARC Nichols	NCSHP/CCPS
MIKE JAMES	NCSHP/CCPS
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety
Cam Cowen	BPMI
Cady Thomas	NC ASSN of REALTORS

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 22

Short Title:	Ban Texting While Driving.	(Public)
Sponsors:	Senators Forrester; and Allran.	
Referred to:	Judiciary II.	

February 3, 2009

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 22 / Senate Bill 96
PROPOSED COMMITTEE SUBSTITUTE S22-CSRV-7 [v.2]

3/18/2009 6:19:02 PM

Short Title: Ban Texting While Driving. (Public)

Sponsors:

Referred to:

February 3, 2009

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

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

(a) Definitions. – ~~For purposes of this section, the following terms shall mean:~~ The following definitions apply in this section:

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

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

(3) Mobile telephone. – As defined in G.S. 20-137.3(a)(2).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SENATE BILL 22
SENATE BILL 96:
Ban Texting While Driving

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	March 19, 2009
Introduced by:	Sen. Forrester/Sen. Bingham	**Prepared by:**	Brenda J. Carter
Analysis of:	PCS to First Edition S22-CSRV-7		Committee Counsel

SUMMARY: Senate Bill 22/Senate Bill 96 would prohibit all drivers fro m using the additional technologies available on a mobile phone, including text messaging, while operating a motor vehicle; an exception would apply for law enforcement officers, firefighters, and ambulance drivers.

The Proposed Committee Substitute makes technical and clarifying changes made necessary by the fact that existing laws regarding the use of cell phones already make it unlawful for drivers under 18 and school bus drivers to use additional technology while driving. By deleting the use of additional technology from those existing cell phone laws, it is clear that the new statute prohibiting the use of additional technology would now apply to all drivers; the existing criminal penalty for school bus drivers would be retained under the new law.

[As introduced, these bills were identical to each other and to H9, as introduced by Reps. Pierce, Harrison, Hall, which is currently in House Ways & Means / Broadband Connectivity, if favorable, House Judiciary III.]

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

"Mobile telephone" is a device used by subscribers and other users of wireless telephone service to access the service, and includes hand held and hands-free devices. "Additional technology" includes such things as cameras, electronic mail, music, the Internet, or games.

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 22 / Senate Bill 96 would prohibit the use of additional technologies available on a cell phone, including text messaging, while operating a motor vehicle. The prohibition would apply to all drivers except for law enforcement officers, firefighters, and ambulance drivers.

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

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

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

Exceptions:

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

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

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

Penalties Generally:

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

EFFECTIVE DATE: This bill would become effective December 1, 2009, and apply to offenses committed on or after that date.

BACKGROUND:

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

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

S22-SMRV-15(CSRV-7) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 96

Short Title:	No "Texting" While Driving.	(Public)
Sponsors:	Senators Bingham; Foriest, Forrester, Jones, McKissick, Stevens, and Tillman.	
Referred to:	Judiciary II.	

February 11, 2009

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 22 / Senate Bill 96
PROPOSED COMMITTEE SUBSTITUTE S22-CSRV-7 [v.2]

3/18/2009 6:19:02 PM

Short Title: Ban Texting While Driving. (Public)

Sponsors:

Referred to:

February 3, 2009

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

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

(a) Definitions. – ~~For purposes of this section, the following terms shall mean:~~ The following definitions apply in this section:

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

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

(3) Mobile telephone. – As defined in G.S. 20-137.3(a)(2).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SENATE BILL 22
SENATE BILL 96:
Ban Texting While Driving

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	March 19, 2009
Introduced by:	Sen. Forrester/Sen. Bingham	**Prepared by:**	Brenda J. Carter
Analysis of:	PCS to First Edition S22-CSRV-7		Committee Counsel

SUMMARY: ***Senate Bill 22/Senate Bill 96 would prohibit all drivers fro m using the additional technologies available on a mobile phone, including text messaging, while operating a motor vehicle; an exception would apply for law enforcement officers, firefighters, and ambulance drivers.***

The Proposed Committee Substitute makes technical and clarifying changes made necessary by the fact that existing laws regarding the use of cell phones already make it unlawful for drivers under 18 and school bus drivers to use additional technology while driving. By deleting the use of additional technology from those existing cell phone laws, it is clear that the new statute prohibiting the use of additional technology would now apply to all drivers; the existing criminal penalty for school bus drivers would be retained under the new law.

[As introduced, these bills were identical to each other and to H9, as introduced by Reps. Pierce, Harrison, Hall, which is currently in House Ways & Means / Broadband Connectivity, if favorable, House Judiciary III.]

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

"Mobile telephone" is a device used by subscribers and other users of wireless telephone service to access the service, and includes hand held and hands-free devices. "Additional technology" includes such things as cameras, electronic mail, music, the Internet, or games.

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 22 / Senate Bill 96 would prohibit the use of additional technologies available on a cell phone, including text messaging, while operating a motor vehicle. The prohibition would apply to all drivers except for law enforcement officers, firefighters, and ambulance drivers.

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

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

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

Exceptions:

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

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

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

Penalties Generally:

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

EFFECTIVE DATE: This bill would become effective December 1, 2009, and apply to offenses committed on or after that date.

BACKGROUND:

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

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

S22-SMRV-15(CSRV-7) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 380

Short Title:	Collection of Mobile Phone Data/DMV Reports.	(Public)
Sponsors:	Senators Dannelly; Dorsett, Jones, and Purcell.	
Referred to:	Judiciary II.	

March 4, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE DIVISION OF MOTOR VEHICLES TO COLLECT DATA REGARDING MOBILE PHONE USE RELATED TO CRASHES ON FORMS SUPPLIED BY THE DIVISION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-166.1(h) reads as rewritten:

"(h) Forms. – The Division shall provide forms or procedures for submitting crash data to persons required to make reports under this section and the reports shall be made in a format approved by the Commissioner. The following information shall be included about a reportable crash:

(1) The cause of the crash.
(2) The conditions existing at the time of the crash.
(3) The persons and vehicles involved.
(4) Whether the vehicle has been seized and is subject to forfeiture under G.S. 20-28.2.
(5) The use of mobile phones or any additional technology, as those terms are defined in G.S. 20-137.3."

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

SENATE BILL 380:
Collection of Mobile Phone Data/DMV Reports

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	March 18, 2009
Introduced by:	Sen. Dannelly	**Prepared by:**	Brenda J. Carter
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 380 would require DMV to provide for the collection of data regarding mobile phone use by persons involved in a reportable crash.***

CURRENT LAW: G.S. 20-166.1(h) requires DMV to provide forms or procedures for use by investigating officers in submitting crash data about reportable crashes. A reportable crash, as defined in G.S. 20-4.01(33b), is a crash involving a motor vehicle that results in one or more of the following:

- Death or injury of a human being.
- Total property damage of one thousand dollars ($1,000) or more, or property damage of any amount to a vehicle seized for an offense involving impaired driving while license revoked or without license and insurance.

BILL ANALYSIS: Senate Bill 380 amends the law regarding reports and investigations required in the event of an accident to require that DMV, in providing forms or procedures for use by investigating officers in submitting crash data include, along with other information concerning the crash, the use of mobile phone or any additional technology associated with a mobile phone, such as cameras, electronic mail, the Internet, or games.

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

S380-SMRV-14(e1) v2

MEETING CANCELLED MARCH 23, 2009 BY SENATOR HARTSELL FROM THE FLOOR.

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	March 24, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 22	Ban Texting While Driving.	Senator Forrester
SB 96	No "Texting" While Driving.	Senator Bingham
SB 454	DOT/Fiber-Optic Cable.	Senator Snow
SB 617	Stalking Law Conforming Changes.	Senator Hartsell

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	March 24, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 22	Ban Texting While Driving.	Senator Forrester
SB 96	No "Texting" While Driving.	Senator Bingham
SB 454	DOT/Fiber-Optic Cable.	Senator Snow
SB 617	Stalking Law Conforming Changes.	Senator Hartsell

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II Committee
Tuesday, March 24, 2009, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 22	Ban Texting While Driving.	Senator Forrester
SB 96	No "Texting" While Driving.	Senator Bingham
SB 454	DOT/Fiber-Optic Cable.	Senator Snow
SB 617	Stalking Law Conforming Changes.	Senator Hartsell

Presentations

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 22

Short Title:	Ban Texting While Driving.	(Public)
Sponsors:	Senators Forrester; and Allran.	
Referred to:	Judiciary II.	

February 3, 2009

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 22
PROPOSED COMMITTEE SUBSTITUTE S22-CSRV-8 [v.2]

3/23/2009 3:26:16 PM

Short Title: Ban Texting While Driving. (Public)

Sponsors:

Referred to:

February 3, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE IT UNLAWFUL TO USE A MOBILE TELEPHONE FOR E-MAIL OR TEXT MESSAGING WHILE OPERATING A VEHICLE ON A PUBLIC STREET OR HIGHWAY OR PUBLIC VEHICULAR AREA.

The General Assembly of North Carolina enacts:

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

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

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

"**§ 20-137.4A. Unlawful use of mobile telephone for text messaging or electronic mail.**

(a) Offense. – It shall be unlawful for any person to operate a vehicle on a public street or highway or public vehicular area while using a mobile telephone to:

(1) Manually enter multiple letters or text in the device as a means of communicating with another person; or

(2) Read any electronic mail or text message transmitted to the device or stored within the device, provided that this prohibition shall not apply to any name or number stored in the device nor to any caller identification information.

(b) Exceptions. – The provisions of this section shall not apply to:

(1) The operator of a vehicle that is lawfully parked or stopped.

(2) Any of the following while in the performance of their official duties: a law enforcement officer; a member of a fire department; or the operator of a public or private ambulance.

(3) The use of factory-installed or aftermarket global positioning systems (GPS) or wireless communications devices used to transmit or receive data as part of a digital dispatch system.

(4) The use of voice operated technology.

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

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

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

SENATE BILL 22
SENATE BILL 96:
Ban Texting While Driving

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	March 23, 2009
Introduced by:	Sen. Forrester/Sen. Bingham	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	PCS to First Edition S22-CSRV-8		

SUMMARY: ***This PCS for Senate Bill 22 would prohibit all drivers from using a mobile phone to read or send electronic mail or text messages, while operating a motor vehicle; an exception would apply for law enforcement officers, firefighters, and ambulance drivers in performance of their official duties. The bill would not apply to voice- operated technology, to GPS devices, or to devices that are part of a digital dispatch system such as OnStar.***

[As introduced, this bill was identical to S96, as introduced by Sen. Bingham; the bills were also identical to H9, as introduced by Rep. Pierce.]

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

"Mobile telephone" is a device used by subscribers and other users of wireless telephone service to access the service, and includes hand held and hands-free devices. "Additional technology" includes such things as cameras, electronic mail, music, the Internet, or games.

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 22 / Senate Bill 96 would make it unlawful for a person to use a mobile telephone to enter letters or text as a means of communicating with another person, while operating a motor vehicle. The bill would also make it unlawful for a driver to read an electronic mail or text message on a mobile telephone. The prohibition would apply to all drivers except for law enforcement officers, firefighters, and ambulance drivers in the performance of their official duties.

Section 1 of the bill amends the definition of "additional technology" as it applies to the statutes prohibiting the use of mobile telephones by drivers under 18 and by persons operating a school bus. This change makes it clear that electronic mail and text messaging are not included as "additional technology" the use of which is punishable under laws that apply specifically to drivers under 18 and to persons operating a school bus.

Section 2 of the bill creates a new offense making it unlawful for <u>any</u> driver to operate a vehicle on a public street or highway or public vehicular area while using a mobile phone to create or read electronic mail or text messages. The offense would not include accessing caller ID information or any name or number stored in the mobile phone.

Exceptions:

- Law Enforcement Officer/Fire Department Members/Operators of public or private ambulances, while in the performance of official duties.
- The operator of a lawfully parked or stopped vehicle.
- The use of GPS or digital dispatch systems such as OnStar.
- The use of voice operated technology.

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

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

Penalties Generally:

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

EFFECTIVE DATE: This bill would become effective December 1, 2009, and apply to offenses committed on or after that date.

BACKGROUND:

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

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

S22-SMRV-16(CSRV-8) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 96

Short Title:	No "Texting" While Driving.	(Public)
Sponsors:	Senators Bingham; Foriest, Forrester, Jones, McKissick, Stevens, and Tillman.	
Referred to:	Judiciary II.	

February 11, 2009

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 454*

Short Title:	DOT/Fiber-Optic Cable.	(Public)
Sponsors:	Senators Snow; and Atwater.	
Referred to:	Judiciary II.	

March 9, 2009

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE AUTHORITY OF THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION TO LOCATE AND ACQUIRE RIGHT-OF-WAY FOR THE LOCATION, ABOVE OR BELOW GROUND, OF FIBER-OPTIC CABLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-18(2) reads as rewritten:

"**§ 136-18. Powers of Department of Transportation.**

The said Department of Transportation is vested with the following powers:

...

(2) To take over and assume exclusive control for the benefit of the State of any existing county or township roads, and to locate and acquire rights-of-way for any new roads that may be necessary for a State highway system, and subject to the provisions of G.S. 136-19.5(a) and (b) also locate and acquire such additional rights-of-way as may be necessary for the present or future relocation or initial location, above or below ground, of telephone, telegraph, broadband communications, electric and other lines, as well as gas, water, sewerage, oil and other pipelines, to be operated by public utilities as defined in G.S. 62-3(23) and which are regulated under Chapter 62 of the General Statutes, or by other providers of broadband communications, or by municipalities, counties, any entity created by one or more political subdivisions for the purpose of supplying any such utility services, electric membership corporations, telephone membership corporations, or any combination thereof, with full power to widen, relocate, change or alter the grade or location thereof and to change or relocate any existing roads that the Department of Transportation may now own or may acquire; to acquire by gift, purchase, or otherwise, any road or highway, or tract of land or other property whatsoever that may be necessary for a State highway system and adjacent utility rights-of-way: Provided, all changes or alterations authorized by this subdivision shall be subject to the provisions of G.S. 136-54 to 136-63, to the extent that said sections are applicable: Provided, that nothing in this Chapter shall be construed to authorize or permit the Department of Transportation to allow or pay anything to any county, township, city or town, or to any board of commissioners or governing body thereof, for any existing road or part of any road heretofore constructed by any such county, township, city or town, unless a contract has already been entered into with the Department of Transportation.

...."

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

SENATE BILL 617*

Short Title:	Stalking Law Conforming Changes.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II.	

March 17, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE CONFORMING CORRECTIONS RELATED TO THE REPEALED STALKING STATUTE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-415.12(b)(8) reads as rewritten:

"(8) Is or has been adjudicated guilty of or received a prayer for judgment continued or suspended sentence for one or more crimes of violence constituting a misdemeanor, including but not limited to, a violation of a misdemeanor under Article 8 of Chapter 14 of the General Statutes, or a violation of a misdemeanor under G.S. 14-225.2, 14-226.1, 14-258.1, 14-269.2, 14-269.3, 14-269.4, 14-269.6, 14-276.1, 14-277, 14-277.1, 14-277.2, ~~14-277.3,~~ 14-277.3A, 14-281.1, 14-283, 14-288.2, 14-288.4(a)(1) or (2), 14-288.6, 14-288.9, 14-288.12, 14-288.13, 14-288.14, 14-318.2, 14-415.21(b), ~~or 14-415.26(d).~~ 14-415.26(d), or former G.S. 14-277.3."

SECTION 2. G.S. 15A-266.4(b)(3) reads as rewritten:

"(3) G.S. 14-277.3A or former G.S. 14-277.3 – Stalking."

SECTION 3. G.S. 15A-830(a)(7) reads as rewritten:

"(7) Victim. – A person against whom there is probable cause to believe one of the following crimes was committed:

a. A Class A, B1, B2, C, D, or E felony.

b. A Class F felony if it is a violation of one of the following: G.S. 14-16.6(b); 14-16.6(c); 14-18; 14-32.1(e); 14-32.2(b)(3); 14-32.3(a); 14-32.4; 14-34.2; 14-34.6(c); 14-41; 14-43.3; 14-43.11; 14-190.17; 14-190.19; 14-202.1; ~~14-277.3;~~ 14-277.3A; 14-288.9; ~~or 20-138.5.~~ 20-138.5; or former G.S. 14-277.3.

c. A Class G felony if it is a violation of one of the following: G.S. 14-32.3(b); 14-51; 14-58; 14-87.1; or 20-141.4.

d. A Class H felony if it is a violation of one of the following: G.S. 14-32.3(a); 14-32.3(c); ~~14-33.2;~~ 14-33.2; 14-277.3A; or former G.S. 14-277.3.

e. A Class I felony if it is a violation of one of the following: G.S. 14-32.3(b); 14-34.6(b); or 14-190.17A.

f. An attempt of any of the felonies listed in this subdivision if the attempted felony is punishable as a felony.

g. Any of the following misdemeanor offenses when the offense is committed between persons who have a personal relationship as

defined in G.S. 50B-1(b): G.S. 14-33(c)(1); 14-33(c)(2); 14-33(a); 14-34; 14-134.3; 14-277.3A; or former G.S. 14-277.3.

h. Any violation of a valid protective order under G.S. 50B-4.1."

SECTION 4. G.S. 15C-2(12) reads as rewritten:

"(12) Victim of stalking. – An individual against whom stalking, as described in ~~G.S. 14-277.3,~~ former G.S. 14-277.3 for acts occurring before December 1, 2008, or G.S. 14-277.3A for acts occurring on or after December 1, 2008, has been committed."

SECTION 5. G.S. 50B-1(a)(2) reads as rewritten:

"(2) Placing the aggrieved party or a member of the aggrieved party's family or household in fear of imminent serious bodily injury or continued harassment, as defined in G.S. ~~14-277.3,~~ 14-277.3A, that rises to such a level as to inflict substantial emotional distress; or".

SECTION 6. G.S. 50C-1(6) reads as rewritten:

"(6) Stalking. – On more than one occasion, following or otherwise harassing, as defined in G.S. ~~14-277.3(c),~~ 14-277.3A(b)(2), another person without legal purpose with the intent to do any of the following:

a. Place the person in reasonable fear either for the person's safety or the safety of the person's immediate family or close personal associates.

b. Cause that person to suffer substantial emotional distress by placing that person in fear of death, bodily injury, or continued harassment and that in fact causes that person substantial emotional distress."

SECTION 7. G.S. 95-260(3)b. reads as rewritten:

"b. Willfully, and on more than one occasion, following, being in the presence of, or otherwise harassing, as defined in G.S. ~~14-277.3,~~ 14-277.3A, without legal purpose and with the intent to place the employee in reasonable fear for the employee's safety."

SECTION 8. This act is effective when it becomes law.

Principal Clerk
Reading Clerk

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	March 26, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 131	Penalty for DWI Conviction/BAC .20 or Higher.	Senator Vaughan
SB 144	Limit Liability/Domestic Violence Shelters.	Senator Snow
SB 285	Rewrite Foreign Money Judgments Laws.	Senator Hartsell
SB 307	Regulate Ownership & Use of Certain Reptiles.	Senator Jones

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II Committee
Thursday, March 26, 2009, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 131	Penalty for DWI Conviction/BAC .20 or Higher.	Senator Vaughan
SB 144	Limit Liability/Domestic Violence Shelters.	Senator Snow
SB 285	Rewrite Foreign Money Judgments Laws.	Senator Hartsell
SB 307	Regulate Ownership & Use of Certain Reptiles.	Senator Jones

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE
Thursday, March 26, 2009 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 10:00 AM on March 26, 2009, in Room 1124 of the Legislative Building with thirteen members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell welcomed pages Jay Royster, Perry Williams, Gregory Rains, Destiny Gibbens and Issac Flowe and thanked them for serving.

SB 131 (Penalty for DWI Conviction/BAC.20 or Higher) Senator Jones moved to accept the Proposed Committee Substitute for purposes of discussion. All voted the motion carried. Senator Vaughan was recognized to explain the bill. He then answered questions from Senators Goodall, Jacumin, Berger and Jones. Ms. Danielle Seale from Fiscal Research gave additional information. Senator Apodaca moved for a favorable report, unfavorable to the original bill, favorable to the Proposed Committee Substitute with a referral to Appropriations. All voted and the motion carried.

SB 144 (Limit liability/Domestic Violence Shelters.) Senator Apodaca moved to accept the Proposed Committee Substitute for purposes of discussion. All voted the motion carried. Senator Snow was recognized to explain the bill. Senator Goodall moved to amend the bill, Senator Snow agreed, all voted and the motion carried. Senator Goodall moved for a favorable report as amended and rolled into a new Proposed Committee Substitute. All voted and the motion carried.

SB 307 (Regulate Ownership & Use of Certain Reptiles.) Senator Forrester moved to accept the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Jones was recognized to explain the bill. Mr. Andrew Wyatt, President of United States Association of Reptile Keepers was invited to speak on the bill. Mr. Joe McClees, representing the Wildlife Control Professionals of North Carolina also spoke on the bill. Senator Goodall moved for a favorable report, unfavorable to the original bill, favorable to the Proposed Committee Substitute with a referral to Appropriations. All voted and the motion carried.

SB 285 (Rewrite Foreign Money Judgments Laws.) As this was Senator Hartsell's bill, Senator Jones presided. Senator Hartsell explained the bill and Senator East moved for a favorable report. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Monday, March 30, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **285** Rewrite Foreign Money Judgments Laws.
Sequential Referral: None
Recommended Referral: None

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

S.B. **131** Penalty for DWI Conviction/BAC .20 or Higher.
Draft Number: 85185
Sequential Referral: None
Recommended Referral: Appropriations/Base Budget
Long Title Amended: Yes

S.B. **144** Limit Liability/Domestic Violence Shelters.
Draft Number: 85183
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **262** Expunctions/Purge Online Databases.
Draft Number: 55159
Sequential Referral: None
Recommended Referral: Finance
Long Title Amended: Yes

S.B. **307** Regulate Ownership & Use of Certain Reptiles.
Draft Number: 85184
Sequential Referral: None
Recommended Referral: Appropriations/Base Budget
Long Title Amended: No

TOTAL REPORTED: 5

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — March 26, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Alicia Dan	MWC
Matt Osborne	AOC
Amy Schilder	MWC
Elizabeth Biser	DENR
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety
Wayne Yencey	Sen. Charlie Dannelly
Michelle Frazier	Manning Fulton
Kelly Graham	NC Advocates for Justice
JC Mc	McCrory

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 131

Short Title:	Penalty for DWI Conviction/BAC .20 or Higher.	(Public)
Sponsors:	Senators Vaughan; and Dorsett.	
Referred to:	Judiciary II.	

February 12, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE, IN ADDITION TO ANY OTHER PENALTIES IMPOSED BY THE PRESIDING JUDGE, THAT A PERSON CONVICTED OF DRIVING WHILE IMPAIRED BE IMPRISONED FOR A PERIOD OF TWENTY-FOUR HOURS IN A CONFINEMENT FACILITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-179 is amended by adding a new subsection to read:

"(f3) A defendant convicted of impaired driving and the evidence having shown that the defendant had an alcohol concentration of .20 or higher shall be imprisoned for a mandatory period of 24 hours. This period of imprisonment is to run consecutively, not concurrently, with any other penalty imposed under the provisions of this section."

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 131
PROPOSED COMMITTEE SUBSTITUTE S131-CSRC-1 [v.4]

3/25/2009 9:38:57 AM

Short Title: Penalty for DWI Conviction/BAC .20 or Higher. (Public)

Sponsors:

Referred to:

February 12, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A PERSON CONVICTED OF DRIVING WHILE IMPAIRED BE IMPRISONED FOR A PERIOD OF TWENTY-FOUR HOURS IN A CONFINEMENT FACILITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-179(i) reads as rewritten:

"(i) Level Three Punishment. – A defendant subject to Level Three punishment may be fined up to one thousand dollars ($1,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 72 hours and a maximum term of not more than six months. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of at least 72 hours as a condition of special probation; or

(2) Perform community service for a term of at least 72 hours; or

(3) Repealed by Session Laws 2006-253, s. 23, effective December 1, 2006, and applicable to offenses committed on or after that date.

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

If the judge, or a jury in superior court, determines that the defendant has an alcohol concentration of 0.20 or more within a relevant time after the driving, any suspended sentence imposed shall include a condition of special probation to require the defendant to serve a term of imprisonment of at least 24 hours. For purposes of this subsection, the results of a chemical analysis presented at trial or sentencing shall be sufficient to prove the person's alcohol concentration, shall be conclusive, and shall not be subject to modification by any party, with or without approval of the court."

SECTION 2. G.S. 20-179(j) reads as rewritten:

(j) Level Four Punishment. – A defendant subject to Level Four punishment may be fined up to five hundred dollars ($500.00) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 48 hours and a maximum term of not more than 120 days. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 48 hours as a condition of special probation; or
(2) Perform community service for a term of 48 hours; or
(3) Repealed by Session Laws 2006-253, s. 23, effective December 1, 2006, and applicable to offenses committed on or after that date.
(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

If the judge, or a jury in superior court, determines that the defendant has an alcohol concentration of 0.20 or more within a relevant time after the driving, any suspended sentence imposed shall include a condition of special probation to require the defendant to serve a term of imprisonment of at least 24 hours. For purposes of this subsection, the results of a chemical analysis presented at trial or sentencing shall be sufficient to prove the person's alcohol concentration, shall be conclusive, and shall not be subject to modification by any party, with or without approval of the court."

SECTION 3. G.S. 20-179(k) reads as rewritten:

(k) Level Five Punishment. – A defendant subject to Level Five punishment may be fined up to two hundred dollars ($200.00) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 24 hours and a maximum term of not more than 60 days. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 24 hours as a condition of special probation; or
(2) Perform community service for a term of 24 hours; or
(3) Repealed by Session Laws 2006-253, s. 23, effective December 1, 2006, and applicable to offenses committed on or after that date.
(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

If the judge, or a jury in superior court, determines that the defendant has an alcohol concentration of 0.20 or more within a relevant time after the driving, any suspended sentence imposed shall include a condition of special probation to require the defendant to serve a term of imprisonment of 24 hours. For purposes of this subsection, the results of a chemical analysis presented at trial or sentencing shall be sufficient to prove the person's alcohol concentration, shall be conclusive, and shall not be subject to modification by any party, with or without approval of the court."

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

SENATE BILL 131:
Penalty for DWI Conviction/BAC .20 or Higher

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	March 25, 2009
Introduced by:	Sen. Vaughan	**Prepared by:**	Kory Goldsmith
Analysis of:	PCS to First Edition S131-CSRC-1		Committee Counsel

SUMMARY: ***Senate Bill 131 would require 24 hours minimum active jail time in cases where the defendant has a blood alcohol content of .20 or more within a relevant time after driving. The act becomes effective December 1, 2009, and applies to offenses committed on or after that date. The Proposed Committee Substitute makes clarifying changes to the original bill.***

CURRENT LAW: G.S. 20-79 governs sentencing hearings following a conviction for impaired driving, including the determination of punishments. Driving while impaired is a misdemeanor offense that has five levels of punishment, depending on the presence and weight assigned to certain specified aggravating and mitigating factors. The levels and correlating punishment are:

Level One: Minimum imprisonment of 30 days, maximum of 2 years; maximum fine of $4,000.

Level Two: Minimum imprisonment of 7 seven days, maximum of 1 year; maximum fine of $2,000.

Level Three: Minimum imprisonment of 72 hours, maximum of 6 months; maximum fine of $1,000. The term of imprisonment may be suspended, but the suspended sentence must include the condition that the defendant:

1. Be imprisoned for a term of at least 72 hours as a condition of special probation;
2. Perform community service for a term of at least 72 hours; or
3. Any combination of the above.

Level Four: Minimum imprisonment of 48 hours, maximum of 120 days; maximum fine of $500. The term of imprisonment may be suspended, but the suspended sentence must include the condition that the defendant:

1. Be imprisoned for a term of at least 48 hours as a condition of special probation;
2. Perform community service for a term of at least 48 hours; or
3. Any combination of the above.

Level Five: Minimum imprisonment of 24 hours, maximum of 60; maximum fine of $200. The term of imprisonment may be suspended, but the suspended sentence must include the condition that the defendant:

1. Be imprisoned for a term of at least 24 hours as a condition of special probation;
2. Perform community service for a term of at least 24 hours; or
3. Any combination of the above.

For Levels One and Two, a defendant must serve a term of imprisonment equal to that level's minimum term of imprisonment. For Levels Three, Four and Five, special probation does not have to include a term of imprisonment. Probation orders under any level may include a substance abuse assessment and education or treatment for license restoration.

BILL ANALYSIS: Senate Bill 131 would require a defendant to serve at least 24 hours of active jail time under punishment Levels Three, Four and Five if the judge, or a jury in superior court, determines the defendant had an alcohol concentration of 0.20 or more within a relevant time after driving.

Number of Persons Convicted Of Driving While Impaired By Year and By Punishment Level

Year	Habitual	Level 1	Level 2	Level 3	Level 4	Level 5	TOTAL
2004	229	3,359	5,243	3,475	5,213	19,205	36,724
2005	175	3,349	5,211	3,654	5,271	19,217	36,877
2006	225	3,247	5,005	3,812	5,614	19,200	37,103
2007	255	3,139	4,984	3,568	5,445	18,929	36,320
2008	345	3,498	5,537	3,615	5,666	19,829	38,490

Source: Administrative Office of the Courts

SENATE BILL 144

Short Title: Limit Liability/Domestic Violence Shelters. (Public)

Sponsors: Senators Snow; Berger of Franklin and Dorsett.

Referred to: Judiciary II.

February 12, 2009

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE CIVIL LIABILITY OF DOMESTIC VIOLENCE SHELTERS AND PERSONS ASSOCIATED WITH THOSE SHELTERS.

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 51.

"Limited Civil Liability of Domestic Violence Shelters and Persons Associated With the Shelters.

"**§ 1-610. Definitions.**

As used in this Article, the following terms mean:

(1) Client. – A person who is the victim of domestic violence, as defined in Chapter 50B of the General Statutes, or of nonconsensual sexual conduct or stalking, as defined in Chapter 50C of the General Statutes, and is using services or facilities of a shelter.

(2) Conduct. – One or more actions or omissions.

(3) Domestic violence. – As defined in G.S. 50B-1(a).

(4) Harm. – Injury, death, or loss to person or property.

(5) Perpetrator. – A person who has committed domestic violence and who bears one of the personal relationships specified in G.S. 50B-1(b) to the victim of domestic violence, or a person who has committed nonconsensual sexual conduct or stalking as defined in Chapter 50C of the General Statutes.

(6) Person associated with the shelter. – A person who is a director, owner, trustee, officer, employee, victim advocate, or volunteer connected with the shelter.

(7) Shelter. – A facility that meets the criteria set forth in G.S. 50B-9 and is funded through the Domestic Violence Center Fund providing shelter to victims of domestic violence, nonconsensual sexual conduct, or stalking.

(8) Victim advocate. – A person from a crime victim service organization who provides support and assistance for a victim of a crime during court proceedings and recovery efforts related to the crime.

(9) Volunteer. – An individual who provides any service at a shelter without expectation of receiving and without receiving any compensation or other form of remuneration, directly or indirectly, for the provision of the service.

"**§ 1-611. Immunity of a domestic violence shelter and any person associated with the shelter concerning torts committed on the shelter's premises.**

(a) Except as provided in subsection (b) of this section, no shelter and no person associated with the shelter is liable in damages in a tort action for any harm that a client or other person who is on the premises of the shelter sustains as a result of tortious conduct of a perpetrator that is committed on the premises of the shelter if the perpetrator is not a person associated with the shelter and if any of the following situations apply:

(1) The perpetrator illegally entered and illegally remained on the premises of the shelter at the time the perpetrator's tortious conduct caused the harm sustained by a client or other person who was also on the premises.

(2) The perpetrator legally entered the premises of the shelter and a person associated with the shelter instructed the perpetrator to leave the premises before the perpetrator caused the harm sustained by a client or other person who was also on the premises and, despite those reasonable steps, the perpetrator remained on the premises and committed the tortious conduct that caused the harm sustained by a client or other person who was on the premises.

(3) The perpetrator legally entered the premises of the shelter and a person associated with the shelter granted the perpetrator permission to remain on the premises after the person associated with the shelter in exercising the reasonable judgment and discretion of a prudent person under similar circumstances, determined that granting the person permission to remain on the premises did not appear to pose a threat of harm to a client or other person who was on the premises.

(b) The immunity established by this section does not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 144
PROPOSED COMMITTEE SUBSTITUTE S144-CSSB-4 [v.1]

3/25/2009 9:40:03 AM

Short Title: Limit Liability/Domestic Violence Shelters. (Public)

Sponsors:

Referred to:

February 12, 2009

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE CIVIL LIABILITY OF DOMESTIC VIOLENCE SHELTERS AND PERSONS ASSOCIATED WITH THOSE SHELTERS.

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 51.

"Limited Civil Liability of Domestic Violence Shelters and Persons Associated With the Shelters.

"**§ 1-610. Definitions.**

As used in this Article, the following terms mean:

(1) Client. – A person who is the victim of domestic violence, as defined in Chapter 50B of the General Statutes, or of nonconsensual sexual conduct or stalking, as defined in Chapter 50C of the General Statutes, and is using services or facilities of a shelter.

(2) Conduct. – One or more actions or omissions.

(3) Domestic violence. – As defined in G.S. 50B-1(a).

(4) Harm. – Injury, death, or loss to person or property.

(5) Perpetrator. – A person who has committed domestic violence and who bears one of the personal relationships specified in G.S. 50B-1(b) to the victim of domestic violence, or a person who has committed nonconsensual sexual conduct or stalking as defined in Chapter 50C of the General Statutes.

(6) Person associated with the shelter. – A person who is a director, owner, trustee, officer, employee, victim advocate, or volunteer connected with the shelter.

(7) Shelter. – A facility that meets the criteria set forth in G.S. 50B-9 and is funded through the Domestic Violence Center Fund providing shelter to victims of domestic violence, nonconsensual sexual conduct, or stalking.

(8) Victim advocate. – A person from a crime victim service organization who provides support and assistance for a victim of a crime during court proceedings and recovery efforts related to the crime.

(9) Volunteer. – An individual who provides any service at a shelter without expectation of receiving and without receiving any compensation or other form of remuneration, directly or indirectly, for the provision of the service.

"**§ 1-611. Immunity of a domestic violence shelter and any person associated with the shelter concerning torts committed on the shelter's premises.**

(a) Except as provided in subsection (b) of this section, no shelter and no person associated with the shelter is liable in damages in a tort action for any harm that a client or other person who is on the premises of the shelter sustains as a result of tortious conduct of a perpetrator that is committed on the premises of the shelter if the perpetrator is not a person associated with the shelter.

(b) The immunity established by this section does not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable."

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

SENATE BILL 144:
Limit Liability/Domestic Violence Shelters

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	March 26, 2009
Introduced by:	Senator Snow	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	Proposed Committee Substitute to First Edition S144-CSSB-4[v.1]		

SUMMARY: ***The Proposed Committee Substitute (PCS) for Senate Bill 144 would, under certain circumstances, provide immunity to domestic violence shelters and persons associated with domestic violence shelters from tort actions related to harm caused to a client of the shelter while on the premises of the shelter.***

CURRENT LAW:

Determination of Liability

In a 2008 opinion, the North Carolina Court of Appeals set out the analysis for determining the liability of a domestic violence shelter in a case where a client of the shelter was murdered on the premises of the shelter by her abusive husband. Under this analysis, a court must determine if the shelter exercised reasonable care to protect the client from the foreseeable harmful actions of third parties.

Immunity

Similar immunity provisions exist in the General Statutes for volunteers performing services for charitable organizations or providing emergency services; engineers and architects who voluntarily provide their services during a disaster or emergency; and for various entities who conduct criminal history checks.

BILL ANALYSIS: The PCS for Senate Bill 144 would provide that no shelter or person associated with the shelter is liable in tort for any harm caused to a client of the shelter or any other person who is on the premises that results from the tortious conduct of a perpetrator that is committed on the premises of the shelter if the perpetrator is not a person associated with the shelter. The protection provided by this immunity does not extend to gross negligence, wanton conduct, or intentional wrongdoing on the part of the shelter or person associated with the shelter.

EFFECTIVE DATE: The PCS for Senate Bill 144 would become effective December 1, 2009, and apply to offenses committed and causes of action arising on or after that date.

Jennifer McGinnis, counsel to Senate Judiciary II, substantially contributed to this summary.

S144-SMSB-4(CSSB-4) v1

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 3/26/09

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

COMMITTEE SUBSTITUTE S144-CSSB-4 [v.1]

Rep.) Sen.) Goodall

1 moves to amend the bill on page 2, line 10-11

2 ( ) WHICH CHANGES THE TITLE

3 by rewriting those lines to read:

4 "Section 2. This act becomes effective

5 when it becomes law.".

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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE BILL 285*

Short Title:	Rewrite Foreign Money Judgments Laws.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II.	

February 25, 2009

A BILL TO BE ENTITLED

AN ACT TO REWRITE THE LAW CONCERNING THE RECOGNITION OF FOREIGN MONEY JUDGMENTS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 18 of Chapter 1C of the General Statutes is repealed.

SECTION 2. Chapter 1C of the General Statutes is amended by adding a new Article to read:

"Article 20.

"North Carolina Uniform Foreign-Country Money Judgments Recognition Act.

"**§ 1C-1850. Short title.**

This Article may be cited as the North Carolina Uniform Foreign-Country Money Judgments Recognition Act.

"**§ 1C-1851. Definitions.**

The following definitions apply in this Article:

(1) Foreign country. – A government other than:

a. The United States;

b. A state, district, commonwealth, territory, or insular possession of the United States; or

c. Any other government with regard to which the decision in this State as to whether to recognize a judgment of that government's courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution.

(2) Foreign-country judgment. – A judgment of a court of a foreign country.

"**§ 1C-1852. Applicability; saving clause.**

(a) Except as otherwise provided in subsection (b) of this section, this Article applies to a foreign-country judgment to the extent that the judgment:

(1) Grants or denies recovery of a sum of money; and

(2) Under the law of the foreign country where rendered, is final, conclusive, and enforceable.

(b) This Article does not apply to a foreign-country judgment, even if the judgment grants or denies recovery of a sum of money, to the extent that the judgment is:

(1) A judgment for taxes;

(2) A fine or other penalty; or

(3) A judgment for alimony, support, or maintenance in matrimonial or family matters.

(c) A party seeking recognition of a foreign-country judgment has the burden of establishing that this Article applies to the foreign-country judgment.

(d) This Article does not prevent the recognition under principles of comity or otherwise of a foreign-country judgment to which this Article does not apply.

"**§ 1C-1853. Standards for recognition and nonrecognition of foreign-country judgment.**

(a) Except as otherwise provided in this section, a court of this State shall recognize a foreign-country judgment to which this Article applies.

(b) A court of this State shall not recognize a foreign-country judgment if:

(1) The judgment was rendered under a judicial system that, taken as a whole, does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(2) The foreign court did not have personal jurisdiction over the defendant; or

(3) The foreign court did not have jurisdiction over the subject matter.

(c) If a court of this State finds that any of the following exist with respect to a foreign-country judgment for which recognition is sought, recognition of the judgment shall be denied unless the court determines, as a matter of law, that recognition would nevertheless be reasonable under the circumstances:

(1) The defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend.

(2) The judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case.

(3) The judgment, or the cause of action or claim for relief on which the judgment is based, is repugnant to the public policy of this State or of the United States.

(4) Reserved for future codification.

(5) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court.

(6) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.

(7) The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment.

(8) The specific proceeding in the foreign court leading to the judgment was fundamentally unfair.

(d) If a foreign-country judgment for which recognition is sought is otherwise entitled to recognition under this Article but conflicts with a prior final and conclusive judgment, a court of this State shall recognize the judgment for which recognition is sought unless the court determines that nonrecognition would nevertheless be reasonable under the circumstances.

(e) If a foreign-country judgment for which recognition is sought is otherwise entitled to recognition under this Article but conflicts with a subsequent final and conclusive judgment, a court of this State shall deny recognition of the judgment for which recognition is sought unless the court determines that recognition would nevertheless be reasonable under the circumstances.

(f) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (b) of this section exists.

(g) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (c) of this section exists. The party seeking recognition of the judgment has the burden of establishing that, as a matter of law, recognition would nevertheless be reasonable under the circumstances.

(h) A party resisting recognition of a foreign-country judgment under subsection (d) or (e) of this section has the burden of establishing that another final and conclusive judgment

exists and that the other judgment conflicts with the judgment for which recognition is sought. Under subsection (d) of this section, the party resisting recognition also has the burden of establishing that nonrecognition of the judgment for which recognition is sought would be reasonable under the circumstances. Under subsection (e) of this section, the party seeking recognition of the foreign-country judgment has the burden of establishing that recognition would be reasonable under the circumstances.

(i) When a court of this State rules on recognition of a foreign-country judgment, the court shall state the facts specially and state separately its conclusions of law.

"**§ 1C-1854. Personal jurisdiction.**

(a) A foreign-country judgment shall not be refused recognition for lack of personal jurisdiction if any of the following exist:

(1) The defendant was served with process personally in the foreign country.

(2) The defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant.

(3) The defendant, before the commencement of the proceeding, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved.

(4) The defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, the foreign country.

(5) The defendant had a business office in the foreign country and the proceeding in the foreign court involved a cause of action or claim for relief arising out of business done by the defendant through that office in the foreign country.

(6) The defendant operated a motor vehicle or airplane in the foreign country and the proceeding involved a cause of action or claim for relief arising out of that operation.

(7) There was any other basis for personal jurisdiction that would be consistent with the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

(b) The list of bases for personal jurisdiction in subsection (a) of this section is not exclusive. The courts of this State may recognize reasonable bases of personal jurisdiction other than those listed in subsection (a) of this section as sufficient to support a foreign-country judgment.

"**§ 1C-1855. Procedure for recognition and nonrecognition of foreign-country judgment.**

(a) If recognition of a foreign-country judgment is sought as an original matter, the issue of recognition shall be raised by filing an action seeking recognition of the foreign-country judgment.

(b) If recognition or nonrecognition of a foreign-country judgment is sought in some other action, the issue of recognition may be raised by complaint, counterclaim, cross-claim, or affirmative defense.

"**§ 1C-1856. Effect of recognition of foreign-country judgment.**

(a) If the court in a proceeding under G.S. 1C-1855 finds that the foreign-country judgment is entitled to recognition under this Article then, to the extent that the foreign-country judgment grants or denies recovery of a sum of money, the foreign-country judgment is:

(1) Conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this State would be conclusive; and

(2) Enforceable in the same manner and to the same extent as a judgment rendered in this State.

(b) Article 17 of this Chapter does not apply to the enforcement of foreign-country judgments recognized under this Article.

"**§ 1C-1857. Stay of proceedings pending appeal of foreign-country judgment.**

If a party establishes that an appeal from a foreign-country judgment is pending or will be taken, the court may stay any proceedings with regard to the foreign-country judgment until the appeal is concluded, the time for appeal expires without an appeal being taken, or the appellant has had sufficient time to prosecute the appeal and has failed to do so.

"**§ 1C-1858. Statute of limitations.**

An action to recognize a foreign-country judgment must be commenced within the earlier of the time during which the foreign-country judgment is effective in the foreign country or 10 years from the date that the foreign-country judgment became effective in the foreign country.

"**§ 1C-1859. Uniformity of interpretation.**

In applying and construing this Article, consideration may be given to promoting uniformity of interpretation with respect to its subject matter among states that enact it."

SECTION 3. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the official comments to the Uniform Foreign-Country Money Judgments Recognition Act and all explanatory comments of the drafters of this act as the Revisor deems appropriate.

SECTION 4. This act is effective October 1, 2009, and applies to all actions commenced on or after that date in which the issue of recognition of a foreign-country judgment is raised.

State of North Carolina
General Statutes
Commission

9001 Mail Service Center
RALEIGH, NORTH CAROLINA
27699-9001

MEMORANDUM
March 9, 2009

TO: Senate Judiciary II Committee
FROM: General Statutes Commission
RE: **Senate Bill 285 (Rewrite Foreign Money Judgments Laws)**

General Comments

This bill is based on the Uniform Foreign-Country Money Judgments Recognition Act (new Uniform Act) as approved in 2005 by the National Conference of Commissioners on Uniform State Laws. The new Uniform Act replaces the earlier Uniform Foreign Money Judgments Recognition Act (old Uniform Act), enacted in this State in 1993 as Article 18 of Chapter 1C of the General Statutes, G.S. 1C-1800 et seq. Like the old Uniform Act, the new Uniform Act provides a process for the recognition of money judgments rendered in other countries.

The new Uniform Act continues the basic policies and approach of the old Uniform Act but updates the old Uniform Act to clarify its provisions and correct problems created by judicial interpretations. The new Uniform Act:

- Updates and clarifies the definitions.
- Reorganizes and clarifies the scope provisions.
- Allocates the burden of proof.
- Establishes a procedure for seeking recognition or nonrecognition of a foreign-country money judgment.
- Clarifies and, to a limited extent, expands the grounds for denying recognition.
- Establishes a statute of limitations for recognizing foreign-country money judgments.

The bill also authorizes the printing of drafters comments and provides an effective date and applicability provision.

Specific Comments

Section 1 repeals Article 18 of Chapter 1C of the General Statutes, the "North Carolina Uniform Foreign Money Judgments Recognition Act" (Article 18).

Section 2 enacts Article 20 of Chapter 1C of the General Statutes, the "North Carolina Uniform Foreign-Country Money Judgments Recognition Act" (new Article 20).

Section 1C-1850 provides that new Article 20 may be cited as the "North Carolina Uniform Foreign-Country Money Judgments Recognition Act."

Section 1C-1851 defines new terms "foreign country" and "foreign-country judgment" to replace the current terms "foreign state" and "foreign judgment" in order to clarify that new Article 20 does not apply to recognition of sister-state judgments. The definition of "foreign country" is substantially similar to the definition of "foreign state." The definition of "foreign-country judgment" is based on the definition of "foreign judgment", except that the part of the definition setting out the scope of Article 18 has been moved to Section 1C-1852 of new Article 20.

Section 1C-1852 provides applicability provisions and a saving clause. Subsections (a) and (b), consistent with Article 18, provide that new Article 20 applies to a foreign-country judgment that grants or denies recovery of a sum of money and that is final, conclusive and enforceable under the law of the foreign country where it was rendered, unless the judgment (i) is for taxes, (ii) constitutes a fine or other penalty, or (iii) is for alimony, support, or maintenance in matrimonial or family matters. Subsection (c), which is new, places the burden of proof of showing that new Article 20 applies to a foreign-country judgment on the party seeking recognition. Subsection (d), like current G.S. 1C-1807, provides that new Article 20 does not prevent a court from applying common law principles of comity or other applicable law to recognize a foreign-country judgment to which the new Article 20 does not apply.

Section 1C-1853 provides standards for recognition and nonrecognition of foreign-country judgments. Subsections (f) through (i) are entirely new. Subsection (a) requires the court to recognize a foreign-country judgment to which new Article 20 applies, except as otherwise provided in the section. Subsection (b) states mandatory grounds for denying recognition that are essentially the same as under Article 18.

Subsection (c) states additional grounds for denying recognition. A court that finds that any of these grounds exist must deny recognition of a foreign-country money judgment unless the court determines as a matter of law that recognition would nevertheless be reasonable under the circumstances. Under Article 18, in contrast, denial of recognition on these grounds is discretionary. The additional grounds stated in subdivisions (c)(7) and (c)(8) are new. This section does not bring forward current G.S. 1C-1804(b)(7) (allowing a court to deny recognition of a foreign-money judgment if the court that rendered the judgment would not recognize a comparable judgment of this State).

Subsections (d) and (e) adopt a modified last-in-time rule for recognition of conflicting foreign-country money judgments. Assuming judgments that are otherwise entitled to recognition, subsection (d) requires the court to recognize the later judgment unless the court determines that nonrecognition would nevertheless be reasonable under the circumstances, and subsection (e) requires the court to deny recognition of an earlier judgment unless the court determines that recognition would nevertheless be reasonable under the circumstances.

Subsections (f) through (h) allocate the burden of proof. Subsection (f) places on the party resisting recognition of a judgment under subsection (b) the burden of establishing that one of the mandatory grounds for nonrecognition exists. Subsection (g) similarly places on the party resisting recognition under subsection (c) the burden of establishing that one of the additional

grounds for nonrecognition exists. If such a ground is established, however, the party seeking recognition has the burden of establishing that, as a matter of law, recognition would nevertheless be reasonable under the circumstances. Subsection (h) places the burden on the party resisting recognition under either subsection (d) or (e) to establish that another final and conclusive judgment exists and that the other judgment conflicts with the judgment for which recognition is sought. A party resisting recognition under subsection (d) also has the burden of showing that nonrecognition of the later judgment would be reasonable under the circumstances; a party seeking recognition under subsection (e) has the burden of establishing that recognition of an earlier judgment would be reasonable under the circumstances.

Subsection (i) requires a court, when ruling on recognition of a foreign-country judgment, to state the facts specially and state separately its conclusions of law. When the court is the trier of fact, the facts will be stated in the findings of fact. When the court is ruling on a motion to dismiss, where the nonmovant's factual allegations are treated as true, or a motion for summary judgment, where there is no issue of material fact, the court will need to set out those facts that the court considered to be material.

Section 1C-1854 lists in subsection (a) bases for personal jurisdiction that are adequate as a matter of law to establish that the foreign court had personal jurisdiction over the defendant. These bases for personal jurisdiction are in substance the same as current law except that subdivision (a)(4) has been modified to include other forms of business organizations and subdivision (a)(7) is new. New subdivision (a)(7) provides that the foreign court has personal jurisdiction over the defendant if there was any other basis for personal jurisdiction that would be consistent with the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Subsection (b) clarifies that the bases for personal jurisdiction listed in subsection (a) are not exclusive; a court of this State may find that the foreign court had personal jurisdiction over the defendant on some other basis.

Section 1C-1855 sets out the procedures by which the issue of recognition or nonrecognition of a foreign-country judgment may be raised. If recognition is sought as an original matter, the issue of recognition must be raised by filing an action seeking recognition. If recognition or nonrecognition is sought in some other action the issue of recognition may be raised by complaint, counterclaim, cross-claim, or affirmative defense.

Section 1C-1856 sets out the effect of recognition of a foreign-country judgment. A judgment recognized under new Article 20 is conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this State would be conclusive, but in contrast to Article 18, it is enforceable in the same manner and to the same extent as a judgment rendered in this State. Under Article 18, a judgment once recognized must be enforced under Article 17 of Chapter 1C of the General Statutes, which is cumbersome and partly duplicates the provisions of Article 18.

Section 1C-1857 is substantively the same as current law in providing that the court may stay any proceedings with regard to a foreign-country judgment pending appeal of the foreign-country judgment.

Section 1C-1858 is new. It expressly provides that an action to recognize a foreign-country judgment must be commenced within the earlier of the time during which the judgment

is effective in the foreign country or 10 years from the date that the judgment became effective in the foreign country.

Section 1C-1859 provides for uniformity of application and construction of new Article 20.

Sections 3 and 4, respectively, authorize the printing of drafters comments and provide that the bill is effective when it becomes law.

SENATE BILL 307

Short Title:	Regulate Ownership & Use of Certain Reptiles.	(Public)
Sponsors:	Senator Jones.	
Referred to:	Judiciary II.	

February 25, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGULATING THE USE OF CERTAIN REPTILES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 55 of Chapter 14 of the General Statutes reads as rewritten:

"Article 55.

"~~Handling~~ Regulation of ~~Poisonous~~ Certain Reptiles.

"§ 14-416. Handling of poisonous reptiles declared public nuisance and criminal offense.

The intentional or negligent exposure of other human beings to contact with ~~reptiles of a venomous nature~~ venomous reptiles, with large constricting snakes, or with crocodilians being essentially dangerous and injurious and detrimental to public health, safety and welfare, the indulgence in and inducement to such exposure is hereby declared to be a public nuisance and a criminal offense, to be abated and punished as provided in this Article.

"§ 14-417. Regulation of ownership or use of ~~poisonous~~ venomous reptiles.

It shall be unlawful for any person to own, possess, use, transport, or traffic in any venomous reptile ~~of a poisonous nature whose venom is not removed, unless such reptile is at all times kept securely in a box, cage, or other safe container in which there are no openings of sufficient size to permit the escape of such reptile, or through which such reptile can bite or inject its venom into any human being.~~ that is not housed in a sturdy and secure enclosure. Permanent enclosures shall be designed to be escape-proof, bite-proof, and have an operable lock. Each enclosure shall be clearly and visibly labeled 'Venomous Reptile Inside' with scientific name, common name, appropriate anti-venom, and owner's identifying information noted on the container. Transport containers shall be designed to be escape-proof and bite-proof. A written bite protocol that includes emergency contact information, local animal control office, the name and location of suitable anti-venom, first aid procedures and treatment guidelines, as well as an escape recovery plan must be within sight of permanent housing, and a copy must accompany the transport of any venomous reptile. In the event of an escape of a venomous reptile, the owner or possessor of the venomous reptile shall immediately notify local law enforcement.

"§ 14-417.1. Regulation of ownership or use of large constricting snakes.

As used in this Article, large constricting snakes shall mean: Reticulated Python, Python reticulates; Burmese Python, Python molurus; African Rock Python, Python sebae; Amethystine Python, Morelia amethistina; and Green Anaconda, Eunectes murinus; or any of their subspecies or hybrids. It shall be unlawful for any person to own, possess, use, transport, or traffic in any of the large constricting snakes that are not housed in a sturdy and secure enclosure. Permanent enclosures shall be designed to be escape-proof and shall have an operable lock. Each enclosure shall be labeled clearly and visibly with the scientific name, common name, number of specimens, and owner's identifying information. Transport

containers shall be designed to be escape proof. A written safety protocol and escape recovery plan shall be within sight of permanent housing and a copy shall accompany the transport of any of the large constricting snakes. The safety protocol shall include emergency contact information, identification of the local animal control office, and first aid procedures. In the event of an escape of a large constricting snake, the owner or possessor shall immediately notify local law enforcement.

"**§ 14-417.2. Regulation of ownership or use of crocodilians.**

All crocodilians, excluding the American alligator, shall be regulated under this Article. It shall be unlawful for any person to own, possess, use, transport, or traffic in any crocodilian that is not housed in a sturdy and secure enclosure. Permanent enclosures shall be designed to be escape-proof and have a fence of sufficient strength to prevent contact between an observer and the crocodilian and shall have an operable lock. Transport containers shall be designed to be escape-proof. A written safety protocol and escape recovery plan shall be within sight of permanent housing and a copy must accompany the transport of any crocodilian. In the event of the escape of a crocodilian, the owner or possessor shall immediately notify local law enforcement.

"**§ 14-418. Prohibited handling of reptiles or suggesting or inducing others to handle.**

It shall be unlawful for any person to intentionally handle any reptile of a ~~poisonous nature whose venom is not removed, by taking or holding such reptile in bare hands or by placing or holding such reptile against any exposed part of the human anatomy, or by placing their own or another's hand or any other part of the human anatomy in or near any box, cage, or other container wherein such reptile is known or suspected to be.~~ species regulated under this Article in a manner that intentionally or negligently exposes another individual to unsafe contact with such reptile. It shall also be unlawful for any person to intentionally suggest, entice, invite, challenge, intimidate, exhort or otherwise induce or aid any person to handle or expose himself to any ~~such poisonous~~ reptile of a species regulated under this Article in any manner ~~defined in this Article.~~ that intentionally or negligently exposes another individual to unsafe contact with such reptile. Safe and responsible handling of reptiles for purposes of animal husbandry, training, transport, and education is permitted.

"**§ 14-418.1. Registration of reptiles.**

The owner of any venomous reptile, large constricting snake, or crocodilian, as defined in this Article, shall register the location of the reptile's housing with local law enforcement. Registration shall be made by December 1, 2010, and shall be updated on an annual basis, and within 30 days of any change in the location of the reptile's housing. Local law enforcement may charge an annual registration fee not to exceed fifty dollars ($50.00) per housing location of reptiles named in this Article.

"**§ 14-419. Investigation of suspected violations; seizure and examination of reptiles; disposition of reptiles.**

In any case in which any law-enforcement officer or animal control officer has reasonable grounds to believe that any of the provisions of this Article have been or are about to be violated, it shall be the duty of such officer and he is hereby authorized, empowered, and directed to immediately investigate such violation or impending violation and to forthwith seize the reptile or reptiles involved, and all such officers are hereby authorized and directed to deliver such reptiles to the North Carolina State Museum of Natural Sciences or to its designated representative for examination ~~and test~~ for the purpose of ascertaining whether ~~said~~ the reptiles ~~contain venom and are poisonous.~~ are venomous reptiles, large constricting snakes, or crocodilians subject to this Article. If the North Carolina State Museum of Natural Sciences or its designated representative finds that ~~said reptiles are dangerously poisonous,~~ a seized reptile is a venomous reptile, large constricting snake, or crocodilian subject to this Article, the North Carolina State Museum of Natural Sciences or its designated representative shall be empowered to ~~dispose~~ determine final disposition of ~~said reptiles~~ the reptile in a manner

consistent with the safety of the public; but if the Museum or its designated representative find that the ~~reptiles are not dangerously poisonous, and are not and cannot be harmful to human life, safety, health or welfare,~~ reptile is not a venomous reptile, large constricting snake, or crocodilian subject to this Article, and either no criminal warrants or indictments are initiated in connection with the reptile within 10 days of initial seizure, or a court of law determines that the reptile is not being owned, possessed, used, transported, or trafficked in violation of this Article, then it shall be the duty of ~~such~~ the law enforcement officers to return the ~~said reptiles~~ the reptile to the person from whom they were seized within five days.

"**§ 14-420. Arrest of persons violating provisions of Article.**

If the examination ~~and tests~~ made by the North Carolina State Museum of Natural Sciences ~~or its designated representative~~ as provided herein ~~show~~ shows that ~~such reptiles are dangerously poisonous,~~ the reptile is a venomous reptile, large constricting snake, or crocodilian, it shall be the duty of the officers making the ~~seizure,~~ seizure with probable cause to believe that the reptile is being owned, possessed, used, transported, or trafficked in violation of this Article, in addition to ~~destroying such reptiles,~~ authorizing the North Carolina Museum of Natural Sciences or its designated representative to determine final disposition of the reptile, also to arrest all persons violating any of the provisions of this Article.

"**§ 14-421. Exemptions from provisions of Article.**

This Article shall not apply to the possession, exhibition, or handling of reptiles by employees or agents of duly constituted museums, laboratories, educational or scientific institutions in the course of their educational or scientific work.

"**§ 14-422. ~~Violation made misdemeanor.~~ Criminal penalties and civil remedies for violation.**

(a) Any person violating any of the provisions of this Article shall be guilty of a Class 2 misdemeanor.

(b) If a person other than the owner of a venomous reptile, large constricting snake, or crocodilian, or other than the owners' agent or agents, suffers a life threatening injury or is killed as the result of a violation of this Article, the owner shall be guilty of a Class I felony.

(c) Any person intentionally releasing into the wild a nonnative venomous reptile, a large constricting snake, or a crocodilian shall be guilty of a Class 1 misdemeanor.

(d) A violation of this Article subject to the provisions of subsection (b) or (c) of this section shall constitute wanton conduct within the meaning of G.S. 1D-5(7) and subject the violator to punitive damages in any civil action that may be filed as a result of the violator's actions."

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 307
PROPOSED COMMITTEE SUBSTITUTE S307-CSRI-1 [v.12]

3/25/2009 2:24:07 PM

Short Title: Regulate Ownership & Use of Certain Reptiles. (Public)

Sponsors:

Referred to:

February 25, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGULATING THE USE OF CERTAIN REPTILES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 55 of Chapter 14 of the General Statutes reads as rewritten:

"Article 55.

"~~Handling~~ Regulation of ~~Poisonous~~ Certain Reptiles.

"§ 14-416. ~~Handling~~ Mishandling of ~~poisonous~~ certain reptiles declared public nuisance and criminal offense.

The intentional or negligent exposure of other human beings to unsafe contact with ~~reptiles of a venomous nature~~ venomous reptiles, large constricting snakes, or crocodilians ~~being~~ is essentially dangerous and injurious and detrimental to public health, safety and welfare, ~~the indulgence in and inducement to such exposure is hereby~~ and is therefore declared to be a public nuisance and a criminal offense, to be abated and punished as provided in this Article.

"§ 14-417. Regulation of ownership or use of ~~poisonous~~ venomous reptiles.

(a) It shall be unlawful for any person to own, possess, use, transport, or traffic in any venomous reptile ~~of a poisonous nature whose venom is not removed, unless such reptile is at all times kept securely in a box, cage, or other safe container in which there are no openings of sufficient size to permit the escape of such reptile, or through which such reptile can bite or inject its venom into any human being.~~ that is not housed in a sturdy and secure enclosure. Permanent enclosures shall be designed to be escape-proof, bite-proof, and have an operable lock. Transport containers shall be designed to be escape-proof and bite-proof.

(b) Each enclosure shall be clearly and visibly labeled 'Venomous Reptile Inside' with scientific name, common name, appropriate anti-venom, and owner's identifying information noted on the container. A written bite protocol that includes emergency contact information, local animal control office, the name and location of suitable anti-venom, first aid procedures, and treatment guidelines, as well as an escape recovery plan must be within sight of permanent housing, and a copy must accompany the transport of any venomous reptile.

(c) In the event of an escape of a venomous reptile, the owner or possessor of the venomous reptile shall immediately notify local law enforcement.

"§ 14-417.1. Regulation of ownership or use of large constricting snakes.

(a) As used in this Article, large constricting snakes shall mean: Reticulated Python, Python reticulates; Burmese Python, Python molurus; African Rock Python, Python sebae; Amethystine Python, Morelia amethistina; and Green Anaconda, Eunectes murinus; or any of their subspecies or hybrids.

(b) It shall be unlawful for any person to own, possess, use, transport, or traffic in any of the large constricting snakes that are not housed in a sturdy and secure enclosure. Permanent enclosures shall be designed to be escape-proof and shall have an operable lock. Transport containers shall be designed to be escape proof.

(c) Each enclosure shall be labeled clearly and visibly with the scientific name, common name, number of specimens, and owner's identifying information. A written safety protocol and escape recovery plan shall be within sight of permanent housing and a copy shall accompany the transport of any of the large constricting snakes. The safety protocol shall include emergency contact information, identification of the local animal control office, and first aid procedures.

(d) In the event of an escape of a large constricting snake, the owner or possessor shall immediately notify local law enforcement.

"**§ 14-417.2. Regulation of ownership or use of crocodilians.**

(a) All crocodilians, excluding the American alligator, shall be regulated under this Article. It shall be unlawful for any person to own, possess, use, transport, or traffic in any crocodilian that is not housed in a sturdy and secure enclosure. Permanent enclosures shall be designed to be escape-proof and have a fence of sufficient strength to prevent contact between an observer and the crocodilian and shall have an operable lock. Transport containers shall be designed to be escape-proof.

(b) A written safety protocol and escape recovery plan shall be within sight of permanent housing and a copy must accompany the transport of any crocodilian.

(c) In the event of the escape of a crocodilian, the owner or possessor shall immediately notify local law enforcement.

"**§ 14-418. Prohibited handling of reptiles or suggesting or inducing others to handle.**

(a) It shall be unlawful for any person to ~~intentionally~~ handle any reptile ~~of a poisonous nature whose venom is not removed, by taking or holding such reptile in bare hands or by placing or holding such reptile against any exposed part of the human anatomy, or by placing their own or another's hand or any other part of the human anatomy in or near any box, cage, or other container wherein such reptile is known or suspected to be.~~ regulated under this Article in a manner that intentionally or negligently exposes another person to unsafe contact with the reptile.

(b) It shall ~~also~~ be unlawful for any person to intentionally or negligently suggest, entice, invite, challenge, intimidate, exhort or otherwise induce or aid any person to handle or expose himself in an unsafe manner to any ~~such poisonous~~ reptile regulated ~~in any manner defined in~~under this Article.

(c) Safe and responsible handling of reptiles for purposes of animal husbandry, exhibition, training, transport, and education is permitted under this section.

"**§ 14-419. Investigation of suspected violations; seizure and examination of reptiles; disposition of reptiles.**

In any case in which any law-enforcement officer or animal control officer has ~~reasonable grounds~~ probable cause to believe that any of the provisions of this Article have been or are about to be violated, it shall be the duty of ~~such~~ the officer and the officer ~~he~~ is ~~hereby~~ authorized, empowered, and directed to immediately investigate ~~such~~ the violation or impending violation and to ~~forthwith~~ seize the reptile or reptiles involved, and ~~all such officers~~the officer is ~~are hereby~~ authorized and directed to ~~deliver such reptiles~~ deliver: (i) a reptile believed to be venomous to the North Carolina State Museum of Natural Sciences or to its designated representative for examination ~~and test~~ for the purpose of ascertaining whether ~~said reptiles contain venom and are poisonous.~~ the reptile is regulated under this Article; and, (ii) a reptile believed to be a large constricting snake or crocodilian to the North Carolina Zoological Park for the purpose of ascertaining whether the reptile is regulated under this Article. If the Museum or the Zoological Park ~~North Carolina State Museum of Natural~~

~~Sciences or its designated representative finds that said reptiles are dangerously poisonous,~~or their designated representatives find that a seized reptile is a venomous reptile, large constricting snake, or crocodilian regulated under this Article, the ~~North Carolina State Museum of Natural Sciences~~ Museum or the Zoological Park or ~~its~~ their designated representative shall ~~be empowered to dispose~~ determine final disposition of ~~said reptiles~~ the reptile in a manner consistent with the safety of the ~~public; but if~~public. If the Museum or the Zoological Park or ~~its~~ their designated ~~representative~~ representatives find that the ~~reptiles are not dangerously poisonous, and are not and cannot be harmful to human life, safety, health or welfare,~~ reptile is not a venomous reptile, large constricting snake, or crocodilian regulated under this Article, and either no criminal warrants or indictments are initiated in connection with the reptile within 10 days of initial seizure, or a court of law determines that the reptile is not being owned, possessed, used, transported, or trafficked in violation of this Article, then it shall be the duty of ~~such~~ the law enforcement officer ~~officers~~ to return the ~~said reptiles~~ reptile or reptiles to the person from whom they were seized within ~~five~~ fifteen days.

"§ 14-420. Arrest of persons violating provisions of Article.

If ~~the~~ an examination ~~and tests~~ made by the North Carolina State Museum of Natural Sciences or the North Carolina Zoological Park or ~~its~~ their designated representatives~~representative as provided herein show~~ conducted pursuant to this Article shows that ~~such reptiles are dangerously poisonous,~~ the reptile is a venomous reptile, large constricting snake, or crocodilian subject to this Article, it shall be the duty of the ~~officers~~ officer making the seizure with probable cause to believe that the reptile is being owned, possessed, used, transported, or trafficked in violation of this Article,~~seizure,in addition to destroying such reptiles, also~~ to arrest all persons violating any of the provisions of this Article.

"§ 14-421. Exemptions from provisions of Article.

This Article shall not apply to the possession, exhibition, or handling of reptiles by employees or agents of duly constituted veterinarians, zoos, serpentariums, museums, laboratories, educational or scientific institutions, public and private, in the course of their educational or scientific ~~work.~~work, or Wildlife Damage Control Agents in the course of the work for which they are approved by the Wildlife Resources Commission.

"§ 14-422. ~~Violation made misdemeanor.~~ Criminal penalties and civil remedies for violation.

(a) Any person violating any of the provisions of this Article shall be guilty of a Class 2 misdemeanor.

(b) If any person, other than the owner of a venomous reptile, large constricting snake, or crocodilian, the owner's agent, employee, or a member of the owner's immediate family, suffers a life threatening injury or is killed as the result of a violation of this Article, the owner of the reptile shall be guilty of a Class 1 misdemeanor. This subsection shall not apply to violations that result from incidents that could not have been prevented or avoided by the owner's exercise of due care or foresight, such as natural disasters or other acts of God, or in the case of thefts of the reptile from the owner.

(c) Any person intentionally releasing into the wild a nonnative venomous reptile, a large constricting snake, or a crocodilian shall be guilty of a Class 1 misdemeanor.

(d) Violations of this Article as set forth in subsections (b) or (c) of this section shall constitute wanton conduct within the meaning of G.S. 1D-5(7) and subject the violator to punitive damages in any civil action that may be filed as a result of the violator's actions."

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

SENATE BILL 307:
Regulate Ownership & Use of Certain Reptiles

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	March 28, 2009
Introduced by:	Sen. Jones	**Prepared by:**	Jennifer McGinnis Committee Counsel
Analysis of:	PCS to First Edition S307-CSRI-1 [v.12]		

CHANGES FROM PREVIOUS PROPOSED COMMITTEE SUBSTITUTE (PCS): This PCS differs from that discussed by the Committee on March 5, 2009 (S307-CSRI-1 [v.4]) by:

- Deleting the provision that required an owner to register the location of a regulated reptile's housing with local law enforcement by December 1, 2010 and update the registration annually or within 30 days after a change of location. The deleted provision also authorized local law enforcement to charge an annual registration fee not to exceed $50 per housing location.
- Changing the entity that would render a determination as to whether or not a seized reptile is one regulated by the statute from the North Carolina State Museum of Natural Sciences (Museum) to the North Carolina Zoological Park (Zoo).
- Modifying the penalty provision included in the previously discussed version of the PCS applicable to violations of the Article that result in life threatening injuries or death. In the previous PCS, this violation would have been a Class I felony and applicable to anyone injured other than the owner of the reptile. Now, the owner of a regulated animal would be guilty of a Class 1 misdemeanor if another person (other than owner, the owner's agent, employee, or member of the owner's immediate family) suffers a life threatening injury or is killed as a result of a violation of the Article. In addition, the new PCS adds an exemption providing that the provision would not apply to violations that result from incidents that could not have been prevented or avoided by the owner's exercise of due care or foresight, such as natural disasters or other acts of God, or in the case of thefts of the reptile from the owner.
- Adding Wildlife Damage Control Agents approved by the Wildlife Resources Commission to the list of entities exempt from the Article's provisions.

SUMMARY: The PCS for Senate Bill 307 would add large constricting snakes and crocodilians (with the exception of the American alligator) to an existing Article that governs the handling of venomous reptiles. The PCS would also: (i) provide that negligent exposure, in addition to intentional exposure, of others to regulated reptiles constitutes a violation under the Article; (ii) provide additional requirements for caging and other protocols associated with these reptiles; (iii) clarify the process upon seizure of a regulated reptile; (iv) add new penalties and remedies for violations of the Article; and (v) make other technical, clarifying, and conforming changes.

CURRENT LAW: Article 55 of Chapter 14 of the General Statutes, "Handling of Poisonous Reptiles", provides that it is unlawful for any person to:

- Own, possess, use, or traffic in any reptile of a poisonous nature whose venom is not removed unless the reptile is kept securely in a box, cage, or safe container without openings that would allow for escape or the biting of humans.
- Intentionally handle any reptile of a poisonous nature whose venom is not removed with bare hands or by holding the reptile against any exposed part of the body or by placing one's hand

(or other part of the anatomy), or that of another person's, near any container housing a poisonous reptile.

- Induce others to handle reptiles of a poisonous nature.

The statute also provides that law enforcement or animal control officers with reasonable grounds to believe a violation of the Article exists must immediately investigate the violation, seize the reptile involved, and deliver the reptile to the Museum or its designee to examine the reptile in order to ascertain whether the reptile is poisonous. If the Museum determines the reptile is dangerously poisonous, the Museum is empowered to dispose of the reptile in a manner consistent with public safety and law enforcement is directed to arrest the person from whom the reptile was seized. If the Museum determines the reptile is not venomous, the statute provides for return of the reptile to the person from whom the reptile was seized.

The statute provides that violations of the Article are punishable as a Class 2 misdemeanor.

The statute exempts museums, laboratories, educational or scientific institutions from the provisions of the Article.

BILL ANALYSIS: The PCS would add large constricting snakes (as listed in the bill) and all crocodilians (except the American alligator, which is already regulated by the State's Wildlife Resources Commission (WRC)) to coverage under the Article. The PCS would also prohibit the transport (in addition to owning, possessing, using, or trafficking) of the regulated reptiles except in compliance with the Article's requirements. Further, the PCS would:

- Provide that negligent exposure, in addition to intentional exposure, of others to regulated reptiles constitutes a violation under the Article.
- Provide additional requirements for caging and associated protocols as follows:
  - Venomous reptiles -- Permanent enclosures designed to be escape-proof, bite-proof, and have an operable lock; transport containers designed to be escape and bite-proof.
  - Large constricting snakes -- Permanent enclosures designed to be escape-proof and have an operable lock; transport containers designed to be escape-proof.
  - Crocodilians -- Permanent enclosures designed to be escape-proof, have a fence of sufficient strength, and have an operable lock; transport containers designed to be escape-proof.

  For venomous reptiles, enclosures must be clearly labeled as containing such a reptile, with identifying anti-venom information. Written bite or safety protocols (as applicable) and escape recovery plans must be kept within sight of a permanent enclosure and accompany transport. Immediate notification of escape to law enforcement would be required.
- Prohibit handling of a regulated reptile in any manner that intentionally or negligently exposes another to unsafe contact with the reptile, or inducement of another to unsafe contact with the reptile.
- Change the standard under which law enforcement may seize a regulated reptile from "reasonable grounds" to "probable cause".
- Provides that law enforcement that seize a reptile must deliver: (i) a reptile believed to be venomous to the Museum; and, (ii) and reptile believed to be a large constricting snake or crocodilian to the Zoo for determination as to whether the reptile is one regulated by the Article. If the Museum or Zoo renders an affirmative determination, the Museum or Zoo must determine

the final disposition of the reptile and law enforcement must arrest the person in violation of the Article. If the Museum or Zoo determines the reptile is not regulated under the Article, and either no criminal warrants or indictments are initiated in connection with the reptile within 10 days of seizure or a court determines that the reptile is not being handled in violation of the Article, the reptile must be returned to the person from whom it was seized.

- Add veterinarians, zoos, serpentariums, and Wildlife Damage Control Agents to the list of entities exempt from the Article's provisions.
- Provide additional penalties/remedies: (i) the owner of a regulated animal would be guilty of a Class 1 misdemeanor if another person (other than owner, the owner's agent, employee, or member of the owner's immediate family) suffers a life threatening injury or is killed as a result of a violation of the Article. This provision would not apply to violations that result from incidents that could not have been prevented or avoided by the owner's exercise of due care or foresight, such as natural disasters or other acts of God, or in the case of thefts of the reptile from the owner; (ii) a person would be guilty of a Class 1 misdemeanor for the intentional release of a nonnative regulated reptile into the wild; and (iii) in cases where violations of the Article result in a life threatening injury or death, or in the case of an intentional release into the wild, the violation would be deemed to constitute wanton conduct as defined under the statutes and subject the violator to punitive damages in any civil case filed as a result.

EFFECTIVE DATE: The PCS would become effective December 1, 2009, and apply to offenses committed on or after that date.

S307-SMRI-7(CSRIf-1) v3

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	March 31, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 22	Ban Texting While Driving.	Senator Forrester
SB 96	No "Texting" While Driving.	Senator Bingham
SB 617	Stalking Law Conforming Changes.	Senator Hartsell
SB 714	Offense for Portable Toilets/Pumper Trucks.	Senator Berger
HB 8	Prohibit Cell Phones in Prison.	Representative Pierce Representative Hall

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II Committee
Tuesday, March 31, 2009, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 22	Ban Texting While Driving.	Senator Forrester
SB 96	No "Texting" While Driving.	Senator Bingham
SB 617	Stalking Law Conforming Changes.	Senator Hartsell
SB 714	Offense for Portable Toilets/Pumper Trucks.	Senator Berger
HB 8	Prohibit Cell Phones in Prison.	Representative Pierce Representative Hall

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE
Tuesday, March 31, 2009 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 10:00 AM on March 31, 2009, in Room 1124 of the Legislative Building with fourteen members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell welcomed pages Hannah Byrd, Katie Shytle, Eleanor Sojka, Sidra Shaaib, Alexandra Holding and Meredith Sutton and thanked them for serving.

HB 8 (Prohibit Cell Phones in Prison.) Representative Pierce was recognized to explain the bill. Senator Jones offered an amendment and moved that the amendment be adopted. All voted and the motion carried. Senator Hartsell explained the amendment. Ms. Mildred R. Spearman, representing the North Carolina Department of Correction, spoke on the bill. Senator Dorsett moved for a favorable report as amended, rolled into a new Proposed Committee Substitute with a referral to Appropriations. All voted and the motion carried.

SB 617 (Stalking Law Conforming Changes.) As this was Senator Hartsell's bill, Senator Vaughan presided. Senator Hartsell was recognized to explain the bill. Senator Dannelly moved for a favorable report. All voted and the motion carried.

SB 714 (Offense for Portable Toilets/Pumper Trucks.) Senator Berger was recognized to explain the bill. Mr. Cary Mack, representing Readilite & Barricade Inc., and Mr. Joe McClees, representing North Carolina Pumper Group & North Carolina Portable Toilets spoke on the bill. Senator Bingham moved for a favorable report. All voted and the motion carried.

SB 22 (Ban Texting While Driving.) Senator Bingham moved to accept the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Forrester was recognized to explain the bill. Ms. Brenda Carter, Staff Attorney, gave additional information. Major W. M. Nichols of the North Carolina Highway Patrol, Mr. Harry Kaplan representing AAA Carolinas, and Mr. Henry Jones representing Automobile Manufacturers spoke on the bill. Senator Atwater moved for a favorable report, unfavorable to the original bill, favorable to the Proposed Committee Substitute with a referral to Appropriations. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, March 31, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **617** Stalking Law Conforming Changes.
Sequential Referral: None
Recommended Referral: None

S.B. **714** Offense for Portable Toilets/Pumper Trucks.
Sequential Referral: None
Recommended Referral: Appropriations/Base Budget

TOTAL REPORTED: 2

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Wednesday, April 01, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

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

S.B. **22** Ban Texting While Driving.

Draft Number:	15234
Sequential Referral:	None
Recommended Referral:	Appropriations/Base Budget
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **8** Prohibit Cell Phones in Prison.

Draft Number:	50357
Sequential Referral:	None
Recommended Referral:	Appropriations/Base Budget
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — March 31, 2009
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
B. Ray Hall	General Statutes Commission
Floyd M. Lewis	General Statutes Commission
Tom Kaplan	NWC
Mark Seaver	AT&T
Henry Jones	Attorney Raleigh
Thomas Moore	Edwards Wells
BRUCE THOMPSON	PARKER POE
Bill Wright	Verizon
[illegible]	Yeaton
Jennifer Cohen	IFNC
Michelle Frazier	MFS

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
DAVID RICE	MFS
SUSAN VALAURI	NATIONWIDE
MARC Nichols	NCSHP / CCPS
David Boaz	MWC
Stephanie Nash	YAIU
Wendy Kelly	S20 Wicker
Jim Blackburn	County Commissioners Association
William Flowers	intern
Rose Williams	DOI
Scott Peele	Division of Prisons
Mildred Spearman	NCDOC

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Zack Kendall	NCDOP
Chuck Johnson	NC Pretrial Services Assoc.
Kim Gordon	NC Pretrial Services Assoc.
Johanna Reese	DOT
Charlotte Boyd	DMV
Debbie Jones	DMV
Wayne Yancey	Gen Charlie Dunn II
David McGowan	NC Realtors
Gordon Hawthorne	ETHOS
Conor Brockett	NCSBA
Katherine Joyce	NCASA

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gene Young	NCOWCICB
Doug Lassiter	NC STA
Amanda Peppercorn	UNC / MD for the day
JOHN SHAW	SELF
Jessi Hayes	NC HBA

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 22

Short Title:	Ban Texting While Driving.	(Public)
Sponsors:	Senators Forrester; and Allran.	
Referred to:	Judiciary II.	

February 3, 2009

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 22
PROPOSED COMMITTEE SUBSTITUTE S22-CSRV-8 [v.2]

3/23/2009 3:26:16 PM

Short Title: Ban Texting While Driving. (Public)

Sponsors:

Referred to:

February 3, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE IT UNLAWFUL TO USE A MOBILE TELEPHONE FOR E-MAIL OR TEXT MESSAGING WHILE OPERATING A VEHICLE ON A PUBLIC STREET OR HIGHWAY OR PUBLIC VEHICULAR AREA.

The General Assembly of North Carolina enacts:

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

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

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

"**§ 20-137.4A. Unlawful use of mobile telephone for text messaging or electronic mail.**

(a) Offense. – It shall be unlawful for any person to operate a vehicle on a public street or highway or public vehicular area while using a mobile telephone to:

(1) Manually enter multiple letters or text in the device as a means of communicating with another person; or

(2) Read any electronic mail or text message transmitted to the device or stored within the device, provided that this prohibition shall not apply to any name or number stored in the device nor to any caller identification information.

(b) Exceptions. – The provisions of this section shall not apply to:

(1) The operator of a vehicle that is lawfully parked or stopped.

(2) Any of the following while in the performance of their official duties: a law enforcement officer; a member of a fire department; or the operator of a public or private ambulance.

(3) The use of factory-installed or aftermarket global positioning systems (GPS) or wireless communications devices used to transmit or receive data as part of a digital dispatch system.

(4) The use of voice operated technology.

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

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

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

SENATE BILL 22
SENATE BILL 96:
Ban Texting While Driving

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	March 23, 2009
Introduced by:	Sen. Forrester/Sen. Bingham	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	PCS to First Edition S22-CSRV-8		

SUMMARY: ***This PCS for Senate Bill 22 would prohibit all drivers from using a mobile phone to read or send electronic mail or text messages, while operating a motor vehicle; an exception would apply for law enforcement officers, firefighters, and ambulance drivers in performance of their official duties. The bill would not apply to voice- operated technology, to GPS devices, or to devices that are part of a digital dispatch system such as OnStar.***

[As introduced, this bill was identical to S96, as introduced by Sen. Bingham; the bills were also identical to H9, as introduced by Rep. Pierce.]

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

"Mobile telephone" is a device used by subscribers and other users of wireless telephone service to access the service, and includes hand held and hands-free devices. "Additional technology" includes such things as cameras, electronic mail, music, the Internet, or games.

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 22 / Senate Bill 96 would make it unlawful for a person to use a mobile telephone to enter letters or text as a means of communicating with another person, while operating a motor vehicle. The bill would also make it unlawful for a driver to read an electronic mail or text message on a mobile telephone. The prohibition would apply to all drivers except for law enforcement officers, firefighters, and ambulance drivers in the performance of their official duties.

Section 1 of the bill amends the definition of "additional technology" as it applies to the statutes prohibiting the use of mobile telephones by drivers under 18 and by persons operating a school bus. This change makes it clear that electronic mail and text messaging are not included as "additional technology" the use of which is punishable under laws that apply specifically to drivers under 18 and to persons operating a school bus.

Section 2 of the bill creates a new offense making it unlawful for <u>any</u> driver to operate a vehicle on a public street or highway or public vehicular area while using a mobile phone to create or read electronic mail or text messages. The offense would not include accessing caller ID information or any name or number stored in the mobile phone.

Exceptions:

- Law Enforcement Officer/Fire Department Members/Operators of public or private ambulances, while in the performance of official duties.
- The operator of a lawfully parked or stopped vehicle.
- The use of GPS or digital dispatch systems such as OnStar.
- The use of voice operated technology.

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

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

Penalties Generally:

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

EFFECTIVE DATE: This bill would become effective December 1, 2009, and apply to offenses committed on or after that date.

BACKGROUND:

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

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

S22-SMRV-16(CSRV-8) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 96

Short Title:	No "Texting" While Driving.	(Public)
Sponsors:	Senators Bingham; Foriest, Forrester, Jones, McKissick, Stevens, and Tillman.	
Referred to:	Judiciary II.	

February 11, 2009

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 617*

Short Title:	Stalking Law Conforming Changes.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II.	

March 17, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE CONFORMING CORRECTIONS RELATED TO THE REPEALED STALKING STATUTE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-415.12(b)(8) reads as rewritten:

"(8) Is or has been adjudicated guilty of or received a prayer for judgment continued or suspended sentence for one or more crimes of violence constituting a misdemeanor, including but not limited to, a violation of a misdemeanor under Article 8 of Chapter 14 of the General Statutes, or a violation of a misdemeanor under G.S. 14-225.2, 14-226.1, 14-258.1, 14-269.2, 14-269.3, 14-269.4, 14-269.6, 14-276.1, 14-277, 14-277.1, 14-277.2, ~~14-277.3,~~ 14-277.3A, 14-281.1, 14-283, 14-288.2, 14-288.4(a)(1) or (2), 14-288.6, 14-288.9, 14-288.12, 14-288.13, 14-288.14, 14-318.2, 14-415.21(b), ~~or 14-415.26(d).~~ 14-415.26(d), or former G.S. 14-277.3."

SECTION 2. G.S. 15A-266.4(b)(3) reads as rewritten:

"(3) G.S. 14-277.3A or former G.S. 14-277.3 – Stalking."

SECTION 3. G.S. 15A-830(a)(7) reads as rewritten:

"(7) Victim. – A person against whom there is probable cause to believe one of the following crimes was committed:

a. A Class A, B1, B2, C, D, or E felony.

b. A Class F felony if it is a violation of one of the following: G.S. 14-16.6(b); 14-16.6(c); 14-18; 14-32.1(e); 14-32.2(b)(3); 14-32.3(a); 14-32.4; 14-34.2; 14-34.6(c); 14-41; 14-43.3; 14-43.11; 14-190.17; 14-190.19; 14-202.1; ~~14-277.3;~~ 14-277.3A; 14-288.9; ~~or 20-138.5.~~ 20-138.5; or former G.S. 14-277.3.

c. A Class G felony if it is a violation of one of the following: G.S. 14-32.3(b); 14-51; 14-58; 14-87.1; or 20-141.4.

d. A Class H felony if it is a violation of one of the following: G.S. 14-32.3(a); 14-32.3(c); ~~14-33.2,~~ 14-33.2; 14-277.3A; or former G.S. 14-277.3.

e. A Class I felony if it is a violation of one of the following: G.S. 14-32.3(b); 14-34.6(b); or 14-190.17A.

f. An attempt of any of the felonies listed in this subdivision if the attempted felony is punishable as a felony.

g. Any of the following misdemeanor offenses when the offense is committed between persons who have a personal relationship as

defined in G.S. 50B-1(b): G.S. 14-33(c)(1); 14-33(c)(2); 14-33(a); 14-34; 14-134.3; 14-277.3A; or former G.S. 14-277.3.

h. Any violation of a valid protective order under G.S. 50B-4.1."

SECTION 4. G.S. 15C-2(12) reads as rewritten:

"(12) Victim of stalking. – An individual against whom stalking, as described in ~~G.S. 14-277.3,~~ former G.S. 14-277.3 for acts occurring before December 1, 2008, or G.S. 14-277.3A for acts occurring on or after December 1, 2008, has been committed."

SECTION 5. G.S. 50B-1(a)(2) reads as rewritten:

"(2) Placing the aggrieved party or a member of the aggrieved party's family or household in fear of imminent serious bodily injury or continued harassment, as defined in G.S. ~~14-277.3,~~ 14-277.3A, that rises to such a level as to inflict substantial emotional distress; or".

SECTION 6. G.S. 50C-1(6) reads as rewritten:

"(6) Stalking. – On more than one occasion, following or otherwise harassing, as defined in G.S. ~~14-277.3(c),~~ 14-277.3A(b)(2), another person without legal purpose with the intent to do any of the following:

a. Place the person in reasonable fear either for the person's safety or the safety of the person's immediate family or close personal associates.

b. Cause that person to suffer substantial emotional distress by placing that person in fear of death, bodily injury, or continued harassment and that in fact causes that person substantial emotional distress."

SECTION 7. G.S. 95-260(3)b. reads as rewritten:

"b. Willfully, and on more than one occasion, following, being in the presence of, or otherwise harassing, as defined in G.S. ~~14-277.3,~~ 14-277.3A, without legal purpose and with the intent to place the employee in reasonable fear for the employee's safety."

SECTION 8. This act is effective when it becomes law.

State of North Carolina
General Statutes
Commission

9001 Mail Service Center
RALEIGH, NORTH CAROLINA
27699-9001

MEMORANDUM
March 23, 2009

TO: Senate Judiciary II Committee
FROM: General Statutes Commission
RE: **Senate Bill 617 (Stalking Law Conforming Changes)**

This bill makes conforming amendments to various sections of the General Statutes as a result of last year's amendments to the criminal offense of stalking. S.L. 2008-167 repealed G.S. 14-277.3 (Stalking) and replaced it with new G.S. 14-277.3A (Stalking), effective December 1, 2008, and applicable to offenses occurring on or after that date. As it happens, seven sections in the General Statutes contain references to former G.S. 14-277.3 that need to be updated. In some of these sections, rather than simply substituting the new G.S. number in place of the repealed section, which would be the normal conforming amendment, references to both sections should be retained because of the nature of the provision in which the reference appears.

Section 1 amends G.S. 14-415.12(b)(8) to add a reference to new G.S. 14-277.3A and to move the existing reference to G.S. 14-277.3 to the end of the subdivision and label it as "former" G.S. 14-277.3. G.S. 14-415.12(b) contains a list of disqualifications for obtaining or renewing a concealed handgun permit, so it needs to continue to reference convictions under the former stalking law.

Section 2 amends G.S. 15A-266.4(b)(3) to add a reference to new G.S. 14-277.3A and to insert the word "former" before the existing reference to G.S. 14-277.3. G.S. 15A-266.4 authorizes the taking of DNA samples from persons convicted of the crimes listed in subsection (b). The reference to former G.S. 14-277.3 is retained out of caution, so that if DNA has not yet been collected under this section from someone convicted under former G.S. 14-277.3, it can still be collected.

Section 3 amends G.S. 15A-830(a)(7) in three places to add a reference to new G.S. 14-277.3A and to move the reference to G.S. 14-277.3 to the end of the sentence in which it appears and label it as "former" G.S. 14-277.3. G.S. 15A-830(a)(7) is the definition of "victim" in the Crime Victims' Rights Act (Article 46 of Chapter 15A of the General Statutes). Retaining the reference to G.S. 14-277.3 ensures that victims of stalking under the former stalking statute will continue to qualify as crime victims under the Crime Victims' Rights Act. **Section 4** similarly amends G.S. 15C-2(12), the definition of "victim of stalking" under the Address Confidentiality Program (Chapter 15C of the General Statutes), except that, due to differences in the structure of the definitions, the amendment to G.S. 15C-2(12) specifies the time periods to which each reference applies.

Sections 5, 6, and 7 amend G.S. 50B-1(a)(2), 50C-1(6), and 95-260(3)b., respectively, to insert a reference to the new G.S. section in the reference to harassing or harassment "as defined in G.S. 14-277.3", because the definition of harass or harassment is now located there.

Section 8 provides that the act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 714*

Short Title:	Offense for Portable Toilets/Pumper Trucks.	(Public)
Sponsors:	Senator Berger of Franklin.	
Referred to:	Judiciary II.	

March 24, 2009

A BILL TO BE ENTITLED

AN ACT TO CREATE THE OFFENSE OF LARCENY, DESTRUCTION, DEFACEMENT, OR VANDALISM OF PORTABLE TOILETS OR PUMPER TRUCKS.

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:

"**§ 14-82.6. Larceny, destruction, defacement, or vandalism of portable toilets or pumper trucks.**

If any person steals, takes from its temporary location or from any person having the lawful custody thereof, or destroys, defaces, or vandalizes a chemical or portable toilet as defined in G.S. 130A-290 or a pumper truck that is operated by a septage management firm that is permitted by the Department of Environment and Natural Resources under G.S. 130A-291.1, the person is guilty of a Class 1 misdemeanor."

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

SENATE BILL 714:
Offense for Portable Toilets/Pumper Trucks

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	March 31, 2009
Introduced by:	Sen. Berger of Franklin	**Prepared by:**	Jennifer McGinnis
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 714 (First Edition) would create the offense of larceny, destruction, defacement, or vandalism of portable toilets or pumper trucks.

[As introduced, this bill was identical to H616, as introduced by Rep. Allen, which is currently in House Judiciary III.]

CURRENT LAW: GS 14-72 (Larceny of property; receiving stolen goods or possessing stolen goods) provides that the larceny of goods of the value of more than one thousand dollars ($1,000) is a Class H felony[1]. Larceny of property where the value of the property or goods is not more than one thousand dollars ($1,000), is a Class 1 misdemeanor.

GS 14-160 (Willful and wanton injury to personal property; punishments) provides that if any person: wantonly and willfully injures the personal property of another the person is guilty of a Class 2 misdemeanor[2], except where the damage caused is in an amount in excess of $200.00, in which case the person is guilty of a Class 1 misdemeanor[3].

BILL ANALYSIS: Senate Bill 714would make it a Class 1 misdemeanor[3] for any person to steal, take from its temporary location or from any person who has lawful custody, destroy, deface, or vandalize a chemical or portable toilet or a pumper truck that is operated by a septage management firm.

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

Jennifer Mundt, Legislative Analyst for the House Environment and Natural Resources Committee, substantially contributed to this summary.

S714-SMRI-12(e1) v1

[1] The presumptive range of minimum punishment for a Class H felony when there are no prior convictions is 5 to 6 months of community, intermediate, or active punishment.

[2] The range of punishment for a Class 2 misdemeanor when there are no prior convictions is 1 to 30 days of community punishment

[3] The range of punishment for a Class 1 misdemeanor when there are no prior convictions is 1 to 45 days of community punishment

H 3

HOUSE BILL 8

Committee Substitute Favorable 2/25/09
Committee Substitute #2 Favorable 3/4/09

Short Title: Prohibit Cell Phones in Prison. (Public)

Sponsors:

Referred to:

February 2, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A CRIME TO PROVIDE CELL PHONES TO INMATES IN THE CUSTODY OF THE DEPARTMENT OF CORRECTION.

The General Assembly of North Carolina enacts:

SECTION 1. 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 mobile phones to inmates.**

(a) ~~If any person~~ Any person who shall give or sell to any inmate of any charitable, mental or penal institution, or local confinement facility, or ~~if any person~~ any person who 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~~ felon. If the person is an officer or employee of any institution of the State, or of any local confinement facility, ~~he~~ the person 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 a mobile telephone as defined in G.S. 20-137.3(a), or a component of a mobile telephone, to an inmate in the custody of the

Department of Correction, or any person who knowingly gives or sells a mobile telephone or component to a person who is not an inmate for delivery to an inmate, is guilty of a Class A1 misdemeanor."

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

HOUSE BILL 8:
Prohibit Cell Phones in Prison

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	March 30, 2009
Introduced by:	Reps. Pierce, Hall	**Prepared by:**	Brenda J. Carter
Analysis of:	Third Edition		Committee Counsel

SUMMARY: ***House Bill 8 makes it a Class A1 misdemeanor to provide a cell phone to an inmate in the custody of the Department of Corrections.***

CURRENT LAW: Under current law, it is a Class H felony to provide poison, a controlled substance, a deadly weapon, or any cartridge or ammunition to an inmate of any charitable, mental, or penal institution, including a local confinement facility. An exception applies for drugs administered under the general supervision of a practitioner or upon the prescription of a physician. It is a Class 1 misdemeanor to knowingly give or sell any alcoholic beverages to any inmate of any State mental or penal institution, or local confinement facility, except when prescribed by a physician or when sacramental wine is given by a minister or rabbi as part of a religious service.

If the person providing the contraband to the inmate is an officer or employee of the institution, in addition to any criminal penalties that person's employment will be terminated.

Inmates in possession of contraband items are subject to prison disciplinary proceedings.

BILL ANALYSIS: House Bill 8 makes it a Class A1 misdemeanor for any person to knowingly give or sell a mobile telephone to an inmate in the custody of the Department of Corrections, or to knowingly give or sell a mobile telephone to another person for delivery to an inmate. Assuming no prior convictions, a Class A1 misdemeanor is punishable by 1-60 days community, intermediate, or active punishment. This means that a judge has the full range of punishments available –from imprisonment to a fine only; the amount of the fine would be in the discretion of the court.

The definition of "mobile phone" referenced in the bill is set out below.

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

§ 20-137.3. Unlawful use of a mobile phone by persons under 18 years of age.

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

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

Karen Cochrane-Brown, Counsel to House State Government/State Personnel Committee, and Steven Rose, Counsel to House Judiciary III substantially contributed to this summary.

H8-SMRV-20(e3) v2

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	April 2, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 44	Appeals of Quasi-Judicial Land-Use Decisions.	Senator Kinnaird
SB 74	Increase Penalty/2nd Degree Murder.	Senator Jones
SB 277	Strengthen Child Labor Violation Penalties.	Senator Berger
SB 403	Victims Compensation Amendment.	Senator Berger
HB 22	Enhance Youth Employment Protections.	Representative Bryant Representative Weiss Representative Goodwin Representative Luebke

Senator Fletcher L. Hartsell, Jr., Chair

Corrected Notice: HB 23

Principal Clerk ____
Reading Clerk ____

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Senator Fletcher L. Hartsell, Jr., Chair

Corrected Notice 2: HB 23

Principal Clerk ____
Reading Clerk ____

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Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II Committee
Thursday, April 2, 2009, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 23	Strengthen Child Labor Violation Penalties.	Representative Bryant Representative Weiss Representative Goodwin Representative Luebke
SB 44	Appeals of Quasi-Judicial Land-Use Decisions.	Senator Kinnaird
SB 74	Increase Penalty/2nd Degree Murder.	Senator Jones
SB 277	Strengthen Child Labor Violation Penalties.	Senator Berger
SB 403	Victims Compensation Amendment.	Senator Berger

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE
Thursday, April 2, 2009 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 10:00 AM on April 2, 2009, in Room 1124 of the Legislative Building with fifteen members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell welcomed pages Max Godfrey, Rebekah Hall, Kaleb Templeton and Abby Paulson and thanked them for serving.

SB 74 (Increase Penalty/2nd Degree Murder.) Senator Jones was recognized to explain the bill. Ms. Peg Dorr of the North Carolina Association of District Attorneys introduced District Attorney Jeff Hunt to speak on the bill. Ms. Kimberly Overton from the District Attorney's Association gave additional information. Mr. Todd Barlow, representing the North Carolina Advocates for Justice and Mr. Thomas Maher, representing the Indigent Defense Services, also spoke on the bill. Ms. Danielle Seale from Fiscal Research gave additional information. Senator Forrester moved for a favorable report with a referral to Appropriations. All voted and the motion carried.

HB 23 (Strengthen Child Labor Violation Penalties.) Representative Weiss was recognized to explain the bill. Dr. Carol Runyan from the University of North Carolina Injury Prevention Research Center, spoke on the bill as did Mr. John Hoomani, General Counsel of the Department of Labor, and Mr. Joe Stewart from the North Carolina Chamber. After additional discussion Senator Berger moved for a favorable report with a referral to Finance. All voted and the motion carried.

SB 403 (Victims Compensation Amendment.) Senator Apodaca moved to accept the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Berger was recognized to explain the bill. Ms. Janice Carmichael, representing Victim Compensation of the Department of Crime Control and Public Safety, and Ms. Marbeth Holmes (personal tragedy) spoke on the bill. Senator Apodaca moved for a favorable report with a referral to Appropriations. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Monday, April 06, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **74** Increase Penalty/2nd Degree Murder.
Sequential Referral: None
Recommended Referral: Appropriations/Base Budget

H.B.(CS #1) **23** Strengthen Child Labor Violation Penalties.
Sequential Referral: None
Recommended Referral: Finance

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

S.B. **403** Victims Compensation Amendment.
Draft Number: 55330
Sequential Referral: Appropriations/Base Budget
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 3

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — April 2, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lee Dorsey	Conference of DAs
Kirby Edwards	Conference of DAs
Carol Runyan	Univ. of North Carolina
James Carmichael	CCPS - Victim Compensation
Maybeth Holmes	citizen/victim
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety
Faith Everett	CJPC
John Madler	NC Sentencing Commission
Jay Stein	NCAA
Hubert Dalton	NCDMH
Todd Barlow	NCAJ

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom Maher	JDS
[illegible]	CDPL
Mc Hunter	CDPL
J. Peele	St. Jones' Office
Aaron Gallagher	OSBM
Leslie Arnold	SOG-Daily Bulletin
James Andrews	NC State AFL-CIO
Sarah Preston	ACLU-NC
Bill Rowe	NC Justice Center
Paul Meyer	NCLM
Daniel Baum	IL+L Gates

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Natalie Yates	Therapeutic Alternatives
Clarice Ristvan	Therapeutic Alternatives, Randleman, NC
Jen Palmer	914 Hale St. Durham 27705
ANTHONY ALLEN	NCACC

SENATE BILL 44

Short Title:	Appeals of Quasi-Judicial Land-Use Decisions.	(Public)
Sponsors:	Senator Kinnaird.	
Referred to:	Judiciary II.	

February 4, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW REGARDING APPEALS OF QUASI-JUDICIAL DECISIONS MADE UNDER ARTICLE 19 OF CHAPTER 160A AND ARTICLE 18 OF CHAPTER 153A OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Part 3 of Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-393. Appeals in the nature of certiorari.**

(a) Applicability. – This section applies to appeals of quasi-judicial decisions of decision-making boards when that appeal is to superior court and in the nature of certiorari as required by this Article.

(b) For purposes of this section, the following terms mean:

(1) Decision-making board. – A city council, planning board, board of adjustment, or other board making quasi-judicial decisions appointed by the city council under this Article or under comparable provisions of any local act.

(2) Person. – Any legal entity authorized to bring suit in the legal entity's name.

(c) Filing the Petition. – An appeal in the nature of certiorari shall be initiated by filing with the superior court a petition for writ of certiorari. The petition shall:

(1) State the facts that demonstrate that the petitioner has standing to seek review.

(2) Set forth the grounds upon which the petitioner contends that an error was made. The facts, if any, in support of allegations that, as the result of impermissible conflict as described in G.S. 160A-388(e1), the decision-making body was not sufficiently impartial to comply with due process principles shall be set forth with particularity.

(3) Set forth the relief the petitioner seeks.

(d) Standing. – A petition may be filed under this section only by a petitioner who has standing to challenge the decision being appealed. The following persons shall have standing to file a petition under this section:

(1) Any person meeting any of the following criteria:

a. Has an ownership interest, leasehold interest, or other interest created by easement, restriction, or covenant in the property that is the subject of the decision being appealed.

b. Has an option or contract to purchase the property that is the subject of the decision being appealed.

c. Was an applicant before the decision-making board whose decision is being appealed.

(2) Any person with an ownership interest or leasehold interest in property any portion of which is located within 200 feet of the boundary of the property that is the subject of the decision being appealed.

(3) Any other person who will suffer special damages as the result of the decision being appealed. For purposes of this subdivision, 'special damages' mean a substantial harm suffered by a person that is distinct from the rest of the community, amounting to a reduction in the value of such person's property.

(4) An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of a particular neighborhood or local area, so long as at least one of the members of the association would have standing as an individual to challenge the decision being appealed, and the association was not created in response to the particular development or issue that is the subject of the appeal.

(5) A city whose decision-making board has made a decision that the council believes improperly grants a variance from or is otherwise inconsistent with the proper interpretation of an ordinance adopted by that council.

(e) Respondent. – The respondent named in the petition shall be the city whose decision-making board made the decision that is being appealed, except that if the petitioner is a city that has filed a petition pursuant to subdivision (d)(5) of this section, then the respondent shall be the decision-making board. If the petitioner is not the applicant before the decision-making board whose decision is being appealed, the petitioner shall also name that applicant as a respondent. Any petitioner may name as a respondent any person with an ownership or leasehold interest in the property that is the subject of the decision being appealed who participated in the hearing before the decision-making board.

(f) Writ of Certiorari. – Upon filing the petition, the petitioner shall present the petition and a proposed writ of certiorari to the clerk of court of the county in which the matter arose. The writ shall direct the respondent city (or the respondent decision-making board if the petitioner is a city that has filed a petition pursuant to subdivision (d)(5) of this section) to prepare and certify to the court the record of proceedings below within a specified date. The writ shall also direct that the petitioner shall serve the petition and the writ upon each respondent named therein in the manner provided for service of a complaint under Rule 4j of the Rules of Civil Procedure (except that, if the respondent is a decision-making board, the petition and the writ shall be served upon the chairman of that decision-making board). No summons shall be issued. The clerk shall issue the writ without notice to the respondent or respondents if the petition has been properly filed and the writ is in proper form. A copy of the executed writ shall be filed with the court.

(g) Answer to the Petition. – The respondent may, but need not, file an answer to the petition, except that if the respondent contends that any petitioner lacks standing to bring the appeal, that contention must be set forth in an answer served on all petitioners at least 30 days prior to the hearing on the petition.

(h) Intervention. – Rule 24 of the Rules of Civil Procedure shall govern motions to intervene as a petitioner or respondent in an action initiated under this section with the following exceptions:

(1) Any person described in subdivision (d)(1) of this section shall have standing to intervene and shall be allowed to intervene as a matter or right.

(2) Any person, other than one described in subdivision (d)(1) of this section, who seeks to intervene as a petitioner must demonstrate that the person would have had standing to challenge the decision being appealed in accordance with subdivisions (d)(2) through (d)(5) of this section.

(3) Any person, other than one described in subdivision (d)(1) of this section, who seeks to intervene as a respondent must demonstrate that the person would have had standing to file a petition in accordance with subdivisions (d)(2) through (d)(5) of this section if the decision-making board had made a decision that is consistent with the relief sought by the petitioner(s).

(i) The Record. – The record shall consist of all documents and exhibits submitted to the decision-making board whose decision is being appealed, together with the minutes of the meeting or meetings at which the decision being appealed was considered. Upon request of any party, the record shall also contain an audio or videotape of the meeting or meetings at which the decision being appealed was considered if such a recording was made. Any party may also include in the record a transcript of the proceedings, which shall be prepared at the cost of the party choosing to include it. The parties may agree, or the court may direct, that matters unnecessary to the court's decision be deleted from the record or that matters other than those specified herein be included. The record shall be bound and paginated or otherwise organized for the convenience of the parties and the court. A copy of the record shall be served by the municipal respondent upon all petitioners within three days after it is filed with the court.

(j) Hearing on the Record. – The court shall hear and decide all issues raised by the petition by reviewing the record submitted in accordance with subsection (h) of this section. Except that the court may, in its discretion, allow the record to be supplemented with affidavits, testimony of witnesses, or documentary or other evidence if, and to the extent that, the record is not adequate to allow an appropriate determination of the following issues:

(1) Whether a petitioner or intervenor has standing.

(2) Whether, as a result of impermissible conflict as described in G.S. 160A-388(e1), the decision-making body was not sufficiently impartial to comply with due process principles.

(3) Whether the decision-making body erred for the reasons set forth in sub-subdivisions a. and b. of subdivision (1) of subsection (k) of this section.

(k) Scope of Review. –

(1) When reviewing the decision of a decision-making board under the provisions of this section, the trial court shall ensure that the rights of petitioners have not been prejudiced because the decision-making body's findings, inferences, conclusions, or decisions were:

a. In violation of constitutional provisions, including those protecting procedural due process rights.

b. In excess of the statutory authority conferred upon the city or the authority conferred upon the decision-making board by ordinance.

c. Inconsistent with applicable procedures specified by statute or ordinance.

d. Affected by other error of law.

e. Unsupported by substantial competent evidence in view of the entire record.

f. Arbitrary or capricious.

(2) When the issue before the trial court is whether the decision-making board erred in interpreting an ordinance, the trial court may review that issue de novo and freely substitute its judgment for that of the decision-making board, provided that the court may give due consideration to the construction adopted by those entities charged with the execution and administration of

the ordinance, taking into account the extent to which such construction may have been based on sound reasoning and consistent application.

(3) The term "competent evidence," as used in this subsection, shall not preclude reliance by the decision-making board on evidence that would not be admissible under the rules of evidence as applied in the trial division of the General Court of Justice if (i) the evidence was admitted without objection, or (ii) the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the decision-making board to rely upon it. The term "competent evidence" shall not be deemed to include the opinion testimony of lay witnesses as to any of the following:

a. The use of property in a particular way would affect the value of other property.

b. The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety.

c. Matters about which only expert testimony would generally be admissible under the rules of evidence.

(l) Decision of the Trial Court. – Following its review of the decision-making board in accordance with subsection (k) of this section, the trial court may affirm the decision, reverse the decision and remand the case with appropriate instructions, or remand the case for further proceedings. If the court does not affirm the decision below in its entirety, then the court shall be guided by the following in determining what relief should be granted to the petitioners:

(1) If the court concludes that the error committed by the decision-making board is procedural only, the court may remand the case for further proceedings to correct the procedural error.

(2) If the court concludes that the decision-making board has erred by failing to make findings of fact such that the court cannot properly perform its function, then the court may remand the case with appropriate instructions so long as the record contains substantial competent evidence that could support the decision below with appropriate findings of fact. However, findings of fact are not necessary when the record sufficiently reveals the basis for the decision below or when the material facts are undisputed and the case presents only an issue of law.

(3) If the court concludes that the decision by the decision-making board is not supported by substantial competent evidence in the record or is based upon an error of law, then the court may remand the case with an order that directs the decision-making board to take whatever action should have been taken had the error not been committed or to take such other action as is necessary to correct the error. Specifically:

a. If the court concludes that a permit was wrongfully denied because the denial was not based on substantial competent evidence or was otherwise based on an error of law, the court shall remand with instructions that the permit be issued.

b. If the court concludes that a permit was wrongfully issued because the issuance was not based on substantial competent evidence or was otherwise based on an error of law, the court shall remand with instructions that the permit be revoked.

(m) Ancillary Injunctive Relief. – Upon motion of a party to a proceeding under this section, and under appropriate circumstances, the trial court may issue an injunctive order requiring any other party to that proceeding to take certain action or refrain from taking action that is consistent with the court's decision on the merits of the appeal."

SECTION 1.(b) Article 18 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-349. Appeals in the nature of certiorari.**

(a) Whenever appeals of quasi-judicial decisions of decision-making boards are to superior court and in the nature of certiorari as required by this Article, the provisions of G.S. 160A-393 shall be applicable to those appeals.

(b) For purposes of this section, as used in G.S. 160A-393, the term "city council" shall be deemed to refer to the "board of commissioners," and the term "city" or "municipal" shall be deemed to refer to the "county."

(c) For purposes of this section, the "impermissible conflict as described in G.S. 160A-388(e1)" shall mean "impermissible conflict as described in G.S. 153A-345(e1)."""

SECTION 2.(a) Part 2 of Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-377. Appeals of decisions on subdivision plats.**

(a) When a subdivision ordinance adopted under this Part provides that the decision whether to approve or deny a preliminary or final subdivision plat is to be made by a city council or a planning board, other than a planning board comprised solely of members of a city planning staff, and the ordinance authorizes the council or planning board to make a quasi-judicial decision in deciding whether to approve the subdivision plat, then that quasi-judicial decision of the council or planning board shall be subject to review by the superior court by proceedings in the nature of certiorari. The provisions of G.S. 160A-381(c), 160A-388(e2), and 160A-393 shall apply to those appeals.

(b) When a subdivision ordinance adopted under this Part provides that a city council, planning board, or staff member is authorized to make only an administrative or ministerial decision in deciding whether to approve a preliminary or final subdivision plat, then any party aggrieved by that administrative or ministerial decision may seek to have the decision reviewed by filing an action in superior court seeking appropriate declaratory or equitable relief. Such an action must be filed within the time frame specified in G.S. 160A-381(c) for petitions in the nature of certiorari.

(c) For purposes of this section, an ordinance shall be deemed to authorize a quasi-judicial decision if the city council or planning board is authorized to decide whether to approve or deny the plat based not only upon whether the application complies with the specific requirements set forth in the ordinance, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision to be made by the city council or planning board."

SECTION 2.(b) Part 2 of Article 18 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-336. Appeals of decisions on subdivision plats.**

(a) When a subdivision ordinance adopted under this Part provides that the decision whether to approve or deny a preliminary or final subdivision plat is to be made by a board of commissioners or a planning board, other than a planning board comprised solely of members of a county planning staff, and the ordinance authorizes the board of commissioners or planning board to make a quasi-judicial decision in deciding whether to approve the subdivision plat, then that quasi-judicial decision of the board of commissioners or planning board shall be subject to review by the superior court by proceedings in the nature of certiorari. The provisions of G.S. 153A-340(f), 153A-345(e2), and 153A-349 shall apply to those appeals.

(b) When a subdivision ordinance adopted under this Part provides that a board of commissioners, planning board, or staff member is authorized to make only an administrative or ministerial decision in deciding whether to approve a preliminary or final subdivision plat, then any party aggrieved by that administrative or ministerial decision may seek to have the decision reviewed by filing an action in superior court seeking appropriate declaratory or

equitable relief. Such an action must be filed within the time frame specified in G.S. 153A-340(f) for petitions in the nature of certiorari.

(c) For purposes of this section, an ordinance shall be deemed to authorize a quasi-judicial decision if the board of commissioners or planning board is authorized to decide whether to approve or deny the plat based not only upon whether the application complies with the specific requirements set forth in the ordinance, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision to be made by the board of commissioners or planning board."

SECTION 3. G.S. 63-34 reads as rewritten:

"**§ 63-34. Judicial review.**

(a) Any person aggrieved by any decision of the board of appeals, or any taxpayer, or any officer, department, board, or bureau of the political subdivision, may present to the superior court a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the decision is filed in the office of the board. Such petition shall comply with the provisions of G.S. 160A-393.

(b) ~~Upon presentation of such petition the court may allow a writ of certiorari directed to the board of appeals to review such decision of the board.~~The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

(c) The board of appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

~~(d) The court shall have exclusive jurisdiction to affirm, modify, or set aside the decision brought up for review, in whole or in part, and if need be, to order further proceedings by the board of appeals. The findings of fact by the board, if supported by substantial evidence, shall be accepted by the court as conclusive, and no objection to a decision of the board shall be considered by the court unless such objection shall have been urged before the board, or if it was not so urged, unless there were reasonable grounds for failure to do so.~~

(e) Costs shall not be allowed against the board of appeals unless it appears to the court that it acted with gross negligence, in bad faith, or with malice, in making the decision appealed from."

SECTION 4. G.S. 162A-93(b) reads as rewritten:

"(b) The provisions of subsection (a) shall not apply if the city council adopts an annexation ordinance including an area served by a district and finds, after a public hearing, that adequate fire protection cannot be provided in the area because of the level of available water service. Notice of the public hearing shall be provided by first class mail to each affected customer and by publication in a newspaper having general circulation in the area, each not less than 10 days before the hearing. The clerk's certification of the mailing shall be deemed conclusive in the absence of fraud. Any resident of the annexed area aggrieved by such a finding of the council may file a petition for review in the superior court in the nature of certiorari, within 30 days after the finding. The petition for review in the nature of certiorari shall comply with G.S. 160A-393."

SECTION 5. G.S. 160A-388(e1) reads as rewritten:

"(e1) A member of the board or any other body exercising ~~the functions of a board of adjustment~~quasi-judicial functions pursuant to this Article shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change,

undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection."

SECTION 6. G.S. 153A-345(e1) reads as rewritten:

"(e1) A member of the board or any other body exercising ~~the functions of a board of adjustment~~quasi-judicial functions pursuant to this Article shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection."

SECTION 7. This act becomes effective January 1, 2010, and applies to appeals filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 74

Short Title:	Increase Penalty/2nd Degree Murder.	(Public)
Sponsors:	Senator Jones.	
Referred to:	Judiciary II.	

February 5, 2009

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR SECOND DEGREE MURDER TO A B1 FELONY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-17 reads as rewritten:

"**§ 14-17. Murder in the first and second degree defined; punishment.**

A murder which shall be perpetrated by means of a nuclear, biological, or chemical weapon of mass destruction as defined in G.S. 14-288.21, poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempted perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon shall be deemed to be murder in the first degree, a Class A felony, and any person who commits such murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine pursuant to G.S. 15A-2000, except that any such person who was under 18 years of age at the time of the murder shall be punished with imprisonment in the State's prison for life without parole. All other kinds of murder, including that which shall be proximately caused by the unlawful distribution of opium or any synthetic or natural salt, compound, derivative, or preparation of opium, or cocaine or other substance described in G.S. 90-90(1)d., or methamphetamine, when the ingestion of such substance causes the death of the user, shall be deemed murder in the second degree, and any person who commits such murder shall be punished as a ~~Class B2 felon.~~Class B1 felon."

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

SENATE BILL 74:
Increase Penalty/2nd Degree Murder

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 2, 2009
Introduced by:	Sen. Jones	**Prepared by:**	Jennifer McGinnis
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 74 would increase the penalty for second degree murder from a Class B2 felony to a Class B1 felony.

CURRENT LAW: G.S. 14-17 provides that second degree murder is punishable as a Class B2 felony. The presumptive range of the minimum sentence for a Class B2 Felony, assuming no prior convictions, is between 125 and 157 months of active punishment.

BILL ANALYSIS: The bill would increase the penalty for second degree murder from a Class B2 felony to a Class B1 felony. The essential elements of murder in the second degree are that the killing was unlawful and with malice.

The presumptive range of the minimum sentence for a Class B1 Felony, assuming no prior convictions, is between 192 and 240 months of active punishment. Other offenses punishable as Class B1 felonies include first degree rape and first degree sexual offense.

EFFECTIVE DATE: This bill would become effective December 1, 2009, and apply to offenses committed on or after that date.

S74-SMRI-13(e1) v3

SENATE BILL 277*

Short Title:	Strengthen Child Labor Violation Penalties.	(Public)
Sponsors:	Senators Berger of Franklin; Atwater, Davis, Foriest, Kinnaird, McKissick, Nesbitt, Queen, and Snow.	
Referred to:	Judiciary II.	

February 24, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING CHAPTER 95 OF THE GENERAL STATUTES TO PROTECT THE HEALTH AND SAFETY OF CHILDREN BY INCREASING THE PENALTIES FOR VIOLATIONS OF CHILD LABOR LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 95-25.23(a) reads as rewritten:

"(a) Any employer who violates the provisions of G.S. 95-25.5 (Youth Employment) or any regulation issued thereunder, shall be subject to a civil penalty not to exceed ~~two hundred fifty dollars ($250.00)~~ five hundred dollars ($500.00) for ~~each violation.~~ the first violation and not to exceed one thousand dollars ($1,000) for each subsequent violation. In determining the amount of such penalty, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The determination by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the person charged with the violation takes exception to the determination, in which event final determination of the penalty shall be made in an administrative proceeding pursuant to Article 3 of Chapter 150B and in a judicial proceeding pursuant to Article 4 of Chapter 150B."

SECTION 2. G.S. 95-25.15(b) reads as rewritten:

"(b) Except as otherwise provided in this Article, every employer subject to any provision of this Article shall make, keep, and preserve such records of the persons employed by the ~~employer~~ employer, including the ages of employees, and of the wages, hours, and other conditions and practices of employment which are essential to the enforcement of this Article and are prescribed by regulation of the Commissioner, except that the Commissioner shall have no authority to prescribe records for the State of North Carolina, a city, town, county or other municipality or agency or instrumentality of government."

SECTION 3. G.S. 95-25.23A(a) reads as rewritten:

"(a) Any employer who violates the provisions of G.S. 95-25.15(b) or any regulation issued pursuant to G.S. 95-25.15(b), shall be subject to a civil penalty of up to two hundred fifty dollars ($250.00) per employee with the maximum not to exceed ~~one thousand dollars ($1,000)~~ two thousand dollars ($2,000) per investigation by the Commissioner or ~~his~~ the Commissioner's authorized representative. In determining the amount of the penalty, the Commissioner shall ~~consider:~~consider each of the following:

(1) The appropriateness of the penalty for the size of the business of the employer ~~charged; and~~charged.

(2) The gravity of the violation.
(3) Whether the violation involves an employee under 18 years of age.

The determination by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the person charged with the violation takes exception to the determination, in which event final determination of the penalty shall be made in an administrative proceeding pursuant to Article 3 of Chapter 150B and in a judicial proceeding pursuant to Article 4 of Chapter 150B."

SECTION 4. G.S. 95-138 reads as rewritten:

"**§ 95-138. Civil penalties.**

(a) The Commissioner, upon recommendation of the Director, or the North Carolina Occupational Safety and Health Review Commission in the case of an appeal, shall have the authority to assess penalties against any employer who violates the requirements of this Article, or any standard, rule, or order adopted under this Article, as follows:

(1) A minimum penalty of five thousand dollars ($5,000) to a maximum penalty of seventy thousand dollars ($70,000) may be assessed for each willful or repeat violation.
(1a) A penalty of up to fourteen thousand dollars ($14,000) shall be assessed for each serious violation that involves injury to, or endangerment of, an employee under 18 years of age.
(2) A penalty of up to seven thousand dollars ($7,000) shall be assessed for each serious ~~violation.~~violation that does not involve injury to, or endangerment of, an employee under 18 years of age.
(2a) A penalty of up to seven thousand dollars ($7,000) may be assessed for each violation that is adjudged not to be of a serious nature.
(3) A penalty of up to seven thousand dollars ($7,000) may be assessed against an employer who fails to correct and abate a violation, within the period allowed for its correction and abatement, which period shall not begin to run until the date of the final Order of the Commission in the case of any appeal proceedings in this Article initiated by the employer in good faith and not solely for the delay of avoidance of penalties. The assessment shall be made to apply to each day during which the failure or violation continues.
(4) A penalty of up to seven thousand dollars ($7,000) shall be assessed for violating the posting requirements, as required under the provisions of this Article.

(b) The Commissioner shall adopt uniform standards that the Commissioner, the Commission, and the hearing examiner shall apply when determining appropriateness of the penalty. The following factors shall be used in determining whether a penalty is appropriate:

(1) Size of the business of the employer being charged.
(2) The gravity of the violation.
(3) The good faith of the employer.
(4) The record of previous violations; provided that for purposes of determining repeat violations, only the record within the previous three years is applicable.
(5) Whether the violation involves injury to, or endangerment of, an employee under 18 years of age.

The report of the hearing examiner and the report, decision, or determination of the Commission on appeal shall specify the standards applied in determining the reduction or affirmation of the penalty assessed by the Commissioner.

(c) The clear proceeds of all civil penalties and interest recovered by the Commissioner, together with the costs thereof, shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 5. G.S. 95-139 reads as rewritten:

"**§ 95-139. Criminal penalties.**

(a) Any employer who willfully violates any standard, rule, regulation or order promulgated pursuant to the authority of this Article, and said violation causes the death of any employee, shall be guilty of a Class 2 misdemeanor, which may include a fine of not more than ten thousand dollars ($10,000); except that if the conviction is for a violation committed after a first conviction of such person, the employer shall be guilty of a Class 1 misdemeanor which may include a fine of not more than twenty thousand dollars ($20,000). This section shall not prevent any prosecuting officer of the State of North Carolina from proceeding against such employer on a prosecution charging any degree of willful or culpable homicide. Any person who gives advance notice of any inspection to be conducted under this Article, without authority from the Commissioner, Director, or any of their agents to whom such authority has been delegated, shall be guilty of a Class 2 misdemeanor. Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or any other document filed or required to be maintained pursuant to this Article, shall be guilty of a Class 2 misdemeanor, which may include a fine of not more than ten thousand dollars ($10,000). Whoever shall commit any kind of assault upon or whoever kills a person engaged in or on account of the performance of investigative, inspection, or law-enforcement functions shall be subject to prosecution under the general criminal laws of the State and upon such charges as the proper prosecuting officer shall charge or allege.

(b) Any employer who willfully violates any standard, rule, regulation, or order promulgated pursuant to the authority of this Article, and the violation causes the death of any employee under 18 years of age, shall be guilty of a Class 2 misdemeanor, which may include a fine of not more than twenty thousand dollars ($20,000); except that if the conviction is for a subsequent violation committed after a first conviction of such person under this section, the employer shall be guilty of a Class 1 misdemeanor which may include a fine of not more than forty thousand dollars ($40,000). This section shall not prevent any prosecuting officer of the State of North Carolina from proceeding against such employer on a prosecution charging any degree of willful or culpable homicide. Any person who gives advance notice of any inspection to be conducted under this Article, without authority from the Commissioner, Director, or any of their agents to whom such authority has been delegated, shall be guilty of a Class 2 misdemeanor. Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or any other document filed or required to be maintained pursuant to this Article, and pertaining to an employee under 18 years of age, shall be guilty of a Class 2 misdemeanor, which may include a fine of not more than twenty thousand dollars ($20,000)."

SECTION 6. This act becomes effective December 1, 2009.

S 1

SENATE BILL 403

Short Title:	Victims Compensation Amendment.	(Public)
Sponsors:	Senator Berger of Franklin.	
Referred to:	Judiciary II.	

March 5, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CRIME VICTIMS COMPENSATION ACT TO PROVIDE THAT CRIMINALLY INJURIOUS CONDUCT INCLUDES BOTH FELONY AND MISDEMEANOR DEATH BY VEHICLE AND TO PROVIDE THAT ECONOMIC LOSS FOR WHICH COMPENSATION MAY BE AWARDED INCLUDES THE COST OF GRIEF COUNSELING FOR THE SPOUSE AND CHILDREN OF THE DECEASED VICTIM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15B-2(5) reads as rewritten:

"(5) "Criminally injurious conduct" means 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 includes the offenses of felony and misdemeanor death by vehicle under G.S. 20-141.4, but does not include any other 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."

SECTION 2. G.S. 15B-2(10) reads as rewritten:

"(10) "Economic loss" means 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.~~ loss, and also includes the cost of grief counseling for the spouse and children of

the deceased victim. Noneconomic detriment is not economic loss, but economic loss may be caused by pain and suffering or physical impairment."

SECTION 3. This act becomes effective July 1, 2009, and applies to pending claims and claims filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 403
PROPOSED COMMITTEE SUBSTITUTE S403-CSRV-14 [v.1]

4/1/2009 6:25:15 PM

Short Title: Victims Compensation Amendment. (Public)

Sponsors:

Referred to:

March 5, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CRIME VICTIMS COMPENSATION ACT TO PROVIDE THAT CRIMINALLY INJURIOUS CONDUCT INCLUDES BOTH FELONY AND MISDEMEANOR DEATH BY VEHICLE AND TO PROVIDE THAT ECONOMIC LOSS FOR WHICH COMPENSATION MAY BE AWARDED INCLUDES THE COST OF GRIEF COUNSELING FOR THE SPOUSE AND CHILDREN OF THE DECEASED VICTIM AND APPROPRIATE FUNDS FOR IMPLEMENTATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15B-2(5) reads as rewritten:

"(5) "Criminally injurious conduct" means 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 <u>includes the offenses of felony and misdemeanor death by vehicle under G.S. 20-141.4, but</u> does not include <u>any other</u> 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."

SECTION 2. G.S. 15B-2(10) reads as rewritten:

"(10) "Economic loss" means 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.~~ loss, and also includes the cost of grief counseling for the spouse and children of the deceased victim. Noneconomic detriment is not economic loss, but economic loss may be caused by pain and suffering or physical impairment."

SECTION 3. There is appropriated to the Department of Crime Control and Public Safety for the Crime Victims Compensation Fund the sum of one million dollars ($1,000,000) to implement the provisions of Section 2 of this act.

SECTION 4. This act becomes effective July 1, 2009, and applies to pending claims and claims filed on or after that date.

SENATE BILL 403:
Victims Compensation Amendment

2009-2010 General Assembly

Committee:	Senate Ref to Judiciary II. If fav, re-ref to Appropriations/Base Budget	**Date:**	April 1, 2009
Introduced by:	Sen. Berger of Franklin	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	PCS to First Edition S403-CSRV-14		

SUMMARY: ***Senate Bill 403 would amend the Crime Victims Compensation Act to allow for the payment of compensation to families of victims of both felony and misdemeanor death by vehicle. It would also allow compensation for the cost of grief counseling for the spouse and children of a deceased victim; the proposed committee substitute adds a $1,000,000 appropriation to cover those costs.***

CURRENT LAW: Under the North Carolina Crime Victims Compensation Act (Chapter 15B of the General Statutes), a person may be reimbursed for economic loss suffered as a result of being an innocent victim of certain crimes committed in this State. Compensation may be awarded for victims of conduct that by its nature poses a substantial threat of personal injury or death, including: acts of terrorism. Victims may be compensated for economic loss including:

- Medical care, rehabilitation, medically-related property, and other remedial treatment and care.
- Loss of income from work.
- Expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed for himself or his family.
- In the case of an unemployed victim whose spouse is the offender, 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.
- In the case of a victim's death, up to $5,000) for funeral expenses.

Most motor vehicle violations are not offenses for which a victim is eligible for compensation. The exceptions are offenses involving impaired driving, and hit-and-run offenses where the victim is a pedestrian, cyclist, or a person on a mobility impairment device.

BILL ANALYSIS: Because felony death by vehicle involves impaired driving, families of victims of felony death by vehicle are eligible to apply for compensation under current law; **Section 1** of the bill would make families of victims of misdemeanor death by vehicle also eligible to apply for compensation. 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*, and
(3) The commission of the offense is the proximate cause of the death.

Section 2 of the bill would allow compensation for the cost of grief counseling for the spouse and children of a deceased victim.

EFFECTIVE DATE: The bill would become effective July 1, 2009 and apply to pending claims and to claims filed on or after that date.

S403-SMRV-27(CSRV-14) v3

FISCAL IMPACT ESTIMATES FOR CRIME VICTIMS COMPENSATION

Short Title: Victims Compensation Amendment: Senate Bill 403

Cost to Victims Compensation Program

Most counselors do not do group or family grief counseling stating because of the different ages in the family (child, adolescent and adult). Each individual has a different perspective of death; therefore each person would need to be seen separately.

Even though there is no way to forecast the exact number of eligible victim family members that would apply for grief counseling benefit, the following information is based on motor vehicles deaths reported by the State Highway Patrol and research that the average immediate family consist of four.

<u>DOES NOT INCLUDE VEHICLE DEATHS REPORTED BY POLICE DEPARTMENTS</u>

Counselors recommend one session per week for first 12 weeks and bi-weekly for the rest of the year. Total of 12+ 16 = 28 sessions
Average cost of counseling session

Intake - $110 - $165 (average cost $137.50)
Session- $100 -$125 (average cost $112.50)
Total cost 28 x $112.50 = $3,150 + $137.50 = $3,287.50
28 sessions per family member $3,287.50
28 sessions per family $3,287.50

182 average Felony and Misdemeanor death by vehicle per year reported by SHP.

For one family member based on SHP = 182 x $3,287.50 = $598,325
For an average family (mother, 2 children) 3 x $3,287.50 = $1,794,975

In fiscal year 2007/2008, NC paid funeral expenses for 257 homicides in NC totaling $1,128,657.

Grief counseling for families of homicide victims:
257 x 3 family members = 771.
771 x $3,287.50 = $2,534,662.50

$2,534,662.50 + $1,794,975 = $4,329,637.50 in additional funding for grief counseling.

If S403 is enacted into law, economic loss would now include misdemeanor death by vehicle so an additional 182 potential victims would be eligible for $30,000 in medical expenses and an additional $5,000 in funeral cost. The cost for grief counseling and the economic loss combined could potentially be a total cost of $10,699,637.50.

Potential Total cost: $10,699,637.50

While I certainly agree that grief counseling would be a wonderful benefit for families who have lost loved ones caused by felony and misdemeanor death by vehicle, the Crime Victims Compensation Program would go into a huge back log without the additional funding.

By statute a victim means a person who suffers personal injury or death proximately caused by criminally injurious conduct.

(5) Criminally injurious conduct" means 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.

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 regulations of traffic, other than impaired driving
3. The commission of the offense in subdivision is the proximate cause of the death.

HOUSE BILL 23
Committee Substitute Favorable 3/12/09

Short Title: Strengthen Child Labor Violation Penalties. (Public)

Sponsors:

Referred to:

February 2, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING CHAPTER 95 OF THE GENERAL STATUTES TO PROTECT THE HEALTH AND SAFETY OF CHILDREN BY INCREASING THE PENALTIES FOR VIOLATIONS OF CHILD LABOR LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 95-25.23(a) reads as rewritten:

"(a) Any employer who violates the provisions of G.S. 95-25.5 (Youth Employment) or any regulation issued thereunder, shall be subject to a civil penalty not to exceed ~~two hundred fifty dollars ($250.00)~~ five hundred dollars ($500.00) for ~~each violation.~~ the first violation and not to exceed one thousand dollars ($1,000) for each subsequent violation. In determining the amount of such penalty, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The determination by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the person charged with the violation takes exception to the determination, in which event final determination of the penalty shall be made in an administrative proceeding pursuant to Article 3 of Chapter 150B and in a judicial proceeding pursuant to Article 4 of Chapter 150B."

SECTION 2. G.S. 95-25.15(b) reads as rewritten:

"(b) Except as otherwise provided in this Article, every employer subject to any provision of this Article shall make, keep, and preserve such records of the persons employed by the ~~employer~~ employer, including the ages of employees, and of the wages, hours, and other conditions and practices of employment which are essential to the enforcement of this Article and are prescribed by regulation of the Commissioner, except that the Commissioner shall have no authority to prescribe records for the State of North Carolina, a city, town, county or other municipality or agency or instrumentality of government."

SECTION 3. G.S. 95-25.23A(a) reads as rewritten:

"(a) Any employer who violates the provisions of G.S. 95-25.15(b) or any regulation issued pursuant to G.S. 95-25.15(b), shall be subject to a civil penalty of up to two hundred fifty dollars ($250.00) per employee with the maximum not to exceed ~~one thousand dollars ($1,000)~~ two thousand dollars ($2,000) per investigation by the Commissioner or ~~his~~ the Commissioner's authorized representative. In determining the amount of the penalty, the Commissioner shall ~~consider:~~consider each of the following:

(1) The appropriateness of the penalty for the size of the business of the employer ~~charged; and~~charged.

(2) The gravity of the violation.

(3) Whether the violation involves an employee under 18 years of age.

The determination by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the person charged with the violation takes exception to the determination, in which event final determination of the penalty shall be made in an administrative proceeding pursuant to Article 3 of Chapter 150B and in a judicial proceeding pursuant to Article 4 of Chapter 150B."

SECTION 4. G.S. 95-138(b) reads as rewritten:

"(b) The Commissioner shall adopt uniform standards that the Commissioner, the Commission, and the hearing examiner shall apply when determining appropriateness of the penalty. The following factors shall be used in determining whether a penalty is appropriate:

(1) Size of the business of the employer being charged.
(2) The gravity of the violation.
(3) The good faith of the employer.
(4) The record of previous violations; provided that for purposes of determining repeat violations, only the record within the previous three years is applicable.
(5) Whether the violation involves injury to an employee under 18 years of age.

The report of the hearing examiner and the report, decision, or determination of the Commission on appeal shall specify the standards applied in determining the reduction or affirmation of the penalty assessed by the Commissioner."

SECTION 5. G.S. 95-139 reads as rewritten:

"**§ 95-139. Criminal penalties.**

(a) Any employer who willfully violates any standard, rule, regulation or order promulgated pursuant to the authority of this Article, and ~~said~~ the violation causes the death of any ~~employee,~~ employee 18 years of age or older, shall be guilty of a Class 2 misdemeanor, which may include a fine of not more than ten thousand dollars ~~($10,000); except that if the conviction is for a violation committed after a first conviction of such person, the employer shall be guilty of a Class 1 misdemeanor which may include a fine of not more than twenty thousand dollars ($20,000).~~ ($10,000).

(b) Any employer who willfully violates any standard, rule, regulation, or order promulgated pursuant to the authority of this Article, and the violation causes the death of any employee under 18 years of age, shall be guilty of a Class 2 misdemeanor, which may include a fine of not more than twenty thousand dollars ($20,000).

(c) If an employer is convicted of more than one violation of subsection (a) or (b) of this section, the subsequent violation shall be penalized as follows:

(1) The employer shall be guilty of a Class 1 misdemeanor which may include a fine of not more than twenty thousand dollars ($20,000) if the subsequent violation results in the death of an employee 18 years of age or older.
(2) The employer shall be guilty of a Class 1 misdemeanor which may include a fine of not more than forty thousand dollars ($40,000) if the subsequent violation results in the death of an employee under 18 years of age.

(d) This section shall not prevent any prosecuting officer of the State of North Carolina from proceeding against such employer on a prosecution charging any degree of willful or culpable homicide. Any person who gives advance notice of any inspection to be conducted under this Article, without authority from the Commissioner, Director, or any of their agents to whom such authority has been delegated, shall be guilty of a Class 2 misdemeanor.

(e) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or any other document filed or required to be maintained pursuant to this Article, shall be guilty of a Class 2 misdemeanor, which may include a fine of

(i) not more than ten thousand dollars ~~($10,000).~~($10,000) for falsifications pertaining to employees 18 years of age or older or (ii) not more than twenty thousand dollars ($20,000) for falsifications pertaining to employees under 18 years of age.

(f) Whoever shall commit any kind of assault upon or whoever kills a person engaged in or on account of the performance of investigative, inspection, or law-enforcement functions shall be subject to prosecution under the general criminal laws of the State and upon such charges as the proper prosecuting officer shall charge or allege."

SECTION 6. This act becomes effective December 1, 2009, and applies to violations occurring or offenses committed on or after that date.

HOUSE BILL 23:
Strengthen Child Labor Violation Penalties

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 2, 2009
Introduced by:	Rep Weiss, Luebke, Bryant, Goodwin	**Prepared by:**	Jeff Hudson
Analysis of:	Second Edition		Committee Counsel

SUMMARY: House Bill 23 would increase the penalties for violations of child labor laws.

[As introduced, this bill was identical to S277, as introduced by Sen. Berger of Franklin, which is currently in Senate Judiciary II.]

CURRENT LAW:

Article 2A of Chapter 95 of the General Statutes is the **Wage and Hour Act**. The Act is enforced by the Commissioner of Labor and governs wage levels, hours of labor, and the well being of minors. The Act contains a number of restrictions regarding when and how a youth may be employed. It provides a civil penalty not to exceed $250 for each violation of the youth employment provisions. It also requires employers to make and keep records of wages, hours, and other conditions and practices of employment. Violations of these requirements result in civil penalties of up to $250 per employee with a maximum of $1,000 per investigation.

Article 16 of Chapter 95 of the General Statutes is the **Occupational Safety and Health Act of North Carolina** (OSHA). OSHA is administered by the Commissioner of Labor and is designed to ensure safe conditions for workers. OSHA contains the following civil and criminal penalties:

- Willfully violating a standard promulgated under OSHA and causing the death of **any** employee is a Class 2 misdemeanor, which may include a fine of not more than $10,000. A subsequent violation would be a Class 1 misdemeanor, which could include a fine of not more than $20,000.
- Making a false statement in a document is a Class 2 misdemeanor which may include a fine of not more than $10,000.

The penalties set out above for the Wage and Hour Act and OSHA do not take into consideration the age of the worker.

BILL ANALYSIS:

House Bill 23 would make the following changes to the Wage and Hour Act:

Violations Regarding Youth Employment:

- Increases the civil penalty for violations regarding youth employment to $500 for the first violation (was $250).
- Provides that fines for each subsequent violation cannot exceed $1,000.

Maintaining Records:

- Requires employers to maintain records of the ages of employees.
- Increases the maximum civil penalty per investigation for violations regarding employer's records of employees to $2,000 (was $1,000).
- Clarifies that in determining the amount of the penalty, the Commissioner of Labor must consider whether the violation involves an employee less than 18 years of age.

House Bill 23 would make the following changes to OSHA:

Civil Penalties:

- Provides that when determining whether a penalty is appropriate, the Commissioner of Labor must consider, in addition to other factors, whether the violation involves injury to an employee less than 18 years of age.

Criminal Penalties: The bill would not change the offense class, but would create differences regarding the amount of fines that may be imposed as follows:

- **First violation** – Willfully violating a standard promulgated under OSHA and causing the death of an employee:
  - If the employee is 18 years of age or older – Class 2 misdemeanor which may include a fine of up to $10,000.
  - If the employee is less than 18 years of age – Class 2 misdemeanor which may include a fine of up to $20,000.
- **Subsequent violations** – If an employer is convicted of a willful violation that results in the death of *any* person, the subsequent violation is penalized as follows:
  - If the subsequent violation leads to the death of someone 18 years of age or older- Class 1 misdemeanor which may include a fine of up to $20,000.
  - If the subsequent violation results in the death of an employee less than 18 years of age- Class 1 misdemeanor which may include a fine of up to $40,000.
- **False statements in documents** –
  - Falsifications pertaining to employees 18 years of age or older-Class 2 misdemeanor, which may include a fine of up to $10,000.
  - Falsifications pertaining to employees less than 18 years of age-Class 2 misdemeanor, which may include a fine of up to $20,000.

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

Brad Krehely, counsel to House Judiciary II, substantially contributed to this summary.

H23-SMSB-6(e2) v1

Principal Clerk
Reading Clerk

Cancelled

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	April 7, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 7	Allow Hunting on Sunday.	Senator Boseman
SB 584	Amend Private Protective Services Act.	Senator Snow
SB 589	Plan to Eliminate Mandatory Min. Sentences.	Senator Shaw

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

Corrected notice

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	April 7, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 7	Allow Hunting on Sunday.	Senator Boseman
SB 584	Amend Private Protective Services Act.	Senator Snow
SB 589	Plan to Eliminate Mandatory Min. Sentences.	Senator Shaw

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Principal Clerk ____
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SENATE
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SB 584	Amend Private Protective Services Act.	Senator Snow
SB 589	Plan to Eliminate Mandatory Min. Sentences.	Senator Shaw
SB 851	Supervision of Certain Defendants.	Senator Vaughan
SB 853	Motion for Appropriate Relief/New Requirement.	Senator Vaughan

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II Committee
Tuesday, April 7, 2009, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 7	Allow Hunting on Sunday.	Senator Boseman
SB 584	Amend Private Protective Services Act.	Senator Snow
SB 589	Plan to Eliminate Mandatory Min. Sentences.	Senator Shaw

Presentations

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2009

S 1

SENATE BILL 7

Short Title:	Allow Hunting on Sunday.	(Public)
Sponsors:	Senator Boseman.	
Referred to:	Judiciary II .	

January 29, 2009

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE LAW PROHIBITING HUNTING ON SUNDAY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 103-2 is repealed.

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

S7-V-1

SENATE BILL 584*

Short Title:	Amend Private Protective Services Act.	(Public)
Sponsors:	Senator Snow.	
Referred to:	Judiciary II.	

March 12, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PRIVATE PROTECTIVE SERVICES ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 74C-3(a) reads as rewritten:

"(a) As used in this Chapter, the term "private protective services profession" means and includes the following:

(1) Armored car profession. – Any person, firm, association, or corporation which for a fee or other valuable consideration provides secured transportation and protection from one place or point to another place or point of money, currency, coins, bullion, securities, checks, documents, stocks, bonds, jewelry, paintings, and other valuables. This definition does not include a person operating an armored car business pursuant to a motor carrier certificate or permit issued by the North Carolina Utilities Commission which grants operating rights for such business; however, armed armored car service guards shall be subject to the provisions of G.S. 74C-13.

(2) Repealed by Session Laws 1983, c. 786, s. 2.

(3) Redesignated as (a)(5a) by Revisor of Statutes. See Editor's notes.

(4) Courier service profession. – Any person, firm, association, or corporation which for a fee or other valuable consideration transports or offers to transport from one place or point to another place or point documents, papers, maps, stocks, bonds, checks, or other small items of value which require expeditious services. Armed courier service guards shall be subject to the provisions of G.S. 74C-13.

(5) Detection of deception examiner. – Any person, firm, association, or corporation which uses any device or instrument, regardless of its name or design, for the purpose of the detection of deception or any person who reviews the work product of an examiner including charts, tapes or other methods of record keeping for the purpose of detecting deception or determining accuracy.

(5a) Digital forensics examiner. – Any person who, on a contractual basis, engages in the practice of conducting examinations of digitally stored data to recover, image, analyze, or examine the data by using specialized software to determine responsibility or reconstruct usage of the data. However, a digital forensics examiner shall not include any of the following:

a. An accountant.

b. A person employed to conduct network security operations regarding network security violations.

c. A member of a network security compromise response team.

d. A person who analyzes computer or digital storage media for the purpose of upgrading, maintaining, or repairing the system.

e. A person who uses utilities proprietary to the examined device to recover data without the use of additional software, such as cellular telephone call information.

f. Any other computer or digital media technician who is not conducting imaging, analysis, or other activities under this subdivision.

g. An officer, employee, or agent of the United States, this State, or any political subdivision while the officer, employee, or agent is engaged in the performance of his or her official duties within the course and scope of his or her employment.

~~(5a)~~(5b) Electronic countermeasures profession. – Any person, firm, association, or corporation which for a fee or other valuable consideration discovers, locates, or disengages by electronic, electrical, or mechanical means any listening or other monitoring equipment surreptitiously placed to gather information concerning any individual, firm, association, or corporation.

~~(6) Security guard and patrol profession. – Any person, firm, association, or corporation that provides a security guard on a contractual basis for another person, firm, association, or corporation for a fee or other valuable consideration and performs one or more of the following functions:~~

~~a. Prevention or detection of intrusion, entry, larceny, vandalism, abuse, fire, or trespass on private property.~~

~~b. Prevention, observation, or detection of any unauthorized activity on private property.~~

~~c. Protection of patrons and persons lawfully authorized to be on the premises or being escorted between premises of the person, firm, association, or corporation that entered into the contract for security services.~~

~~d. Control, regulation, or direction of the flow or movement of the public, whether by vehicle or otherwise, only to the extent and for the time directly and specifically required to assure the protection of properties.~~

(7) Guard dog service profession. – Any person, firm, association, or corporation which for a fee or other valuable consideration contracts with another person, firm, association, or corporation to place, lease, rent, or sell a trained dog for the purpose of protecting lives or property.

(8) Private detective or private investigator. – Any person who engages in the profession of or accepts employment to furnish, agrees to make, or makes inquiries or investigations concerning any of the following on a contractual basis:

a. Crimes or wrongs done or threatened against the United States or any state or territory of the United States.

b. The identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of any person.

c. The location, disposition, or recovery of lost or stolen property.

d. The cause or responsibility for fires, libels, losses, accidents, damages, or injuries to persons or to properties.
e. Securing evidence to be used before any court, board, officer, or investigative committee.
f. Protection of individuals from serious bodily harm or death.

(8a) Security guard and patrol profession. – Any person, firm, association, or corporation that provides a security guard on a contractual basis for another person, firm, association, or corporation for a fee or other valuable consideration and performs one or more of the following functions:
a. Prevention or detection of intrusion, entry, larceny, vandalism, abuse, fire, or trespass on private property.
b. Prevention, observation, or detection of any unauthorized activity on private property.
c. Protection of patrons and persons lawfully authorized to be on the premises or being escorted between premises of the person, firm, association, or corporation that entered into the contract for security services.
d. Control, regulation, or direction of the flow or movement of the public, whether by vehicle or otherwise, only to the extent and for the time directly and specifically required to assure the protection of properties.

(9) Special limited guard and patrol profession. – Any person who is licensed under Chapter 74D of the General Statutes of North Carolina and provides armed alarm responders pursuant to G.S. 74C-13. Applicants for this limited license shall not be required to meet the experience requirements for a security guard and patrol license. Any experience gained under this limited license shall not be counted as experience for a security guard and patrol license."

SECTION 2. G.S. 74C-3(b)(13) reads as rewritten:

"(b) "Private protective services" shall not include any of the following:

...

(13) A person who works regularly and exclusively as an employee of an employer in connection with the business affairs of that employer. ~~If the employee is an armed security guard and wears, carries, or possesses a firearm in the performance of the employee's duties, the provisions of G.S. 74C-13 apply.~~ However, the provisions of this Chapter shall apply if: (i) the employee is an armed security guard who wears, carries, or possesses a firearm in the performance of the employee's duties; or (ii) the person is an armed or unarmed security guard at an establishment that sells alcohol. The term 'establishment' shall include an eating establishment, a private club, or a restaurant as defined in G.S. 18B-1000.

...."

SECTION 3. G.S. 74C-7 reads as rewritten:

"**§ 74C-7. Investigative powers of the Attorney General.**

The Attorney General for the State of North Carolina shall have the power to investigate or cause to be investigated any complaints, allegations, or suspicions of wrongdoing or violations of this Chapter involving individuals licensed, or to be licensed, under this Chapter. Any investigation conducted pursuant to this section is deemed confidential and is not subject to review under G.S. 132-1. However, the report may be released to the licensee after the investigation is complete but before the report is presented to the Board."

SECTION 4. G.S. 74C-8(c) reads as rewritten:

"(c) (1) A business entity other than a sole proprietorship shall not do business under this Chapter unless the business entity has in its employ a designated resident qualifying agent who meets the requirements for a license issued under this Chapter and who is, in fact, licensed under the provisions of this Chapter, unless otherwise approved by the Board. Provided however, that this approval shall not be given unless the business entity has and continuously maintains in this State a registered agent who shall be an individual resident in this State. Service upon the registered agent appointed by the business entity of any process, notice, or demand required by or permitted to be served upon the business entity by the Private Protective Services Board shall be binding upon the business entity and the licensee. Nothing herein contained shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a business entity in any other manner now or hereafter permitted by law.

(2) For the purposes of the Chapter a qualifying agent means an individual in a management position who is licensed under this Chapter and whose name and address have been registered with the Director.

(3) In the event that the qualifying agent upon whom the business entity relies in order to do business ceases to perform his duties as qualifying agent, the business entity shall notify the Director within 10 working days. The business entity must obtain a substitute qualifying agent within 30 days after the original qualifying agent ceases to serve as qualifying agent unless for good cause: (i) the Board, in its discretion, ~~extends this period, for good cause, for a~~ extends the period of time not to exceed three ~~months.~~months; or (ii) following petition by an applicant and a hearing by the Board, the Board extends the period of time not to exceed six months.

(4) The certificate authorizing the business entity to engage in a private protective services profession shall list the name of at least one designated qualifying agent. No licensee shall serve as the qualifying agent for more than one business entity without prior approval of the Director, subject to the approval of the Board.

(5) The Department of Justice may provide a criminal record check to the Private Protective Services Board for a person who has applied for a new or renewal license, registration, certification, or permit through the Private Protective Services Board. The Board shall provide to the Department of Justice, along with the request, the fingerprints of ~~the applicant,~~a new applicant, and the Department of Justice shall provide a criminal record check based upon the applicant's fingerprints. The Board may request a criminal record check from the Department of Justice for a renewal applicant based upon the applicant's fingerprints in accordance with policy adopted by the Board. The Board shall provide any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subdivision privileged, in accordance with applicable State law and federal guidelines, and the

information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subdivision."

SECTION 5. G.S. 74C-8(f) reads as rewritten:

"(f) Upon a finding that the application is in proper form, the completion of the background investigation, and the completion of an examination required by the Board, the Director shall submit to the Board the application and his recommendations. Upon completion of the background investigation, the Director may in his discretion issue a temporary license pending approval of the application by the Board at the next regularly scheduled meeting. The Board shall determine whether to approve or deny the application for a license. Upon approval by the Board, a license will be issued to the applicant upon payment by the applicant of the initial license fee and the required contribution to the Private Protective Services ~~Recovery~~ Education Fund, and certificate of liability insurance."

SECTION 6. G.S. 74C-9(e) reads as rewritten:

"(e) The Board is authorized to charge reasonable application and license fees as follows:

(1) A nonrefundable initial application fee in an amount not to exceed one hundred fifty dollars ($150.00);

(2) A new or renewal license fee in an amount not to exceed two hundred fifty dollars ($250.00) per year of the license term;

(3) A new or renewal trainee permit fee in an amount not to exceed two hundred fifty dollars ($250.00) per year of the license term;

(4) A new or renewal fee for each license or duplicate license in addition to the basic license referred to in subsection (2) in an amount not to exceed fifty dollars ~~($50.00);~~($50.00) per year of the license term;

(5) A late renewal fee to be paid within 90 days from the date the license expires in addition to the renewal fee due in an amount not to exceed one hundred dollars ($100.00), if the ~~license~~ license, registration, permit, or certification has not been renewed on or before the expiration date of the ~~licensee;~~license, registration, permit, or certification;

(6) A new, renewal, replacement or reissuance fee for an unarmed registration identification card in an amount not to exceed thirty dollars ($30.00);

(7) An application fee for a firearm registration permit not to exceed fifty dollars ($50.00);

(8) A new, renewal, replacement, or reissuance fee for a firearm registration permit not to exceed thirty dollars ($30.00);

(9) An application fee for certification as a certified trainer not to exceed fifty dollars ($50.00);

(10) A renewal or replacement fee for certified trainer certification not to exceed twenty-five dollars ($25.00);

(11) A new nonresident temporary permit fee not to exceed one hundred dollars ($100.00);

(12) An unarmed registration transfer fee not to exceed fifteen dollars ($15.00);

(13) A branch office license fee not to exceed fifty dollars ~~($50.00); and~~($50.00) per year of the license term;

(14) A special limited guard and patrol license fee not to exceed one hundred dollars ~~($100.00).~~($100.00) per year of the license term; and

(15) A correctable error fee not to exceed one hundred dollars ($100.00) for each subsequent filing of an application following review and rejection of the initial application.

Except as provided in G.S. 74C-13(k), all fees collected pursuant to this section shall be expended, under the direction of the Board, for the purpose of defraying the expenses of administering this Chapter."

SECTION 7. G.S. 74C-11(a) reads as rewritten:

"(a) All licensees may employ unarmed security guards as probationary employees for 20 consecutive calendar days. Upon completion of the probationary period and the desire of the licensee to hire an unarmed security guard as a regular employee, the licensee shall register the employee who will be engaged in providing private protective services covered by this Chapter with the Board within 30 days after the probationary employment period ends, unless the Director, in the Director's discretion, extends the time period, for good cause. Before a probationary employee engages in private protective services, the employee shall complete any training requirements, and the licensee shall conduct a criminal record check on the employee, as the Board deems appropriate. The licensee shall submit a list of the probationary employees to the Director on a monthly basis. The list shall include the name, address, social security number, and dates of employment of the employees.

To register an employee after the probationary period ends, a licensee must give the Board the following:

(1) Set(s) of classifiable fingerprints on standard F.B.I. applicant cards; recent photograph(s) of acceptable quality for identification; and

(2) Statements of any criminal records obtained from the appropriate authority in each area where the employee has resided within the immediately preceding 48 months."

SECTION 8. G.S. 74C-12(a) reads as rewritten:

"(a) The Board may, after compliance with Chapter 150B of the General Statutes, deny, suspend or revoke a license, registration, or permit issued under this Chapter if it is determined that the applicant, licensee, registrant, or permit holder has done any of the following acts:

(1) Made any false statement or given any false information in connection with any application for a license, registration, or permit or for the renewal or reinstatement of a license, registration, or permit.

(2) Violated any provision of this Chapter.

(3) Violated any rule adopted by the Board pursuant to the authority contained in this Chapter.

(4) Repealed by Session Laws 1989, c. 759, s. 10.

(5) Impersonated or permitted or aided and abetted any other person to impersonate a law enforcement officer of the United States, this State, any other state, or any political subdivision of a state.

(6) Engaged in or permitted any employee to engage in a private protective services profession when not lawfully in possession of a valid license issued under the provisions of this Chapter.

(7) Willfully failed or refused to render to a client service as agreed between the parties and for which compensation has been paid or tendered in accordance with the agreement of the parties.

(8) Knowingly made any false report to the employer or client for whom information is being obtained.

(9) Committed an unlawful breaking or entering, assault, battery, or kidnapping.

(10) Knowingly violated or advised, encouraged, or assisted the violation of any court order or injunction in the course of business as a licensee.

(11) Repealed by Session Laws 1989, c. 759, s. 10.

(12) Undertaken to give legal advice or counsel or to in any way falsely represent that he or she is representing any attorney or he or she is appearing or will appear as an attorney in any legal proceeding.

(13) Issued, delivered, or uttered any simulation of process of any nature which might lead a person or persons to believe that such simulation – written, printed, or typed – may be a summons, warrant, writ or court process, or any pleading in any court proceeding.

(14) Failed to make the required contribution to the Private Protective Services ~~Recovery~~ Education Fund or failed to maintain the certificate of liability insurance required by this Chapter.

(15) Violated the firearm provisions set forth in this Chapter.

(16) Repealed by Session Laws 1989, c. 759, s. 10.

(17) Failed to notify the Director by a business entity other than a sole proprietorship licensed pursuant to this Chapter of the cessation of employment of the business entity's qualifying agent within the time set forth in this Chapter.

(18) Failed to obtain a substitute qualifying agent by a business entity within 30 days after its qualifying agent has ceased to serve as the business entity's qualifying agent.

(19) Been judged incompetent by a court having jurisdiction under Chapter 35A or former Chapter 35 of the General Statutes or committed to a mental health facility for treatment of mental illness, as defined in G.S. 122C-3, by a court under G.S. 122C-271.

(20) Failed or refused to offer a report to a client within 30 days of the client's written request after the client has paid for services rendered.

(21) Been previously denied a license, registration, or permit under this Chapter or previously had a license, registration, or permit revoked for cause. The denial or revocation shall include a principal in the applicant's business.

(22) Engaged in a private protective services profession under a name other than the name under which the license was obtained under the provisions of this Chapter.

(23) Divulged to any person, except as required by law, any information acquired by the license holder except at the direction of the employer or client for whom the information was obtained. A licensee may divulge to any law enforcement officer or district attorney or district attorney's representative any information the law enforcement officer may require to investigate a criminal offense with the prior approval and consent of the client.

(24) Fraudulently held himself or herself out as employed by or licensed by the State Bureau of Investigation or any other governmental authority.

(25) Intemperate habits or lacks good moral character. The acts that are prima facie evidence of intemperate habits or lack of good moral character under G.S. 74C-8(d)(2) are prima facie evidence of the same under this subdivision.

(26) Advertised or solicited business using a name other than that in which the license was issued.

(27) Worn, carried, or accepted any badge or shield purporting to indicate that the person is a law enforcement officer while licensed under the provisions of this Chapter as a private investigator.

(28) Possessed or displayed a badge or shield while providing private protective services that was not designed and approved by the Board pursuant to G.S. 74C-5(12).

(29) Failed or refused to reasonably cooperate with the Board or its agents during an investigation of any complaint, allegation, suspicion of wrongdoing, or violation of this Chapter.

(30) Failed to properly make any disclosure to the Board or provide documents or information required by this Chapter or rules adopted by the Board.

(31) Engaged in conduct constituting dereliction of duty or otherwise deceived, defrauded, or harmed the public in the course of professional activities or services.

(32) Demonstrated a lack of financial responsibility."

SECTION 9. G.S. 74C-12(c) reads as rewritten:

"(c) The following persons may not be issued a ~~license, registration, or permit~~license under this Chapter:

(1) A sworn court official.

(2) A holder of a company police commission under Chapter 74E of the General Statutes."

SECTION 10. G.S. 74C-13(a) reads as rewritten:

"(a) It shall be unlawful for any person performing private protective services duties to carry a firearm in the performance of those duties without first having met the qualifications of this section and having been issued a firearm registration permit by the Board. A licensee shall register any individual carrying a firearm within 30 days of employment. Before engaging in any private protective services activity, the individual shall receive any required training prescribed by the Board."

SECTION 11. G.S. 74C-14 is repealed.

SECTION 12. G.S. 74C-21(a) reads as rewritten:

"(a) No law enforcement officer of the United States, this State, any other state, or any political subdivision of a state shall be licensed as a private ~~detective~~detective, digital forensics examiner, or security guard and patrol licensee under this Chapter."

SECTION 13. Chapter 74C of the General Statutes is amended by adding a new section to read:

"**§ 74C-23. Acquisition or change of ownership or control of licensed firm, association, or corporation.**

In the event a company, firm, or corporation, including a limited liability corporation, licensed under this Chapter transfers ownership, control, or a majority of assets to another person, firm, association, or corporation, the person, firm, association, or corporation acquiring control or ownership shall have the following responsibilities:

(1) Notify the Director of the acquisition or change of ownership or control by registered mail within five business days from the date of the transaction.

(2) Describe the transaction that has occurred by providing the following information:

a. The name and address of the registered agent of the party acquiring control or ownership or otherwise succeeding the licensee.

b. The name and address of the acquiring party, including each individual owner of any interest in the party or, if the party is a corporation, each officer of the corporation and member of the board of directors.

c. Any change in location of any branch office.

d. Any change in insurance or bonding limits.

(3) Return to the Director all licenses held by the licensee within five business days from the date of the transaction if the acquiring party does not continue to operate the business under its previous name and license.

(4) Provide to the Director within 60 calendar days from the date of the transaction the following:

a. A list of all registrants or licensees affected by the transaction.

b. Written confirmation of completion of any changes necessary for the acquiring party to comply with the requirements of this Chapter or any applicable rules adopted by the Board on a form approved by the Director."

SECTION 14. G.S. 74C-30 reads as rewritten:

"Article 2.

"Private Protective Services ~~Recovery~~ Education Fund.

"**§ 74C-30. Private Protective Services ~~Recovery~~ Education Fund created; payments to Fund; management; use of funds.**

(a) There is hereby created and established a special fund to be known as the "Private Protective Services ~~Recovery~~ Education Fund" (hereinafter Fund) which shall be set aside and maintained in the Office of the State Treasurer. ~~Said~~ The Fund shall be used in the manner provided in this Article for the ~~payment of claims where the aggrieved person has suffered a direct monetary loss by reason of certain acts committed by any person licensed under this Chapter.~~education of licensees and registrants as deemed appropriate by the Board.

~~(b) Nothing contained in this Article shall limit the authority of the Board to take disciplinary action against any licensee or trainee under this Chapter, nor shall the repayment in full or all obligations to the Fund by any licensee or trainee nullify or modify the effect of any other disciplinary proceeding brought under this Chapter.~~

(c) In addition to the fees provided for elsewhere in this Chapter, the Board shall charge the following fees which shall be deposited into the Fund:

(1) Repealed by Session Laws 2007-511, s. 10.

(2) The Board shall charge each new applicant for a licensee or trainee permit fifty dollars ($50.00), provided that for purposes of this Article a new applicant is hereby defined as an applicant who did not possess a license or trainee permit on July 1, 1983; and

(3) The Board is authorized to charge each licensee and trainee an additional amount, not to exceed fifty dollars ($50.00), on July 1 of any year in which the balance of the Fund is less than twenty-five thousand dollars ($25,000), provided that any amount so assessed will be only so much as is needed to raise the level of the Fund to twenty-five thousand dollars ($25,000).

(d) The State Treasurer shall invest and reinvest the moneys in the Fund in a manner provided by ~~law, provided that sufficient liquidity shall be maintained to satisfy claims authorized by the Board. The proceeds from the investments shall be deposited to the credit of the Fund.~~law. The ~~Board~~ Board, in its discretion, may use ~~any and all of the proceeds from the investments or funds that exceed twenty-five thousand dollars ($25,000)~~ the Fund for any of the following purposes:

(1) To advance education and research in the private protective services field for the benefit of those licensed or registered under the provisions of this Chapter and for the improvement of the industry.

(2) To underwrite educational seminars, training centers and other educational projects for the use and benefit generally of ~~licensees~~ licensees, registrants, and trainees.

(3) To sponsor, contract for and to underwrite any and all additional educational training and research projects of a similar nature having to do with the advancement of the private protective services field in North Carolina. The Board shall have the authority to sponsor courses given by private individuals, associations, or corporations. However, the Board shall only

grant funds as necessary to offset the actual cost of the educational course. Any individual, association, or corporation receiving grant money from the Board shall make the course available to the industry at large. Any individual, association, or corporation receiving grant money from the Board and advertising the course to the industry is required to include in its advertising the following statement: "The course is being given in whole or in part by a grant from the Private Protective Services Board."

(e) By a unanimous vote of the Board, funds in the Fund in excess of fifty thousand dollars ($50,000) may be converted to offset the operating expenses of the Board. However, in converting the funds, the Board shall make findings of fact by a written order or resolution supporting the need to make the conversion."

SECTION 15. G.S. 74C-31, 74C-32, and 74C-33 are repealed.

SECTION 16. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 1

HOUSE BILL 604*

Short Title:	Project Turn Around Funds.	(Public)
Sponsors:	Representatives Insko; Faison and Pierce.	
Referred to:	Appropriations.	

March 16, 2009

A BILL TO BE ENTITLED

AN ACT TO APPROPRIATE FUNDS FOR PROJECT TURN AROUND.

The General Assembly of North Carolina enacts:

SECTION 1. There is appropriated from the General Fund to the Town of Chapel Hill the sum of thirty thousand dollars ($30,000) for the 2009-2010 fiscal year to be allocated to Project Turn Around. These funds shall be used for hiring a juvenile case manager for the Project Turn Around program, an early intervention, court diversionary program for first-time, nonviolent adult and juvenile drug offenders in Orange and Chatham counties.

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

Principal Clerk ____
Reading Clerk ____

MEETING CANCELLED

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	April 9, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 481	Trustee's Power to Appoint to Other Trust.	Senator Hartsell
SB 482	Clarifications to Trust Code.	Senator Hartsell
SB 483	Clarify Judicial Creation of Trust.	Senator Hartsell

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

SENATE
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Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II Committee
Thursday, April 9, 2009, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 481	Trustee's Power to Appoint to Other Trust.	Senator Hartsell
SB 482	Clarifications to Trust Code.	Senator Hartsell
SB 483	Clarify Judicial Creation of Trust.	Senator Hartsell

Presentations

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 481

Short Title:	Trustee's Power to Appoint to Other Trust.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II.	

March 10, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW A TRUSTEE TO APPOINT TRUST PROPERTY TO ANOTHER TRUST FOR THE SAME BENEFICIARY AND TO GRANT CLERKS JURISDICTION TO HEAR MOTIONS TO APPROVE THE APPOINTMENT OF TRUST PROPERTY TO ANOTHER TRUST.

The General Assembly of North Carolina enacts:

SECTION 1. Article 8 of Chapter 36C of the General Statutes is amended by adding a new section to read:

"**§ 36C-8-816.1. Trustee's special power to appoint to another trust.**

(a) A trustee who has the discretionary power under the terms of an irrevocable trust instrument to distribute principal or income of the trust (the 'first trust') to or for the benefit of one or more beneficiaries of the trust, whether or not there is a current need to distribute principal or income under any standard provided in the trust instrument, may instead, without authorization by the court, exercise the power by appointing all or part of the principal or income subject to the power in favor of a trustee of another trust (the 'second trust') for the current benefit of one or more of the beneficiaries under the same trust instrument or under a different trust instrument which may be created by the trustee.

(b) The terms of the second trust shall be subject to the following:

(1) The beneficiaries of the second trust may include only beneficiaries of the first trust.

(2) A beneficiary who has only a future beneficial interest, vested or contingent, in the first trust cannot have the future beneficial interest accelerated to a present interest in the second trust.

(3) The second trust may not reduce any fixed income, annuity, or unitrust interest in the assets of the first trust.

(4) If any contribution to the first trust qualified for a marital or charitable deduction for federal income, gift, or estate tax purposes under the Internal Revenue Code, then the second trust shall not contain any provision that, if included in the first trust, would have prevented the first trust from qualifying for the deduction or that would have reduced the amount of the deduction.

(5) If contributions to the first trust have been excluded from the gift tax by the application of Section 2503(b) and Section 2503(c) of the Internal Revenue Code, then the second trust shall provide that the beneficiary's remainder interest in the contributions shall vest and become distributable no later than the date upon which the interest would have vested and become distributable under the terms of the first trust.

(6) If one or more beneficiaries of the first trust has a power of withdrawal over trust property, then either:
a. The second trust must provide a power of withdrawal in the second trust identical to the power of withdrawal in the first trust; or
b. Sufficient trust property must remain in the first trust to satisfy the outstanding power of withdrawal.

(7) If the power to distribute principal or income in the first trust is subject to an ascertainable standard, then the terms of the second trust shall be subject to all of the following:
a. The power to distribute principal or income in the second trust must be subject to the same ascertainable standard; and
b. The second trust may not confer a power of appointment upon a beneficiary of the first trust; and
c. The beneficiaries of the first trust must have the same beneficial interests in the second trust.

(8) If the power to distribute principal or income in the first trust is not subject to an ascertainable standard, then the second trust may confer a power of appointment upon a beneficiary of the first trust to whom or for the benefit of whom the trustee has the power to distribute principal or income of the first trust. The permissible appointees of the power of appointment conferred upon a beneficiary may include persons who are not beneficiaries of the first or second trust. The power of appointment conferred upon a beneficiary shall be subject to the provisions of G.S. 41-23 covering the time at which the permissible period of the rule against perpetuities and suspension of power of alienation begins and the law that determines the permissible period of the rule against perpetuities and suspension of power of alienation of the first trust.

(c) A trustee may not exercise the power to appoint principal or income under subsection (a) of this section if the trustee is a beneficiary of the first trust, but the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(d) The exercise of the power to appoint principal or income under subsection (a) of this section:

(1) Shall be considered the exercise of a power of appointment, other than a power to appoint to the trustee, the trustee's creditors, the trustee's estate, or the creditors of the trustee's estate; and

(2) Shall be subject to the provisions of G.S. 41-23 covering the time at which the permissible period of the rule against perpetuities and suspension of power of alienation begins and the law that determines the permissible period of the rule against perpetuities and suspension of power of alienation of the first trust; and

(3) Is not prohibited by a spendthrift provision or by a provision in the trust instrument that prohibits amendment or revocation of the trust.

(e) To effect the exercise of the power to appoint principal or income under subsection (a) of this section the following shall apply:

(1) The exercise of the power to appoint shall be made by an instrument in writing, signed and acknowledged by the trustee, setting forth the manner of the exercise of the power, including the terms of the second trust, and the effective date of the exercise of the power. The instrument shall be filed with the records of the first trust.

(2) The trustee shall give written notice to all qualified beneficiaries of the first trust, at least 60 days prior to the effective date of the exercise of the power

to appoint, of the trustee's intention to exercise the power. The notice shall include a copy of the instrument described in subdivision (1) of this subsection.

(3) If all qualified beneficiaries waive the notice period by a signed written instrument delivered to the trustee, the trustee's power to appoint principal or income shall be exercisable after notice is waived by all qualified beneficiaries, notwithstanding the effective date of the exercise of the power.

(4) The trustee's notice under this subsection shall not limit the right of any beneficiary to object to the exercise of the trustee's power to appoint and bring an action for breach of trust seeking appropriate relief as provided by G.S. 36C-10-1001.

(f) Nothing in this section shall be construed to create or imply a duty of the trustee to exercise the power to distribute principal or income, and no inference of impropriety shall be made as a result of a trustee not exercising the power to appoint principal or income conferred under subsection (a) of this section. Nothing in this section shall be construed to abridge the right of any trustee who has a power to appoint property in further trust that arises under the terms of the first trust or under any other section of this Chapter or under another provision of law or under common law."

SECTION 2. G.S. 36C-2-203 is amended by adding a new subdivision to read:

"**§ 36C-2-203. Subject matter jurisdiction.**

(a) The clerks of superior court of this State have original jurisdiction over all proceedings concerning the internal affairs of trusts. Except as provided in subdivision (9) of this subsection, the clerk of superior court's jurisdiction is exclusive. Proceedings concerning the internal affairs of the trust are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and trust beneficiaries, to the extent that those matters are not otherwise provided for in the governing instrument. These include proceedings:

...

(8a) To approve the exercise of the trustee's special power to appoint trust principal or income to another trust as provided in G.S. 36C-8-816.1."

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

SENATE BILL 482

Short Title:	Clarifications to Trust Code.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II.	

March 10, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT A PERMISSIBLE APPOINTEE UNDER A POWER OF APPOINTMENT IS NOT A TRUST BENEFICIARY, AND TO CLARIFY THAT A LOAN OR PLEDGE BY A TRUSTEE MAY BE MADE IN CONNECTION WITH A LOAN OF THE TRUSTEE'S OWN FUNDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 36C-1-103(3) reads as rewritten:

"**§ 36C-1-103. Definitions.**

The following definitions apply in this Chapter:

...

(3) Beneficiary. – A person who:

a. Has a present or future beneficial interest in a trust, vested or contingent, including the owner of an interest by assignment or ~~transfer;~~ transfer, but excluding a permissible appointee of a general or nongeneral power of appointment; or

b. In a capacity other than that of trustee, holds a power of appointment over trust property."

SECTION 2. G.S. 36C-3-302 reads as rewritten:

"**§ 36C-3-302. Representation by holder of general testamentary power of appointment.**

The sole holder or all coholders of a power of revocation or a presently exercisable or testamentary general power of appointment, including one in the form of a power of amendment, shall represent and bind other persons to the extent that their interests, as ~~permissible appointees,~~ takers in default, ~~or otherwise,~~ are subject to the power. ~~To the extent there is no conflict of interest between the holder of a general testamentary power of appointment and the persons represented with respect to the particular question or dispute, the holder may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.~~"

SECTION 3. Subdivisions (19), (19a), (19b), and (19c) of G.S. 36C-8-816 read as rewritten:

"**§ 36C-8-816. Specific powers of trustee.**

Without limiting the authority conferred by G.S. 36C-8-815, a trustee may:

...

(19) Pledge trust property to guarantee loans made ~~by others~~ to any beneficiary;

(19a) Guarantee loans made ~~by others~~ to any beneficiary;

(19b) Pledge trust property to guarantee loans made ~~by others~~ to any proprietorship, partnership, limited liability company, business trust,

corporation, venture, agricultural operation, or other form of business or enterprise in which the trust or any beneficiary has an ownership interest.

(19c) Guarantee loans made ~~by others~~ to ~~a~~ any proprietorship, partnership, limited liability company, business trust, corporation, venture, agricultural operation, or other form of business or enterprise in which the trust or any beneficiary has an ownership interest."

SECTION 4. This act becomes effective October 1, 2009.

S 1

SENATE BILL 483

Short Title:	Clarify Judicial Creation of Trust.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II.	

March 10, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT COURTS IN NORTH CAROLINA HAVE THE AUTHORITY TO CREATE TRUSTS BY JUDICIAL ORDER OR JUDGMENT IN CASES PROPERLY BEFORE THE COURT; AND TO SPECIFICALLY PROVIDE THAT NORTH CAROLINA COURTS HAVE THE RIGHT TO CREATE TRUSTS PURSUANT TO 42 U.S.C. § 1396P(D)(4)(A).

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 36C-2-203(a)(9) reads as rewritten:

"**§ 36C-2-203. Subject matter jurisdiction.**

(a) The clerks of superior court of this State have original jurisdiction over all proceedings concerning the internal affairs of trusts. Except as provided in subdivision (9) of this subsection, the clerk of superior court's jurisdiction is exclusive. Proceedings concerning the internal affairs of the trust are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and trust beneficiaries, to the extent that those matters are not otherwise provided for in the governing instrument. These include proceedings:

...

(9) To ascertain beneficiaries, to determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments, <u>to create a trust,</u> and to determine the existence or nonexistence of trusts created other than by will and the existence or nonexistence of any immunity, power, privilege, duty, or right. Any party may file a notice of transfer of a proceeding pursuant to this subdivision to the superior court division of the General Court of Justice as provided in G.S. 36C-2-205(g1). In the absence of a transfer to Superior Court, Article 26 of Chapter 1 of the General Statutes shall apply to a trust proceeding pending before the clerk of superior court to the extent consistent with this Article.

SECTION 2. G.S. 36C-4-401 reads as rewritten:

"**§ 36C-4-401. Methods of creating trust.**

A trust may be created by any of the following methods:

(1) Transfer of property by a settlor to a person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death including either of the following:

a. The devise or bequest to the trustee of the trust as provided in G.S. 31-47.

b. The designation of the trust as beneficiary of life insurance or other death benefits as provided in G.S. 36C-4-401.1.

(2) Declaration by the owner of property that the owner holds identifiable property as trustee unless the transfer of title of that property is otherwise required by law.

(3) Exercise of a power of appointment in favor of a trustee.

(4) A court by judgment, order, or decree, including the establishment of a trust pursuant to section 1396p(d)(4) of Title 42 of the United States Code."

SECTION 3. Article 4 of Chapter 36C of the General Statutes is amended by adding a new section to read:

"**§ 36C-4-401.2. Trust pursuant to 46 U.S.C. § 1396p(d)(4).**

Any interested party may petition the court, in accordance with the provisions of this Chapter, to establish a trust pursuant to section 1396p(d)(4) of Title 42 of the United States Code. This section is not the exclusive method of establishing a trust pursuant to section 1396p(d)(4) of Title 42 of the United States Code; and the court shall maintain its authority to create or establish any trust, including a trust pursuant to section 1396p(d)(4) of Title 42 of the United States Code, by means of judgment, order, or decree in any matter properly before the court."

SECTION 4. This act becomes effective October 1, 2009.

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	April 14, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 481	Trustee's Power to Appoint to Other Trust.	Senator Hartsell
SB 482	Clarifications to Trust Code.	Senator Hartsell
SB 483	Clarify Judicial Creation of Trust.	Senator Hartsell
SB 967	Creation of Yadkin River Trust.	Senator Hartsell

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II Committee
Tuesday, April 14, 2009, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 481	Trustee's Power to Appoint to Other Trust.	Senator Hartsell
SB 482	Clarifications to Trust Code.	Senator Hartsell
SB 483	Clarify Judicial Creation of Trust.	Senator Hartsell
SB 967	Creation of Yadkin River Trust.	Senator Hartsell

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE
Tuesday, April 14, 2009 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 10:00 AM on April 14, 2009, in Room 1124 of the Legislative Building, with fifteen members of the committee present. Senator Fletcher Hartsell, Chairman, presided.

Senator Hartsell introduced pages Dylan Frick, Melanie Martin, Laura Perry, Indya Brown and Amanda Farquarson and thanked them for serving.

As all the bills on the agenda today were Senator Hartsell's bills, he invited Senator Vaughan to chair the committee.

SB 481 (Trustee's Power to Appoint to Other Trust.) Senator Jones moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Hartsell recognized Ms. Elizabeth Arias, from the Estate Planning Section of the North Carolina Bar Association and requested that she be allowed to explain the bill. Ms. Arias answered questions from Senators Jacumin and Goodall. Senator Jones moved for a favorable report of the Proposed Committee Substitute, unfavorable to the original bill. All voted and the motion carried.

SB 482 (Clarifications to trust Code.) Senator Jones moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Ms. Elizabeth Arias explained the bill and answered Senator Forrester's question. Senator Forrester moved for a favorable report of the Proposed Committee Substitute, unfavorable to the original bill. All voted and the motion carried.

SB 483 (Clarify Judicial Creation of Trust.) Ms. Arias explained the bill. Senator Bingham moved for a favorable report. All voted and the motion carried.

SB 967 (Creation of Yadkin River Trust.) Senator Goodall moved to accept the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Hartsell explained the bill and answered question from Senators Apodaca, Goodall and Allran. Mr. Charles Neely, representing Alcoa, spoke in opposition to the bill as did Mr. Lynn Strong and Mr. Mel Wofford, both representing High Rock Lake. Speaking in support of the bill were Mr. Bruce Thompson of Stanly County and Senate Page Dylan Frick. Senator Berger moved for a favorable report with a referral to Finance. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Wednesday, April 15, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **483** Clarify Judicial Creation of Trust.
Sequential Referral: None
Recommended Referral: None

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

S.B. **481** Trustee's Power to Appoint to Other Trust.
Draft Number: 85195
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **482** Clarifications to Trust Code.
Draft Number: 15244
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **967** Creation of Yadkin River Trust.
Draft Number: 55335
Sequential Referral: Finance
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 4

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

April 14, 2009
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sarah Clapp	NCWRC
Codey Hall	NC Alb
Jerry Wall	NC-WR ALB-
Corey Prevatte	NC-WR ALB-
Colton Hall	NC-WR ALB-
Wayne Hall	NC-WR Alb
Aaron Brooks	NC-WR Albemarle
Jerry Long	NC WR Albemarle
Kathy Dick	NC WR Albemarle
Beverly Morgan	NC WR Albemarle
Andy Lucas	Stanly County
John Brainerd	Albemarle

SENATE BILL 481

Short Title:	Trustee's Power to Appoint to Other Trust.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II.	

March 10, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW A TRUSTEE TO APPOINT TRUST PROPERTY TO ANOTHER TRUST FOR THE SAME BENEFICIARY AND TO GRANT CLERKS JURISDICTION TO HEAR MOTIONS TO APPROVE THE APPOINTMENT OF TRUST PROPERTY TO ANOTHER TRUST.

The General Assembly of North Carolina enacts:

SECTION 1. Article 8 of Chapter 36C of the General Statutes is amended by adding a new section to read:

"**§ 36C-8-816.1. Trustee's special power to appoint to another trust.**

(a) A trustee who has the discretionary power under the terms of an irrevocable trust instrument to distribute principal or income of the trust (the 'first trust') to or for the benefit of one or more beneficiaries of the trust, whether or not there is a current need to distribute principal or income under any standard provided in the trust instrument, may instead, without authorization by the court, exercise the power by appointing all or part of the principal or income subject to the power in favor of a trustee of another trust (the 'second trust') for the current benefit of one or more of the beneficiaries under the same trust instrument or under a different trust instrument which may be created by the trustee.

(b) The terms of the second trust shall be subject to the following:

(1) The beneficiaries of the second trust may include only beneficiaries of the first trust.

(2) A beneficiary who has only a future beneficial interest, vested or contingent, in the first trust cannot have the future beneficial interest accelerated to a present interest in the second trust.

(3) The second trust may not reduce any fixed income, annuity, or unitrust interest in the assets of the first trust.

(4) If any contribution to the first trust qualified for a marital or charitable deduction for federal income, gift, or estate tax purposes under the Internal Revenue Code, then the second trust shall not contain any provision that, if included in the first trust, would have prevented the first trust from qualifying for the deduction or that would have reduced the amount of the deduction.

(5) If contributions to the first trust have been excluded from the gift tax by the application of Section 2503(b) and Section 2503(c) of the Internal Revenue Code, then the second trust shall provide that the beneficiary's remainder interest in the contributions shall vest and become distributable no later than the date upon which the interest would have vested and become distributable under the terms of the first trust.

(6) If one or more beneficiaries of the first trust has a power of withdrawal over trust property, then either:
a. The second trust must provide a power of withdrawal in the second trust identical to the power of withdrawal in the first trust; or
b. Sufficient trust property must remain in the first trust to satisfy the outstanding power of withdrawal.
(7) If the power to distribute principal or income in the first trust is subject to an ascertainable standard, then the terms of the second trust shall be subject to all of the following:
a. The power to distribute principal or income in the second trust must be subject to the same ascertainable standard; and
b. The second trust may not confer a power of appointment upon a beneficiary of the first trust; and
c. The beneficiaries of the first trust must have the same beneficial interests in the second trust.
(8) If the power to distribute principal or income in the first trust is not subject to an ascertainable standard, then the second trust may confer a power of appointment upon a beneficiary of the first trust to whom or for the benefit of whom the trustee has the power to distribute principal or income of the first trust. The permissible appointees of the power of appointment conferred upon a beneficiary may include persons who are not beneficiaries of the first or second trust. The power of appointment conferred upon a beneficiary shall be subject to the provisions of G.S. 41-23 covering the time at which the permissible period of the rule against perpetuities and suspension of power of alienation begins and the law that determines the permissible period of the rule against perpetuities and suspension of power of alienation of the first trust.

(c) A trustee may not exercise the power to appoint principal or income under subsection (a) of this section if the trustee is a beneficiary of the first trust, but the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(d) The exercise of the power to appoint principal or income under subsection (a) of this section:
(1) Shall be considered the exercise of a power of appointment, other than a power to appoint to the trustee, the trustee's creditors, the trustee's estate, or the creditors of the trustee's estate; and
(2) Shall be subject to the provisions of G.S. 41-23 covering the time at which the permissible period of the rule against perpetuities and suspension of power of alienation begins and the law that determines the permissible period of the rule against perpetuities and suspension of power of alienation of the first trust; and
(3) Is not prohibited by a spendthrift provision or by a provision in the trust instrument that prohibits amendment or revocation of the trust.

(e) To effect the exercise of the power to appoint principal or income under subsection (a) of this section the following shall apply:
(1) The exercise of the power to appoint shall be made by an instrument in writing, signed and acknowledged by the trustee, setting forth the manner of the exercise of the power, including the terms of the second trust, and the effective date of the exercise of the power. The instrument shall be filed with the records of the first trust.
(2) The trustee shall give written notice to all qualified beneficiaries of the first trust, at least 60 days prior to the effective date of the exercise of the power

to appoint, of the trustee's intention to exercise the power. The notice shall include a copy of the instrument described in subdivision (1) of this subsection.

(3) If all qualified beneficiaries waive the notice period by a signed written instrument delivered to the trustee, the trustee's power to appoint principal or income shall be exercisable after notice is waived by all qualified beneficiaries, notwithstanding the effective date of the exercise of the power.

(4) The trustee's notice under this subsection shall not limit the right of any beneficiary to object to the exercise of the trustee's power to appoint and bring an action for breach of trust seeking appropriate relief as provided by G.S. 36C-10-1001.

(f) Nothing in this section shall be construed to create or imply a duty of the trustee to exercise the power to distribute principal or income, and no inference of impropriety shall be made as a result of a trustee not exercising the power to appoint principal or income conferred under subsection (a) of this section. Nothing in this section shall be construed to abridge the right of any trustee who has a power to appoint property in further trust that arises under the terms of the first trust or under any other section of this Chapter or under another provision of law or under common law."

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...

(8a) To approve the exercise of the trustee's special power to appoint trust principal or income to another trust as provided in G.S. 36C-8-816.1."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 481
PROPOSED COMMITTEE SUBSTITUTE S481-CSRC-6 [v.1]

4/13/2009 6:54:44 PM

Short Title: Trustee's Power to Appoint to Other Trust. (Public)

Sponsors:

Referred to:

March 10, 2009

A BILL TO BE ENTITLED

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(b) The terms of the second trust shall be subject to the following:

(1) The beneficiaries of the second trust may include only beneficiaries of the first trust.

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(5) If contributions to the first trust have been excluded from the gift tax by the application of Section 2503(b) and Section 2503(c) of the Internal Revenue Code, then the second trust shall provide that the beneficiary's remainder interest in the contributions shall vest and become distributable no later than

the date upon which the interest would have vested and become distributable under the terms of the first trust.

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c. The beneficiaries of the first trust must have the same beneficial interests in the second trust.

(8) If the power to distribute principal or income in the first trust is not subject to an ascertainable standard, then the second trust may confer a power of appointment upon a beneficiary of the first trust to whom or for the benefit of whom the trustee has the power to distribute principal or income of the first trust. The permissible appointees of the power of appointment conferred upon a beneficiary may include persons who are not beneficiaries of the first or second trust. The power of appointment conferred upon a beneficiary shall be subject to the provisions of G.S. 41-23 covering the time at which the permissible period of the rule against perpetuities and suspension of power of alienation begins and the law that determines the permissible period of the rule against perpetuities and suspension of power of alienation of the first trust.

(c) A trustee may not exercise the power to appoint principal or income under subsection (a) of this section if the trustee is a beneficiary of the first trust, but the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(d) The exercise of the power to appoint principal or income under subsection (a) of this section:

(1) Shall be considered the exercise of a power of appointment, other than a power to appoint to the trustee, the trustee's creditors, the trustee's estate, or the creditors of the trustee's estate; and

(2) Shall be subject to the provisions of G.S. 41-23 covering the time at which the permissible period of the rule against perpetuities and suspension of power of alienation begins and the law that determines the permissible period of the rule against perpetuities and suspension of power of alienation of the first trust; and

(3) Is not prohibited by a spendthrift provision or by a provision in the trust instrument that prohibits amendment or revocation of the trust.

(e) To effect the exercise of the power to appoint principal or income under subsection (a) of this section the following shall apply:

(1) The exercise of the power to appoint shall be made by an instrument in writing, signed and acknowledged by the trustee, setting forth the manner of the exercise of the power, including the terms of the second trust, and the

effective date of the exercise of the power. The instrument shall be filed with the records of the first trust.

(2) The trustee shall give written notice to all qualified beneficiaries of the first trust, at least 60 days prior to the effective date of the exercise of the power to appoint, of the trustee's intention to exercise the power. The notice shall include a copy of the instrument described in subdivision (1) of this subsection.

(3) If all qualified beneficiaries waive the notice period by a signed written instrument delivered to the trustee, the trustee's power to appoint principal or income shall be exercisable after notice is waived by all qualified beneficiaries, notwithstanding the effective date of the exercise of the power.

(4) The trustee's notice under this subsection shall not limit the right of any beneficiary to object to the exercise of the trustee's power to appoint and bring an action for breach of trust seeking appropriate relief as provided by G.S. 36C-10-1001.

(f) Nothing in this section shall be construed to create or imply a duty of the trustee to exercise the power to distribute principal or income, and no inference of impropriety shall be made as a result of a trustee not exercising the power to appoint principal or income conferred under subsection (a) of this section. Nothing in this section shall be construed to abridge the right of any trustee who has a power to appoint property in further trust that arises under the terms of the first trust or under any other section of this Chapter or under another provision of law or under common law.

(g) A trustee or beneficiary may commence a proceeding to approve or disapprove a proposed exercise of the trustee's special power to appoint to another trust pursuant to subsection (a) of this section."

SECTION 2. G.S. 36C-2-203(f) is amended by adding a new subdivision to read:

"**§ 36C-2-203. Subject matter jurisdiction.**

...

(f) Without otherwise limiting the jurisdiction of the superior court division of the General Court of Justice, proceedings concerning the internal affairs of trusts shall not include, and, therefore, the clerk of superior court shall not have jurisdiction under subsection (a) of this section of the following:

(1) Actions to reform, terminate, or modify a trust as provided by G.S. 36C-4-410 through G.S. 36C-4-416;

(2) Actions by or against creditors or debtors of a trust;

(3) Actions involving claims for monetary damages, including claims for breach of fiduciary duty, fraud, and negligence;

(4) Actions to enforce a charitable trust under G.S. 36C-4-405.1; and

(5) Actions to amend or reform a charitable trust under G.S. 36C-4A-1.

(6) Actions involving the exercise of the trustee's special power to appoint to another trust pursuant to G.S.36C-8-816.1."

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

SENATE BILL 481:
Trustee's Power to Appoint to Other Trust

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 13, 2009
Introduced by:	Sen. Hartsell	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	PCS to First Edition S481-CSRC-5		

SUMMARY: ***Senate Bill 481 would allow a trustee under certain circumstances to appoint trust property into another trust without the approval of a court. The PCS differs from the 1st Edition of the bill by removing a provision that would have allowed the clerk of court to create trusts in this manner and substituting a provision that makes it clear the clerks do not have this authority.***

CURRENT LAW: A trustee may currently seek court approval to appoint trust property into another trust.

BILL ANALYSIS:

Section 1 of Senate Bill 481 amends Chapter 36C (Uniform Trust Code) by creating a new section (G.S. 36C- 8-816.1) that would allow a trustee under certain circumstances to appoint trust property into another trust without the approval of a court. The restrictions on the ability to appoint from one trust to another would be:

- A trustee must have discretionary power to distribute principal and income before the trustee can use this power to appoint.
- The beneficiaries of the second trust (the one the assets are being appointed to) may only include beneficiaries of the first trust.
- A beneficiary who has only a future beneficial interest, vested or contingent, in the first trust cannot have that interest accelerated to a present interest in the second trust.
- The second trust may not reduce any fixed income, annuity, or unitrust interest in the assets of the first trust.
- Any assets in the first trust subject to a federal marital or charitable deduction cannot be appointed to a second trust if the effect would be to lose the deduction.
- A minor's remainder interest in a 2503(c) trust cannot be changed in the second trust.
- If a beneficiary of the first trust has a power of withdrawal over trust property, then the second trust must provide an identical power of withdrawal or sufficient property must remain in the first trust to satisfy the outstanding power of withdrawal.
- If the power to distribute principal or income in the first trust is subject to an ascertainable standard, the power must be subject to the same standard in the second trust. Additionally, the second trust may not confer a power of appointment upon a beneficiary of the first trust and the beneficiaries of the first trust must have the same beneficial interests in the second trust.
- If the power to distribute principal or income in the first trust is not subject to an ascertainable standard, the second trust may confer a power of appointment upon a beneficiary of the first trust. The power of appointment conferred shall be subject to the rule against perpetuities applicable to the first trust.

In addition to these restrictions, exercise of the power of appointment must be made in a written instrument, signed and acknowledged by the trustee and filed with the records of the first trust. The trustee must give the qualified beneficiaries 60 days written notice before exercising the power. This notice requirement may be waived by all qualified beneficiaries. A beneficiary who objects to the trustee's exercise of this power of appointment may seek appropriate relief from the court under G.S. 36C-10-1001.

Any exercise of the power of appointment by a trustee under this section would be subject to the trustee's fiduciary duties.

Section 2 amends G.S. 36C-2-203(f) to prohibit clerks of superior court from having jurisdiction over actions involving a trustee's exercise of the power of appointment authorized under G.S. 36C-8-816.1.

EFFECTIVE DATE: The act would become October 1, 2009 and would apply to new and existing trusts.

S481-SMRC-7(CSRC-5) v1

SENATE BILL 482

Short Title:	Clarifications to Trust Code.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II.	

March 10, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT A PERMISSIBLE APPOINTEE UNDER A POWER OF APPOINTMENT IS NOT A TRUST BENEFICIARY, AND TO CLARIFY THAT A LOAN OR PLEDGE BY A TRUSTEE MAY BE MADE IN CONNECTION WITH A LOAN OF THE TRUSTEE'S OWN FUNDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 36C-1-103(3) reads as rewritten:

"**§ 36C-1-103. Definitions.**

The following definitions apply in this Chapter:

...

(3) Beneficiary. – A person who:

a. Has a present or future beneficial interest in a trust, vested or contingent, including the owner of an interest by assignment or ~~transfer;~~ transfer, but excluding a permissible appointee of a general or nongeneral power of appointment; or

b. In a capacity other than that of trustee, holds a power of appointment over trust property."

SECTION 2. G.S. 36C-3-302 reads as rewritten:

"**§ 36C-3-302. Representation by holder of general testamentary power of appointment.**

The sole holder or all coholders of a power of revocation or a presently exercisable or testamentary general power of appointment, including one in the form of a power of amendment, shall represent and bind other persons to the extent that their interests, as ~~permissible appointees,~~ takers in default, ~~or otherwise,~~ are subject to the power. ~~To the extent there is no conflict of interest between the holder of a general testamentary power of appointment and the persons represented with respect to the particular question or dispute, the holder may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.~~"

SECTION 3. Subdivisions (19), (19a), (19b), and (19c) of G.S. 36C-8-816 read as rewritten:

"**§ 36C-8-816. Specific powers of trustee.**

Without limiting the authority conferred by G.S. 36C-8-815, a trustee may:

...

(19) Pledge trust property to guarantee loans made ~~by others~~ to any beneficiary;

(19a) Guarantee loans made ~~by others~~ to any beneficiary;

(19b) Pledge trust property to guarantee loans made ~~by others~~ to any proprietorship, partnership, limited liability company, business trust,

corporation, venture, agricultural operation, or other form of business or enterprise in which the trust or any beneficiary has an ownership interest.

(19c) Guarantee loans made ~~by others~~ to ~~a~~ any proprietorship, partnership, limited liability company, business trust, corporation, venture, agricultural operation, or other form of business or enterprise in which the trust or any beneficiary has an ownership interest."

SECTION 4. This act becomes effective October 1, 2009.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 482
PROPOSED COMMITTEE SUBSTITUTE S482-CSRC-7 [v.1]

4/13/2009 7:30:42 PM

Short Title: Clarifications to Trust Code. (Public)

Sponsors:

Referred to:

March 10, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT A PERMISSIBLE APPOINTEE UNDER A POWER OF APPOINTMENT IS NOT A TRUST BENEFICIARY, AND TO CLARIFY THAT A LOAN OR PLEDGE BY A TRUSTEE MAY BE MADE IN CONNECTION WITH A LOAN OF THE TRUSTEE'S OWN FUNDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 36C-1-103(3) reads as rewritten:

"**§ 36C-1-103. Definitions.**

The following definitions apply in this Chapter:

...

(3) Beneficiary. – A person who:

a. Has a present or future beneficial interest in a trust, vested or contingent, including the owner of an interest by assignment or ~~transfer;~~ transfer, but excluding a permissible appointee of a power of appointment; or

b. In a capacity other than that of trustee, holds a power of appointment over trust property."

SECTION 2. G.S. 36C-3-302 reads as rewritten:

"**§ 36C-3-302. Representation by holder of general testamentary power of appointment.**

The sole holder or all coholders of a power of revocation or a presently exercisable or testamentary general power of appointment, including one in the form of a power of amendment, shall represent and bind other persons to the extent that their interests, as ~~permissible appointees,~~ takers in default, ~~or otherwise,~~ are subject to the power. ~~To the extent there is no conflict of interest between the holder of a general testamentary power of appointment and the persons represented with respect to the particular question or dispute, the holder may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.~~"

SECTION 3. Subdivisions (19), (19a), (19b), and (19c) of G.S. 36C-8-816 read as rewritten:

"**§ 36C-8-816. Specific powers of trustee.**

Without limiting the authority conferred by G.S. 36C-8-815, a trustee may:

...

(19) Pledge trust property to guarantee loans made ~~by others~~ to any beneficiary;

(19a) Guarantee loans made ~~by others~~ to any beneficiary;

(19b) Pledge trust property to guarantee loans made ~~by others~~ to any proprietorship, partnership, limited liability company, business trust, corporation, venture, agricultural operation, or other form of business or enterprise in which the trust or any beneficiary has an ownership interest.

(19c) Guarantee loans made ~~by others~~ to a any proprietorship, partnership, limited liability company, business trust, corporation, venture, agricultural operation, or other form of business or enterprise in which the trust or any beneficiary has an ownership interest."

SECTION 4. This act becomes effective October 1, 2009.

SENATE BILL 482:
Clarifications to Trust Code

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 13, 2009
Introduced by:	Sen. Hartsell	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	PCS to First Edition S482-CSRC-7		

SUMMARY: Senate Bill 482 amends the definition of "beneficiary" of a trust to clarify that it does not include an appointee under a power of appointment and make other conforming changes.

The PCS makes a technical change.

CURRENT LAW: G.S. 36C-1-103(3) defines a beneficiary of a trust as (1) a person who has a present or future beneficial interest in a trust, whether vested or contingent, or (2) holds a power of appointment over trust property, but in a capacity other than as a trustee. The definition would appear to include as a beneficiary a *potential* appointee under a power of appointment. These potential appointees (as beneficiaries) would be entitled to notice and representation in proceedings related to the trust.

BILL ANALYSIS:

Section 1 amends the definition of a "beneficiary" of a trust to clarify that it does not include permissible appointees under a power of appointment. An appointee under those conditions has an expectancy to become a beneficiary, but until the appointment is made, does not have any vested rights under the trust.

Section 2 amends G.S. 36C-3-302 to delete the reference to permissible appointees as persons entitled to notice and representation in proceedings related to the trust. This amendment is consistent with the change in G.S. 36C-1-103(3) regarding the definition of a beneficiary of a trust.

Section 3 amends G.S. 36C-8-816(19), (19a), (19b) and (19c) to allow a trustee to make and or guarantee loans to a beneficiary or related to trust property.

EFFECTIVE DATE: The act would become effective October 1, 2009.

S482-SMRC-8(CSRC-7) v1

SENATE BILL 483

Short Title:	Clarify Judicial Creation of Trust.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II.	

March 10, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT COURTS IN NORTH CAROLINA HAVE THE AUTHORITY TO CREATE TRUSTS BY JUDICIAL ORDER OR JUDGMENT IN CASES PROPERLY BEFORE THE COURT; AND TO SPECIFICALLY PROVIDE THAT NORTH CAROLINA COURTS HAVE THE RIGHT TO CREATE TRUSTS PURSUANT TO 42 U.S.C. § 1396P(D)(4)(A).

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 36C-2-203(a)(9) reads as rewritten:

"**§ 36C-2-203. Subject matter jurisdiction.**

(a) The clerks of superior court of this State have original jurisdiction over all proceedings concerning the internal affairs of trusts. Except as provided in subdivision (9) of this subsection, the clerk of superior court's jurisdiction is exclusive. Proceedings concerning the internal affairs of the trust are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and trust beneficiaries, to the extent that those matters are not otherwise provided for in the governing instrument. These include proceedings:

...

(9) To ascertain beneficiaries, to determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments, <u>to create a trust,</u> and to determine the existence or nonexistence of trusts created other than by will and the existence or nonexistence of any immunity, power, privilege, duty, or right. Any party may file a notice of transfer of a proceeding pursuant to this subdivision to the superior court division of the General Court of Justice as provided in G.S. 36C-2-205(g1). In the absence of a transfer to Superior Court, Article 26 of Chapter 1 of the General Statutes shall apply to a trust proceeding pending before the clerk of superior court to the extent consistent with this Article.

SECTION 2. G.S. 36C-4-401 reads as rewritten:

"**§ 36C-4-401. Methods of creating trust.**

A trust may be created by any of the following methods:

(1) Transfer of property by a settlor to a person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death including either of the following:

a. The devise or bequest to the trustee of the trust as provided in G.S. 31-47.

b. The designation of the trust as beneficiary of life insurance or other death benefits as provided in G.S. 36C-4-401.1.

(2) Declaration by the owner of property that the owner holds identifiable property as trustee unless the transfer of title of that property is otherwise required by law.

(3) Exercise of a power of appointment in favor of a trustee.

(4) A court by judgment, order, or decree, including the establishment of a trust pursuant to section 1396p(d)(4) of Title 42 of the United States Code."

SECTION 3. Article 4 of Chapter 36C of the General Statutes is amended by adding a new section to read:

"**§ 36C-4-401.2. Trust pursuant to 46 U.S.C. § 1396p(d)(4).**

Any interested party may petition the court, in accordance with the provisions of this Chapter, to establish a trust pursuant to section 1396p(d)(4) of Title 42 of the United States Code. This section is not the exclusive method of establishing a trust pursuant to section 1396p(d)(4) of Title 42 of the United States Code; and the court shall maintain its authority to create or establish any trust, including a trust pursuant to section 1396p(d)(4) of Title 42 of the United States Code, by means of judgment, order, or decree in any matter properly before the court."

SECTION 4. This act becomes effective October 1, 2009.

SENATE BILL 483:
Clarify Judicial Creation of Trust

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 13, 2009
Introduced by:	Sen. Hartsell	**Prepared by:**	Kory Goldsmith
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 483 provides statutory authorization for a court to create a trust for Medicaid purposes under section 1396d(4) of Title 42 of the U.S. Code. The authorization is not the exclusive method for a court to create this or any other type of trust.***

CURRENT LAW: A court may establish a trust by judgment, order or decree. G.S. 36C-2-203(a) provides that the clerks of superior court have original jurisdiction over all proceedings concerning the internal affairs of trusts.

BILL ANALYSIS:

Section 3 amends Article 4 of Chapter 36C to specifically provide that a court may create a trust for Medicaid purposes under Section 1396d(4) of Title 42 of the U.S. Code. The provision is not a limitation on the court's ability to otherwise create a trust under existing law.

Section 1 and 2 make it clear that a court may create a trust by means other than a Medicaid trust under the proposed G.S. 36C-4-401.2.

EFFECTIVE DATE: The act would become October 1, 2009.

S483-SMRC-9(e1) v1

SENATE BILL 967

Short Title:	Creation of Yadkin River Trust.	(Public)
Sponsors:	Senators Hartsell; Berger of Rockingham, Bingham, Clodfelter, Purcell, Rand, and Tillman.	
Referred to:	Judiciary II.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO CREATE THE YADKIN RIVER TRUST IN ORDER TO: (1) DEVELOP THE YADKIN RIVER IN STANLY, DAVIDSON, MONTGOMERY, AND ROWAN COUNTIES AS AN INSTRUMENTALITY OF INTRASTATE, INTERSTATE, AND FOREIGN COMMERCE AND NAVIGATION; (2) ACQUIRE AND OPERATE THE YADKIN PROJECT, AN EXISTING HYDROELECTRIC FACILITY, AND TO AUTHORIZE ISSUANCE OF BONDS AND NOTES BY THE TRUST FOR THAT PURPOSE; AND (3) PRODUCE, DISTRIBUTE, AND SELL HYDROELECTRIC POWER FROM EXISTING OR NEW HYDROELECTRIC FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 77 of the General Statutes is amended by adding a new Article to read as follows:

"Article 9.

"Yadkin River Trust.

"**§ 77-120. Trust established; purposes.**

There is established the Yadkin River Trust as a body politic and corporate. The purpose of the Trust is: (i) to develop the Yadkin River in Stanly, Davidson, Montgomery, and Rowan Counties as an instrumentality of intrastate, interstate, and foreign commerce and navigation through the development, sale, and distribution of hydroelectric power; (ii) to ensure the equitable distribution of water for public purposes; and (iii) to maintain recreational facilities associated with the Yadkin River. These purposes are declared to be in all respects for the benefit of the people of the State.

"**§ 77-121. Definitions.**

The following definitions apply in this Article:

(1) Board. – The Board of Directors of the Yadkin River Trust.

(2) Bonds. – The revenue bonds or other interest bearing obligations authorized to be issued by the Board under this Article.

(3) Costs. – The capital cost of a project, including:

a. The costs of doing any or all of the following:

1. Acquiring, constructing, erecting, providing, developing, installing, furnishing, and equipping.

2. Reconstructing, remodeling, altering, renovating, replacing, refurnishing, and reequipping.

3. Enlarging, expanding, and extending.

4. Demolishing, relocating, improving, grading, draining, landscaping, paving, widening, and resurfacing.

b. The costs of all property, both real and personal and both improved and unimproved, and of plants, works, appurtenances, structures, facilities, furnishings, machinery, equipment, vehicles, easements, water rights, air rights, franchises, and licenses used or useful in connection with the project.

c. The costs of demolishing or moving structures from land acquired and acquiring land to which the structures are to be moved.

d. Financing charges, including estimated interest during the acquisition or construction of a project and for one year thereafter.

e. The costs of services to provide plans, specifications, studies, reports, surveys, and estimates of costs and revenues.

f. The costs of paying any interim financing, including principal, interest, and premium, related to the acquisition or construction of the project.

g. Administrative and legal expenses and administrative charges.

h. The costs of obtaining bond and reserve fund insurance and investment contracts, of credit-enhancement facilities, liquidity facilities, and interest-rate agreements, and of establishing and maintaining debt service and other reserves.

i. Any other services, costs, and expenses necessary or incidental to the project.

(4) Credit facility. – An agreement with a banking institution, an insurance institution, an investment institution, or other financial institution located inside or outside the United States of America that provides for prompt payment, whether at maturity, presentment, or tender for purchase, redemption, or acceleration, of part or all of the principal or purchase price, redemption premium, if any, and interest on a bond or note issued by the Trust and for repayment of the institution.

(5) Local Government Commission. – The Local Government Commission of the Department of State Treasurer, established by Article 2 of Chapter 159 of the General Statutes.

(6) Notes. – Revenue notes or revenue bond anticipation notes issued by the Trust under this Article.

(7) Par formula. – A provision or formula to make periodic adjustments in the interest rate of a bond or note, including:

a. A provision for an adjustment to keep the purchase price of the bond or note in the open market as close to par as possible.

b. A provision for an adjustment based on one or more percentages of a prime rate or base rate that may vary or apply for specified periods of time.

c. Any other provision that does not materially and adversely affect the financial position of the Trust and the marketing of the bonds or notes at a reasonable interest cost to the Trust.

(8) Person. – Any person, corporation, partnership, association, trust, or other legal entity.

(9) Revenues. – Rents, fees, charges, payments, proceeds, or other income or profit derived from the hydroelectric project or from any pledge of nontax revenues, appropriation, or payment made by the State or a county in which the hydroelectric project is located.

(10) Security document. – One or more written instruments establishing the rights and responsibilities of the Trust and the holders of bonds issued to finance

the hydroelectric project. A security document may provide for, or be in the form of an agreement with, a trustee for the benefit of the bondholders. A security document may contain an assignment, pledge, mortgage, or other encumbrance of part or all of the Trust's interest in, or right to receive revenues from, the hydroelectric project.

(11) Trust. – The Yadkin River Trust as established by this Article.

(12) Yadkin Project. – Project No. 2197 as described in a license issued by the Federal Energy Regulatory Commission as of May 1, 1958, and as thereafter subject to the regulation of the Federal Regulatory Commission.

"**§ 77-122. Board of Directors.**

(a) Appointment. – The Board of Directors of the Yadkin River Trust shall consist of seven directors who shall be appointed by the Governor upon the advice of the House Public Utilities Committee and Senate Commerce Committee and subject to confirmation by the General Assembly by joint resolution. Two of the directors shall have substantial work experience within the operations of electric cooperatives or investor-owned utilities or substantial experience on an electric cooperative board or investor-owned utility board but must not serve as an employee or board member of an electric cooperative or investor-owned utility during their term as a director of the Yadkin River Trust. The names of directors to be appointed by the Governor shall be submitted by the Governor to the General Assembly for confirmation by the General Assembly on or before June 1 of the year in which the terms for which the appointments are to be made are to expire. Upon failure of the Governor to submit names as herein provided, the President Pro Tempore of the Senate and Speaker of the House of Representatives jointly shall submit the names of a like number of directors to the General Assembly on or before June 15 of the same year for confirmation by the General Assembly. Regardless of the way in which the names of directors are submitted, confirmation of directors must be accomplished prior to adjournment of the then current session of the General Assembly.

(b) Terms. – The term of office of directors of the Board is four years. A director may be reappointed to any number of successive four-year terms. A director in office shall continue to serve until the director's successor is duly confirmed and qualified, but the holdover shall not affect the expiration date of the succeeding term.

(c) Chairman; Vice-Chair. – Upon confirmation of the directors by the General Assembly as provided in subsection (a) of this section, the Governor shall designate one of the directors to serve as chairman of the Board for the succeeding four years and until the director's successor is duly confirmed and qualifies. Upon death or resignation of the director appointed as chairman, the Governor shall designate the chairman from the remaining directors and appoint a successor as hereinafter provided to fill the vacancy on the Board. The Governor shall convene the first meeting of the Board, at which time the members of the Board shall elect from their membership a vice-chair of the Board.

(d) Removal. – The Governor may remove any director of the Board for misfeasance, malfeasance, or nonfeasance as provided in G.S. 143B-13.

(e) Vacancies. – In case of death, incapacity, resignation, or vacancy for any other reason in the office of any director prior to the expiration of the director's term of office, the name of the director's successor shall be submitted by the Governor within four weeks after the vacancy arises to the General Assembly for confirmation by the General Assembly. Upon failure of the Governor to submit the name of the successor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives jointly shall submit the name of a successor to the General Assembly within six weeks after the vacancy arises. Regardless of the way in which the names of directors are submitted, confirmation of directors must be accomplished prior to the adjournment of the then current session of the General Assembly. If a vacancy arises in the office of director when the General Assembly is not in session, and the

appointment is deemed urgent by the Governor, the director may be appointed and serve on an interim basis pending confirmation by the General Assembly.

(f) Organization of the Board. – The Board shall adopt bylaws with respect to the calling of meetings, quorums, voting procedures, the keeping of records, and other organizational and administrative matters as the Board may determine. A quorum shall consist of a majority of the members of the Board. No vacancy in the membership of the Board shall impair the right of a quorum to exercise all rights and to perform all the duties of the Board and the Trust.

(g) Compensation of the Board. – No part of the revenues or assets of the Trust shall inure to the benefit of or be distributable to the members of the Board or officers or other private persons. The members of the Board shall receive no salary for their services but shall be entitled to receive per diem and allowances in accordance with the provisions of G.S. 138-5.

(h) Treasurer. – The Board shall select the Trust's treasurer. The Board shall require a surety bond of the appointee in the amount as the Board may fix, and the premium shall be paid by the Trust as a necessary expense of the Trust.

(i) Executive Director and Other Employees. – The Board shall appoint an executive director, whose salary shall be fixed by the Board, to serve at its pleasure. The executive director or a person designated by the executive director shall appoint, employ, dismiss, and, within the limits of available funding, fix the compensation of other employees as considered necessary.

(j) Office. – The Board shall establish an office for the transaction of the Trust's business at the place the Board finds advisable or necessary to implement the provisions of this Article.

"**§ 77-123. Authority to acquire Yadkin Project.**

The Yadkin River Trust may acquire the Yadkin Project. If the Trust acquires the Yadkin Project, it shall pursue transfer of the license from the Federal Energy Regulatory Commission and other transfer of title and may enter into negotiations, execute agreements, amend the license, and take any other actions necessary to become licensee for the Yadkin Project on behalf of the State. Any terms of acquisition shall be approved by the Board of Directors for the Trust prior to completion of the acquisition. If acquired, the Trust shall not surrender, terminate, transfer, or sell the license or the Yadkin Project without the consent of the General Assembly.

"**§ 77-124. Powers and duties.**

(a) The Trust has the power to: (i) develop the Yadkin River in Stanly, Davidson, Montgomery, and Rowan Counties as an instrumentality of intrastate, interstate, and foreign commerce and navigation; (ii) acquire existing hydroelectric facilities; and (iii) produce, distribute, and sell hydroelectric power from existing or new hydroelectric facilities. The Trust has all powers that may be necessary or convenient for the exercise of these powers including, without limiting the generality of the foregoing, the following:

(1) The powers of a corporate body, including the power to sue and be sued, to make contracts, to adopt and use a common seal, and to alter the adopted seal as needed.

(2) To have perpetual succession as a corporation.

(3) To adopt, alter, or repeal its own bylaws and adopt, promulgate, and amend rules to implement the provisions of this Article. The Trust and its activities shall not be governed by the North Carolina Utilities Commission but shall be governed by the provisions of this Article and the rules adopted thereunder.

(4) To establish, finance, purchase, construct, operate, and regulate hydroelectric facilities to implement the provisions of this Article.

(5) To manufacture, produce, and generate hydroelectric power using the waters of the Yadkin River, and to sell the hydroelectric power to utilities within and without the State of North Carolina.

(6) To set rates, services, and practices, or participate in any organized power sales market with one or more entities for the sale, transmission, or distribution of the power generated by the hydroelectric facility, and to charge and collect fees for the use of power generated.

(7) To contract and enter into agreements with the State, local governments, other authorities of North Carolina, and other states for the interchange of business and to facilitate the business of the Trust.

(8) To rent, lease, purchase, acquire, own, hold, use, encumber, sell, transfer, or dispose of any property, real, personal, or mixed, or any interest therein.

(9) To acquire, purchase, establish, build, construct, maintain, equip, and operate any structure or facilities necessary, useful, or customarily used and employed in generation of hydroelectric power.

(10) To appoint officers, agents, employees, to prescribe their duties, and to fix their compensation.

(11) To create and operate agencies and departments needed to implement this Article.

(12) To pay all necessary costs and expenses in the formation, organization, administration, and operation of the Trust.

(13) To apply for, accept, and administer loans and grants of money from any federal agency, from the State or its political subdivisions, or from any other public or private sources available, to expend the money in accordance with the requirements imposed by the lender or donor, and to give any evidences of indebtedness that are required. No indebtedness of any kind incurred or created by the Trust shall constitute an indebtedness of the State or its political subdivisions, and no indebtedness of the Trust shall involve or be secured by the faith, credit, or taxing power of the State or its political subdivisions.

(14) To execute security documents and other instruments necessary in exercising its power under this Article.

(15) To fix, charge, collect, pledge, or assign revenues of the Trust.

(16) To employ consulting engineers, architects, attorneys, real estate counselors, appraisers, and other consultants and employees as may be required in the judgment of the Board and to fix and pay their compensation from funds available to the Trust, and, when approved by the Local Government Commission under G.S. 159-123(e) and (f) as if the Trust were an issuing unit, to select and retain financial consultants, underwriters, and bond attorneys in connection with the issuance of any bonds and to pay for their services out of the proceeds of any bond issue for which their services were performed.

(17) To issue bonds or notes of the Trust as provided under this Article to pay the costs associated with the business of the Trust.

(18) To issue revenue refunding bonds of the Trust as provided under this Article.

(19) To procure and maintain adequate insurance or otherwise provide for adequate protection to indemnify the Trust and its officers, directors, agents, employees, adjoining property owners, or the general public against loss or liability resulting from any act or omission by or on behalf of the Trust.

(20) To purchase or finance real or personal property in the manner provided for cities and counties under G.S. 160A-20.

(21) With the approval of any unit of local government, to use officers, employees, agents, and facilities of the unit of local government for the purposes and upon the terms as may be mutually agreeable.

(22) To issue obligations, without Local Government Commission approval, to finance the purchase or acquisition of land or options on land, or the construction of buildings or facilities. An obligation may be secured by the land purchased or acquired, or by the buildings or facilities constructed, may be unsecured, or may be made payable from revenues, the proceeds of notes, bonds, or the sale of any lands, the proceeds of any bonds of the State or moneys appropriated by the State, or any other available moneys of the Trust. An obligation to finance the purchase or acquisition of land or options on land, or the construction of buildings or facilities, may be sold only to the Escheat Fund as an investment of the Fund pursuant to G.S. 147-69.2(b)(11).

(23) To receive and use appropriations from the State, including an appropriation from the proceeds of State general obligation bonds or notes.

(b) To execute the powers provided in subsection (a) of this section, the Board shall determine the policies of the Trust by majority vote of the members of the Board present and voting, a quorum having been established. Once a policy is determined, the Board shall communicate it to the executive director who shall have the sole and exclusive authority to execute the policy of the Trust. No member of the Board shall have the responsibility or authority to give operational directives to any employee of the Trust other than the executive director.

(c) If the Yadkin River Trust acquires the Yadkin Project as provided in this Article, in addition to other powers and duties, the Trust shall:

(1) Conduct environmental testing and assessment of all properties located in Stanly County currently or formerly owned and operated by Alcoa Power Generating, Inc., or Alcoa, Inc., and its subsidiaries, in order to evaluate danger to public health or the environment.

(2) Require remediation of contamination at the Badin Works site located in Stanly County to levels over and above the minimum levels that Alcoa or its subsidiaries would be required to perform under current law in order to restore the contaminated land and water to multiple use purposes.

(3) Establish a remediation fund to perform necessary environmental testing and remediation of hazardous waste sites in the Yadkin River Basin, excluding properties owned or under the control of Alcoa Power Generating, Inc., or Alcoa, Inc., and its subsidiaries.

(4) Install aeration technology in association with the Yadkin Project to increase dissolved oxygen levels and improve water quality in the Yadkin River.

(5) Institute operational changes to the Yadkin Project that will retain more water in High Rock Lake and provide a consistent flow of water to downstream water users.

(6) Extend the recreation season at High Rock Lake by three months from April 1 to October 31.

(7) Implement a comprehensive drought management plan, or "Low Inflow Protocol," that requires the Trust to reduce power generation and send less water downstream when certain drought-related triggers are reached.

(8) Develop and maintain new or expanded public recreation facilities across the Yadkin River, including a new public swim area in Rowan County, new tailwater fishing access areas, two new reservoir fishing piers, and 10 new campsites.

(9) Allow the City of Albemarle to increase water withdrawals from the Yadkin River up to 30 million gallons per day.

(10) Utilize a portion of the proceeds from power generation to fund a Yadkin River Basin Clean Water Trust Fund to be created in order to acquire land for water quality improvements, implement innovative storm water strategies, state-of-the art waste water improvements, and aquatic habitat improvements, and to provide funding mechanisms to assist local governments to make water quality improvements throughout the Yadkin River Basin.

(11) Apportion a percentage of electricity from the Yadkin Project output for use by a regional economic development entity to be designated by the Department of Commerce. To the extent that there are renewable energy credits attributable to the output, the credits shall belong to the designated entity.

(12) Use proceeds from power generation to: (i) acquire and donate land to the Town of Badin for a new public park; (ii) acquire and donate land to Rowan County for the continued protection and public access to the Eagle Point Nature Preserve; (iii) acquire other land for conservation purposes; and (iv) make a forty thousand dollars ($40,000) donation to the Yadkin-Pee Dee River Trail Fund.

"**§ 77-125. Bonds and notes.**

(a) The Trust may provide for the issuance, at one time or from time to time, of bonds and notes, including bond anticipation notes and renewal notes, of the Trust to carry out its corporate purposes including financing the costs of projects. The principal of and interest on the bonds or notes shall be payable from funds provided under this Article for their payment. A bond anticipation note may be made payable from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, from any available Trust revenues or other funds provided for this purpose. Bonds and notes may also be paid from the proceeds of any credit facility.

All bonds, notes, or refunding bonds or notes of the Trust are subject to this section and G.S. 77-126.

The bonds and notes of each issue shall be dated and may be made redeemable prior to maturity at the option of the Trust or otherwise, at one or more prices, on one or more dates, and upon the terms and conditions set by the Trust. The bonds or notes may also be made payable from time to time on demand or tender for purchase by the owner upon terms and conditions set by the Trust.

A bond or note shall bear interest at a rate or rates, including variable rates, as determined by the Local Government Commission with the approval of the Trust. A bond or note may be secured by a reserve fund created for that purpose and funded from proceeds of the bond or note, revenues, or any other source of funds available to the Trust.

(b) In fixing the details of bonds or notes, the Trust may provide that the bonds or notes may:

(1) Be payable from time to time on demand or tender for purchase by the owner of the bond or note if a credit facility supports the bond or note, unless the Local Government Commission specifically determines that a credit facility is not required because the absence of a credit facility will not materially and adversely affect the financial position of the Trust and the marketing of the bonds or notes at a reasonable interest cost to the Trust.

(2) Be additionally supported by a credit facility.

(3) Be made subject to redemption or a mandatory tender for purchase prior to maturity.

(4) Be capital appreciation bonds.
(5) Bear interest at a rate or rates that may vary, including variations permitted pursuant to a par formula.
(6) Be made the subject of a remarketing agreement whereby an attempt is made to remarket the bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the Trust.

(c) Notes and bonds shall mature at the times determined by the Trust, not to exceed 40 years from the date of issue. The Trust shall determine the form and manner of execution of a bond or note, including any interest coupons to be attached to the bond or note. The Trust shall fix the denominations and places of payment of principal and interest of the bond or note. The principal of and interest on a bond or note may be paid at any bank or trust company, whether located inside or outside the United States of America.

(d) The validity of a bond, note, or coupon that has the signature or facsimile signature of a person who was an officer when the bond, note, or coupon was signed or the facsimile signature attached but who is not that officer when the bond, note, or coupon is delivered is not affected by the change in officers. A bond, note, or coupon may bear the signature or facsimile signature of a person who will be the proper officer to sign the bond, note, or coupon when it is executed but who is not the officer on the date of the bond, note, or coupon.

(e) The Trust may provide for any of the following:
(1) Authentication of a bond or note by a trustee or other authenticating agent.
(2) Issuance of a bond or note as a certificated obligation, an uncertificated obligation, or both.
(3) Issuance of a bond or note in coupon form, in registered form, or both.
(4) Registration of a coupon bond or note as to principal alone or as to both principal and interest.
(5) The reconversion of a bond or note registered as to both principal and interest into a coupon bond or note.
(6) The interchange of registered and coupon bonds or notes.
(7) A system for registration in accordance with Chapter 159E of the General Statutes.
(8) Replacement of a bond or note that has been mutilated, lost, or destroyed.

(f) The Trust may not issue a bond or note under this Article, other than an obligation permitted under G.S. 77-123(a)(22), unless its issuance is approved by the Local Government Commission, and it is sold by the Local Government Commission. To obtain approval of a bond or note, the Trust shall file an application for approval with the Local Government Commission. The application shall contain the information required by the Local Government Commission.

In determining whether to approve a proposed bond or note issue of the Trust, the Local Government Commission shall consider the following:
(1) For bonds or notes to finance activities of the Trust, the criteria for its approval of revenue bonds under G.S. 159-86.
(2) The effect of the proposed financing upon any proposed or scheduled sale of obligations by the State, another State agency, or a unit of local government.

The Local Government Commission shall approve the proposed bond or note issue if it determines that the proposed financing for the issue meets the criteria and will effect the purposes of this Article.

When the Local Government Commission approves a bond or note issue of the Trust, the Trust may submit a written request to the Local Government Commission to sell the approved bonds or notes. Upon receiving a written request, the Local Government Commission shall consult with the Trust on the manner in which the bonds or notes will be sold and the price or prices at which the bonds or notes will be sold. With the approval of the Trust, the Local

Government Commission shall sell the bonds or notes either at public or private sale in the manner and at the prices determined to be in the best interest of the Trust and to effect the purposes of this Article.

Bonds or notes may be issued under this Article without obtaining, except as otherwise expressly provided in this Article, the consent of any department, division, commission, board, body, bureau, or other agency of the State or without any other proceedings or conditions except as specifically authorized by this Article or by the provisions of the resolution authorizing the issuance of, or any trust agreement securing, the bonds or notes.

(g) Each bond or note that is represented by an instrument shall contain a statement signed by the Secretary of the Local Government Commission, or an assistant designated by the Secretary, certifying that the issuance of the bond or note has been approved under this Article. The signature may be a manual signature or a facsimile signature, as determined by the Local Government Commission. Each bond or note that is not represented by an instrument shall be evidenced by a writing relating to the obligation that identifies the obligation or the issue of which it is a part, contains the signed statement certifying approval of the Local Government Commission that is required on an instrument, and is filed with the Local Government Commission. A certification of approval by the Local Government Commission is conclusive evidence that a bond or note complies with this Article.

(h) The proceeds of a bond or note shall be used solely for the purposes for which the bond or note was issued and shall be disbursed in accordance with the resolution authorizing the issuance of the bond or note and with any trust agreement securing the bond or note.

(i) Prior to the preparation of definitive bonds, the Trust may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when the bonds have been executed and are available for delivery.

(j) The Trust may secure a bond or note issued under this Article by a trust agreement between the Trust and a corporate trustee. The corporate trustee may be any trust company or bank having the powers of a trust company inside or outside the State. The Trust may secure a bond or note issued under this Article by a deed of trust. The trustee of the deed of trust may be an individual who is a resident of the State. A bank or trust company that is incorporated in this State and is a depository of the proceeds of obligations, revenues, or other money of the Trust may furnish indemnifying bonds or pledge securities required by the Trust.

The pledge of any assets, income, or revenues of the Trust to the payment of the principal of or the interest on any obligations of the Trust is binding from the time the pledge is made, and any assets, income, or revenues of the Trust are immediately subject to the lien of the pledge without any physical delivery or other act. The lien created by a pledge is binding against all persons who have claims of any kind against the Trust, regardless of whether they have notice of the lien.

(k) A resolution authorizing the issuance of a bond or note and a trust agreement securing a bond or note may provide that any moneys held under the resolution or trust agreement may be temporarily invested pending disbursement. Any officer with whom, or any bank or trust company with which, the moneys are deposited is considered a trustee of the moneys and must hold and apply the moneys for their stated purpose in accordance with this Article and the resolution or trust agreement. The Trust may invest any moneys as allowed in G.S. 147-69.1 for investments of the State Treasurer or in this subsection.

In connection with or incidental to the acquisition or carrying of any investment relating to bonds, program of investment relating to bonds, or carrying of bonds, the Trust may, with the approval of the Local Government Commission, enter into a contract to place the investment or obligation of the Trust, as represented by the bonds, investment, or program of investment and the contract or contracts, in whole or in part, on an interest rate, currency, cash flow, or other basis, including the following:

(1) Interest rate swap agreements, currency swap agreements, insurance agreements, forward payment conversion agreements, and futures.
(2) Contracts providing for payments based on levels of, or changes in, interest rates, currency exchange rates, or stock or other indices.
(3) Contracts to exchange cash flows or a series of payments.
(4) Contracts to hedge payment, currency, rate, spread, or similar exposure, including interest rate floors or caps, options, puts, and calls.

The Trust may enter a contract of this type in connection with, or incidental to, entering into or maintaining any agreement that secures bonds. A contract shall contain the payment, security, term, default, remedy, and other terms and conditions the Board considers appropriate. The Trust may enter a contract of this type with any person after giving due consideration, where applicable, of the person's creditworthiness as determined by a rating by a nationally recognized rating agency or any other criteria the Board considers appropriate. In connection with, or incidental to, the issuance or carrying of bonds, or the entering of any contract described in this subsection, the Trust may enter into credit enhancement or liquidity agreements, with payment, interest rate, termination date, currency, security, default, remedy, and other terms and conditions as the Trust determines. Proceeds of bonds and any moneys set aside and pledged to secure payment of bonds or any of the contracts entered into under this subsection may be pledged to and used to service any of the contracts entered into under this section.

(l) Bonds and notes are exempt from all State, county, and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding inheritance and gift taxes, income taxes on the gain from the transfer of bonds and notes, and franchise taxes. The interest on bonds and notes is not subject to taxation as income.

(m) Bonds or notes issued under this Article shall not constitute a debt secured by a pledge of the faith and credit of the State or a political subdivision of the State and shall be payable solely from the revenues, income, or assets of the Trust that are pledged for their payment. The face of each bond or note issued shall contain a statement that the Trust is obligated to pay the bond or note or the interest on the bond or note only from the revenues, income, or assets pledged in payment of the bond or note and that neither the faith and credit nor the taxing power of the State or any political subdivision of the State is pledged in payment of the principal of or the interest on the bond or note.

(n) The State pledges to the holder of a bond or note issued under this Article that, as long as the bond or note is outstanding and unpaid, the State will not limit or alter the power the Trust had when the bond or note was issued in a way that impairs the ability of the Trust to produce revenues sufficient with other available funds to do all of the following:

(1) Maintain and operate the project for which the bond or note was issued.
(2) Pay the principal of, interest on, and redemption premium, if any, of the bond or note.
(3) Fulfill the terms of an agreement with the holder.

The State further pledges to the holder of a bond or note issued under this Article that the State will not impair the rights and remedies of the holder concerning the bond or note.

(o) Obligations issued under this Article are made securities in which all public officers and public bodies of the State and its political subdivisions, and all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. The obligations are made securities that may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds, notes, or obligations of the State is now or may be authorized by law.

"§ 77-126. Refunding bonds or notes.

(a) The Trust may issue refunding bonds or notes for the purpose of refunding any outstanding bonds or notes issued under this Article, including any redemption premium on the bonds or notes and any interest accrued or to accrue to the date of redemption. Refunding bonds or notes shall be issued in accordance with the same procedures and requirements as bonds or notes. Refunding bonds or notes may be sold or exchanged for outstanding bonds and notes issued under this Article.

Refunding bonds or notes may have different interest rates and maturities than the bonds or notes being refunded. The proceeds of refunding bonds or notes may be applied to any of the following:

(1) The payment, purchase, and retirement of the bonds or notes being refunded by direct application to the payment, purchase, and retirement.

(2) The payment, purchase, and retirement of the bonds or notes being refunded by the deposit in trust of the proceeds.

(3) The payment of any expenses incurred in connection with the refunding.

(4) For any other uses not inconsistent with the refunding.

(b) The proceedings providing for the issuance of refunding bonds or notes may limit the investments in which the proceeds of a particular refunding issue may be invested. Unless prohibited by the proceedings, the proceeds of refunding bonds or notes that are deposited in trust for the payment, purchase, and retirement of outstanding bonds or notes may be invested in any of the following:

(1) Direct obligations of the United States of America.

(2) Obligations whose principal and interest are guaranteed by the United States of America.

(3) Evidences of ownership of a proportionate interest in an obligation that is described in subdivision (1) or (2) of this subsection and is held in a custodial capacity by a bank or trust company organized under the laws of the United States of America or a state.

(4) Obligations of the State or a unit of local government of the State when payment of the principal of and interest on the obligations has been provided for by depositing with a trustee or other escrow agent obligations that meet all of the following:

a. Are described in subdivisions (1), (2), or (3) of this subsection.

b. When due and payable, will provide enough money when added to any other money held in trust for this purpose to pay the principal of, premium, if any, and interest on the State or local obligations.

c. Are rated in the highest category by Standard & Poor's Corporation and Moody's Investors Service, Inc.

(5) Obligations of the State or a unit of local government when payment of the principal and interest on the obligations is insured by a bond insurance company rated in the highest category by Standard & Poor's Corporation and Moody's Investors Service, Inc.

(6) Full faith and credit obligations of the State or a unit of local government of the State that are rated in the highest category by Standard & Poor's Corporation and Moody's Investors Service, Inc.

(7) Any obligations or investments in which the State Treasurer is then authorized to invest funds of the State.

(c) This section does not limit any of the following:

(1) The period for which the proceeds of refunding bonds or notes may be held in trust to retire the bonds or notes that are being refunded and have not

matured, are not redeemable or, if redeemable, have not been called for redemption.

(2) The power to issue bonds or notes for the combined purpose of refunding outstanding bonds or notes and of providing funds for any other corporate purpose.

"**§ 77-127. Public hearing requirements.**

To the extent federal tax law requires public hearings to be held with respect to the issuance of bonds to finance projects, the hearings may be called for by the executive director and held before one or more members of the Board of the Trust. The hearings may be held at any place within the State pursuant to public notice given in accordance with current federal tax regulations. To the extent federal tax law requires approval following the hearing of the issuance of bonds to finance a project, the approval shall be sought from the Governor following a report to the Governor of the results of the public hearing accompanied by information relating to the purposes for the proposed bond issue.

"**§ 77-128. Security documents.**

Bonds issued under the provisions of this Article may be secured by a security document which may be a trust instrument between the Trust and a bank or trust company or individual within the State, or a bank or a trust company outside the State, as trustee. The security document may pledge and assign the revenues provided for the security of the bonds, including proceeds from the sale of any project, or part thereof, and insurance proceeds, and may convey or mortgage the project and other property to secure a bond issue.

The revenues and other funds derived from the project, except for any part as may be necessary to provide reserves therefor, if any, may be set aside at regular intervals as may be provided in the security document in a sinking fund which may be pledged to, and charged with, the payment of the principal of and the interest on the bonds as the same shall become due and the redemption price or the purchase price of bonds retired by call or purchase as provided. The pledge shall be valid and binding from the time when the pledge is made. The revenues pledged and received by the Trust shall immediately be subject to the lien of the pledge without any physical delivery or further act, and the lien of any pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Trust, irrespective of whether the parties have notice. The use and disposition of money to the credit of the sinking fund shall be subject to the provisions of the security document. The security document may contain provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including, without limitation, any one or more of the following:

(1) Acceleration of all amounts payable under the security document.

(2) Appointment of a receiver to manage the project and any other property mortgaged or assigned as security for the bonds.

(3) Foreclosure and sale of the project and any other property mortgaged or assigned as security for the bonds.

(4) Rights to bring and maintain such other actions at law or in equity as may appear necessary or desirable to collect the amounts payable under, or to enforce the covenants made in, the security document.

It shall be lawful for any bank or trust company incorporated under the laws of this State which may act as depository of the proceeds of bonds, revenues, or other funds provided under this Article to furnish indemnifying bonds or to pledge securities as may be required by the Trust. All expenses incurred in carrying out the provisions of the security document may be treated as a part of the cost of the project in connection with which bonds are issued or as an expense of administration of the project.

The Trust may subordinate the bonds or its rights under the security document or otherwise to any prior, contemporaneous, or future securities or obligations or lien, mortgage, or other security interest.

"**§ 77-129. Remedies.**

Any owner of bonds or notes issued under the provisions of this Article or any coupons appertaining thereto, and the trustee under any trust agreement securing or resolution authorizing the issuance of such bonds or notes, except to the extent the rights given may be restricted by the trust agreement or resolution, may either at law or in equity, by suit, action, mandamus, or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under the trust agreement or resolution, or under any other contract executed by the Trust pursuant to this Article, and may enforce and compel the performance of all duties required by this Article or by the trust agreement or resolution by the Trust or by any officer of the Trust.

"**§ 77-130. Status of bonds and notes under Uniform Commercial Code.**

All bonds and notes and interest coupons, if any, issued under this Article are made investment securities within the meaning of and for all the purposes of Article 8 of the Uniform Commercial Code, as enacted in Chapter 25 of the General Statutes.

"**§ 77-131. Officers not liable.**

No director or officer of the Trust shall be subject to any personal liability or accountability by reason of the director or officer's execution of any bonds or notes or the issuance of any bonds or notes.

"**§ 77-132. Conflicts of interest.**

If any director, officer, or employee of the Trust shall be interested either directly or indirectly, or shall be an officer or employee of or have an ownership interest in any firm or corporation, not including units of local government, interested directly or indirectly, in any contract with the Trust, the interest shall be disclosed to the Board and shall be set forth in the minutes of the Board. The director, officer, or employee having an interest shall not participate on behalf of the Trust in the authorization of any contract. Other provisions of law notwithstanding, failure to take any or all actions necessary to carry out the purposes of this section may not affect the validity of any bonds or notes issued under this Article.

"**§ 77-133. Cooperation by other State agencies.**

All State officers and agencies shall render the services to the Trust within their respective functions as may be requested by the Trust.

"**§ 77-134. Net earnings; disposition and use.**

The Yadkin River Trust is a corporation completely owned by and to be operated for the benefit of the people of this State. Any and all net earnings of the Yadkin River Trust not necessary for the prudent conduct and operation of its business in the best interests of the Trust or to pay the principal of and interest on its bonds, notes, or other evidences of indebtedness or other obligations, or to fulfill the terms and provisions of any agreements made with the purchasers or holders thereof or others shall be remitted semiannually to the State Treasurer for deposit to the General Fund of the State. Nothing in this section shall prohibit the Trust from paying to the State each year up to one percent (1%) of its projected operating revenues, as such revenues would be determined on an accrual basis, from the combined electric and water systems.

"**§ 77-135. Funds of Trust.**

All funds of the Trust shall be deposited in one or more banks to be designated by the Board. The Funds shall be paid out only upon warrants signed by the treasurer or assistant treasurer of the Trust and countersigned by the chair, the acting chair, or the executive director. No warrants shall be drawn or issued disbursing any of the funds of the Trust except for a purpose authorized by this Article and only when the account or expenditure has been audited and approved by the Trust or the chairman of the board of directors.

"**§ 77-136. Exemption from taxation; payments in lieu of taxes.**

(a) Property owned by the Yadkin River Trust is exempt from taxation in accordance with Article V, Section 2 of the North Carolina Constitution, except as provided in this section.

(b) The Trust shall pay annually to all counties, municipalities, and school districts in which the Trust has acquired property a sum of money equivalent to the amount paid annually for taxes on properties within these jurisdictions at the time of acquisition of the property by the Trust. Payments shall be apportioned between the counties, municipalities, and school districts in which the property is owned or an operation is carried on by the Trust on the basis of the percentage of loss of property taxes to each. Payments in lieu of taxes shall only be made from the Trust after: (i) payment of necessary operating expenses; (ii) payment of all annual debt requirements on bonds, notes, or other obligations at any time outstanding; and (iii) the discharge of all annual obligations arising under finance agreements with the United States or any agency or corporation of the United States and indentures or other instruments under which bonds have been, or may be issued.

"**§ 77-137. Annual budget and report.**

The Yadkin River Trust shall submit a budget for the upcoming fiscal year and a report regarding its operations and transactions for the preceding fiscal year to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Utility Review Committee, and the House and Senate Committees on Appropriations on or before July 1 of each year. The annual report shall include, but not be limited to, the following information: (i) the amount of power and energy produced by the Trust; (ii) financial and operating information for the Trust during the preceding fiscal year including income and expense statements, balance sheets, and changes in financial position, debt structure, and a summary of funds on a cash basis, all in accordance with generally accepted accounting principles; and (iii) the price of power and energy sold by the Trust."

SECTION 2. Notwithstanding G.S. 77-122(b), as enacted by Section 1 of this act, in order to provide for the staggering of the terms of the Board of Directors of the Yadkin River Trust, the terms of the initial appointments of the directors made by the Governor shall be made as follows: (i) two shall be for a period of two years; (ii) two shall be for a period of three years; and (iii) three shall be for a period of four years.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 967
PROPOSED COMMITTEE SUBSTITUTE S967-CSRIxf-6 [v.4]

4/7/2009 11:37:17 AM

Short Title: Creation of Yadkin River Trust. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO CREATE THE YADKIN RIVER TRUST IN ORDER TO: (1) DEVELOP THE YADKIN RIVER IN DAVIDSON, MONTGOMERY, ROWAN, AND STANLY COUNTIES AS AN INSTRUMENTALITY OF INTRASTATE, INTERSTATE, AND FOREIGN COMMERCE AND NAVIGATION; (2) ACQUIRE AND OPERATE THE YADKIN PROJECT, AN EXISTING HYDROELECTRIC FACILITY, AND TO AUTHORIZE ISSUANCE OF BONDS AND NOTES BY THE TRUST FOR THAT PURPOSE; AND (3) PRODUCE, DISTRIBUTE, AND SELL HYDROELECTRIC POWER FROM EXISTING OR NEW HYDROELECTRIC FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 77 of the General Statutes is amended by adding a new Article to read as follows:

"Article 9.
"Yadkin River Trust.

"**§ 77-120. Trust established; purposes.**

There is established the Yadkin River Trust as a body politic and corporate. The purpose of the Trust is: (i) to develop the Yadkin River in Davidson, Montgomery, Rowan, and Stanly Counties as an instrumentality of intrastate, interstate, and foreign commerce and navigation through the development, sale, and distribution of hydroelectric power; (ii) to ensure the equitable distribution of water for public purposes; and (iii) to maintain recreational facilities associated with the Yadkin River. These purposes are declared to be in all respects for the benefit of the people of the State.

"**§ 77-121. Definitions.**

The following definitions apply in this Article:

(1) Board. – The Board of Directors of the Yadkin River Trust.

(2) Bonds. – The revenue bonds or other interest bearing obligations authorized to be issued by the Board under this Article.

(3) Costs. – The capital cost of a project, including:

a. The costs of doing any or all of the following:

1. Acquiring, constructing, erecting, providing, developing, installing, furnishing, and equipping.

2. Reconstructing, remodeling, altering, renovating, replacing, refurnishing, and reequipping.

3. Enlarging, expanding, and extending.

4. Demolishing, relocating, improving, grading, draining, landscaping, paving, widening, and resurfacing.

b. The costs of all property, both real and personal and both improved and unimproved, and of plants, works, appurtenances, structures, facilities, furnishings, machinery, equipment, vehicles, easements, water rights, air rights, franchises, and licenses used or useful in connection with the Yadkin Project.

c. The costs of demolishing or moving structures from land acquired and acquiring land to which the structures are to be moved.

d. Financing charges, including estimated interest during the acquisition or construction of a project and for one year thereafter and any payments related to hedging instruments.

e. The costs of services to provide plans, specifications, studies, reports, surveys, and estimates of costs and revenues.

f. The costs of paying any interim financing, including principal, interest, and premium, related to the acquisition or construction of the Yadkin Project.

g. Administrative and legal expenses and administrative charges.

h. The costs of obtaining bond and reserve fund insurance and investment contracts, of credit-enhancement facilities, liquidity facilities, and interest-rate agreements, and of establishing and maintaining debt service and other reserves.

i. Any other services, costs, and expenses necessary or incidental to the Yadkin Project.

(4) Credit facility. – An agreement with a banking institution, an insurance institution, an investment institution, or other financial institution located inside or outside the United States of America that provides for prompt payment, whether at maturity, presentment, or tender for purchase, redemption, or acceleration, of part or all of the principal or purchase price, redemption premium, if any, and interest on a bond or note issued by the Trust and for repayment of the institution.

(5) Local Government Commission. – The Local Government Commission of the Department of State Treasurer, established by Article 2 of Chapter 159 of the General Statutes.

(6) Notes. – Revenue notes or revenue bond anticipation notes issued by the Trust under this Article.

(7) Par formula. – A provision or formula to make periodic adjustments in the interest rate of a bond or note, including:

a. A provision for an adjustment to keep the purchase price of the bond or note in the open market as close to par as possible.

b. A provision for an adjustment based on one or more percentages of a prime rate or base rate that may vary or apply for specified periods of time.

c. Any other provision that does not materially and adversely affect the financial position of the Trust and the marketing of the bonds or notes at a reasonable interest cost to the Trust.

(8) Person. – Any person, corporation, partnership, association, trust, or other legal entity.

(9) Revenues. – Rents, fees, charges, payments, proceeds, or other income or profit derived from the Yadkin Project or from any pledge of nontax

revenues, appropriation, or payment made by the State or a county in which the Yadkin Project is located.

(10) Security document. – One or more written instruments establishing the rights and responsibilities of the Trust and the holders of bonds issued to finance the acquisition, improvement, or operation of the Yadkin Project and related facilities, and to ensure compliance with the terms of any Yadkin Project license, permits and contracts, including any license issued by the Federal Energy Regulatory Commission. A security document may provide for, or be in the form of an agreement with, a trustee for the benefit of the bondholders. A security document may contain an assignment, pledge, mortgage, or other encumbrance of part or all of the Trust's interest in, or right to receive revenues from, the Yadkin Project.

(11) Trust. – The Yadkin River Trust as established by this Article.

(12) Yadkin Project. – Project No. 2197 as described in a license issued by the Federal Energy Regulatory Commission as of May 1, 1958, and as thereafter amended and otherwise subject to the regulation of the Federal Energy Regulatory Commission.

(13) Yadkin Project License. – The license issued by the Federal Energy Regulatory Commission as of May 1, 1958, which expired on April 30, 2008, the year-to-year annual licenses that have been issued since that time, and any future renewal license for Project No. 2197.

"**§ 77-122. Board of Directors.**

(a) Appointment. – The Board of Directors of the Yadkin River Trust shall consist of seven directors who shall be appointed by the Governor upon the advice of the House Public Utilities Committee and Senate Commerce Committee and subject to confirmation by the General Assembly by joint resolution. Two of the directors shall have substantial work experience within the operations of electric cooperatives or investor-owned utilities or substantial experience on an electric cooperative board or investor-owned utility board but must not serve as an employee or board member of an electric cooperative or investor-owned utility during their term as a director of the Yadkin River Trust. The names of directors to be appointed by the Governor shall be submitted by the Governor to the General Assembly for confirmation by the General Assembly on or before June 1 of the year in which the terms for which the appointments are to be made are to expire. Upon failure of the Governor to submit names as herein provided, the President Pro Tempore of the Senate and Speaker of the House of Representatives jointly shall submit the names of a like number of directors to the General Assembly on or before June 15 of the same year for confirmation by the General Assembly. Regardless of the way in which the names of directors are submitted, confirmation of directors must be accomplished prior to adjournment of the then current session of the General Assembly.

(b) Terms. – The term of office of directors of the Board is four years. A director may be reappointed to any number of successive four-year terms. A director in office shall continue to serve until the director's successor is duly confirmed and qualified, but the holdover shall not affect the expiration date of the succeeding term.

(c) Chairman; Vice-Chair. – Upon confirmation of the directors by the General Assembly as provided in subsection (a) of this section, the Governor shall designate one of the directors to serve as chairman of the Board for the succeeding four years and until the director's successor is duly confirmed and qualified. Upon death or resignation of the director appointed as chairman, the Governor shall designate the chairman from the remaining directors and appoint a successor as hereinafter provided to fill the vacancy on the Board. The Governor shall convene the first meeting of the Board, at which time the members of the Board shall elect from their membership a vice-chair of the Board.

(d) Removal. – The Governor may remove any director of the Board for misfeasance, malfeasance, or nonfeasance as provided in G.S. 143B-13.

(e) Vacancies. – In case of death, incapacity, resignation, or vacancy for any other reason in the office of any director prior to the expiration of the director's term of office, the name of the director's successor shall be submitted by the Governor within four weeks after the vacancy arises to the General Assembly for confirmation by the General Assembly. Upon failure of the Governor to submit the name of the successor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives jointly shall submit the name of a successor to the General Assembly within six weeks after the vacancy arises. Regardless of the way in which the names of directors are submitted, confirmation of directors must be accomplished prior to the adjournment of the then current session of the General Assembly. If a vacancy arises in the office of director when the General Assembly is not in session, and the appointment is deemed urgent by the Governor, the director may be appointed and serve on an interim basis pending confirmation by the General Assembly.

(f) Organization of the Board. – The Board shall adopt bylaws with respect to the calling of meetings, quorums, voting procedures, the keeping of records, and other organizational and administrative matters as the Board may determine. A quorum shall consist of a majority of the members of the Board. No vacancy in the membership of the Board shall impair the right of a quorum to exercise all rights and to perform all the duties of the Board and the Trust.

(g) Compensation of the Board. – No part of the revenues or assets of the Trust shall inure to the benefit of or be distributable to the members of the Board or officers or other private persons. The members of the Board shall receive no salary for their services but shall be entitled to receive per diem and allowances in accordance with the provisions of G.S. 138-5.

(h) Treasurer. – The Board shall select the Trust's treasurer. The Board shall require a surety bond of the appointee in the amount as the Board may fix, and the premium shall be paid by the Trust as a necessary expense of the Trust.

(i) Executive Director and Other Employees. – The Board shall appoint an executive director, whose salary shall be fixed by the Board, to serve at its pleasure. The executive director or a person designated by the executive director shall appoint, employ, dismiss, and, within the limits of available funding, fix the compensation of other employees as considered necessary.

(j) Office. – The Board shall establish an office for the transaction of the Trust's business at the place the Board finds advisable or necessary to implement the provisions of this Article.

"**§ 77-123. Authority to acquire Yadkin Project and Yadkin Project License.**

The Yadkin River Trust may acquire the Yadkin Project License and the Yadkin Project, including all associated facilities and land and water rights. If the Trust acquires the Yadkin Project License, it shall pursue transfer of the license at the Federal Energy Regulatory Commission and other transfer of title for property or permits and may enter into negotiations, execute agreements, file an application for a new license, amend the existing license, and take any other actions necessary to become the licensee for the Yadkin Project on behalf of the State. Any terms of acquisition shall be approved by the Board of Directors for the Trust prior to completion of the acquisition. If acquired, the Trust shall not agree to voluntarily surrender, terminate, transfer, or sell the license or the Yadkin Project without the consent of the General Assembly.

"**§ 77-124. Powers and duties.**

(a) The Trust has the power to: (i) develop the Yadkin River in Davidson, Montgomery, Rowan, and Stanly Counties as an instrumentality of intrastate, interstate, and foreign commerce and navigation; (ii) acquire existing hydroelectric facilities; and (iii) produce, distribute, and sell hydroelectric power from existing or new hydroelectric facilities. The Trust

has all powers that may be necessary or convenient for the exercise of these powers including, without limiting the generality of the foregoing, the following:

(1) The powers of a corporate body, including the power to sue and be sued, to make contracts, to adopt and use a common seal, and to alter the adopted seal as needed.

(2) To have perpetual succession as a corporation.

(3) To adopt, alter, or repeal its own bylaws and adopt, promulgate, and amend rules to implement the provisions of this Article. The Trust and its activities shall not be governed by the North Carolina Utilities Commission but shall be governed by the provisions of this Article and the rules adopted thereunder.

(4) To establish, finance, purchase, construct, operate, and regulate hydroelectric facilities to implement the provisions of this Article.

(5) To manufacture, produce, and generate hydroelectric power using the waters of the Yadkin River, and to sell the hydroelectric power to utilities within and without the State of North Carolina.

(6) To set rates, services, and practices, or participate in any organized power sales market with one or more entities for the sale, transmission, or distribution of the power generated by the hydroelectric facility, and to charge and collect fees for the use of power generated.

(7) To contract and enter into agreements with the State, local governments, other authorities of North Carolina, and other states for the interchange of business and to facilitate the business of the Trust.

(8) To rent, lease, purchase, acquire, own, hold, use, encumber, sell, transfer, or dispose of any property, real, personal, or mixed, or any interest therein.

(9) To acquire, purchase, establish, build, construct, maintain, equip, and operate any structure or facilities necessary, useful, or customarily used and employed in generation of hydroelectric power.

(10) To appoint officers, agents, employees, to prescribe their duties, and to fix their compensation.

(11) To create and operate agencies and departments needed to implement this Article.

(12) To pay all necessary costs and expenses in the formation, organization, administration, and operation of the Trust.

(13) To apply for, accept, and administer loans and grants of money from any federal agency, from the State or its political subdivisions, or from any other public or private sources available, to expend the money in accordance with the requirements imposed by the lender or donor, and to give any evidences of indebtedness that are required. Bonds or notes issued under this Article shall not constitute a debt secured by a pledge of the faith and credit of the State or a political subdivision of the State and shall be payable solely from the revenues, income, or assets of the Trust that are pledged for their payment. The face of each bond or note issued shall contain a statement that the Trust is obligated to pay the bond or note or the interest on the bond or note only from the revenues, income, or assets pledged in payment of the bond or note and that neither the faith and credit nor the taxing power of the State or any political subdivision of the State is pledged in payment of the principal of or the interest on the bond or note.

(14) To execute security documents and other instruments necessary in exercising its power under this Article.

(15) To fix, charge, collect, pledge, or assign revenues of the Trust.

(16) To employ consulting engineers, architects, attorneys, real estate counselors, appraisers, and other consultants and employees as may be required in the judgment of the Board and to fix and pay their compensation from funds available to the Trust, and, when approved by the Local Government Commission under G.S. 159-123(e) and (f) as if the Trust were an issuing unit, to select and retain financial consultants, underwriters, and bond attorneys in connection with the issuance of any bonds and to pay for their services out of the proceeds of any bond issue for which their services were performed.

(17) To issue bonds or notes of the Trust as provided under this Article to pay the costs associated with the business of the Trust.

(18) To issue revenue refunding bonds of the Trust as provided under this Article.

(19) To procure and maintain adequate insurance or otherwise provide for adequate protection to indemnify the Trust and its officers, directors, agents, employees, adjoining property owners, or the general public against loss or liability resulting from any act or omission by or on behalf of the Trust.

(20) To purchase or finance real or personal property in the manner provided for cities and counties under G.S. 160A-20.

(21) With the approval of any unit of local government, to use officers, employees, agents, and facilities of the unit of local government for the purposes and upon the terms as may be mutually agreeable.

(22) To issue obligations, without Local Government Commission approval, to finance the purchase or acquisition of land or options on land, or the construction of buildings or facilities. An obligation may be secured by the land purchased or acquired, or by the buildings or facilities constructed, may be unsecured, or may be made payable from revenues, the proceeds of notes, bonds, or the sale of any lands, the proceeds of any bonds of the State or moneys appropriated by the State, or any other available moneys of the Trust. An obligation to finance the purchase or acquisition of land or options on land, or the construction of buildings or facilities, may be sold only to the Escheat Fund as an investment of the Fund pursuant to G.S. 147-69.2(b)(11).

(23) To receive and use appropriations from the State, including an appropriation from the proceeds of State general obligation bonds or notes.

(24) To seek enforcement of environmental laws and contribution to environmental cleanup costs, consistent with its obligations under this Act.

(b) To execute the powers provided in subsection (a) of this section, the Board shall determine the policies of the Trust by majority vote of the members of the Board present and voting, a quorum having been established. Once a policy is determined, the Board shall communicate it to the executive director who shall have the sole and exclusive authority to execute the policy of the Trust. No member of the Board shall have the responsibility or authority to give operational directives to any employee of the Trust other than the executive director.

(c) If the Yadkin River Trust acquires the Yadkin Project and Yadkin Project License as provided in this Article, in addition to other powers and duties, the Trust shall:

(1) Conduct environmental testing and assessment of all properties located in Stanly County currently or formerly owned and operated by Alcoa Power Generating, Inc., or Alcoa, Inc., and its subsidiaries, in order to evaluate danger to public health or the environment.

(2) Pursue remediation of contamination at the Badin Works site located in Stanly County to levels over and above the minimum levels that Alcoa or its

subsidiaries would be required to perform under current law in order to restore the contaminated land and water to multiple use purposes.

(3) Establish a remediation fund to perform necessary environmental testing and remediation of hazardous waste sites in the Yadkin River Basin, excluding properties owned or under the control of Alcoa Power Generating, Inc., or Alcoa, Inc., and its subsidiaries.

(4) Install aeration technology in association with the Yadkin Project to increase dissolved oxygen levels and improve water quality in the Yadkin River.

(5) Institute operational changes to the Yadkin Project that will retain more water in Badin, Falls, High Rock, and Tuckertown lakes and provide a consistent flow of water to downstream water users.

(6) Extend the recreation seasons at Badin, Falls, High Rock, and Tuckertown lakes by three months from April 1 to October 31.

(7) Implement a comprehensive drought management plan, or "Low Inflow Protocol," that requires the Trust to reduce power generation and send less water downstream when certain drought-related triggers are reached.

(8) Develop and maintain new or expanded public recreation facilities across the Yadkin River, including a new public swim area in Rowan County, new tailwater fishing access areas, two new reservoir fishing piers, and 10 new campsites.

(9) Allow the City of Albemarle to increase water withdrawals from the Yadkin River up to 30 million gallons per day.

(10) Utilize a portion of the proceeds from power generation to fund a Yadkin River Basin Clean Water Trust Fund to be created in order to acquire land for water quality improvements, implement innovative storm water strategies, state-of-the art waste water improvements, and aquatic habitat improvements, and to provide funding mechanisms to assist local governments to make water quality improvements throughout the Yadkin River Basin.

(11) Apportion a percentage of electricity from the Yadkin Project output for use by a regional economic development entity to be designated by the Department of Commerce. To the extent that there are renewable energy credits attributable to the output, the credits shall belong to the designated entity.

(12) Use proceeds from power generation to: (i) acquire and donate land to the Town of Badin for a new public park; (ii) acquire and donate land to Rowan County for the continued protection and public access to the Eagle Point Nature Preserve; (iii) acquire other land for conservation purposes; and (iv) make a forty thousand dollars ($40,000) donation to the Yadkin-Pee Dee River Trail Fund.

(13) Review the proposed Water Infrastructure Mitigation license condition proposed by the City of Salisbury and determine what the Yadkin River Trust can do to assure an adequate, clean future water supply for the region.

"**§ 77-125. Bonds and notes.**

(a) The Trust may provide for the issuance, at one time or from time to time, of bonds and notes, including bond anticipation notes and renewal notes, of the Trust to carry out its corporate purposes including financing the costs of projects. The principal of and interest on the bonds or notes shall be payable from funds provided under this Article for their payment. A bond anticipation note may be made payable from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, from any available Trust revenues or

other funds provided for this purpose. Bonds and notes may also be paid from the proceeds of any credit facility.

All bonds, notes, or refunding bonds or notes of the Trust are subject to this section and G.S. 77-126.

The bonds and notes of each issue shall be dated and may be made redeemable prior to maturity at the option of the Trust or otherwise, at one or more prices, on one or more dates, and upon the terms and conditions set by the Trust. The bonds or notes may also be made payable from time to time on demand or tender for purchase by the owner upon terms and conditions set by the Trust.

A bond or note shall bear interest at a rate or rates, including variable rates, as determined by the Local Government Commission with the approval of the Trust. A bond or note may be secured by a reserve fund created for that purpose and funded from proceeds of the bond or note, revenues, or any other source of funds available to the Trust.

(b) In fixing the details of bonds or notes, the Trust may provide that the bonds or notes may:

(1) Be payable from time to time on demand or tender for purchase by the owner of the bond or note if a credit facility supports the bond or note, unless the Local Government Commission specifically determines that a credit facility is not required because the absence of a credit facility will not materially and adversely affect the financial position of the Trust and the marketing of the bonds or notes at a reasonable interest cost to the Trust.

(2) Be additionally supported by a credit facility.

(3) Be made subject to redemption or a mandatory tender for purchase prior to maturity.

(4) Be capital appreciation bonds.

(5) Bear interest at a rate or rates that may vary, including variations permitted pursuant to a par formula.

(6) Be made the subject of a remarketing agreement whereby an attempt is made to remarket the bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the Trust.

(c) Notes and bonds shall mature at the times determined by the Trust, not to exceed 40 years from the date of issue. The Trust shall determine the form and manner of execution of a bond or note, including any interest coupons to be attached to the bond or note. The Trust shall fix the denominations and places of payment of principal and interest of the bond or note. The principal of and interest on a bond or note may be paid at any bank or trust company, whether located inside or outside the United States of America.

(d) The validity of a bond, note, or coupon that has the signature or facsimile signature of a person who was an officer when the bond, note, or coupon was signed or the facsimile signature attached but who is not that officer when the bond, note, or coupon is delivered is not affected by the change in officers. A bond, note, or coupon may bear the signature or facsimile signature of a person who will be the proper officer to sign the bond, note, or coupon when it is executed but who is not the officer on the date of the bond, note, or coupon.

(e) The Trust may provide for any of the following:

(1) Authentication of a bond or note by a trustee or other authenticating agent.

(2) Issuance of a bond or note as a certificated obligation, an uncertificated obligation, or both.

(3) Issuance of a bond or note in coupon form, in registered form, or both.

(4) Registration of a coupon bond or note as to principal alone or as to both principal and interest.

(5) The reconversion of a bond or note registered as to both principal and interest into a coupon bond or note.

(6) The interchange of registered and coupon bonds or notes.

(7) A system for registration in accordance with Chapter 159E of the General Statutes.

(8) Replacement of a bond or note that has been mutilated, lost, or destroyed.

(f) The Trust may not issue a bond or note under this Article, other than an obligation permitted under G.S. 77-123(a)(22), unless its issuance is approved by the Local Government Commission, and it is sold by the Local Government Commission. To obtain approval of a bond or note, the Trust shall file an application for approval with the Local Government Commission. The application shall contain the information required by the Local Government Commission.

In determining whether to approve a proposed bond or note issue of the Trust, the Local Government Commission shall consider the following:

(1) For bonds or notes to finance activities of the Trust, the criteria for its approval of revenue bonds under G.S. 159-86.

(2) The effect of the proposed financing upon any proposed or scheduled sale of obligations by the State, another State agency, or a unit of local government.

The Local Government Commission shall approve the proposed bond or note issue if it determines that the proposed financing for the issue meets the criteria and will effect the purposes of this Article.

When the Local Government Commission approves a bond or note issue of the Trust, the Trust may submit a written request to the Local Government Commission to sell the approved bonds or notes. Upon receiving a written request, the Local Government Commission shall consult with the Trust on the manner in which the bonds or notes will be sold and the price or prices at which the bonds or notes will be sold. With the approval of the Trust, the Local Government Commission shall sell the bonds or notes either at public or private sale in the manner and at the prices determined to be in the best interest of the Trust and to effect the purposes of this Article.

Bonds or notes may be issued under this Article without obtaining, except as otherwise expressly provided in this Article, the consent of any department, division, commission, board, body, bureau, or other agency of the State or without any other proceedings or conditions except as specifically authorized by this Article or by the provisions of the resolution authorizing the issuance of, or any trust agreement securing, the bonds or notes.

(g) Each bond or note that is represented by an instrument shall contain a statement signed by the Secretary of the Local Government Commission, or an assistant designated by the Secretary, certifying that the issuance of the bond or note has been approved under this Article. The signature may be a manual signature or a facsimile signature, as determined by the Local Government Commission. Each bond or note that is not represented by an instrument shall be evidenced by a writing relating to the obligation that identifies the obligation or the issue of which it is a part, contains the signed statement certifying approval of the Local Government Commission that is required on an instrument, and is filed with the Local Government Commission. A certification of approval by the Local Government Commission is conclusive evidence that a bond or note complies with this Article.

(h) The proceeds of a bond or note shall be used solely for the purposes for which the bond or note was issued and shall be disbursed in accordance with the resolution authorizing the issuance of the bond or note and with any trust agreement securing the bond or note.

(i) Prior to the preparation of definitive bonds, the Trust may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when the bonds have been executed and are available for delivery.

(j) The Trust may secure a bond or note issued under this Article by a trust agreement between the Trust and a corporate trustee. The corporate trustee may be any trust company or bank having the powers of a trust company inside or outside the State. The Trust may secure a

bond or note issued under this Article by a deed of trust. The trustee of the deed of trust may be an individual who is a resident of the State. A bank or trust company that is incorporated in this State and is a depository of the proceeds of obligations, revenues, or other money of the Trust may furnish indemnifying bonds or pledge securities required by the Trust.

The pledge of any assets, income, or revenues of the Trust to the payment of the principal of or the interest on any obligations of the Trust is binding from the time the pledge is made, and any assets, income, or revenues of the Trust are immediately subject to the lien of the pledge without any physical delivery or other act. The lien created by a pledge is binding against all persons who have claims of any kind against the Trust, regardless of whether they have notice of the lien.

(k) A resolution authorizing the issuance of a bond or note and a trust agreement securing a bond or note may provide that any moneys held under the resolution or trust agreement may be temporarily invested pending disbursement. Any officer with whom, or any bank or trust company with which, the moneys are deposited is considered a trustee of the moneys and must hold and apply the moneys for their stated purpose in accordance with this Article and the resolution or trust agreement. The Trust may invest any moneys as allowed in G.S. 147-69.1 for investments of the State Treasurer or in this subsection.

In connection with or incidental to the acquisition or carrying of any investment relating to bonds, program of investment relating to bonds, or carrying of bonds, the Trust may, with the approval of the Local Government Commission, enter into a contract to place the investment or obligation of the Trust, as represented by the bonds, investment, or program of investment and the contract or contracts, in whole or in part, on an interest rate, currency, cash flow, or other basis, including the following:

(1) Interest rate swap agreements, currency swap agreements, insurance agreements, forward payment conversion agreements, and futures.

(2) Contracts providing for payments based on levels of, or changes in, interest rates, currency exchange rates, or stock or other indices.

(3) Contracts to exchange cash flows or a series of payments.

(4) Contracts to hedge payment, currency, rate, spread, or similar exposure, including interest rate floors or caps, options, puts, and calls.

The Trust may enter a contract of this type in connection with, or incidental to, entering into or maintaining any agreement that secures bonds. A contract shall contain the payment, security, term, default, remedy, and other terms and conditions the Board considers appropriate. The Trust may enter a contract of this type with any person after giving due consideration, where applicable, of the person's creditworthiness as determined by a rating by a nationally recognized rating agency or any other criteria the Board considers appropriate. In connection with, or incidental to, the issuance or carrying of bonds, or the entering of any contract described in this subsection, the Trust may enter into credit enhancement or liquidity agreements, with payment, interest rate, termination date, currency, security, default, remedy, and other terms and conditions as the Trust determines. Proceeds of bonds and any moneys set aside and pledged to secure payment of bonds or any of the contracts entered into under this subsection may be pledged to and used to service any of the contracts entered into under this section.

(l) Bonds and notes are exempt from all State, county, and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding inheritance and gift taxes, income taxes on the gain from the transfer of bonds and notes, and franchise taxes. The interest on bonds and notes is not subject to taxation as income.

(m) Bonds or notes issued under this Article shall not constitute a debt secured by a pledge of the faith and credit of the State or a political subdivision of the State and shall be payable solely from the revenues, income, or assets of the Trust that are pledged for their

payment. The face of each bond or note issued shall contain a statement that the Trust is obligated to pay the bond or note or the interest on the bond or note only from the revenues, income, or assets pledged in payment of the bond or note and that neither the faith and credit nor the taxing power of the State or any political subdivision of the State is pledged in payment of the principal of or the interest on the bond or note.

(n) The State pledges to the holder of a bond or note issued under this Article that, as long as the bond or note is outstanding and unpaid, the State will not limit or alter the power the Trust had when the bond or note was issued in a way that impairs the ability of the Trust to produce revenues sufficient with other available funds to do all of the following:

(1) Maintain and operate the project for which the bond or note was issued.

(2) Pay the principal of, interest on, and redemption premium, if any, of the bond or note.

(3) Fulfill the terms of an agreement with the holder.

The State further pledges to the holder of a bond or note issued under this Article that the State will not impair the rights and remedies of the holder concerning the bond or note.

(o) Obligations issued under this Article are made securities in which all public officers and public bodies of the State and its political subdivisions, and all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. The obligations are made securities that may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds, notes, or obligations of the State is now or may be authorized by law.

"**§ 77-126. Refunding bonds or notes.**

(a) The Trust may issue refunding bonds or notes for the purpose of refunding any outstanding bonds or notes issued under this Article, including any redemption premium on the bonds or notes and any interest accrued or to accrue to the date of redemption. Refunding bonds or notes shall be issued in accordance with the same procedures and requirements as bonds or notes. Refunding bonds or notes may be sold or exchanged for outstanding bonds and notes issued under this Article.

Refunding bonds or notes may have different interest rates and maturities than the bonds or notes being refunded. The proceeds of refunding bonds or notes may be applied to any of the following:

(1) The payment, purchase, and retirement of the bonds or notes being refunded by direct application to the payment, purchase, and retirement.

(2) The payment, purchase, and retirement of the bonds or notes being refunded by the deposit in trust of the proceeds.

(3) The payment of any expenses incurred in connection with the refunding.

(4) For any other uses not inconsistent with the refunding.

(b) The proceedings providing for the issuance of refunding bonds or notes may limit the investments in which the proceeds of a particular refunding issue may be invested. Unless prohibited by the proceedings, the proceeds of refunding bonds or notes that are deposited in trust for the payment, purchase, and retirement of outstanding bonds or notes may be invested in any of the following:

(1) Direct obligations of the United States of America.

(2) Obligations whose principal and interest are guaranteed by the United States of America.

(3) Evidences of ownership of a proportionate interest in an obligation that is described in subdivision (1) or (2) of this subsection and is held in a custodial capacity by a bank or trust company organized under the laws of the United States of America or a state.

(4) Obligations of the State or a unit of local government of the State when payment of the principal of and interest on the obligations has been provided for by depositing with a trustee or other escrow agent obligations that meet all of the following:

a. Are described in subdivisions (1), (2), or (3) of this subsection.

b. When due and payable, will provide enough money when added to any other money held in trust for this purpose to pay the principal of, premium, if any, and interest on the State or local obligations.

c. Are rated in the highest category by Standard & Poor's Corporation and Moody's Investors Service, Inc.

(5) Obligations of the State or a unit of local government when payment of the principal and interest on the obligations is insured by a bond insurance company rated in the highest category by Standard & Poor's Corporation and Moody's Investors Service, Inc.

(6) Full faith and credit obligations of the State or a unit of local government of the State that are rated in the highest category by Standard & Poor's Corporation and Moody's Investors Service, Inc.

(7) Any obligations or investments in which the State Treasurer is then authorized to invest funds of the State.

(c) This section does not limit any of the following:

(1) The period for which the proceeds of refunding bonds or notes may be held in trust to retire the bonds or notes that are being refunded and have not matured, are not redeemable or, if redeemable, have not been called for redemption.

(2) The power to issue bonds or notes for the combined purpose of refunding outstanding bonds or notes and of providing funds for any other corporate purpose.

"**§ 77-127. Public hearing requirements.**

To the extent federal tax law requires public hearings to be held with respect to the issuance of bonds to finance projects, the hearings may be called for by the executive director and held before one or more members of the Board of the Trust. The hearings may be held at any place within the State pursuant to public notice given in accordance with current federal tax regulations. To the extent federal tax law requires approval following the hearing of the issuance of bonds to finance a project, the approval shall be sought from the Governor following a report to the Governor of the results of the public hearing accompanied by information relating to the purposes for the proposed bond issue.

"**§ 77-128. Security documents.**

Bonds issued under the provisions of this Article may be secured by a security document which may be a trust instrument between the Trust and a bank or trust company or individual within the State, or a bank or a trust company outside the State, as trustee. The security document may pledge and assign the revenues provided for the security of the bonds, including proceeds from the sale of any project, or part thereof, and insurance proceeds, and may convey or mortgage the project and other property to secure a bond issue.

The revenues and other funds derived from the Yadkin Project, except for any part as may be necessary to provide reserves therefor, if any, may be set aside at regular intervals as may be provided in the security document in a sinking fund which may be pledged to, and charged with, the payment of the principal of and the interest on the bonds as the same shall become due and the redemption price or the purchase price of bonds retired by call or purchase as provided. The pledge shall be valid and binding from the time when the pledge is made. The revenues pledged and received by the Trust shall immediately be subject to the lien of the pledge without any physical delivery or further act, and the lien of any pledge shall be valid and

binding as against all parties having claims of any kind in tort, contract, or otherwise against the Trust, irrespective of whether the parties have notice. The use and disposition of money to the credit of the sinking fund shall be subject to the provisions of the security document. The security document may contain provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including, without limitation, any one or more of the following:

(1) Acceleration of all amounts payable under the security document.

(2) Appointment of a receiver to manage the Yadkin Project and any other property mortgaged or assigned as security for the bonds.

(3) Foreclosure and sale of the Yadkin Project and any other property mortgaged or assigned as security for the bonds.

(4) Rights to bring and maintain such other actions at law or in equity as may appear necessary or desirable to collect the amounts payable under, or to enforce the covenants made in, the security document.

It shall be lawful for any bank or trust company incorporated under the laws of this State which may act as depository of the proceeds of bonds, revenues, or other funds provided under this Article to furnish indemnifying bonds or to pledge securities as may be required by the Trust. All expenses incurred in carrying out the provisions of the security document may be treated as a part of the cost of the project in connection with which bonds are issued or as an expense of administration of the Yadkin Project.

The Trust may subordinate the bonds or its rights under the security document or otherwise to any prior, contemporaneous, or future securities or obligations or lien, mortgage, or other security interest.

"**§ 77-129. Remedies.**

Any owner of bonds or notes issued under the provisions of this Article or any coupons appertaining thereto, and the trustee under any trust agreement securing or resolution authorizing the issuance of such bonds or notes, except to the extent the rights given may be restricted by the trust agreement or resolution, may either at law or in equity, by suit, action, mandamus, or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under the trust agreement or resolution, or under any other contract executed by the Trust pursuant to this Article, and may enforce and compel the performance of all duties required by this Article or by the trust agreement or resolution by the Trust or by any officer of the Trust.

"**§ 77-130. Status of bonds and notes under Uniform Commercial Code.**

All bonds and notes and interest coupons, if any, issued under this Article are made investment securities within the meaning of and for all the purposes of Article 8 of the Uniform Commercial Code, as enacted in Chapter 25 of the General Statutes.

"**§ 77-131. Officers not liable.**

No director or officer of the Trust shall be subject to any personal liability or accountability by reason of the director or officer's execution of any bonds or notes or the issuance of any bonds or notes.

"**§ 77-132. Conflicts of interest.**

If any director, officer, or employee of the Trust shall be interested either directly or indirectly, or shall be an officer or employee of or have an ownership interest in any firm or corporation, not including units of local government, interested directly or indirectly, in any contract with the Trust, the interest shall be disclosed to the Board and shall be set forth in the minutes of the Board. The director, officer, or employee having an interest shall not participate on behalf of the Trust in the authorization of any contract. Other provisions of law notwithstanding, failure to take any or all actions necessary to carry out the purposes of this section may not affect the validity of any bonds or notes issued under this Article.

"**§ 77-133. Cooperation by other State agencies.**

All State officers and agencies shall render the services to the Trust within their respective functions as may be requested by the Trust.

"**§ 77-134. Net earnings; disposition and use.**

The Yadkin River Trust is a corporation completely owned by and to be operated for the benefit of the people of this State. Any and all net earnings of the Yadkin River Trust not necessary for the prudent conduct and operation of its business in the best interests of the Trust or to pay the principal of and interest on its bonds, notes, or other evidences of indebtedness or other obligations, or to fulfill the terms and provisions of any agreements made with the purchasers or holders thereof or others shall be remitted semiannually to the State Treasurer for deposit to the General Fund of the State. Nothing in this section shall prohibit the Trust from paying to the State each year up to one percent (1%) of its projected operating revenues, as such revenues would be determined on an accrual basis, from the combined electric and water systems.

"**§ 77-135. Funds of Trust.**

All funds of the Trust shall be deposited in one or more banks to be designated by the Board. The Funds shall be paid out only upon warrants signed by the treasurer or assistant treasurer of the Trust and countersigned by the chair, the acting chair, or the executive director. No warrants shall be drawn or issued disbursing any of the funds of the Trust except for a purpose authorized by this Article and only when the account or expenditure has been audited and approved by the Trust or the chairman of the board of directors.

"**§ 77-136. Exemption from taxation; payments in lieu of taxes.**

(a) Property owned by the Yadkin River Trust is exempt from taxation in accordance with Article V, Section 2 of the North Carolina Constitution, except as provided in this section.

(b) The Trust shall pay annually to all counties, municipalities, and school districts in which the Trust has acquired property a sum of money equivalent to the amount paid annually for taxes on properties within these jurisdictions at the time of acquisition of the property by the Trust. Payments shall be apportioned between the counties, municipalities, and school districts in which the property is owned or an operation is carried on by the Trust on the basis of the percentage of loss of property taxes to each. Payments in lieu of taxes shall only be made from the Trust after: (i) payment of necessary operating expenses; (ii) payment of all annual debt requirements on bonds, notes, or other obligations at any time outstanding; and (iii) the discharge of all annual obligations arising under finance agreements with the United States or any agency or corporation of the United States and indentures or other instruments under which bonds have been, or may be issued.

"**§ 77-137. Annual budget and report.**

The Yadkin River Trust shall submit a budget for the upcoming fiscal year and a report regarding its operations and transactions for the preceding fiscal year to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Utility Review Committee, and the House and Senate Committees on Appropriations on or before July 1 of each year. The annual report shall include, but not be limited to, the following information: (i) the amount of power and energy produced by the Trust; (ii) financial and operating information for the Trust during the preceding fiscal year including income and expense statements, balance sheets, and changes in financial position, debt structure, and a summary of funds on a cash basis, all in accordance with generally accepted accounting principles; (iii) the price of power and energy sold by the Trust; (iv) the amount of water distributed to each entity or water user; and (v) the status of environmental testing, assessment, and remediation of contamination at the Badin Works and other sites located in Stanly County."

SECTION 2. Notwithstanding G.S. 77-122(b), as enacted by Section 1 of this act, in order to provide for the staggering of the terms of the Board of Directors of the Yadkin River Trust, the terms of the initial appointments of the directors made by the Governor shall be made

as follows: (i) two shall be for a period of two years; (ii) two shall be for a period of three years; and (iii) three shall be for a period of four years.

SECTION 3. G.S. 66-58(b) is amended by adding a new subdivision to read:

"(b) The provisions of subsection (a) of this section shall not apply to:

...

(26) The Yadkin River Trust."

SECTION 4. This act becomes effective July 1, 2009.

SENATE BILL 967:
Creation of Yadkin River Trust

2009-2010 General Assembly

Committee:	Senate Judiciary II. If fav, re-ref to Finance	**Date:**	April 14, 2009
Introduced by:	Sen. Hartsell	**Prepared by:**	Jennifer McGinnis
Analysis of:	PCS to First Edition S967-CSRIxf-6 [v.4]		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute (PCS) for Senate Bill 967 would authorize: (i) creation of the Yadkin River Trust (Trust); (ii) acquisition by the Trust of a hydroelectric project located along the Yadkin River, which is currently owned and operated by Alcoa Power Generating Inc. (the Yadkin Project or Project); acquisition of the associated license issued by the Federal Energy Regulatory Commission (FERC); (iii) production, distribution, and sale of power from the Project by the Trust; and (iv) issuance of bonds and notes by the Trust in order to finance acquisition and operation of the Project.***

CURRENT LAW: Under the authority of the Federal Power Act, FERC has the exclusive authority to license most nonfederal hydropower projects located on navigable waterways or federal lands, or connected to the interstate electric grid. FERC may issue an original license for up to 50 years for constructing, operating, and maintaining jurisdictional projects. At the end of a stated term of an original license, a licensee must undertake the relicensing process. In response, FERC can issue a new license (relicense) to either the existing licensee or a new licensee for a period of 30 to 50 years, the federal government can take over a project, or a project may be decommissioned.[1]

With regard to federal takeover of a project, 16 USC § 807 provides that the United States, upon or after the expiration of any license may take over, maintain, and operate any project, or may take over upon mutual agreement with the licensee all property owned and held by the licensee. The section further provides that the United States shall pay the net investment of the licensee in the project taken, not to exceed its fair value, plus such reasonable damages, if any, to property of the licensee – such value to be determined by FERC. Under the section, the right of the United States or any State or municipality to take over, maintain, and operate any project licensed under the chapter at any time by condemnation proceedings upon payment of just compensation is expressly reserved.

BACKGROUND[2]: In 1958, the Federal Power Commission, predecessor to FERC, issued a 50 year license to Carolina Aluminum Company (a wholly-owned subsidiary of Alcoa, Inc.) to operate and maintain the Yadkin Project. The Yadkin Project is comprised of four hydroelectric stations, dams, and reservoirs located along a 38-mile stretch of the Yadkin River in Davidson, Davie, Montgomery, Rowan, and Stanly counties. The Project has an installed capacity of 210 megawatts. Alcoa Power Generating Inc (APGI, a wholly-owned subsidiary of Alcoa) filed a license application with FERC for

[1] *Handbook for Hydroelectric Project Licensing and 5 Mw Exemptions From Licensing*, Federal Energy Regulatory Commission, Washington, DC, April 2004. See http://www.ferc.gov/industries/hydropower/gen-info/handbooks/licensing_handbook.pdf

[2] Additional background on the Project and FERC proceedings is available at:

- http://www.ferc.gov/industries/hydropower/enviro/eis/2008/04-18-08.asp#skipnavsub, and
- at the ERC website -- http://www.ncleg.net/gascripts/DocumentSites/browseDocSite.asp?nID=12&sFolderName=\Alcoa%20-%20Stanley%20County%20-%20FERC%20Re-licensing

the Yadkin Project on April 25, 2006, and filed a Relicensing Settlement Agreement with FERC on May 7, 2007.

In 2008, the General Assembly directed the Environmental Review Commission (ERC) to study the impacts on the State of the potential issuance by FERC of a new fifty-year license to APGI for the Yadkin Project (S.L. 2008-137). The study authorized the ERC to consider and develop proposals regarding all of the following issues:

- The socioeconomic impacts of APGI's decision to discontinue its job-producing manufacturing activities at its Badin facility that relied on the use of low-cost power from the Yadkin Hydroelectric Project.
- Assurance of an adequate, clean future water supply for the region.
- The allocation of water for non-power uses from the Yadkin Hydroelectric Project.

To facilitate the study, representatives of APGI and Stanly County submitted various materials to the ERC for consideration, and several meetings were held between the parties and staff to the ERC. No formal report or proposals on the matter were issued.

BILL ANALYSIS: The PCS would authorize creation of the Yadkin River Trust. The Trust would have a Board of Directors consisting of seven members to be appointed by the Governor upon the advice of the House Utilities Committee and the Senate Commerce Committee. Created as a body politic and corporate, completely owned by and to be operated for the benefit of the people of the State, the Trust would have all powers necessary and convenient to: (i) develop the Yadkin River in Stanly, Davidson, Montgomery, and Rowan Counties as an instrumentality of intrastate, interstate, and foreign commerce and navigation; (ii) acquire the Yadkin Project and the associated license issued by FERC; (iii) produce, distribute, and sell hydroelectric power from existing or new hydroelectric facilities; and (iv) issue bonds or notes to finance acquisition and operation of the Project. In addition to other powers and duties, the PCS provides that the Trust would be required to:

- conduct environmental testing on properties owned, or formerly owned by Alcoa or its subsidiaries
- pursue remediation of contamination at the Badin Works site in Stanly County to levels over and above minimum levels that Alcoa and its subsidiaries would be required to perform under current law to restore contaminated land and water to multiple use purposes
- install aeration technology to improve water quality in the Yadkin River
- institute operational changes to retain more water in several lakes, extend recreational seasons at those lakes, and develop new or expanded public recreation facilities across the Yadkin River
- implement a "Low Inflow Protocol" (comprehensive drought management plan)
- allow the City of Albemarle to increase water withdrawals from the Yadkin River
- use a portion of the proceeds of power generation to fund a Yadkin River Basin Clean Water Trust Fund, and to acquire and donate land for various conservation purposes
- apportion a percentage of electrical output from the Project for use by a regional economic development entity

- submit a budget for the upcoming fiscal year and a report regarding its operation and transactions for the preceding fiscal year to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Utility Review Committee, and the House and Senate Committees on Appropriations on or before July 1 each year.

The PCS provides that the property of the Trust would be exempt from taxation. The Trust would be required to make payments in lieu of taxes to affected counties, municipalities, and school districts after payments for necessary operating expenses, annual debt requirements, and discharge annual obligations from finance agreements.

With regard to net earnings of the Trust that are not necessary for the prudent conduct and operation of its business or to pay required debt service, the PCS provides the earnings shall be remitted semiannually to the State Treasurer for deposit to the General Fund.

EFFECTIVE DATE: This PCS would become effective July 1, 2009.

S967-SMRI-16(CSRIxf-6) v3

Mr. Chairman, I'm Leonard Strong, a private citizen of Davidson County and a property owner on the Yadkin River. I rise to oppose SB 967, the creation of the Yadkin River Trust. I present 4 issues:

1. The adjacent counties, Davidson, Rowan, Stanly, & Montgomery all will lose any direct property tax revenues now generated by Alcoa's ownership of acreage in and around the basin. Instead they are to be paid a fixed amount by the proposed authority but only after all debt service, operating and maintenance costs, and upgrade expenses are paid. According to the bill, all property owned by the Authority is to be exempt from taxation.
2. At the same time that the State is anxiously counting on Federal stimulus monies and recently declared spending freezes in an attempt to repair the No. Carolina deficit and budget, this bill obligates the State to millions of dollars to aquire the lands and equipments now owned by Alcoa along 38 miles of river basin. Moreover, significant upgrades in power generation equipment Will be needed in view of the age and inefficiencies of the present equipment. Recent estimates place these costs in excess of $240 million dollars over the next 40 years. The debt service costs alone will average $40 million dollars. This is intended to provide a profit to the taxpayers of NC??? I don't think so. The present private enterprise is costing approx. $24 million yearly to operate. Present electrical grid sales are generating approx. a $20 mill. Profit. But with the proposed State take-over, those profits will quickly disappear in the financing costs not to mention re-staffing the project with an all local staff to both operate as well as market the power output. This project is ripe for a

financial default at the taxpayer's expense. Further, the Bill specifically exempts the State from interfering in the operation of the project if it would impair the ability of the Trust from meeting any of its financial obligations. This would prevent the Authority from responding to unusual drougnt or other unforeseen inflow problems. These conditions have been specifically addressed in the present Relicensing Settlement Agreement negotiated with the Fed. Energy Regulatory Comm. Over the last 5 years.

2 Hard Copies Requested

3. The proposed Bill places the responsibility for contamination and pollution remediation for the over 4000 sq. miles of the Yadkin River Basin squarely in the hands of the Yadkin Trust and therefore the NC taxpayer. This is obviously a great unknown. Just the cost of testing, and monitoring not to mention abatement places a further burden on our citizens.
4. Alcoa's operation of the power generation facilities on the Yadkin is a classic example of private enterprise managing their services, paying their taxes, contributing to the community, planning for the future. Have they always done it right...of course not. But in the aggregate, have they contributed to our state's economy, have they been a supplier to a vital national industry, have they worked with our Federal and State agencies to achieve safety and performance standards// You bet!! Isn't that what our state is about? To foster and encourage private enterprise for the public good?
5. Gentlemen, this bill is a serious mistake.
6. Thank You. .

financial default to the taxpayer's expense. Further, the Bill specifically exempts the State from interfering in the operation of the project if it would impair the ability of the Trust from meeting any of its financial obligations. This would prevent the Authority from responding to unusual drought or other unforeseen inflow problems. These conditions have been specifically addressed in the present Relicensing Settlement Agreement negotiated with the Fed. Energy Regulatory Comm. Over the last 5 years.

3. The proposed Bill places the responsibility for contamination and pollution remediation for the *over* 4000 sq. miles of the Yadkin River Basin squarely in the hands of the Yadkin Trust and therefore the NC taxpayer. This is obviously a great unknown. Just the cost of testing, and monitoring not to mention abatement places a further burden on our citizens

4. Alcoa's operation of the power generation facilities on the Yadkin is a classic example of private enterprise managing their services, paying their taxes, contributing to the community, planning for the future. Have they always done it right...of course not. But in the aggregate, have they contributed to our state's economy. Have they been a supplier to a vital national industry. Have they worked with our Federal and State agencies to achieve safety and performance standards? You bet! Isn't that what our state is about? To foster and encourage private enterprise for the public good?

5. Gentlemen, this bill is a serious mistake.

6. Thank You.

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Nance	N.C.W.R. Albemarle, N.C.
Jimmy Dick	NCWR Albemarle, NC
Kenneth R. Huneycutt	NC WR New London, N.C.
Rebecca Tuma	NCACC
Tracy Kimbrell	Parker Poe
Robert Brown	Fitzpatrick Communications
Gene Ellis	Alcoa Power Generating Inc
Sonya Harden	Alcoa, Inc.
Linda Andrews	NCFB
Joyce Fitzpatrick	Fitzpatrick Communications
Scott Gardner	Duke Energy

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 4/14/09

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Keith Moore	High Rock Lake Assn
MARK ODEN	HIGH ROCK LAKE BUSINESS OWNERS GROUP - SIGNATORY TO THE RSA
LEN STRONG	CITIZEN - DAVIDSON CO. PROP. OWNER - HIGH ROCK LAKE
Mel Wofford	HIGH ROCK LAKE ASSOCIATION
Nadine Bowers	36372 Millingport New London 28127 NC Water Rights Com -
Kathy Valentine	121 Woodland Dr., Concord, NC 28025 NC Water Rights Committee
Karen Snyder	41362 Mtn View Ch Rd Albemarle, NC 28001
L.G. EAVES & JANE EAVES	279 BEVERLY DR CONCORD, NC. 28025
Patricia K. Horton	1951 Hwy 73 EAST - Concord NC 28025 NC Water Rights Committee
Hugh & DORIS Biggers	429 Wynd ham Pl. NE Concord NC 28025
Deborah Pressley	29649 Sides Rd Albemarle, NC 28001

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
C B Crook	Albemarle (Retired Bus. Owner)
Taren Myrick	Stanly County Real Estate PO Box 1402, Albemarle NC 28002
Annette Newkirk	Governor's Office
Doug Paris	City of Stanly NC
Grey Carle	Retired Public School Teacher
Kevin Carle	Susquehanna C.D., Inc New London, NC
Ron Bryant	3 Edges Sanctuary Norwood, NC
Roger A. Dick	N.C. Water Rights
Gransbur Dick	Chambers Engineering – Albemarle, NC
Pat Bramblett	Albemarle (Retired Educators)
Becki Gray	John Locke Foundation

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tamara Singletary	Citizen 1413 Northridge Drive Albemarle, NC 28001
Bill Lawhon, Jr.	Citizen 49295 Swift Water Rd.
Gail Lawhon	Albemarle, NC 28001 Citizen
B-A. Smith	STANFIELD NC 28163 citizen
Grover Stewart	Citizen 46427 Sapona Lane Norwood, N.C. 28128
Delores Stewart	"
Lindsey Dunevant	County Commissioner Stanly County
Will Taylor	Citizen 415 Brookgreen Dr Chapel Hill, NC 27516
Natalie Almond	Citizen PO Box 1556 Raeford, NC 28309
Martha Hughes	Citizen 528 East Street Albemarle, NC 28001
Will Flowers	intern
Steven Levitas	Kilpatrick Stockton

Principal Clerk ____
Reading Clerk ____

Corrected Notice – SB 853 removed, SB 1082 and 1090 added

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	April 16, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 584	Amend Private Protective Services Act.	Senator Snow
SB 589	Plan to Eliminate Mandatory Min. Sentences.	Senator Shaw
SB 851	Supervision of Certain Defendants.	Senator Vaughan
SB 1082	Juvenile Records/Probation Risk Assessment.	Senator Snow
SB 1090	Amend Civil Procedure Rule 4.	Senator Snow

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	April 16, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 584	Amend Private Protective Services Act.	Senator Snow
SB 589	Plan to Eliminate Mandatory Min. Sentences.	Senator Shaw
SB 851	Supervision of Certain Defendants.	Senator Vaughan
SB 853	Motion for Appropriate Relief/New Requirement.	Senator Vaughan

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II Committee
Thursday, April 16, 2009, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 584	Amend Private Protective Services Act.	Senator Snow
SB 589	Plan to Eliminate Mandatory Min. Sentences.	Senator Shaw
SB 851	Supervision of Certain Defendants.	Senator Vaughan
SB 1082	Juvenile Records/Probation Risk Assessment.	Senator Snow
SB 1090	Amend Civil Procedure Rule 4.	Senator Snow

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE
Thursday, April 16, 2009 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 10:00 AM on April 16, 2009, in Room 1124 of the Legislative Building, with sixteen members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell introduced pages Jocelyn Wright, Elliott McDowell, Ridge Walker, Nicholas Johnson, Treuon Spence, Jacob Yaniero and thanked them for serving.

SB 851 (Supervision of Certain Defendants.) Senator Vaughan was recognized to explain the bill. He introduced Judge Jarrell for additional explanation. Senator Apodaca moved for a favorable report. All voted and the motion carried.

SB 1082 (Juvenile Records/Probation Risk Assessment.) Senator Allran moved to consider the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Snow explained the bill. He and Ms. Tracy Little of the Department of Corrections answered questions from the committee members. Senator Goodall moved for a favorable report to the Proposed Committee Substitute, unfavorable to the original bill. All voted and the motion carried.

SB 584 (Amend Private Protective Services Act.) Senator Jones moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Snow explained the bill and asked Mr. Charles McDarris, representing Private Protective Services Board to give additional information and assist in answering questions. Senator Atwater offered an amendment. Mr. Ryan Johnson of Forward Discovery, Mr. Larry Daniels, digital science specialist, and Mr. Giovanni Masucci of National Digital Forensics Inc. spoke on the amendment. After much discussion, Senator Hartsell called for a vote on the amendment. All voted and the motion carried. Senator Bingham moved for a favorable report as amended, unfavorable to the original bill and rolled into a new committee substitute. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Thursday, April 16, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **851** Supervision of Certain Defendants.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

CORRECTED REPORT

Monday, April 20, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

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

S.B. **584** Amend Private Protective Services Act.

Draft Number:	85197
Sequential Referral:	None
Recommended Referral:	Finance
Long Title Amended:	No

S.B. **1082** Juvenile Records/Probation Risk Assessment.

Draft Number:	35289
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Monday, April 20, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

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

S.B. **584** Amend Private Protective Services Act.

Draft Number:	85187
Sequential Referral:	None
Recommended Referral:	Finance
Long Title Amended:	No

S.B. **1082** Juvenile Records/Probation Risk Assessment.

Draft Number:	35289
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — April 16, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mildred Spearman	NCDOC
Ruth Reynolds	NC Private Investigator
Aurora Coleman	NC Private Investigator
Peter C. Hewitt	Private citizen
RYAN JOHNSON	PRIVATE CITIZEN
Eddie Caldwell	NC Sheriffs' Assn.
Leann Kelly	Nelson Mullins
Sarah Preston	ACLU-NC
Lito Rubert	CYPC
Elizabeth Dalton	NCCMA
Amanda Parsons	NCDOC

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — April 16, 2009
Name of Committee — Date

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NAME	FIRM OR AGENCY AND ADDRESS
Chris Hollis	K-L Gates
John Leach	NCBA
Mike Gunn	NCACDL
Faith Everett	CJPC
Bill Fletcher	NC Assoc of Private Investigators
Monty Clark	NC Assoc of PIs
Giovanni Maeucci	National Digital Forensics Inc
Anne Blythe	N&O
Allison Lane	NCAPI
Ann Lane	NC Association of PIs
Harold Church	NC Assoc. of Investigators

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gary Thomas	NC Assoc of Private Investigators
Gregory A. Hatton	NC Assoc. of Private Investigators
Leroy M. Everhart, IFC	NC Assoc. of Private Investigators
[illegible]	AHE
[illegible]	"
[illegible]	DOC
Mandy Ahlenius	Action for Children NC
John Madler	NC Sentencing Commission
David Lagos	" "
Tim Moore	NC DOC
Tracy Little	NCDOC

SENATE BILL 584*

Short Title:	Amend Private Protective Services Act.	(Public)
Sponsors:	Senator Snow.	
Referred to:	Judiciary II.	

March 12, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PRIVATE PROTECTIVE SERVICES ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 74C-3(a) reads as rewritten:

"(a) As used in this Chapter, the term "private protective services profession" means and includes the following:

(1) Armored car profession. – Any person, firm, association, or corporation which for a fee or other valuable consideration provides secured transportation and protection from one place or point to another place or point of money, currency, coins, bullion, securities, checks, documents, stocks, bonds, jewelry, paintings, and other valuables. This definition does not include a person operating an armored car business pursuant to a motor carrier certificate or permit issued by the North Carolina Utilities Commission which grants operating rights for such business; however, armed armored car service guards shall be subject to the provisions of G.S. 74C-13.

(2) Repealed by Session Laws 1983, c. 786, s. 2.

(3) Redesignated as (a)(5a) by Revisor of Statutes. See Editor's notes.

(4) Courier service profession. – Any person, firm, association, or corporation which for a fee or other valuable consideration transports or offers to transport from one place or point to another place or point documents, papers, maps, stocks, bonds, checks, or other small items of value which require expeditious services. Armed courier service guards shall be subject to the provisions of G.S. 74C-13.

(5) Detection of deception examiner. – Any person, firm, association, or corporation which uses any device or instrument, regardless of its name or design, for the purpose of the detection of deception or any person who reviews the work product of an examiner including charts, tapes or other methods of record keeping for the purpose of detecting deception or determining accuracy.

(5a) Digital forensics examiner. – Any person who, on a contractual basis, engages in the practice of conducting examinations of digitally stored data to recover, image, analyze, or examine the data by using specialized software to determine responsibility or reconstruct usage of the data. However, a digital forensics examiner shall not include any of the following:

a. An accountant.

b. A person employed to conduct network security operations regarding network security violations.

c. A member of a network security compromise response team.

d. A person who analyzes computer or digital storage media for the purpose of upgrading, maintaining, or repairing the system.

e. A person who uses utilities proprietary to the examined device to recover data without the use of additional software, such as cellular telephone call information.

f. Any other computer or digital media technician who is not conducting imaging, analysis, or other activities under this subdivision.

g. An officer, employee, or agent of the United States, this State, or any political subdivision while the officer, employee, or agent is engaged in the performance of his or her official duties within the course and scope of his or her employment.

~~(5a)~~(5b) Electronic countermeasures profession. – Any person, firm, association, or corporation which for a fee or other valuable consideration discovers, locates, or disengages by electronic, electrical, or mechanical means any listening or other monitoring equipment surreptitiously placed to gather information concerning any individual, firm, association, or corporation.

~~(6) Security guard and patrol profession. – Any person, firm, association, or corporation that provides a security guard on a contractual basis for another person, firm, association, or corporation for a fee or other valuable consideration and performs one or more of the following functions:~~

~~a. Prevention or detection of intrusion, entry, larceny, vandalism, abuse, fire, or trespass on private property.~~

~~b. Prevention, observation, or detection of any unauthorized activity on private property.~~

~~c. Protection of patrons and persons lawfully authorized to be on the premises or being escorted between premises of the person, firm, association, or corporation that entered into the contract for security services.~~

~~d. Control, regulation, or direction of the flow or movement of the public, whether by vehicle or otherwise, only to the extent and for the time directly and specifically required to assure the protection of properties.~~

(7) Guard dog service profession. – Any person, firm, association, or corporation which for a fee or other valuable consideration contracts with another person, firm, association, or corporation to place, lease, rent, or sell a trained dog for the purpose of protecting lives or property.

(8) Private detective or private investigator. – Any person who engages in the profession of or accepts employment to furnish, agrees to make, or makes inquiries or investigations concerning any of the following on a contractual basis:

a. Crimes or wrongs done or threatened against the United States or any state or territory of the United States.

b. The identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of any person.

c. The location, disposition, or recovery of lost or stolen property.

d. The cause or responsibility for fires, libels, losses, accidents, damages, or injuries to persons or to properties.
e. Securing evidence to be used before any court, board, officer, or investigative committee.
f. Protection of individuals from serious bodily harm or death.

(8a) Security guard and patrol profession. – Any person, firm, association, or corporation that provides a security guard on a contractual basis for another person, firm, association, or corporation for a fee or other valuable consideration and performs one or more of the following functions:
a. Prevention or detection of intrusion, entry, larceny, vandalism, abuse, fire, or trespass on private property.
b. Prevention, observation, or detection of any unauthorized activity on private property.
c. Protection of patrons and persons lawfully authorized to be on the premises or being escorted between premises of the person, firm, association, or corporation that entered into the contract for security services.
d. Control, regulation, or direction of the flow or movement of the public, whether by vehicle or otherwise, only to the extent and for the time directly and specifically required to assure the protection of properties.

(9) Special limited guard and patrol profession. – Any person who is licensed under Chapter 74D of the General Statutes of North Carolina and provides armed alarm responders pursuant to G.S. 74C-13. Applicants for this limited license shall not be required to meet the experience requirements for a security guard and patrol license. Any experience gained under this limited license shall not be counted as experience for a security guard and patrol license."

SECTION 2. G.S. 74C-3(b)(13) reads as rewritten:

"(b) "Private protective services" shall not include any of the following:

...

(13) A person who works regularly and exclusively as an employee of an employer in connection with the business affairs of that employer. ~~If the employee is an armed security guard and wears, carries, or possesses a firearm in the performance of the employee's duties, the provisions of G.S. 74C-13 apply.~~ However, the provisions of this Chapter shall apply if: (i) the employee is an armed security guard who wears, carries, or possesses a firearm in the performance of the employee's duties; or (ii) the person is an armed or unarmed security guard at an establishment that sells alcohol. The term 'establishment' shall include an eating establishment, a private club, or a restaurant as defined in G.S. 18B-1000.

...."

SECTION 3. G.S. 74C-7 reads as rewritten:

"**§ 74C-7. Investigative powers of the Attorney General.**

The Attorney General for the State of North Carolina shall have the power to investigate or cause to be investigated any complaints, allegations, or suspicions of wrongdoing or violations of this Chapter involving individuals licensed, or to be licensed, under this Chapter. Any investigation conducted pursuant to this section is deemed confidential and is not subject to review under G.S. 132-1. However, the report may be released to the licensee after the investigation is complete but before the report is presented to the Board."

SECTION 4. G.S. 74C-8(c) reads as rewritten:

"(c) (1) A business entity other than a sole proprietorship shall not do business under this Chapter unless the business entity has in its employ a designated resident qualifying agent who meets the requirements for a license issued under this Chapter and who is, in fact, licensed under the provisions of this Chapter, unless otherwise approved by the Board. Provided however, that this approval shall not be given unless the business entity has and continuously maintains in this State a registered agent who shall be an individual resident in this State. Service upon the registered agent appointed by the business entity of any process, notice, or demand required by or permitted to be served upon the business entity by the Private Protective Services Board shall be binding upon the business entity and the licensee. Nothing herein contained shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a business entity in any other manner now or hereafter permitted by law.

(2) For the purposes of the Chapter a qualifying agent means an individual in a management position who is licensed under this Chapter and whose name and address have been registered with the Director.

(3) In the event that the qualifying agent upon whom the business entity relies in order to do business ceases to perform his duties as qualifying agent, the business entity shall notify the Director within 10 working days. The business entity must obtain a substitute qualifying agent within 30 days after the original qualifying agent ceases to serve as qualifying agent unless for good cause: (i) the Board, in its discretion, ~~extends this period, for good cause, for a~~ extends the period of time not to exceed three ~~months.~~months; or (ii) following petition by an applicant and a hearing by the Board, the Board extends the period of time not to exceed six months.

(4) The certificate authorizing the business entity to engage in a private protective services profession shall list the name of at least one designated qualifying agent. No licensee shall serve as the qualifying agent for more than one business entity without prior approval of the Director, subject to the approval of the Board.

(5) The Department of Justice may provide a criminal record check to the Private Protective Services Board for a person who has applied for a new or renewal license, registration, certification, or permit through the Private Protective Services Board. The Board shall provide to the Department of Justice, along with the request, the fingerprints of ~~the applicant,~~a new applicant, and the Department of Justice shall provide a criminal record check based upon the applicant's fingerprints. The Board may request a criminal record check from the Department of Justice for a renewal applicant based upon the applicant's fingerprints in accordance with policy adopted by the Board. The Board shall provide any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subdivision privileged, in accordance with applicable State law and federal guidelines, and the

information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subdivision."

SECTION 5. G.S. 74C-8(f) reads as rewritten:

"(f) Upon a finding that the application is in proper form, the completion of the background investigation, and the completion of an examination required by the Board, the Director shall submit to the Board the application and his recommendations. Upon completion of the background investigation, the Director may in his discretion issue a temporary license pending approval of the application by the Board at the next regularly scheduled meeting. The Board shall determine whether to approve or deny the application for a license. Upon approval by the Board, a license will be issued to the applicant upon payment by the applicant of the initial license fee and the required contribution to the Private Protective Services ~~Recovery~~ Education Fund, and certificate of liability insurance."

SECTION 6. G.S. 74C-9(e) reads as rewritten:

"(e) The Board is authorized to charge reasonable application and license fees as follows:

(1) A nonrefundable initial application fee in an amount not to exceed one hundred fifty dollars ($150.00);

(2) A new or renewal license fee in an amount not to exceed two hundred fifty dollars ($250.00) per year of the license term;

(3) A new or renewal trainee permit fee in an amount not to exceed two hundred fifty dollars ($250.00) per year of the license term;

(4) A new or renewal fee for each license or duplicate license in addition to the basic license referred to in subsection (2) in an amount not to exceed fifty dollars ~~($50.00);~~($50.00) per year of the license term;

(5) A late renewal fee to be paid within 90 days from the date the license expires in addition to the renewal fee due in an amount not to exceed one hundred dollars ($100.00), if the ~~license~~ license, registration, permit, or certification has not been renewed on or before the expiration date of the ~~licensee;~~license, registration, permit, or certification;

(6) A new, renewal, replacement or reissuance fee for an unarmed registration identification card in an amount not to exceed thirty dollars ($30.00);

(7) An application fee for a firearm registration permit not to exceed fifty dollars ($50.00);

(8) A new, renewal, replacement, or reissuance fee for a firearm registration permit not to exceed thirty dollars ($30.00);

(9) An application fee for certification as a certified trainer not to exceed fifty dollars ($50.00);

(10) A renewal or replacement fee for certified trainer certification not to exceed twenty-five dollars ($25.00);

(11) A new nonresident temporary permit fee not to exceed one hundred dollars ($100.00);

(12) An unarmed registration transfer fee not to exceed fifteen dollars ($15.00);

(13) A branch office license fee not to exceed fifty dollars ~~($50.00); and~~($50.00) per year of the license term;

(14) A special limited guard and patrol license fee not to exceed one hundred dollars ~~($100.00).~~($100.00) per year of the license term; and

(15) A correctable error fee not to exceed one hundred dollars ($100.00) for each subsequent filing of an application following review and rejection of the initial application.

Except as provided in G.S. 74C-13(k), all fees collected pursuant to this section shall be expended, under the direction of the Board, for the purpose of defraying the expenses of administering this Chapter."

SECTION 7. G.S. 74C-11(a) reads as rewritten:

"(a) All licensees may employ unarmed security guards as probationary employees for 20 consecutive calendar days. Upon completion of the probationary period and the desire of the licensee to hire an unarmed security guard as a regular employee, the licensee shall register the employee who will be engaged in providing private protective services covered by this Chapter with the Board within 30 days after the probationary employment period ends, unless the Director, in the Director's discretion, extends the time period, for good cause. Before a probationary employee engages in private protective services, the employee shall complete any training requirements, and the licensee shall conduct a criminal record check on the employee, as the Board deems appropriate. The licensee shall submit a list of the probationary employees to the Director on a monthly basis. The list shall include the name, address, social security number, and dates of employment of the employees.

To register an employee after the probationary period ends, a licensee must give the Board the following:

(1) Set(s) of classifiable fingerprints on standard F.B.I. applicant cards; recent photograph(s) of acceptable quality for identification; and

(2) Statements of any criminal records obtained from the appropriate authority in each area where the employee has resided within the immediately preceding 48 months."

SECTION 8. G.S. 74C-12(a) reads as rewritten:

"(a) The Board may, after compliance with Chapter 150B of the General Statutes, deny, suspend or revoke a license, registration, or permit issued under this Chapter if it is determined that the applicant, licensee, registrant, or permit holder has done any of the following acts:

(1) Made any false statement or given any false information in connection with any application for a license, registration, or permit or for the renewal or reinstatement of a license, registration, or permit.

(2) Violated any provision of this Chapter.

(3) Violated any rule adopted by the Board pursuant to the authority contained in this Chapter.

(4) Repealed by Session Laws 1989, c. 759, s. 10.

(5) Impersonated or permitted or aided and abetted any other person to impersonate a law enforcement officer of the United States, this State, any other state, or any political subdivision of a state.

(6) Engaged in or permitted any employee to engage in a private protective services profession when not lawfully in possession of a valid license issued under the provisions of this Chapter.

(7) Willfully failed or refused to render to a client service as agreed between the parties and for which compensation has been paid or tendered in accordance with the agreement of the parties.

(8) Knowingly made any false report to the employer or client for whom information is being obtained.

(9) Committed an unlawful breaking or entering, assault, battery, or kidnapping.

(10) Knowingly violated or advised, encouraged, or assisted the violation of any court order or injunction in the course of business as a licensee.

(11) Repealed by Session Laws 1989, c. 759, s. 10.

(12) Undertaken to give legal advice or counsel or to in any way falsely represent that he or she is representing any attorney or he or she is appearing or will appear as an attorney in any legal proceeding.

(13) Issued, delivered, or uttered any simulation of process of any nature which might lead a person or persons to believe that such simulation – written, printed, or typed – may be a summons, warrant, writ or court process, or any pleading in any court proceeding.

(14) Failed to make the required contribution to the Private Protective Services ~~Recovery~~ Education Fund or failed to maintain the certificate of liability insurance required by this Chapter.

(15) Violated the firearm provisions set forth in this Chapter.

(16) Repealed by Session Laws 1989, c. 759, s. 10.

(17) Failed to notify the Director by a business entity other than a sole proprietorship licensed pursuant to this Chapter of the cessation of employment of the business entity's qualifying agent within the time set forth in this Chapter.

(18) Failed to obtain a substitute qualifying agent by a business entity within 30 days after its qualifying agent has ceased to serve as the business entity's qualifying agent.

(19) Been judged incompetent by a court having jurisdiction under Chapter 35A or former Chapter 35 of the General Statutes or committed to a mental health facility for treatment of mental illness, as defined in G.S. 122C-3, by a court under G.S. 122C-271.

(20) Failed or refused to offer a report to a client within 30 days of the client's written request after the client has paid for services rendered.

(21) Been previously denied a license, registration, or permit under this Chapter or previously had a license, registration, or permit revoked for cause. The denial or revocation shall include a principal in the applicant's business.

(22) Engaged in a private protective services profession under a name other than the name under which the license was obtained under the provisions of this Chapter.

(23) Divulged to any person, except as required by law, any information acquired by the license holder except at the direction of the employer or client for whom the information was obtained. A licensee may divulge to any law enforcement officer or district attorney or district attorney's representative any information the law enforcement officer may require to investigate a criminal offense with the prior approval and consent of the client.

(24) Fraudulently held himself or herself out as employed by or licensed by the State Bureau of Investigation or any other governmental authority.

(25) Intemperate habits or lacks good moral character. The acts that are prima facie evidence of intemperate habits or lack of good moral character under G.S. 74C-8(d)(2) are prima facie evidence of the same under this subdivision.

(26) Advertised or solicited business using a name other than that in which the license was issued.

(27) Worn, carried, or accepted any badge or shield purporting to indicate that the person is a law enforcement officer while licensed under the provisions of this Chapter as a private investigator.

(28) Possessed or displayed a badge or shield while providing private protective services that was not designed and approved by the Board pursuant to G.S. 74C-5(12).

(29) Failed or refused to reasonably cooperate with the Board or its agents during an investigation of any complaint, allegation, suspicion of wrongdoing, or violation of this Chapter.

(30) Failed to properly make any disclosure to the Board or provide documents or information required by this Chapter or rules adopted by the Board.

(31) Engaged in conduct constituting dereliction of duty or otherwise deceived, defrauded, or harmed the public in the course of professional activities or services.

(32) Demonstrated a lack of financial responsibility."

SECTION 9. G.S. 74C-12(c) reads as rewritten:

"(c) The following persons may not be issued a ~~license, registration, or permit~~license under this Chapter:

(1) A sworn court official.

(2) A holder of a company police commission under Chapter 74E of the General Statutes."

SECTION 10. G.S. 74C-13(a) reads as rewritten:

"(a) It shall be unlawful for any person performing private protective services duties to carry a firearm in the performance of those duties without first having met the qualifications of this section and having been issued a firearm registration permit by the Board. A licensee shall register any individual carrying a firearm within 30 days of employment. Before engaging in any private protective services activity, the individual shall receive any required training prescribed by the Board."

SECTION 11. G.S. 74C-14 is repealed.

SECTION 12. G.S. 74C-21(a) reads as rewritten:

"(a) No law enforcement officer of the United States, this State, any other state, or any political subdivision of a state shall be licensed as a private ~~detective~~ detective, digital forensics examiner, or security guard and patrol licensee under this Chapter."

SECTION 13. Chapter 74C of the General Statutes is amended by adding a new section to read:

"**§ 74C-23. Acquisition or change of ownership or control of licensed firm, association, or corporation.**

In the event a company, firm, or corporation, including a limited liability corporation, licensed under this Chapter transfers ownership, control, or a majority of assets to another person, firm, association, or corporation, the person, firm, association, or corporation acquiring control or ownership shall have the following responsibilities:

(1) Notify the Director of the acquisition or change of ownership or control by registered mail within five business days from the date of the transaction.

(2) Describe the transaction that has occurred by providing the following information:

a. The name and address of the registered agent of the party acquiring control or ownership or otherwise succeeding the licensee.

b. The name and address of the acquiring party, including each individual owner of any interest in the party or, if the party is a corporation, each officer of the corporation and member of the board of directors.

c. Any change in location of any branch office.

d. Any change in insurance or bonding limits.

(3) Return to the Director all licenses held by the licensee within five business days from the date of the transaction if the acquiring party does not continue to operate the business under its previous name and license.

(4) Provide to the Director within 60 calendar days from the date of the transaction the following:

a. A list of all registrants or licensees affected by the transaction.

b. Written confirmation of completion of any changes necessary for the acquiring party to comply with the requirements of this Chapter or any applicable rules adopted by the Board on a form approved by the Director."

SECTION 14. G.S. 74C-30 reads as rewritten:

"Article 2.

"Private Protective Services ~~Recovery~~ Education Fund.

"**§ 74C-30. Private Protective Services ~~Recovery~~ Education Fund created; payments to Fund; management; use of funds.**

(a) There is hereby created and established a special fund to be known as the "Private Protective Services ~~Recovery~~ Education Fund" (hereinafter Fund) which shall be set aside and maintained in the Office of the State Treasurer. ~~Said~~ The Fund shall be used in the manner provided in this Article for the ~~payment of claims where the aggrieved person has suffered a direct monetary loss by reason of certain acts committed by any person licensed under this Chapter.~~education of licensees and registrants as deemed appropriate by the Board.

~~(b) Nothing contained in this Article shall limit the authority of the Board to take disciplinary action against any licensee or trainee under this Chapter, nor shall the repayment in full or all obligations to the Fund by any licensee or trainee nullify or modify the effect of any other disciplinary proceeding brought under this Chapter.~~

(c) In addition to the fees provided for elsewhere in this Chapter, the Board shall charge the following fees which shall be deposited into the Fund:

(1) Repealed by Session Laws 2007-511, s. 10.

(2) The Board shall charge each new applicant for a licensee or trainee permit fifty dollars ($50.00), provided that for purposes of this Article a new applicant is hereby defined as an applicant who did not possess a license or trainee permit on July 1, 1983; and

(3) The Board is authorized to charge each licensee and trainee an additional amount, not to exceed fifty dollars ($50.00), on July 1 of any year in which the balance of the Fund is less than twenty-five thousand dollars ($25,000), provided that any amount so assessed will be only so much as is needed to raise the level of the Fund to twenty-five thousand dollars ($25,000).

(d) The State Treasurer shall invest and reinvest the moneys in the Fund in a manner provided by ~~law, provided that sufficient liquidity shall be maintained to satisfy claims authorized by the Board. The proceeds from the investments shall be deposited to the credit of the Fund.~~law. The ~~Board~~ Board, in its discretion, may use ~~any and all of the proceeds from the investments or funds that exceed twenty-five thousand dollars ($25,000)~~ the Fund for any of the following purposes:

(1) To advance education and research in the private protective services field for the benefit of those licensed or registered under the provisions of this Chapter and for the improvement of the industry.

(2) To underwrite educational seminars, training centers and other educational projects for the use and benefit generally of ~~licensees~~ licensees, registrants, and trainees.

(3) To sponsor, contract for and to underwrite any and all additional educational training and research projects of a similar nature having to do with the advancement of the private protective services field in North Carolina. The Board shall have the authority to sponsor courses given by private individuals, associations, or corporations. However, the Board shall only

grant funds as necessary to offset the actual cost of the educational course. Any individual, association, or corporation receiving grant money from the Board shall make the course available to the industry at large. Any individual, association, or corporation receiving grant money from the Board and advertising the course to the industry is required to include in its advertising the following statement: "The course is being given in whole or in part by a grant from the Private Protective Services Board."

(e) By a unanimous vote of the Board, funds in the Fund in excess of fifty thousand dollars ($50,000) may be converted to offset the operating expenses of the Board. However, in converting the funds, the Board shall make findings of fact by a written order or resolution supporting the need to make the conversion."

SECTION 15. G.S. 74C-31, 74C-32, and 74C-33 are repealed.

SECTION 16. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 584*
PROPOSED COMMITTEE SUBSTITUTE S584-CSRCf-3 [v.3]

4/15/2009 4:12:12 PM

Short Title: Amend Private Protective Services Act. (Public)

Sponsors:

Referred to:

March 12, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PRIVATE PROTECTIVE SERVICES ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 74C-3(a) reads as rewritten:

"(a) As used in this Chapter, the term "private protective services profession" means and includes the following:

(1) Armored car profession. – Any person, firm, association, or corporation which for a fee or other valuable consideration provides secured transportation and protection from one place or point to another place or point of money, currency, coins, bullion, securities, checks, documents, stocks, bonds, jewelry, paintings, and other valuables. This definition does not include a person operating an armored car business pursuant to a motor carrier certificate or permit issued by the North Carolina Utilities Commission which grants operating rights for such business; however, armed armored car service guards shall be subject to the provisions of G.S. 74C-13.

(2) Repealed by Session Laws 1983, c. 786, s. 2.

(3) Redesignated as (a)(5a) by Revisor of Statutes. See Editor's notes.

(4) Courier service profession. – Any person, firm, association, or corporation which for a fee or other valuable consideration transports or offers to transport from one place or point to another place or point documents, papers, maps, stocks, bonds, checks, or other small items of value which require expeditious services. Armed courier service guards shall be subject to the provisions of G.S. 74C-13.

(5) Detection of deception examiner. – Any person, firm, association, or corporation which uses any device or instrument, regardless of its name or design, for the purpose of the detection of deception or any person who reviews the work product of an examiner including charts, tapes or other methods of record keeping for the purpose of detecting deception or determining accuracy.

(5a) Digital forensics examiner. – Any person who, on a contractual basis, for another person, firm, association, or corporation for a fee or other valuable consideration engages in the practice of conducting examinations of digitally stored data to recover, image, analyze, or examine the data by using

specialized software to determine responsibility or reconstruct usage of the data for one or more of the following functions:

a. Crimes or wrongs done or threatened against the United States or any state or territory of the United States.

b. The identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of any person.

c. The location, disposition, or recovery of lost or stolen property.

d. Securing evidence to be used before any court, board, officer, or investigative committee.

~~(5a)~~(5b) Electronic countermeasures profession. – Any person, firm, association, or corporation which for a fee or other valuable consideration discovers, locates, or disengages by electronic, electrical, or mechanical means any listening or other monitoring equipment surreptitiously placed to gather information concerning any individual, firm, association, or corporation.

~~(6) Security guard and patrol profession. – Any person, firm, association, or corporation that provides a security guard on a contractual basis for another person, firm, association, or corporation for a fee or other valuable consideration and performs one or more of the following functions:~~

~~a. Prevention or detection of intrusion, entry, larceny, vandalism, abuse, fire, or trespass on private property.~~

~~b. Prevention, observation, or detection of any unauthorized activity on private property.~~

~~c. Protection of patrons and persons lawfully authorized to be on the premises or being escorted between premises of the person, firm, association, or corporation that entered into the contract for security services.~~

~~d. Control, regulation, or direction of the flow or movement of the public, whether by vehicle or otherwise, only to the extent and for the time directly and specifically required to assure the protection of properties.~~

(7) Guard dog service profession. – Any person, firm, association, or corporation which for a fee or other valuable consideration contracts with another person, firm, association, or corporation to place, lease, rent, or sell a trained dog for the purpose of protecting lives or property.

(8) Private detective or private investigator. – Any person who engages in the profession of or accepts employment to furnish, agrees to make, or makes inquiries or investigations concerning any of the following on a contractual basis:

a. Crimes or wrongs done or threatened against the United States or any state or territory of the United States.

b. The identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of any person.

c. The location, disposition, or recovery of lost or stolen property.

d. The cause or responsibility for fires, libels, losses, accidents, damages, or injuries to persons or to properties.

e. Securing evidence to be used before any court, board, officer, or investigative committee.

f. Protection of individuals from serious bodily harm or death.

(8a) Security guard and patrol profession. – Any person, firm, association, or corporation that provides a security guard on a contractual basis for another person, firm, association, or corporation for a fee or other valuable consideration and performs one or more of the following functions:

a. Prevention or detection of intrusion, entry, larceny, vandalism, abuse, fire, or trespass on private property.

b. Prevention, observation, or detection of any unauthorized activity on private property.

c. Protection of patrons and persons lawfully authorized to be on the premises or being escorted between premises of the person, firm, association, or corporation that entered into the contract for security services.

d. Control, regulation, or direction of the flow or movement of the public, whether by vehicle or otherwise, only to the extent and for the time directly and specifically required to assure the protection of properties.

(9) Special limited guard and patrol profession. – Any person who is licensed under Chapter 74D of the General Statutes of North Carolina and provides armed alarm responders pursuant to G.S. 74C-13. Applicants for this limited license shall not be required to meet the experience requirements for a security guard and patrol license. Any experience gained under this limited license shall not be counted as experience for a security guard and patrol license."

SECTION 2. G.S. 74C-3(b)(13) reads as rewritten:

"(b) "Private protective services" shall not include any of the following:

...

(13) A person who works regularly and exclusively as an employee of an employer in connection with the business affairs of that employer. ~~If the employee is an armed security guard and wears, carries, or possesses a firearm in the performance of the employee's duties, the provisions of G.S. 74C-13 apply.~~ However, the provisions of this Chapter shall apply if: (i) the employee is an armed security guard who wears, carries, or possesses a firearm in the performance of the employee's duties; or (ii) the person is an armed or unarmed security guard at an establishment that sells alcohol. The term 'establishment' shall include an eating establishment, a private club, or a restaurant as defined in G.S. 18B-1000.

...."

SECTION 2.1. G.S. 74C-3(b) is amended by adding a new subsection to read:

"(b) "Private protective services" shall not include any of the following:

...

(17) A person who engages in some or all of the activities that are consistent with being a digital forensics examiner, but who is:

a. An accountant.

b. A person employed to conduct network security operations regarding network security violations.

c. A member of a network security compromise response team.

d. A person who analyzes computer or digital storage media for the purpose of upgrading, maintaining, or repairing the system.

e. A person who uses utilities proprietary to the examined device to recover data without the use of additional software, such as cellular telephone call information.

f. Any other computer or digital media technician who is not conducting imaging, analysis, or other activities under this subdivision.

g. An officer, employee, or agent of the United States, this State, or any political subdivision while the officer, employee, or agent is engaged in the performance of his or her official duties within the course and scope of his or her employment.

h. An attorney at law while engaged in the practice of law and the attorney's agent, provided the agent is performing duties only in connection with his or her principal's practice of law.

. . ."

SECTION 3. G.S. 74C-7 reads as rewritten:

"**§ 74C-7. Investigative powers of the Attorney General.**

The Attorney General for the State of North Carolina shall have the power to investigate or cause to be investigated any complaints, allegations, or suspicions of wrongdoing or violations of this Chapter involving individuals licensed, or to be licensed, under this Chapter. Any investigation conducted pursuant to this section is deemed confidential and is not subject to review under G.S. 132-1 until the investigation is complete and a report is presented to the Board. However, the report may be released to the licensee after the investigation is complete but before the report is presented to the Board."

SECTION 4. G.S. 74C-8(c) reads as rewritten:

"(c) (1) A business entity other than a sole proprietorship shall not do business under this Chapter unless the business entity has in its employ a designated resident qualifying agent who meets the requirements for a license issued under this Chapter and who is, in fact, licensed under the provisions of this Chapter, unless otherwise approved by the Board. Provided however, that this approval shall not be given unless the business entity has and continuously maintains in this State a registered agent who shall be an individual resident in this State. Service upon the registered agent appointed by the business entity of any process, notice, or demand required by or permitted to be served upon the business entity by the Private Protective Services Board shall be binding upon the business entity and the licensee. Nothing herein contained shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a business entity in any other manner now or hereafter permitted by law.

(2) For the purposes of the Chapter a qualifying agent means an individual in a management position who is licensed under this Chapter and whose name and address have been registered with the Director.

(3) In the event that the qualifying agent upon whom the business entity relies in order to do business ceases to perform his duties as qualifying agent, the business entity shall notify the Director within 10 working days. The business entity must obtain a substitute qualifying agent within 30 days after the original qualifying agent ceases to serve as qualifying agent unless for good cause: (i) the Board, in its discretion, ~~extends this period, for good cause, for a~~ extends the period of time not to exceed three ~~months.~~months; or (ii) following petition by an applicant and a hearing by the Board, the Board extends the period of time not to exceed six months.

(4) The certificate authorizing the business entity to engage in a private protective services profession shall list the name of at least one designated qualifying agent. No licensee shall serve as the qualifying agent for more than one business entity without prior approval of the Director, subject to the approval of the Board.

(5) The Department of Justice may provide a criminal record check to the Private Protective Services Board for a person who has applied for a new or renewal license, registration, certification, or permit through the Private Protective Services Board. The Board shall provide to the Department of Justice, along with the request, the fingerprints of ~~the applicant,~~a new applicant, and the Department of Justice shall provide a criminal record check based upon the applicant's fingerprints. The Board may request a criminal record check from the Department of Justice for a renewal applicant based upon the applicant's fingerprints in accordance with policy adopted by the Board. The Board shall provide any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subdivision privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subdivision."

SECTION 5. G.S. 74C-8(f) reads as rewritten:

"(f) Upon a finding that the application is in proper form, the completion of the background investigation, and the completion of an examination required by the Board, the Director shall submit to the Board the application and ~~his~~ the Director's recommendations. Upon completion of the background investigation, the Director may ~~in his discretion~~ issue a temporary license pending approval of the application by the Board at the next regularly scheduled meeting. The Board shall determine whether to approve or deny the application for a license. Upon approval by the Board, a license will be issued to the applicant upon payment by the applicant of the initial license fee and the required contribution to the Private Protective Services ~~Recovery~~ Education Fund, and certificate of liability insurance."

SECTION 6. G.S. 74C-9(d) reads as rewritten:

"(d) The operator or manager of any branch office shall be properly licensed or registered. The license shall be posted at all times in a conspicuous place in the branch office. This license shall be issued for a term of ~~one year.~~two years. Every business covered under the provisions of this Chapter shall file in writing with the Board the addresses of each of its branch offices, if any, within 10 working days after the establishment, closing, or changing of the location of any branch office. The Director may, upon the successful completion of an investigation of the application, issue a temporary branch office license pending approval of the application by the Board."

SECTION 7. G.S. 74C-9(e) reads as rewritten:

"(e) The Board is authorized to charge reasonable application and license fees as follows:

(1) A nonrefundable initial application fee in an amount not to exceed one hundred fifty dollars ~~($150.00);~~($150.00).

(2) A new or renewal license fee in an amount not to exceed two hundred fifty dollars ($250.00) per year of the license ~~term;~~term.

(3) A new or renewal trainee permit fee in an amount not to exceed two hundred fifty dollars ($250.00) per year of the license ~~term;~~term.

(4) A new or renewal fee for each license or duplicate license in addition to the basic license referred to in subsection (2) in an amount not to exceed fifty dollars ~~($50.00);~~($50.00) per year of the license term.

(5) A late renewal fee to be paid within 90 days from the date the license, registration, permit, or certification expires in addition to the renewal fee due in an amount not to exceed one hundred dollars ($100.00), if the ~~license~~ license, registration, permit, or certification has not been renewed on or before the expiration date of the ~~licensee;~~license, registration, permit, or certification.

(6) A new, renewal, replacement or reissuance fee for an unarmed registration identification card in an amount not to exceed thirty dollars ~~($30.00);~~($30.00).

(7) An application fee for a firearm registration permit not to exceed fifty dollars ~~($50.00);~~($50.00).

(8) A new, renewal, replacement, or reissuance fee for a firearm registration permit not to exceed thirty dollars ~~($30.00);~~($30.00).

(9) An application fee for certification as a certified trainer not to exceed fifty dollars ~~($50.00);~~($50.00).

(10) A renewal or replacement fee for certified trainer certification not to exceed twenty-five dollars ~~($25.00);~~($25.00).

(11) A new nonresident temporary permit fee not to exceed one hundred dollars ~~($100.00);~~($100.00).

(12) An unarmed registration transfer fee not to exceed fifteen dollars ~~($15.00);~~($15.00).

(13) A branch office license fee not to exceed fifty dollars ~~($50.00); and~~($50.00) per year of the license term.

(14) A special limited guard and patrol license fee not to exceed one hundred dollars ~~($100.00).~~($100.00) per year of the license term.

(15) A correctable error fee not to exceed one hundred dollars ($100.00) for each subsequent filing of an application following review and rejection of the initial application.

Except as provided in G.S. 74C-13(k), all fees collected pursuant to this section shall be expended, under the direction of the Board, for the purpose of defraying the expenses of administering this Chapter."

SECTION 8. G.S. 74C-11(a) reads as rewritten:

"(a) All licensees may employ unarmed security guards as probationary employees for 20 consecutive calendar days. Upon completion of the probationary period and the desire of the licensee to hire an unarmed security guard as a regular employee, the licensee shall register the employee who will be engaged in providing private protective services covered by this Chapter with the Board within 30 days after the probationary employment period ends, unless the Director, in the Director's discretion, extends the time period, for good cause. Before a probationary employee engages in private protective services, the employee shall complete any training requirements, and the licensee shall conduct a criminal record check on the employee, as the Board deems appropriate. The licensee shall submit a list of the probationary employees

to the Director on a monthly basis. The list shall include the name, address, social security number, and dates of employment of the employees.

To register an employee after the probationary period ends, a licensee must give the Board the following:

(1) Set(s) of classifiable fingerprints on standard F.B.I. applicant cards; recent photograph(s) of acceptable quality for identification; and

(2) Statements of any criminal records obtained from the appropriate authority in each area where the employee has resided within the immediately preceding 48 months."

SECTION 9. G.S. 74C-12(a) reads as rewritten:

"(a) The Board may, after compliance with Chapter 150B of the General Statutes, deny, suspend or revoke a license, registration, or permit issued under this Chapter if it is determined that the applicant, licensee, registrant, or permit holder has done any of the following acts:

(1) Made any false statement or given any false information in connection with any application for a license, registration, or permit or for the renewal or reinstatement of a license, registration, or permit.

(2) Violated any provision of this Chapter.

(3) Violated any rule adopted by the Board pursuant to the authority contained in this Chapter.

(4) Repealed by Session Laws 1989, c. 759, s. 10.

(5) Impersonated or permitted or aided and abetted any other person to impersonate a law enforcement officer of the United States, this State, any other state, or any political subdivision of a state.

(6) Engaged in or permitted any employee to engage in a private protective services profession when not lawfully in possession of a valid license issued under the provisions of this Chapter.

(7) Willfully failed or refused to render to a client service as agreed between the parties and for which compensation has been paid or tendered in accordance with the agreement of the parties.

(8) Knowingly made any false report to the employer or client for whom information is being obtained.

(9) Committed an unlawful breaking or entering, assault, battery, or kidnapping.

(10) Knowingly violated or advised, encouraged, or assisted the violation of any court order or injunction in the course of business as a licensee.

(11) Repealed by Session Laws 1989, c. 759, s. 10.

(12) Undertaken to give legal advice or counsel or to in any way falsely represent that he or she is representing any attorney or he or she is appearing or will appear as an attorney in any legal proceeding.

(13) Issued, delivered, or uttered any simulation of process of any nature which might lead a person ~~or persons~~ to believe that such simulation – written, printed, or typed – may be a summons, warrant, writ or court process, or any pleading in any court proceeding.

(14) Failed to make the required contribution to the Private Protective Services ~~Recovery~~ Education Fund or failed to maintain the certificate of liability insurance required by this Chapter.

(15) Violated the firearm provisions set forth in this Chapter.

(16) Repealed by Session Laws 1989, c. 759, s. 10.

(17) Failed to notify the Director by a business entity other than a sole proprietorship licensed pursuant to this Chapter of the cessation of employment of the business entity's qualifying agent within the time set forth in this Chapter.

(18) Failed to obtain a substitute qualifying agent by a business entity within 30 days after its qualifying agent has ceased to serve as the business entity's qualifying agent.

(19) Been judged incompetent by a court having jurisdiction under Chapter 35A or former Chapter 35 of the General Statutes or committed to a mental health facility for treatment of mental illness, as defined in G.S. 122C-3, by a court under G.S. 122C-271.

(20) Failed or refused to offer a report to a client within 30 days of the client's written request after the client has paid for services rendered.

(21) Been previously denied a license, registration, or permit under this Chapter or previously had a license, registration, or permit revoked for cause. The denial or revocation shall include a principal in the applicant's business.

(22) Engaged in a private protective services profession under a name other than the name under which the license was obtained under the provisions of this Chapter.

(23) Divulged to any person, except as required by law, any information acquired by the license holder except at the direction of the employer or client for whom the information was obtained. A licensee may divulge to any law enforcement officer or district attorney or district attorney's representative any information the law enforcement officer may require to investigate a criminal offense with the prior approval and consent of the client.

(24) Fraudulently held himself or herself out as employed by or licensed by the State Bureau of Investigation or any other governmental authority.

(25) ~~Intemperate~~ Demonstrated intemperate habits or ~~lacks~~ a lack of good moral character. The acts that are prima facie evidence of intemperate habits or lack of good moral character under G.S. 74C-8(d)(2) are prima facie evidence of the same under this subdivision.

(26) Advertised or solicited business using a name other than that in which the license was issued.

(27) Worn, carried, or accepted any badge or shield purporting to indicate that the person is a law enforcement officer while licensed under the provisions of this Chapter as a private investigator.

(28) Possessed or displayed a badge or shield while providing private protective services that was not designed and approved by the Board pursuant to G.S. 74C-5(12).

(29) Failed or refused to reasonably cooperate with the Board or its agents during an investigation of any complaint, allegation, suspicion of wrongdoing, or violation of this Chapter.

(30) Failed to properly make any disclosure to the Board or provide documents or information required by this Chapter or rules adopted by the Board.

(31) Engaged in conduct constituting dereliction of duty or otherwise deceived, defrauded, or harmed the public in the course of professional activities or services.

(32) Demonstrated a lack of financial responsibility."

SECTION 10. G.S. 74C-12(c) reads as rewritten:

"(c) The following persons may not be issued a ~~license, registration, or permit~~license under this Chapter:

(1) A sworn court official.

(2) A holder of a company police commission under Chapter 74E of the General Statutes."

SECTION 11. G.S. 74C-13(a) reads as rewritten:

"(a) It shall be unlawful for any person performing private protective services duties to carry a firearm in the performance of those duties without first having met the qualifications of this section and having been issued a firearm registration permit by the Board. A licensee shall register any individual carrying a firearm within 30 days of employment. Before engaging in any private protective services activity, the individual shall receive any required training prescribed by the Board."

SECTION 12. G.S. 74C-14 is repealed.

SECTION 13. G.S. 74C-21(a) reads as rewritten:

"(a) No law enforcement officer of the United States, this State, any other state, or any political subdivision of a state shall be licensed as a private ~~detective~~ detective, digital forensics examiner, or security guard and patrol licensee under this Chapter."

SECTION 14. Chapter 74C of the General Statutes is amended by adding a new section to read:

"**§ 74C-23. Acquisition or change of ownership or control of licensed firm, association, or corporation.**

In the event a company, firm, or corporation licensed under this Chapter transfers ownership, control, or a majority of assets to another person, firm, association, or corporation, the person, firm, association, or corporation acquiring control or ownership shall have the following responsibilities:

(1) Notify the Director of the acquisition or change of ownership or control by registered mail within five business days from the date of the transaction.

(2) Describe the transaction that has occurred by providing the following information:

a. The name and address of the registered agent of the party acquiring control or ownership or otherwise succeeding the licensee.

b. The name and address of the acquiring party, including each individual owner of any interest in the party or, if the party is a corporation, the name and address of each officer of the corporation and member of the board of directors.

c. Any change in location of any branch office.

d. Any change in insurance or bonding limits.

(3) Return to the Director all licenses held by the licensee within five business days from the date of the transaction if the acquiring party does not continue to operate the business under its previous name and license.

(4) Provide to the Director within 60 calendar days from the date of the transaction the following:

a. A list of all registrants or licensees affected by the transaction.

b. Written confirmation of completion of any changes necessary for the acquiring party to comply with the requirements of this Chapter or any applicable rules adopted by the Board on a form approved by the Director."

SECTION 15. G.S. 74C-30 reads as rewritten:

"Article 2.

"Private Protective Services ~~Recovery~~ Education Fund.

"**§ 74C-30. Private Protective Services ~~Recovery~~ Education Fund created; payments to Fund; management; use of funds.**

(a) There is hereby created and established a special fund to be known as the "Private Protective Services ~~Recovery~~ Education Fund" (hereinafter Fund) which shall be set aside and maintained in the Office of the State Treasurer. ~~Said~~ The Fund shall be used in the manner provided in this Article for the ~~payment of claims where the aggrieved person has suffered a~~

~~direct monetary loss by reason of certain acts committed by any person licensed under this Chapter.~~education of licensees and registrants as deemed appropriate by the Board.

~~(b) Nothing contained in this Article shall limit the authority of the Board to take disciplinary action against any licensee or trainee under this Chapter, nor shall the repayment in full or all obligations to the Fund by any licensee or trainee nullify or modify the effect of any other disciplinary proceeding brought under this Chapter.~~

(c) In addition to the fees provided for elsewhere in this Chapter, the Board shall charge the following fees which shall be deposited into the Fund:

(1) Repealed by Session Laws 2007-511, s. 10.

(2) The Board shall charge each new applicant for a licensee or trainee permit fifty dollars ($50.00), provided that for purposes of this Article a new applicant is hereby defined as an applicant who did not possess a license or trainee permit on July 1, 1983; and

(3) The Board is authorized to charge each licensee and trainee an additional amount, not to exceed fifty dollars ($50.00), on July 1 of any year in which the balance of the Fund is less than twenty-five thousand dollars ($25,000), provided that any amount so assessed will be only so much as is needed to raise the level of the Fund to twenty-five thousand dollars ($25,000).

(d) The State Treasurer shall invest and reinvest the moneys in the Fund in a manner provided by ~~law, provided that sufficient liquidity shall be maintained to satisfy claims authorized by the Board. The proceeds from the investments shall be deposited to the credit of the Fund.~~law. The ~~Board~~ Board, in its discretion, may use ~~any and all of the proceeds from the investments or funds that exceed twenty-five thousand dollars ($25,000)~~ the Fund for any of the following purposes:

(1) To advance education and research in the private protective services field for the benefit of those licensed or registered under the provisions of this Chapter and for the improvement of the industry.

(2) To underwrite educational seminars, training centers and other educational projects for the use and benefit generally of ~~licensees~~ licensees, registrants, and trainees.

(3) To sponsor, contract for and to underwrite any and all additional educational training and research projects of a similar nature having to do with the advancement of the private protective services field in North Carolina. The Board shall have the authority to sponsor courses given by private individuals, associations, or corporations. However, the Board shall only grant funds as necessary to offset the actual cost of the educational course. Any individual, association, or corporation receiving grant money from the Board shall make the course available to the industry at large. Any individual, association, or corporation receiving grant money from the Board and advertising the course to the industry is required to include in its advertising the following statement: "The course is being given in whole or in part by a grant from the Private Protective Services Board."

(e) By a unanimous vote of the Board, funds in the Fund in excess of fifty thousand dollars ($50,000) may be converted to offset the operating expenses of the Board. However, in converting the funds, the Board shall make findings of fact by a written order or resolution supporting the need to make the conversion."

SECTION 16. G.S. 74C-31, 74C-32, and 74C-33 are repealed.

SECTION 17. This act becomes effective October 1, 2009.

SENATE BILL 584:
Amend Private Protective Services Act

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 6, 2009
Introduced by:	Sen. Snow	**Prepared by:**	Kory Goldsmith
Analysis of:	PCS to First Edition S584-CSRCf-3		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 584 makes the following changes to Chapter 74C of the General Statutes, which regulates the private protective services profession:***

- ***Adds "digital forensics examiner" to the list of regulated professions.***
- ***Amends an exemption to provide regulation of any security guard working for a business if he or she is armed or is working at an establishment that serves alcohol.***
- ***Provides confidentiality for ongoing investigations of violations by the Attorney General.***
- ***Extends from 3 to 6 months the amount of time a licensed company has to replace a qualifying agent.***
- ***Makes fingerprint background checks optional for renewal applicants.***
- ***Makes the term of a branch office license two years instead of one, clarifies fees that are per year, specifies when a late renewal fee must be paid, and authorizes a reduced fee for applications that are resubmitted for correctable errors.***
- ***Adds four new grounds for which a license may be denied, suspended, or revoked.***
- ***Allows a sworn court official or holder of a company police commission to be registered or permitted.***
- ***Requires registration of a firearm by a licensee within 30 days of employment, and requires the individual to receive training prior to engaging in private protective services.***
- ***Repeals provision allowing use of mace.***
- ***Adds provision setting out requirements for when a licensed business changes ownership.***
- ***Converts the Private Protective Services Recovery Fund to an Education Fund.***

BILL ANALYSIS:

"Digital forensics examiners" regulated. Currently, under Chapter 74C, the Private Protective Services Board regulates the private protective services profession, which includes security guards, private investigators, guard dog service, electronic countermeasures, detection of deception examiners, courier service, and the armored car profession. The bill adds "digital forensics examiners" as one of the listed professions regulated by the Board. Currently, a digital forensic examiner, depending on the type of work he or she performs, may or may not fall under the definition of a private investigator and require licensure.

Amend proprietary exemption. Under the current law, there is an exemption from licensure for a person who works regularly and exclusively for an employer in connection with the employer's business affairs. The bill excludes from this exemption an armed security guard who carries a firearm, or an armed or unarmed guard at an establishment that serves alcohol.

Confidential investigations. The Attorney General has the authority to investigate violations of Chapter 74C and report to the Board. Records of investigations are public records under G.S. 132-1 since there is no specific exemption. The bill would make these investigations confidential and not subject to the public records law until the investigation is complete and a report is presented to the Board.

Time within which a substitute qualifying agent must be named. A business entity that is licensed by the Board is required to employ a qualifying agent (a person in a management position who is licensed by the Board). If the qualifying agent ceases to serve, the business must obtain a substitute agent within 30 days, but the Board may extend that time to 3 months for good cause. The bill would extend the time within which a substitute qualifying agent must be named to 6 months. A petition by the applicant and a hearing by the Board would be required before the additional 3 month extension would be given.

Background check based on fingerprints. Currently, the Board is required to provide fingerprints to the Department of Justice for background checks of new and renewal license applicants. The bill would require the fingerprint check for new applicants only, and it would be optional for renewals.

License period/fee changes. In 2007, the term for licenses issues by the Board was changed from one year to two years. Because the provision applying to licenses for branch offices is set out in a separate subsection, it was overlooked. The bill amends that provision to make the term of the branch office license two years instead of one. The bill also amends the fee provision to clarify that license fees are per year, and sets a specific time period within which a late renewal fee must be paid (90 days from the date of expiration).

Correctable error fee. The bill creates a new reduced fee for applications that are resubmitted for correctable errors. The Board currently has the authority to charge up to $250 (the regular application fee) for any application that is resubmitted. The bill would provide a reduced fee of up to $100 for an application that is resubmitted for correctable errors.

Grounds for denying, suspending, revoking a license. The bill would add the following new grounds for denying, suspending, or revoking a license:

- Failure to cooperate with the Board during an investigation.
- Failure to make disclosures or provide documents to the Board as required.
- Dereliction of duty or otherwise deceiving, defrauding, or harming the public in the course of professional activities or services.
- Demonstrated lack of financial responsibility.

Persons prohibited from license, registration, permit. Current law prohibits sworn court officials and holders of a company police commission from being licensed, registered, or permitted under Chapter 74C. The bill would allow them to be registered or permitted, but not licensed.

Firearms training and registration requirements. In addition to being licensed, a person who performs private protective services and carries a firearm in the performance of those duties must also be issued a firearm registration permit by the Board. In order to get a firearm registration permit, an applicant must complete training, which includes classroom training and a minimum qualifying score on an approved target course. The bill would require registration of an individual carrying a firearm within 30 days of employment. It would also require that an individual receive training prior to engaging in private protective services activity.

Repeal provision allowing mace. The bill would repeal the provision that authorizes security guards to possess and use mace, as mace is no longer used.

Change of ownership of a licensed business. Chapter 74C does not currently provide requirements for licensed businesses that have a change of ownership or control. The bill adds a new statutory section to Chapter 74C setting out specific requirements for when a licensed business transfers ownership, control, or a majority of assets to another person, firm, association, or corporation. The person or entity acquiring control must:

- Notify the Director of the Board of the change within five business days of the transaction.
- Describe the transaction, including the name and address of the acquiring party and its registered agent, any change in location of a branch office, and any change in insurance or bonding limits.
- Return all licenses within five business days of the transaction if the acquiring party does not continue to operate the business under its previous name and license.
- Within 60 days of the transaction, provide a list of registrants or licensees affected and written confirmation of completion of any required changes.

Convert Private Protective Services Recovery Fund to Education Fund. Under current law, there is a Private Protective Services Recovery Fund, which is intended to be used for the payment of claims of aggrieved parties that have suffered a monetary loss because of acts committed by a licensee under Chapter 74C. New applicants and licensees are charged additional fees to be contributed to the Fund. Money in the Fund is to be invested by the State Treasurer, and the proceeds from the investments or fund in excess of $25,000 may be used for education, training, and research projects to benefit licensees and the industry. The bill would amend the law to make the Fund an education fund only, allowing all of the funds to be used for education, training, and research projects.

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

S584-SMRC-5(CSRCf-3) v2

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 584*

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

S584-ARCf-4 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
S584-CSRCf-3[v.3]

Date April 16, 2009 ,2009

Senator Atwater

moves to amend the bill on pages 1 through 3 by deleting Section 1, and substituting the following:

"**SECTION 1.** G.S. 74C-3(b) is amended by adding a new subsection to read:

"(b) "Private protective services" shall not include any of the following:

...

(17) A person engaged in (i) computer or digital forensic services or in the acquisition, review, or analysis of digital or computer-based information, whether for the purposes of obtaining or furnishing information for evidentiary or other purposes, or for providing expert testimony before a court; or (ii) network or system vulnerability testing, including network scans and risk assessment and analysis of computers connected to a network.";

and on pages 3 and 4, by deleting Section 2.1.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

SENATE BILL 589

Short Title:	Plan to Eliminate Mandatory Min. Sentences.	(Public)
Sponsors:	Senator Shaw.	
Referred to:	Judiciary II.	

March 16, 2009

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION TO REVIEW AND EVALUATE THE CURRENT STRUCTURED SENTENCING SYSTEM FOR THE PURPOSE OF ELIMINATING MANDATORY MINIMUM SENTENCES.

The General Assembly of North Carolina enacts:

SECTION 1. The North Carolina Sentencing and Policy Advisory Commission shall review and evaluate the current sentencing structure in North Carolina as set out in Chapter 15A and Chapter 90 of the General Statutes for the purpose of eliminating the requirement that a mandatory minimum sentence be imposed for any crime. The Sentencing Commission shall develop a plan to revise the sentencing structure to eliminate mandatory minimum sentences and shall provide that plan and report its recommendations on how to implement the revised structure to the 2009 General Assembly, 2010 Regular Session.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 851*

Short Title:	Supervision of Certain Defendants.	(Public)
Sponsors:	Senator Vaughan.	
Referred to:	Judiciary II.	

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW DISTRICT COURTS TO SUPERVISE DEFENDANTS CONVICTED IN SUPERIOR COURT WHO ARE ASSIGNED TO DRUG TREATMENT COURTS OR PROBLEM-SOLVING COURTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-271 is amended by adding a new subsection to read:

"(f) The superior court has exclusive jurisdiction over all hearings to revoke probation pursuant to G.S. 15A-1345(e) in which the district court is supervising a drug treatment court or a problem-solving criminal court probation judgment under G.S. 7A-272(e)."

SECTION 2. G.S. 7A-272 is amended by adding two new subsections to read:

"(e) With the consent of the chief district court judge and the senior resident superior court judge, the district court has jurisdiction to preside over the supervision of probation judgments entered in superior court in which the defendant is required to participate in a drug treatment court program pursuant to G.S. 15A-1343(b1)(2b) or a problem-solving criminal court, as defined in subsection (f) of this section, or is participating in the drug treatment court pursuant to a deferred prosecution agreement under G.S. 15A-1341(a2). The district court may modify or extend the probation judgment, but jurisdiction to revoke probation supervised under this subsection is as provided in G.S. 7A-271(f).

(f) As used in subsection (e) of this section, the term "problem-solving criminal court" refers to a court program, other than a drug treatment court established pursuant to Article 62 of Chapter 7A of the General Statutes, in which a criminal defendant, either as a condition of probation or pursuant to a deferred prosecution agreement under G.S. 15A-1341, is ordered to participate in specified activities designed to address underlying problems, such as substance abuse or mental illness, that contribute to the person's criminal activity. The ordered activities shall, at a minimum, require the person to participate in treatment and attend regular court sessions of the treatment court over an extended period of time. The senior resident superior court judge and the chief district court judge shall agree in writing that the problem-solving criminal court is being established before jurisdiction established by subsection (f) may be exercised by the district court."

SECTION 3. G.S. 15A-1344(a) reads as rewritten:

"(a) Authority to Alter or Revoke. – Except as provided in subsection (a1) or (b), probation may be reduced, terminated, continued, extended, modified, or revoked by any judge entitled to sit in the court which imposed probation and who is resident or presiding in the district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be, where the sentence of probation was imposed, where the probationer violates probation, or where the probationer resides. Upon a finding that an offender sentenced to community punishment under Article 81B has violated one or more

conditions of probation, the court's authority to modify the probation judgment includes the authority to require the offender to comply with conditions of probation that would otherwise make the sentence an intermediate punishment. The district attorney of the prosecutorial district as defined in G.S. 7A-60 in which probation was imposed must be given reasonable notice of any hearing to affect probation substantially."

SECTION 4. G.S. 15A-1344 is amended by adding a new subsection to read:

"(a1) Authority to Supervise Probation in Drug Treatment Court or Problem-Solving Criminal Court. – Jurisdiction to supervise and modify probation imposed in cases in which the offender is required to participate in a drug treatment court or a problem-solving criminal court is as provided in G.S. 7A-272(e) and (f) and G.S. 7A-271(f). Proceedings to modify or revoke probation in such cases shall be held in the county in which the drug treatment court or problem-solving court is located."

SECTION 5. This act becomes effective October 1, 2009, and applies to probation judgments entered or deferred prosecution agreements executed on or after that date.

SENATE BILL 851:
Supervision of Certain Defendants

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 16, 2009
Introduced by:	Senator Vaughan	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 851 would authorize a district court to supervise the probation of a defendant who is convicted in superior court and required to participate in a drug treatment court program or a problem-solving criminal court program or who is participating in a drug treatment court program pursuant to a deferred prosecution agreement.***

[As introduced, this bill was identical to H1076, as introduced by Reps. Wiley, Jones, Harrison, which is currently in House Ways and Means/Broadband Connectivity, if favorable, Judiciary III.]

CURRENT LAW:

Under current law, the district court has jurisdiction over the trial of misdemeanor criminal actions. With the consent of the presiding district court judge, the prosecutor, and the defendant, the district court also has jurisdiction to accept a defendant's plea of guilty or no contest to a Class H or I felony under certain circumstances. Generally, the superior court has jurisdiction over all criminal actions not assigned to the district court. The superior court also jurisdiction over appeals from the district court.

BILL ANALYSIS:

Senate Bill 851 would provide that, with the consent of the chief district court judge and the senior resident superior court judge, the district court would supervise the probation of a defendant who is convicted in superior court and required to participate in a drug treatment court program or a problem-solving criminal court program or who is participating in a drug treatment court program pursuant to a deferred prosecution agreement. The district court would be authorized to modify or extend probation, but the authority to revoke probation would remain with the superior court.

Under Senate Bill 851, a "problem-solving criminal court" is a court program, other than a drug treatment court program, in which a criminal defendant must participate in specified activities designed to address underlying problems that contribute to the person's criminal behavior as a condition of the defendant's probation or deferred prosecution.

EFFECTIVE DATE:

Senate Bill 851 would become effective October 1, 2009, and apply to probation judgments entered or deferred prosecution agreements executed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 1082

Short Title:	Juvenile Records/Probation Risk Assessment.	(Public)
Sponsors:	Senators Snow; and Atwater.	
Referred to:	Judiciary II.	

March 31, 2009

A BILL TO BE ENTITLED

AN ACT ALLOWING PROBATION OFFICERS IN THE DIVISION OF COMMUNITY CORRECTIONS ACCESS TO THE JUVENILE RECORDS OF PERSONS SUBJECT TO PROBATION UNDER THEIR SUPERVISION FOR THE PURPOSE OF DETERMINING RISK ASSESSMENT FOR PROBATION.

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.

(5) Probation officers in the Division of Community Corrections of the Department of Correction in accordance with subsection (e1) of this section and 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) A probation officer in the Division of Community Corrections assigned to supervise a person subject to probation under Article 82 of Chapter 15A of the General Statutes may examine the person's juvenile record without a court order at anytime during which the person is subject to probation for the purpose of determining risk assessment.

(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, the Division of Community Corrections of the Department of Correction, and the Office of Guardian ad Litem Services of the Administrative Office of the Courts. 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 the following 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. 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 1082
PROPOSED COMMITTEE SUBSTITUTE S1082-CSRI-8 [v.2]

4/15/2009 4:43:26 PM

Short Title: Juvenile Records/Probation Risk Assessment. (Public)

Sponsors:

Referred to:

March 31, 2009

A BILL TO BE ENTITLED

AN ACT TO: (1) ALLOW PROBATION OFFICERS IN THE DIVISION OF COMMUNITY CORRECTIONS ACCESS TO THE JUVENILE RECORDS OF PERSONS SUBJECT TO PROBATION UNDER THEIR SUPERVISION FOR THE PURPOSE OF DETERMINING RISK ASSESSMENT FOR PROBATION; AND (2) ADD THE DIVISION OF COMMUNITY CORRECTIONS TO A LIST OF AGENCIES AUTHORIZED TO SHARE CERTAIN INFORMATION CONCERNING JUVENILES WITH ONE ANOTHER.

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 in accordance with subsection (e1) of this section and 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) A probation officer in the Division of Community Corrections assigned to supervise a person subject to probation under Article 82 of Chapter 15A of the General Statutes may examine the person's juvenile record without a court order at anytime during which the person is subject to probation for the purpose of determining risk assessment.

(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, the Division of Community Corrections of the Department of Correction, and the Office of Guardian ad Litem Services of the Administrative Office of the Courts. 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. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

SENATE BILL 1082:
Juvenile Records/Probation Risk Assessment

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 16, 2009
Introduced by:	Sen. Snow	**Prepared by:**	Jennifer McGinnis Committee Counsel
Analysis of:	PCS to First Edition S1082-CSRI-8		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 1082 would: (i) add probation officers in the Division of Community Corrections (Division) of the Department of Correction to a list of parties entitled to examine a juvenile's record and obtain copies of the record without a court order; and (ii) add the Division to a list of agencies authorized to share certain information concerning juveniles in the agencies' possession with one another.***

CURRENT LAW: Under current law, the only persons entitled to examine and obtain copies of a juvenile's record absent a court order are: the juvenile, or the juvenile's parent, guardian, custodian, or an authorized representative of these persons; the prosecutor; and court counselors. Prosecutors are authorized to share information from the juvenile's record with sworn law enforcement officers, but prohibited from allowing a law enforcement officer to copy any part of the record.

The statutes also authorize certain agencies to share information with one another that is in the agencies' possession concerning a juvenile -- information relevant to any assessment of a report of child abuse, neglect, or dependency, or relevant to petitions filed alleging that a juvenile is abused, neglected, dependent, undisciplined, or delinquent. These authorized agencies currently include:

- Local mental health facilities, local health departments, local departments of social services, local law enforcement agencies, local school administrative units, and the district's district attorney's office
- The Department of Juvenile Justice and Delinquency Prevention
- The office of Guardian ad Litem Services of the Administrative Office of the Courts

BILL ANALYSIS: The PCS would permit probation officers assigned to supervise individuals subject to probation to examine the person's juvenile record without a court order at anytime during which the person is subject to probation for the purpose of determining risk assessment.

The PCS also adds the Division to the list of agencies authorized to share information concerning juveniles.

The PCS makes technical changes.

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

S1082-SMRI-18(CSRI-8) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 1090

Short Title:	Amend Civil Procedure Rule 4.	(Public)
Sponsors:	Senator Snow.	
Referred to:	Judiciary II.	

March 31, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING RULE 4 OF THE NORTH CAROLINA RULES OF CIVIL PROCEDURE RELATING TO SERVICE OF PROCESS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1A-1, Rule 4(a) reads as rewritten:

"(a) Summons – Issuance; who may serve. – Upon the filing of the complaint, summons shall be issued forthwith, and in any event within five days. The complaint and summons shall be delivered to some proper person for service. In this State, such proper person shall be the sheriff of the county where service is to be ~~made or some other person duly authorized by law to serve summons.~~ made, the sheriff's deputy, any person not less than 21 years of age who is not a party, or some other person duly authorized by law to serve a summons. An authorized person includes a private investigator duly licensed under Chapter 74C of the General Statutes. Outside this State, such proper person shall be anyone who is not a party and is not less than 21 years of age or anyone duly authorized to serve summons by the law of the place where service is to be made. Upon request of the plaintiff separate or additional summons shall be issued against any defendants. A summons is issued when, after being filled out and dated, it is signed by the officer having authority to do so. The date the summons bears shall be prima facie evidence of the date of issue."

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

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	April 21, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 852	Alcohol Screening Device Test Results.	Senator Vaughan
SB 853	Motion for Appropriate Relief/New Requirement.	Senator Vaughan
SB 925	Misrepresentation of Bottled NC Spring Water.	Senator Apodaca
SB 926	Misbranding of Bottled NC Spring Water.	Senator Apodaca
SB 929	No Set Aside of Bond Forfeit/Actual Notice.	Senator Berger
SB 1078	Delay Bond/Probationer Arrested For Felony.	Senator Snow
SB 1087	Continuous Alcohol Monitoring Systems.	Senator Snow

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II Committee
Tuesday, April 21, 2009, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 852	Alcohol Screening Device Test Results.	Senator Vaughan
SB 853	Motion for Appropriate Relief/New Requirement.	Senator Vaughan
SB 925	Misrepresentation of Bottled NC Spring Water.	Senator Apodaca
SB 926	Misbranding of Bottled NC Spring Water.	Senator Apodaca
SB 929	No Set Aside of Bond Forfeit/Actual Notice.	Senator Berger
SB 1078	Delay Bond/Probationer Arrested For Felony.	Senator Snow
SB 1087	Continuous Alcohol Monitoring Systems.	Senator Snow

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE
Tuesday, April 21, 2009 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 10:00 AM on April 21, 2009, in Room 1124 of the Legislative Building with eighteen members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell introduced pages Heather Newman, Kayla brooks, Kimberly Barnes and Brittny Barnes and thanked them for their service.

SB 853 (Motion for Appropriate Relief/New Requirement.) Senator Vaughan was recognized to explain the bill. He introduced Attorney Joe Williams and Guilford County District Attorney Doug Henderson. Both gave additional explanation of the bill. Ms. Mary Pollard, representing North Carolina Prison Legal Services gave additional comments. Senator Apodaca moved for a favorable report. All voted and the motion carried.

SB 926 (Misbranding of Bottled NC Spring Water.) Senator Apodaca was recognized to explain the bill. Senator East moved for a favorable report which was temporarily held. Questions from committee members were answered by Senator Apodaca, Mr. David McCloud of the North Carolina Department of Agriculture and Mr. Jeffrey Hudson, Staff Attorney. Speaking in opposition to the bill were Mr. Andy Ellen, General Counsel for the North Carolina Retail Merchants Association, Mr. Robert Smith of Smith's Coffee and Water Company and Mr. Robert Douglas, of Mountain Park Spring Water. After continued discussion, Senator Apodaca asked that the bill be continued at a later meeting.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, April 21, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **853** Motion for Appropriate Relief/New Requirement.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — April 21, 2009
Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Doug Henderson	Rutherford Co. D.A.
Joe Williams	" " ATTY
Mary Pollard	NC PLS
Kimberly McCarter	Conference of DAs
Peg Dorer	Conference of D.A.s
[illegible]	Conf. of DA
[illegible]	MWC
Tom Maxa	NC DCC
Tracy Little	NCDOC
Jordan Schrader	Asheville Citizen-Times
[illegible]	[illegible]

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — April 21, 2009
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cassandra White	AOC
John W. Smith	AOC
Andy Ellen	NCRMA
Elizabeth Dalton	NCRMA
Robert A. Smith	Smith's Premium Water
Robert S Douglas	Mountain Park Spring Water Inc
John Wrenn	Alliance Urology Specialists
Todd Barlow	NCAJ
Will Edwards	intern
Wayne Yancey	Counsel / Sen. Charlie Dannelly
L. Andrews	NCFB

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

April 21, 2009
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David McLeod	NCDACS
Dick Calton	
Butch Gunnells	NC Bev A
George Siddalls	PBU
Mark Warren	NCJFA

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 852

Short Title:	Alcohol Screening Device Test Results.	(Public)
Sponsors:	Senator Vaughan.	
Referred to:	Judiciary II.	

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A THRESHOLD FOR POSITIVE ALCOHOL SCREENING TEST RESULTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-16.3(d) reads as rewritten:

"(d) Use of Screening Test Results or Refusal by Officer. – The fact that a driver showed a positive or negative result on an alcohol screening test, but not the actual alcohol concentration result, or a driver's refusal to submit may be used by a law-enforcement officer, is admissible in a court, or may also be used by an administrative agency in determining if there are reasonable grounds for believing:

(1) That the driver has committed an implied-consent offense under G.S. 20-16.2; and

(2) That the driver had consumed alcohol and that the driver had in his or her body previously consumed alcohol, but not to prove a particular alcohol concentration. Negative results on the alcohol screening test may be used in factually appropriate cases by the officer, a court, or an administrative agency in determining whether a person's alleged impairment is caused by an impairing substance other than alcohol.

For the purposes of this section, a positive result is a result that registers .08 or higher on an alcohol screening device. Any result that registers lower than .08 on an alcohol screening device is a negative result."

SECTION 2. This act becomes effective December 1, 2009, and applies to alcohol screening tests taken on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 853

Short Title:	Motion for Appropriate Relief/New Requirement.	(Public)
Sponsors:	Senator Vaughan.	
Referred to:	Judiciary II.	

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT AN ATTORNEY MAKING A MOTION FOR APPROPRIATE RELIEF, WHETHER BY ORAL OR WRITTEN MOTION, MUST CERTIFY IN WRITING TO THE COURT THAT THE ATTORNEY HAS REVIEWED THE TRIAL TRANSCRIPT AND HAS NOTIFIED AND CONSULTED WITH OR HAS MADE A GOOD FAITH EFFORT TO NOTIFY AND CONSULT WITH BOTH THE ATTORNEY WHO INITIALLY PROSECUTED THE CASE AND THE DEFENSE ATTORNEY WHO INITIALLY REPRESENTED THE DEFENDANT OF THE MOTION AND TO REQUIRE THAT THE CERTIFICATION APPEAR IN WRITING ON THE MOTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1420(a) reads as rewritten:

"(a) Form, Service, Filing.

(1) A motion for appropriate relief must:

a. Be made in writing unless it is made:

1. In open court;
2. Before the judge who presided at trial;
3. Before the end of the session if made in superior court; and
4. Within 10 days after entry of judgment;

b. State the grounds for the motion;

c. Set forth the relief sought; ~~and~~

c1. Certify in writing that the attorney making the motion has reviewed the trial transcript and has notified and consulted with or has made a good faith effort to notify and consult with both the attorney who initially prosecuted the case and the defense attorney who initially represented the defendant in the case, if the defendant was represented by counsel, of the motion; and

d. Be timely filed.

(2) A written motion for appropriate relief must be served in the manner provided in G.S. 15A-951(b). When the written motion is made more than 10 days after entry of judgment, service of the motion and a notice of hearing must be made not less than five working days prior to the date of the hearing. When a motion for appropriate relief is permitted to be made orally the court must determine whether the matter may be heard immediately or at a later time. If the opposing party, or his counsel if he is represented, is not present, the court must provide for the giving of adequate notice of the

motion and the date of hearing to the opposing party, or his counsel if he is represented by counsel.

(3) A written motion for appropriate relief must be filed in the manner provided in G.S. 15A-951(c).

(4) An oral or written motion for appropriate relief may not be granted in district court without the signature of the district attorney, indicating that the State has had an opportunity to consent or object to the motion. However, the court may grant a motion for appropriate relief without the district attorney's signature 10 business days after the district attorney has been notified in open court of the motion, or served with the motion pursuant to G.S. 15A-951(c).

(5) An oral or written motion for appropriate relief may not be granted by the court without written certification by the attorney making the motion that the attorney has reviewed the trial transcript and has notified and consulted with or has made a good faith effort to notify and consult with both the attorney who initially prosecuted the case and the defense attorney who initially represented the defendant in the case, if the defendant was represented by counsel, of the motion. The written certification required by this subdivision shall appear on the motion."

SECTION 2. This act becomes effective December 1, 2009, and applies to all motions for appropriate relief made on or after that date.

SENATE BILL 853:
Motion for Appropriate Relief/New Requirement

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 21, 2009
Introduced by:	Sen. Vaughan	**Prepared by:**	Jennifer McGinnis
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 853 would require that an attorney making a motion for appropriate relief must certify in writing to the court that the attorney has: (i) reviewed the trial transcript, and (ii) consulted with or made a good faith effort to notify the attorney who originally prosecuted the case and the attorney who initially represented the defendant of the motion.

CURRENT LAW: Article 89 of Chapter 15A of the General Statutes governs motions for appropriate relief, and provides for a single, unified procedure for raising at the trial level errors which are asserted to have been made during the trial. Relief available upon grant of a motion for appropriate relief includes:

- A new trial on all or any of the charges.
- Dismissal of all or any of the charges.
- Pursuant to relief sought by the State, (1) the imposition of sentence when prayer for judgment has been continued and grounds for the imposition of sentence are asserted; or (2) the initiation of any proceeding authorized under Article 82 (Probation), Article 83 (Imprisonment), and Article 84 (Fines), with regard to the modification of sentences.
- For claims of factual innocence, referral to the Innocence Inquiry Commission.
- Any other appropriate relief.

BILL ANALYSIS: The bill would require that an attorney making a motion for appropriate relief must certify in writing to the court that the attorney has: (i) reviewed the trial transcript, and (ii) consulted with or made a good faith effort to notify the attorney who originally prosecuted the case and the attorney who initially represented the defendant of the motion (if the defendant was represented by counsel).

EFFECTIVE DATE: The bill would become effective December 1, 2009, and apply to all motions for appropriate relief made on or after that date.

S853-SMRI-20(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 925

Short Title:	Misrepresentation of Bottled NC Spring Water.	(Public)
Sponsors:	Senator Apodaca.	
Referred to:	Judiciary II.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE DECEPTIVE MISREPRESENTATION OF NORTH CAROLINA NATURAL SPRING WATER THAT IS OFFERED FOR SALE BY A BUSINESS IS AN UNFAIR TRADE PRACTICE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 75 of the General Statutes is amended by adding a new section to read:

"**§ 75-43. Deceptive misrepresentation of North Carolina natural spring water by a business.**

(a) A person who is engaged in the business of selling, or offering for sale, bottled water as a beverage shall not misrepresent the bottled water to be 'North Carolina natural spring water.' A person misrepresents the bottled water to be 'North Carolina natural spring water' if the water is not water that is both:

(1) Derived from an underground land formation from which the water freely flows without the use of a borehole and without the aid of mechanical means.

(2) Collected at the natural orifice in the earth's surface (i) that is connected to the underground land formation and through which this water freely flows and (ii) that is on land located in North Carolina.

(b) A violation of this section is an unfair trade practice under G.S. 75-1.1."

SECTION 2. This act becomes effective October 1, 2009, and applies to beverages that are sold or offered for sale on or after that date.

SENATE BILL 926

Short Title:	Misbranding of Bottled NC Spring Water.	(Public)
Sponsors:	Senator Apodaca.	
Referred to:	Judiciary II.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT WATER THAT IS REPRESENTED AS NORTH CAROLINA NATURAL SPRING WATER AND OFFERED FOR SALE AS A BEVERAGE IS MISBRANDED AND, AS SUCH, THE PERSONS WHO BOTTLE, SELL, OR DELIVER SUCH ITEM ARE SUBJECT TO CIVIL AND CRIMINAL PENALTIES AND INJUNCTIONS, UNLESS IT IS FROM A NORTH CAROLINA NATURAL SPRING, WHICH IS WATER THAT IS DERIVED FROM AN UNDERGROUND LAND FORMATION FROM WHICH THE WATER FREELY FLOWS WITHOUT THE USE OF A BOREHOLE AND WITHOUT THE AID OF MECHANICAL MEANS AND THAT IS COLLECTED AT THE SPRING'S NATURAL ORIFICE IN THE EARTH'S SURFACE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 106-130 reads as rewritten:

"**§ 106-130. Foods deemed misbranded.**

A food shall be deemed to be misbranded:

(1) a. If its labeling is false or misleading in any particular, or

b. If its labeling or packaging fails to conform with the requirements of G.S. 106-139 and 106-139.1 of this Article.

...

(16) If it purports to be or is represented as 'North Carolina natural spring water' and is offered for sale as a beverage, unless it is from a North Carolina natural spring. As used in this subdivision, 'North Carolina natural spring water' means water that is derived from an underground land formation from which the water freely flows without the use of a borehole and without the aid of mechanical means and that is collected at the natural orifice in the earth's surface (i) that is connected to the underground land formation and through which this water freely flows and (ii) that is on land located in North Carolina."

SECTION 2. G.S. 106-122(1) reads as rewritten:

"(1) The manufacture, sale, or delivery, holding or offering for sale of any food, drug, device, or cosmetic that is adulterated or ~~misbranded.~~misbranded and the bottling, sale, or delivery of any water that is adulterated or misbranded."

SECTION 3. G.S. 106-121(8) reads as rewritten:

"(8) The term "food" ~~means~~means any of the following:

a. Articles used for food or drink for man or other animals, including water that is bottled and offered for sale as a beverage.

b. Chewing ~~gum, and~~gum.

c. Articles used for components of any such article."

SECTION 4. This act becomes effective October 1, 2009, and applies to food items sold or offered for sale on or after that date.

SENATE BILL 926:
Misbranding of Bottled NC Spring Water

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 21, 2009
Introduced by:	Senator Apodaca	**Prepared by:**	Jeff Hudson
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 926 would add products represented as North Carolina natural spring water that are not from a natural, North Carolina spring to the list of statutorily misbranded foods.

BILL ANALYSIS:

Section 1. The bill would provide that a food is deemed to be misbranded if it purports to be North Carolina natural spring water and is not from a North Carolina natural spring where the water is derived from an underground land formation from which the water freely flows without the use of a borehole and without the aid of mechanical means and that is collected at the natural orifice in the earth's surface that is connected to the underground land formation and through which the water freely flows.

Section 2. The bill would add to the list of prohibited acts under the Food, Drug and Cosmetic Act the bottling, sale, or delivery of any water that is adulterated or misbranded.

Section 3. The bill would amend the definitions under the Act to include under the term 'food' water that is bottled and offered for sale as a beverage.

CURRENT LAW:

The Commissioner of Agriculture may seek a temporary or permanent injunction restraining any person from violating the provisions of Article 12 of Chapter 106, Food, Drugs and Cosmetics. The Commissioner may also assess civil penalties of not more than $2,000 against any person violating the provisions of that Article. Prior to assessing civil penalties, the Commissioner must give the person written notice and a reasonable time to correct the violation. Violations of the Article are Class 2 misdemeanors.

Violations of the Article include misbranding of foods. G.S. 106-130 sets forth various criteria by which a food is deemed misbranded, such as offering for sale a food under the name of another food or the food has labeling that is false or misleading in any particular. "Food" is defined as any of the following:

- Articles used for food or drink for man or other animals.
- Chewing gum.
- Articles used for components of any of the above.

Under federal law, the Food and Drug Administration (FDA), which is responsible for assuring that foods sold in the United States are safe, wholesome, and properly labeled, defines "spring water" as water derived from an underground formation from which water flows naturally to the surface of the earth. Spring water may be collected only at the spring or through a bore hole tapping the underground formation feeding the spring. Federal law also provides that no state may directly or indirectly establish any definition for food, including bottled water, for which there is a FDA definition unless the state definition is identical.

Federal law does provide an exemption process for a state that wants to use a definition different from the federal definition. The Secretary of Health and Human Services may exempt a state requirement from preemption if the requirement:

- Would not cause any food to be in violation of any applicable requirement under federal law.
- Would not unduly burden interstate commerce.
- Is designed to address a particular need for information that is not met by federal requirements.

EFFECTIVE DATE: This act would become effective October 1, 2009, and apply to food or items sold or offered for sale on or after that date.

S926-SMSB-11(e1) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 1078

Short Title:	Delay Bond/Probationer Arrested for Felony.	(Public)
Sponsors:	Senators Snow and Kinnaird.	
Referred to:	Judiciary II.	

March 31, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PROBATIONER WHO IS ARRESTED AND CHARGED WITH THE COMMISSION OF A FELONY SHALL BE TEMPORARILY DETAINED WITHOUT BOND UNTIL THE COURT HAS SUFFICIENT INFORMATION TO DETERMINE WHETHER THE PROBATIONER'S RELEASE POSES A DANGER TO THE PUBLIC.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1345(b) reads as rewritten:

"(b) Bail Following Arrest for Probation Violation. – If at any time during the period of probation the probationer is arrested for a violation of any of the conditions of probation, he must be taken without unnecessary delay before a judicial official to have conditions of release pending a revocation hearing set in the same manner as provided in G.S. 15A-534. If the probationer has been convicted of an offense at any time that requires registration under Article 27A of Chapter 14 of the General Statutes or an offense that would have required registration but for the effective date of the law establishing the Sex Offender and Public Protection Registration Program, the court must make a finding that the probationer is not a danger to the public prior to release with or without bail. If a probationer is arrested and charged with the commission of a felony, the probationer shall not be released with or without bail until the court makes a finding that the probationer is not a danger to the public. If a probationer is arrested and charged with the commission of a felony, and the court finds that it has insufficient information to determine whether the probationer poses a danger to the public, then the probationer shall be detained without bond, not to exceed seven working days from the date of the arrest, until the court is provided sufficient information to determine whether the probationer poses a danger to the public."

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

SENATE BILL 1087

Short Title:	Continuous Alcohol Monitoring Systems.	(Public)
Sponsors:	Senators Snow; Allran, Atwater, Berger of Franklin, Berger of Rockingham, Kinnaird, McKissick, Nesbitt, Queen, and Weinstein.	
Referred to:	Judiciary II.	

March 31, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE USE OF CONTINUOUS ALCOHOL MONITORING SYSTEMS AS A CONDITION OF PROBATION, TO MEET REQUIREMENTS FOR THE RESTORATION OF A REVOKED DRIVERS LICENSE, TO MITIGATE PUNISHMENTS FOR IMPAIRED DRIVING OFFENSES, AND TO ENSURE COMPLIANCE WITH CHILD CUSTODY AND VISITATION ORDERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-534.1(a)(2) reads as rewritten:

"(2) A judge may impose the following conditions on pretrial release:

a. That the defendant stay away from the home, school, business or place of employment of the alleged ~~victim;~~victim.

b. That the defendant refrain from assaulting, beating, molesting, or wounding the alleged ~~victim;~~victim.

c. That the defendant refrain from removing, damaging or injuring specifically identified ~~property;~~property.

d. That the defendant may visit his or her child or children at times and places provided by the terms of any existing order entered by a judge.

e. That the defendant abstain from alcohol consumption as verified by the use of an approved continuous alcohol monitoring system.

The conditions set forth above may be imposed in addition to requiring that the defendant execute a secured appearance bond."

SECTION 2. G.S. 15A-1340.11(6) reads as rewritten:

"(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.

e. Assignment to a day-reporting center.

f. Assignment to a drug treatment court program.

g. Abstinence from alcohol consumption as verified by continuous alcohol monitoring system approved by the Department of Corrections."

SECTION 3. G.S. 15A-1543(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.

~~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)."

SECTION 4. G.S. 15A-1343(b1) is amended by adding a new subdivision to read:

"(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:

...

(2c) Submit to continuous alcohol monitoring when alcohol dependency or chronic abuse has been identified by a substance abuse assessment, or have two or more convictions for any alcohol related offense, including impaired driving offenses.

...."

SECTION 5. G.S. 15A-1343.2(f) is amended by adding a new subdivision to read:

"(f) Delegation to Probation Officer in Intermediate Punishments. – Unless the presiding judge specifically finds in the judgment of the court that delegation is not appropriate, the Division of Community Corrections in the Department of Correction may require an offender sentenced to intermediate punishment to:

(1) Perform up to 50 hours of community service, and pay the fee prescribed by law for this ~~supervision;~~supervision.

(2) Submit to a curfew which requires the offender to remain in a specified place for a specified period each day and wear a device that permits the offender's compliance with the condition to be monitored ~~electronically;~~electronically.

(3) Submit to substance abuse assessment, monitoring or ~~treatment; or~~treatment, including continuous alcohol monitoring when abstinence from alcohol consumption has been specified as a term of probation.

(4) Participate in an educational or vocational skills development program.

(5) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is described by G.S. 14-208.40(a)(2).

If the Division imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

If the probation officer exercises authority delegated to him or her by the court pursuant to this subsection, the offender may file a motion with the court to review the action taken by the probation officer. The offender shall be given notice of the right to seek such a court review. The Division may exercise any authority delegated to it under this subsection only if it first determines that the offender has failed to comply with one or more of the conditions of probation imposed by the court."

SECTION 6. G.S. 20-19(e1) reads as rewritten:

"(e1) Notwithstanding subsection (e) of this section, the Division may conditionally restore the license of a person to whom subsection (e) applies after it has been revoked for at least three years under subsection (e) if the person provides the Division with satisfactory proof of all of the following:

(1) In the three 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 criminal offense involving the consumption of alcohol or drugs.

(2) The person is not currently an excessive user of alcohol, drugs, or prescription drugs, or unlawfully using any controlled substance. The person

may voluntarily submit themselves to continuous alcohol monitoring for the purpose of proving abstinence from alcohol consumption during the revocation period. Monitoring periods of 120 days or longer shall be accepted by the Division as evidence of abstinence. The person shall use a continuous alcohol monitoring system approved by the Department of Corrections."

SECTION 7. G.S. 20-19(e2) reads as rewritten:

"(e2) Notwithstanding subsection (e) of this section, the Division may conditionally restore the license of a person to whom subsection (e) applies after it has been revoked for at least 24 months under G.S. 20-17(a)(2) if the person provides the Division with satisfactory proof of all of the following:

(1) The person has not consumed any alcohol for the 12 months preceding the restoration while being monitored by a continuous alcohol monitoring device of a type approved by the Department of Correction.

(2) The person has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs.

(3) The person is not currently an excessive user of alcohol, drugs or prescription drugs. The person may voluntarily submit themselves to continuous alcohol monitoring for the purpose of proving abstinence from alcohol consumption during the revocation period. Monitoring periods of 120 days or longer shall be accepted by the Division as evidence of abstinence. The person must use a continuous alcohol monitoring system approved by the Department of Corrections.

(4) The person is not unlawfully using any controlled substance."

SECTION 8. G.S. 20-28(a) reads as rewritten:

"(a) Driving While License Revoked. – Except as provided in subsection (a1) of this section, any person whose drivers license has been revoked who drives any motor vehicle upon the highways of the State while the license is revoked is guilty of a Class 1 misdemeanor. Upon conviction, the person's license shall be revoked for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense.

In cases involving revocation as a result of convictions under G.S. 20-138.1, the judge may order the offender to abstain from alcohol consumption and verify compliance by continuous alcohol monitoring for a minimum period of 90 days instead of incarceration.

The restoree of a revoked drivers license who operates a motor vehicle upon the highways of the State without maintaining financial responsibility as provided by law shall be punished as for driving without a license."

SECTION 9. G.S. 20-179 reads as rewritten:

"**§ 20-179. Sentencing hearing after conviction for impaired driving; determination of grossly aggravating and aggravating and mitigating factors; punishments.**

(a) Sentencing Hearing Required. – After a conviction under G.S. 20-138.1, G.S. 20-138.2, a second or subsequent conviction under G.S. 20-138.2A, or a second or subsequent conviction under G.S. 20-138.2B, or when any of those offenses are remanded back to district court after an appeal to superior court, the judge shall hold a sentencing hearing to determine whether there are aggravating or mitigating factors that affect the sentence to be imposed.

(1) The court shall consider evidence of aggravating or mitigating factors present in the offense that make an aggravated or mitigated sentence

appropriate. The State bears the burden of proving beyond a reasonable doubt that an aggravating factor exists, and the offender bears the burden of proving by a preponderance of the evidence that a mitigating factor exists.

(2) Before the hearing the prosecutor shall make all feasible efforts to secure the defendant's full record of traffic convictions, and shall present to the judge that record for consideration in the hearing. Upon request of the defendant, the prosecutor shall furnish the defendant or his attorney a copy of the defendant's record of traffic convictions at a reasonable time prior to the introduction of the record into evidence. In addition, the prosecutor shall present all other appropriate grossly aggravating and aggravating factors of which he is aware, and the defendant or his attorney may present all appropriate mitigating factors. In every instance in which a valid chemical analysis is made of the defendant, the prosecutor shall present evidence of the resulting alcohol concentration.

(a1) Jury Trial in Superior Court; Jury Procedure if Trial Bifurcated. –

(1) Notice. – If the defendant appeals to superior court, and the State intends to use one or more aggravating factors under subsections (c) or (d) of this section, the State must provide the defendant with notice of its intent. The notice shall be provided no later than 10 days prior to trial and shall contain a plain and concise factual statement indicating the factor or factors it intends to use under the authority of subsections (c) and (d) of this section. The notice must list all the aggravating factors that the State seeks to establish.

(2) Aggravating factors. – The defendant may admit to the existence of an aggravating factor, and the factor so admitted shall be treated as though it were found by a jury pursuant to the procedures in this section. If the defendant does not so admit, only a jury may determine if an aggravating factor is present. The jury impaneled for the trial may, in the same trial, also determine if one or more aggravating factors is present, unless the court determines that the interests of justice require that a separate sentencing proceeding be used to make that determination. If the court determines that a separate proceeding is required, the proceeding shall be conducted by the trial judge before the trial jury as soon as practicable after the guilty verdict is returned. The State bears the burden of proving beyond a reasonable doubt that an aggravating factor exists, and the offender bears the burden of proving by a preponderance of the evidence that a mitigating factor exists.

(3) Convening the jury. – If prior to the time that the trial jury begins its deliberations on the issue of whether one or more aggravating factors exist, any juror dies, becomes incapacitated or disqualified, or is discharged for any reason, an alternate juror shall become a part of the jury and serve in all respects as those selected on the regular trial panel. An alternate juror shall become a part of the jury in the order in which the juror was selected. If the trial jury is unable to reconvene for a hearing on the issue of whether one or more aggravating factors exist after having determined the guilt of the accused, the trial judge shall impanel a new jury to determine the issue.

(4) Jury selection. – A jury selected to determine whether one or more aggravating factors exist shall be selected in the same manner as juries are selected for the trial of criminal cases.

(a2) Jury Trial on Aggravating Factors in Superior Court.

(1) Defendant admits aggravating factor only. – If the defendant admits that an aggravating factor exists, but pleads not guilty to the underlying charge, a

jury shall be impaneled to dispose of the charge only. In that case, evidence that relates solely to the establishment of an aggravating factor shall not be admitted in the trial.

(2) Defendant pleads guilty to the charge only. – If the defendant pleads guilty to the charge, but contests the existence of one or more aggravating factors, a jury shall be impaneled to determine if the aggravating factor or factors exist.

(b) Repealed by Session Laws 1983, c. 435, s. 29.

(c) Determining Existence of Grossly Aggravating Factors. – At the sentencing hearing, based upon the evidence presented at trial and in the hearing, the judge, or the jury in superior court, must first determine whether there are any grossly aggravating factors in the case. Whether a prior conviction exists under subdivision (1) of this subsection, or whether a conviction exists under subdivision (d)(5) of this section, shall be matters to be determined by the judge, and not the jury, in district or superior court. If the sentencing hearing is for a case remanded back to district court from superior court, the judge shall determine whether the defendant has been convicted of any offense that was not considered at the initial sentencing hearing and impose the appropriate sentence under this section. The judge must impose the Level One punishment under subsection (g) of this section if it is determined that two or more grossly aggravating factors apply. The judge must impose the Level Two punishment under subsection (h) of this section if it is determined that only one of the grossly aggravating factors applies. The grossly aggravating factors are:

(1) A prior conviction for an offense involving impaired driving if:

a. The conviction occurred within seven years before the date of the offense for which the defendant is being sentenced; or

b. The conviction occurs after the date of the offense for which the defendant is presently being sentenced, but prior to or contemporaneously with the present sentencing; or

c. The conviction occurred in district court; the case was appealed to superior court; the appeal has been withdrawn, or the case has been remanded back to district court; and a new sentencing hearing has not been held pursuant to G.S. 20-38.7.

Each prior conviction is a separate grossly aggravating factor.

(2) Driving by the defendant at the time of the offense while his driver's license was revoked under G.S. 20-28, and the revocation was an impaired driving revocation under G.S. 20-28.2(a).

(3) Serious injury to another person caused by the defendant's impaired driving at the time of the offense.

(4) Driving by the defendant while a child under the age of 16 years was in the vehicle at the time of the offense.

In imposing a Level One or Two punishment, the judge may consider the aggravating and mitigating factors in subsections (d) and (e) in determining the appropriate sentence. If there are no grossly aggravating factors in the case, the judge must weigh all aggravating and mitigating factors and impose punishment as required by subsection (f).

(c1) Written Findings. – The court shall make findings of the aggravating and mitigating factors present in the offense. If the jury finds factors in aggravation, the court shall ensure that those findings are entered in the court's determination of sentencing factors form or any comparable document used to record the findings of sentencing factors. Findings shall be in writing.

(d) Aggravating Factors to Be Weighed. – The judge, or the jury in superior court, shall determine before sentencing under subsection (f) whether any of the aggravating factors listed

below apply to the defendant. The judge shall weigh the seriousness of each aggravating factor in the light of the particular circumstances of the case. The factors are:

(1) Gross impairment of the defendant's faculties while driving or an alcohol concentration of 0.15 or more within a relevant time after the driving. For purposes of this subdivision, the results of a chemical analysis presented at trial or sentencing shall be sufficient to prove the person's alcohol concentration, shall be conclusive, and shall not be subject to modification by any party, with or without approval by the court.

(2) Especially reckless or dangerous driving.

(3) Negligent driving that led to a reportable accident.

(4) Driving by the defendant while his driver's license was revoked.

(5) Two or more prior convictions of a motor vehicle offense not involving impaired driving for which at least three points are assigned under G.S. 20-16 or for which the convicted person's license is subject to revocation, if the convictions occurred within five years of the date of the offense for which the defendant is being sentenced, or one or more prior convictions of an offense involving impaired driving that occurred more than seven years before the date of the offense for which the defendant is being sentenced.

(6) Conviction under G.S. 20-141.5 of speeding by the defendant while fleeing or attempting to elude apprehension.

(7) Conviction under G.S. 20-141 of speeding by the defendant by at least 30 miles per hour over the legal limit.

(8) Passing a stopped school bus in violation of G.S. 20-217.

(9) Any other factor that aggravates the seriousness of the offense.

Except for the factor in subdivision (5) the conduct constituting the aggravating factor shall occur during the same transaction or occurrence as the impaired driving offense.

(e) Mitigating Factors to Be Weighed. – The judge shall also determine before sentencing under subsection (f) whether any of the mitigating factors listed below apply to the defendant. The judge shall weigh the degree of mitigation of each factor in light of the particular circumstances of the case. The factors are:

(1) Slight impairment of the defendant's faculties resulting solely from alcohol, and an alcohol concentration that did not exceed 0.09 at any relevant time after the driving.

(2) Slight impairment of the defendant's faculties, resulting solely from alcohol, with no chemical analysis having been available to the defendant.

(3) Driving at the time of the offense that was safe and lawful except for the impairment of the defendant's faculties.

(4) A safe driving record, with the defendant's having no conviction for any motor vehicle offense for which at least four points are assigned under G.S. 20-16 or for which the person's license is subject to revocation within five years of the date of the offense for which the defendant is being sentenced.

(5) Impairment of the defendant's faculties caused primarily by a lawfully prescribed drug for an existing medical condition, and the amount of the drug taken was within the prescribed dosage.

(6) The defendant's voluntary submission to a mental health facility for assessment after he was charged with the impaired driving offense for which he is being sentenced, and, if recommended by the facility, his voluntary participation in the recommended treatment.

(6a) Completion of a substance abuse assessment, compliance with its recommendations, and simultaneously maintaining 60 days of continuous abstinence from alcohol consumption, as proven by a continuous alcohol monitoring system. The continuous alcohol monitoring system shall be of a type approved by the Department of Correction.

(7) Any other factor that mitigates the seriousness of the offense.

Except for the factors in subdivisions (4), (6), (6a), and (7), the conduct constituting the mitigating factor shall occur during the same transaction or occurrence as the impaired driving offense.

(f) Weighing the Aggravating and Mitigating Factors. – If the judge or the jury in the sentencing hearing determines that there are no grossly aggravating factors, the judge shall weigh all aggravating and mitigating factors listed in subsections (d) and (e). If the judge determines that:

(1) The aggravating factors substantially outweigh any mitigating factors, the judge shall note in the judgment the factors found and his finding that the defendant is subject to the Level Three punishment and impose a punishment within the limits defined in subsection (i).

(2) There are no aggravating and mitigating factors, or that aggravating factors are substantially counterbalanced by mitigating factors, the judge shall note in the judgment any factors found and the finding that the defendant is subject to the Level Four punishment and impose a punishment within the limits defined in subsection (j).

(3) The mitigating factors substantially outweigh any aggravating factors, the judge shall note in the judgment the factors found and his finding that the defendant is subject to the Level Five punishment and impose a punishment within the limits defined in subsection (k).

It is not a mitigating factor that the driver of the vehicle was suffering from alcoholism, drug addiction, diminished capacity, or mental disease or defect. Evidence of these matters may be received in the sentencing hearing, however, for use by the judge in formulating terms and conditions of sentence after determining which punishment level shall be imposed.

(f1) Aider and Abettor Punishment. – Notwithstanding any other provisions of this section, a person convicted of impaired driving under G.S. 20-138.1 under the common law concept of aiding and abetting is subject to Level Five punishment. The judge need not make any findings of grossly aggravating, aggravating, or mitigating factors in such cases.

(f2) Limit on Consolidation of Judgments. – Except as provided in subsection (f1), in each charge of impaired driving for which there is a conviction the judge shall determine if the sentencing factors described in subsections (c), (d) and (e) are applicable unless the impaired driving charge is consolidated with a charge carrying a greater punishment. Two or more impaired driving charges may not be consolidated for judgment.

(g) Level One Punishment. – A defendant subject to Level One punishment may be fined up to four thousand dollars ($4,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 30 days and a maximum term of not more than 24 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 30 ~~days.~~ days or if the defendant has abstained from consuming alcohol for at least 180 consecutive days, as verified by a continuous alcohol monitoring system approved by the Department of Corrections. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(h) Level Two Punishment. – A defendant subject to Level Two punishment may be fined up to two thousand dollars ($2,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than seven days and a maximum term of not more than 12 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least seven ~~days.~~ days or if the defendant has abstained from consuming alcohol for at least 90 consecutive days, as verified by a continuous alcohol monitoring system approved by the Department of Corrections. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

~~(h1) The judge may impose, as a condition of probation for defendants subject to Level One or Level Two punishments, that the defendant abstain from alcohol consumption for a minimum of 30 days, to a maximum of 60 days, as verified by a continuous alcohol monitoring system. The total cost to the defendant for the continuous alcohol monitoring system may not exceed one thousand dollars ($1,000). The defendant's abstinence from alcohol shall be verified by a continuous alcohol monitoring system of a type approved by the Department of Correction.~~

~~(h2) Notwithstanding the provisions of subsection (h1), if the court finds, upon good cause shown, that the defendant should not be required to pay the costs of the continuous alcohol monitoring system, the court shall not impose the use of a continuous alcohol monitoring system unless the local governmental entity responsible for the incarceration of the defendant in the local confinement facility agrees to pay the costs of the system.~~

~~(h3) Any fees or costs paid pursuant to subsections (h1) or (h2) of this section shall be paid to the clerk of court for the county in which the judgment was entered or the deferred prosecution agreement was filed. Fees or costs collected under this subsection shall be transmitted to the entity providing the continuous alcohol monitoring system.~~

(i) Level Three Punishment. – A defendant subject to Level Three punishment may be fined up to one thousand dollars ($1,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 72 hours and a maximum term of not more than six months. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of at least 72 hours as a condition of special probation; or
(2) Perform community service for a term of at least 72 hours; or
(3) Repealed by Session Laws 2006-253, s. 23, effective December 1, 2006, and applicable to offenses committed on or after that date.
(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(j) Level Four Punishment. – A defendant subject to Level Four punishment may be fined up to five hundred dollars ($500.00) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 48 hours and a maximum term of not more than 120 days. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 48 hours as a condition of special probation; or
(2) Perform community service for a term of 48 hours; or
(3) Repealed by Session Laws 2006-253, s. 23, effective December 1, 2006, and applicable to offenses committed on or after that date.

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(k) Level Five Punishment. – A defendant subject to Level Five punishment may be fined up to two hundred dollars ($200.00) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 24 hours and a maximum term of not more than 60 days. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 24 hours as a condition of special probation; or

(2) Perform community service for a term of 24 hours; or

(3) Repealed by Session Laws 2006-253, s. 23, effective December 1, 2006, and applicable to offenses committed on or after that date.

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation.

(k1) Credit for Inpatient Treatment. – Pursuant to G.S. 15A-1351(a), the judge may order that a term of imprisonment imposed as a condition of special probation under any level of punishment be served as an inpatient in a facility operated or licensed by the State for the treatment of alcoholism or substance abuse where the defendant has been accepted for admission or commitment as an inpatient. The defendant shall bear the expense of any treatment unless the trial judge orders that the costs be absorbed by the State. The judge may impose restrictions on the defendant's ability to leave the premises of the treatment facility and require that the defendant follow the rules of the treatment facility. The judge may credit against the active sentence imposed on a defendant the time the defendant was an inpatient at the treatment facility, provided such treatment occurred after the commission of the offense for which the defendant is being sentenced. This section shall not be construed to limit the authority of the judge in sentencing under any other provisions of law.

(k2) Probationary Requirement for Abstinence and Use of Continuous Alcohol Monitoring. – The judge may order that as a condition of special probation for any level of offense under G.S. 20-179 that the defendant abstain from alcohol consumption as verified by a continuous alcohol monitoring system of a type approved by the Department of Corrections.

(k3) Probation officers may require defendants to submit to continuous alcohol monitoring for assessment purposes if the defendant has been required to abstain from alcohol consumption during the term of probation and the probation officer believes the defendant is consuming alcohol.

(k4) Notwithstanding the provisions of subsection (g), (h), (k2), and (k3), if the court finds, upon good cause shown, that the defendant should not be required to pay the costs of the continuous alcohol monitoring system, the court shall not impose the use of a continuous alcohol monitoring system unless the local governmental entity responsible for the incarceration of the defendant in the local confinement facility agrees to pay the costs of the system.

(l) Repealed by Session Laws 1989, c. 691.

(m) Repealed by Session Laws 1995, c. 496, s. 2.

(n) Time Limits for Performance of Community Service. – If the judgment requires the defendant to perform a specified number of hours of community service as provided in subsections (i), (j), or (k), the community service shall be completed:

(1) Within 90 days, if the amount of community service required is 72 hours or more; or
(2) Within 60 days, if the amount of community service required is 48 hours; or
(3) Within 30 days, if the amount of community service required is 24 hours.

The court may extend these time limits upon motion of the defendant if it finds that the defendant has made a good faith effort to comply with the time limits specified in this subsection.

(o) Evidentiary Standards; Proof of Prior Convictions. – In the sentencing hearing, the State shall prove any grossly aggravating or aggravating factor beyond a reasonable doubt, and the defendant shall prove any mitigating factor by the greater weight of the evidence. Evidence adduced by either party at trial may be utilized in the sentencing hearing. Except as modified by this section, the procedure in G.S. 15A-1334(b) governs. The judge may accept any evidence as to the presence or absence of previous convictions that he finds reliable but he shall give prima facie effect to convictions recorded by the Division or any other agency of the State of North Carolina. A copy of such conviction records transmitted by the police information network in general accordance with the procedure authorized by G.S. 20-26(b) is admissible in evidence without further authentication. If the judge decides to impose an active sentence of imprisonment that would not have been imposed but for a prior conviction of an offense, the judge shall afford the defendant an opportunity to introduce evidence that the prior conviction had been obtained in a case in which he was indigent, had no counsel, and had not waived his right to counsel. If the defendant proves by the preponderance of the evidence all three above facts concerning the prior case, the conviction may not be used as a grossly aggravating or aggravating factor.

(p) Limit on Amelioration of Punishment. – For active terms of imprisonment imposed under this section:

(1) The judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.
(2) The defendant shall serve the mandatory minimum period of imprisonment and good or gain time credit may not be used to reduce that mandatory minimum period.
(3) The defendant may not be released on parole unless he is otherwise eligible, has served the mandatory minimum period of imprisonment, and has obtained a substance abuse assessment and completed any recommended treatment or training program.

With respect to the minimum or specific term of imprisonment imposed as a condition of special probation under this section, the judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.

(q) Repealed by Session Laws 1991, c. 726, s. 20.

(r) Supervised Probation Terminated. – Unless a judge in his discretion determines that supervised probation is necessary, and includes in the record that he has received evidence and finds as a fact that supervised probation is necessary, and states in his judgment that supervised probation is necessary, a defendant convicted of an offense of impaired driving shall be placed on unsupervised probation if he meets three conditions. These conditions are that he has not been convicted of an offense of impaired driving within the seven years preceding the date of this offense for which he is sentenced, that the defendant is sentenced under subsections (i), (j), and (k) of this section, and has obtained any necessary substance abuse assessment and completed any recommended treatment or training program.

When a judge determines in accordance with the above procedures that a defendant should be placed on supervised probation, the judge shall authorize the probation officer to modify the defendant's probation by placing the defendant on unsupervised probation upon the completion by the defendant of the following conditions of his suspended sentence:

(1) Community service; or
(2) Repealed by Session Laws 1995 c. 496, s. 2.
(3) Payment of any fines, court costs, and fees; or
(4) Any combination of these conditions.

(s) Method of Serving Sentence. – The judge in his discretion may order a term of imprisonment to be served on weekends, even if the sentence cannot be served in consecutive sequence. However, if the defendant is ordered to a term of 48 hours or more, or has 48 hours or more remaining on a term of imprisonment, the defendant shall be required to serve 48 continuous hours of imprisonment to be given credit for time served.

(1) Credit for any jail time shall only be given hour for hour for time actually served. The jail shall maintain a log showing number of hours served.
(2) The defendant shall be refused entrance and shall be reported back to court if the defendant appears at the jail and has remaining in his body any alcohol as shown by an alcohol screening device or controlled substance previously consumed, unless lawfully obtained and taken in therapeutically appropriate amounts.
(3) If a defendant has been reported back to court under subdivision (2) of this subsection, the court shall hold a hearing. The defendant shall be ordered to serve his jail time immediately and shall not be eligible to serve jail time on weekends if the court determines that, at the time of his entrance to the jail,
a. The defendant had previously consumed alcohol in his body as shown by an alcohol screening device, or
b. The defendant had a previously consumed controlled substance in his body.

It shall be a defense to an immediate service of sentence of jail time and ineligibility for weekend service of jail time if the court determines that alcohol or controlled substance was lawfully obtained and was taken in therapeutically appropriate amounts.

(t) Repealed by Session Laws 1995, c. 496, s. 2."

SECTION 10. G.S. 50-13.2 is amended by adding a new subsection to read:

"(b2) Any order for custody, including visitation, may as a condition of such custody or visitation require either or both parents, or any other person seeking custody or visitation, to abstain from consuming alcohol and may require submission to an approved continuous alcohol monitoring system to verify compliance with this condition of custody or visitation. Failure to comply with this condition shall be grounds for civil or criminal contempt."

SECTION 11. This act becomes effective December 1, 2009, and applies to offenses committed or any custody and visitation orders issued on or after that date.

Principal Clerk ____
Reading Clerk ____

MEETING CANCELLED

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	April 23, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 138	Salvia Divinorum Schedule I.	Senator Purcell
SB 709	Home Improvement Fraud.	Senator Allran
SB 710	False Pretenses/Increase Some Penalties.	Senator Allran
SB 1091	Clarify Wt. Measurement/Meth Trafficking.	Senator Snow

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

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Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

Corrected Notice – SB 925 added

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	April 28, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 138	Salvia Divinorum Schedule I.	Senator Purcell
SB 709	Home Improvement Fraud.	Senator Allran
SB 710	False Pretenses/Increase Some Penalties.	Senator Allran
SB 925	Misrepresentation of Bottled NC Spring Water.	Senator Apodaca
SB 926	Misbranding of Bottled NC Spring Water.	Senator Apodaca
SB 1078	Delay Bond/Probationer Arrested For Felony.	Senator Snow
SB 1091	Clarify Wt. Measurement/Meth Trafficking.	Senator Snow

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

SENATE
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SB 1091	Clarify Wt. Measurement/Meth Trafficking.	Senator Snow

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II Committee
Tuesday, April 28, 2009, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 138	Salvia Divinorum Schedule I.	Senator Purcell
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Presentations

Other Business

Adjournment

Senate Judiciary II Committee
Tuesday, April 28, 2009, 10:00 AM
1124 LB

AGENDA

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Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE
Tuesday, April 28, 2009 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 10:00 AM on April 28, 2009, in Room 1124 of the Legislative Building with sixteen members of the committee present. Senator Fletcher L. Hartsell, Chairman, presided.

Senator Hartsell introduced pages Tahirah Smith, Brandon Crady, Caleb Pletcher and Michael Horton and thanked them for serving.

SB 138 – (Salvia Divinorum Schedule 1.) Senator Allran moved to adopt the Proposed Committee Substitute for Purposes of Discussion. All voted and the motion carried. Senator Purcell was recognized to explain the bill. Ms. Brenda Carter, Staff Attorney, gave additional information. Questions from Senators Allran and Goodall were answered by Senator Purcell and Ms. Carter. Senator Bingham moved for a favorable report of the Proposed Committee Substitute, unfavorable to the original bill with a referral to Appropriations. All voted and the motion carried.

SB 1078 – (Delay Bond/Probationer Arrested For Felony.) Senator Snow was recognized to explain the bill. He then answered questions from Senators Forrester, Jones, Queen, Bingham, and Apodaca. Senator Dannelly moved for a favorable report. All voted and the motion carried.

SB 925 – (Misrepresentation of Bottled NC Spring Water.) Senator Apodaca was recognized to explain the bill. Mr. Phil Whited, President and CEO of Clearwater Springs, spoke in favor of the bill. Also commenting on the bill were Mr. Bob Plimpton and Mr. McCloud of the North Carolina Department of Agriculture. Mr. Andy Ellen, representing the North Carolina Merchants Association, spoke in opposition to the bill. After much discussion, Senator Snow moved for a favorable report. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr, Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Wednesday, April 29, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **925** Misrepresentation of Bottled NC Spring Water.
Sequential Referral: None
Recommended Referral: None

S.B. **1078** Delay Bond/Probationer Arrested For Felony.
Sequential Referral: None
Recommended Referral: None

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

S.B. **138** Salvia Divinorum Schedule I.
Draft Number: 55345
Sequential Referral: None
Recommended Referral: Appropriations/Base Budget
Long Title Amended: Yes

TOTAL REPORTED: 3

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — April 28, 2009
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	PBV
Genevieve Megginson	Chatham County Partnership for Children
Marianne Nicholson	Chatham County Partnership for Children
Kate Scott	Chatham Co. Partnership for Children
SARA THOMAS	NC SEN. COMM.
David Lagos	" "
Karen Calhoun	"
Ann C. Hamlin	NCSBI / Raleigh Crime Laboratory
David M. Howard	NC Realtors
Mildred Spearman	NCDOC
Sherry Pellington	NCDOC

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Robert A. Smith	Smith's Premium Waters P.O. Box 845 Pittsboro NC 27312
Robert S Douglas	mountain park springs bottling co 2835 Lowery St, W-S, NC 27101
Andy Ellen	NCLM/NA
Emily Johnson	Bill Drafting Div
Michael Eisen	DIV. HH/DD/SAS
Phillip Whited	CLEARWATER SPRINGS OF CASWELL, INC MEBANE, N.C.
John Whited	CLEARWATER SPRING of CASWELL, INC MEBANE, N.C. (CASWELL COUNTY)
Alfred E. Motsinger	Roaring Gap Springs Roaring Gap, N.C. (Alleghany Co.)
Wiley Fogleman	DEEP COVE SPRINGS MARION, N.C. (McDOWELL Co.)
John Shaw	JAS
Ann Hamlin	NCSBI / Raleigh Crime Laboratory

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Steven Waters	Living Streets
BOB Plimpton	NCSWA
MIKE MANN	NCBIA
David McLeod	NCDACS
Ray Stanley	"
Jordan Schrader	Asheville C-T
Tracy Kimbrell	Parker Poe
Rex Plimpton	Moonshine Springs
JJ Gillett	BRMW

SENATE BILL 138

Short Title:	Salvia Divinorum Schedule I.	(Public)
Sponsors:	Senators Purcell; Bingham, Dorsett, Snow, and Weinstein.	
Referred to:	Judiciary II.	

February 12, 2009

A BILL TO BE ENTITLED

AN ACT TO CLASSIFY SALVIA DIVINORUM AS A SCHEDULE I CONTROLLED SUBSTANCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-89 reads as rewritten:

"**§ 90-89. Schedule I controlled substances.**

This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a high potential for abuse, no currently accepted medical use in the United States, or a lack of accepted safety for use in treatment under medical supervision. The following controlled substances are included in this schedule:

(1) Any of the following opiates, including the isomers, esters, ethers, salts and salts of isomers, esters, and ethers, unless specifically excepted, or listed in another schedule, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

a. Acetyl-alpha-methylfentanyl (N[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide).

b. Acetylmethadol.

c. Repealed by Session Laws 1987, c. 412, s. 2.

d. Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).

e. Allylprodine.

f. Alphacetylmethadol.

g. Alphameprodine.

h. Alphamethadol.

i. Alpha-methylfentanyl (N-(1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl) propionalilide; 1(1-methyl-2-phenyl-ethyl)-4-(N-propanilido) piperidine).

j. Benzethidine.

k. Betacetylmethadol.

l. Beta-hydroxfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide).

m. Beta-hydroxy-3-methylfentanyl (N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide).
n. Betameprodine.
o. Betamethadol.
p. Betaprodine.
q. Clonitazene.
r. Dextromoramide.
s. Diampromide.
t. Diethylthiambutene.
u. Difenoxin.
v. Dimenoxadol.
w. Dimepheptanol.
x. Dimethylthiambutene.
y. Dioxaphetyl butyrate.
z. Dipipanone.
aa. Ethylmethylthiambutene.
bb. Etonitazene.
cc. Etoxeridine.
dd. Furethidine.
ee. Hydroxypethidine.
ff. Ketobemidone.
gg. Levomoramide.
hh. Levophenacylmorphan.
ii. 1-methyl-4-phenyl-4-propionox ypiperidine (MPPP).
jj. 3-Methylfentanyl (N-[3-methyl-1-(2-Phenylethyl)-4-Pi-peridyl]-N-Phenylpropanamide).
kk. 3-Methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropa namide).
lo . Morpheridine.
mm. Noracymethadol.
nn. Norlevorphanol.
oo. Normethadone.
pp. Norpipanone.
qq. Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phen-ethyl)-4-piperidinyl]-propanamide .
rr. Phenadoxone.
ss. Phenampromide.
tt. 1-(2-phenethyl)-4-phenyl-4-ac etoxypiperidine (PEPAP).
uu. Phenomorphan.
vv. Phenoperidine.
ww. Piritramide.
xx. Proheptazine.
yy. Properidine.
zz. Propiram.
aaa. Racemoramide.
bbb. Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide.

ccc. Tilidine.
ddd. Trimeperidine.

(2) Any of the following opium derivatives, including their salts, isomers, and salts of isomers, unless specifically excepted, or listed in another schedule, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

a. Acetorphine.
b. Acetyldihydrocodeine.
c. Benzylmorphine.
d. Codeine methylbromide.
e. Codeine-N-Oxide.
f. Cyprenorphine.
g. Desomorphine.
h. Dihydromorphine.
i. Etorphine (except hydrochloride salt).
j. Heroin.
k. Hydromorphinol.
l. Methyldesorphine.
m. Methyldihydromorphine.
n. Morphine methylbromide.
o. Morphine methylsulfonate.
p. Morphine-N-Oxide.
q. Myrophine.
r. Nicocodeine.
s. Nicomorphine.
t. Normorphine.
u. Pholcodine.
v. Thebacon.
w. Drotebanol.

(3) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers, unless specifically excepted, or listed in another schedule, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

a. 3, 4-methylenedioxyamphetamine.
b. 5-methoxy-3, 4-methylenedioxyamphetamine.
c. 3, 4-Methylenedioxymethamphetamine (MDMA).
d. 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4-(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, and MDEA).
e. N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4-(methylenedioxy)phenethylamine, and N-hydroxy MDA).
f. 3, 4, 5-trimethoxyamphetamine.
g. Alpha-ethyltryptamine. Some trade or other names: etryptamine, Monase, alpha-ethyl-1H-indole-3- ethanamine, 3-(2-aminobutyl) indole, alpha-ET, and AET.
h. Bufotenine.
i. Diethyltryptamine.
j. Dimethyltryptamine.
k. 4-methyl-2, 5-dimethoxyamphetamine.

l. Ibogaine.
m. Lysergic acid diethylamide.
n. Mescaline.
o. Peyote, meaning all parts of the plant presently classified botanically as Lophophora Williamsii Lemaire, whether growing or not; the seeds thereof; any extract from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seed or extracts.
p. N-ethyl-3-piperidyl benzilate.
q. N-methyl-3-piperidyl benzilate.
r. Psilocybin.
s. Psilocin.
t. 2, 5-dimethoxyamphetamine.
u. 2, 5-dimethoxy-4-ethylamphetamin e. Some trade or other names: DOET.
v. 4-bromo-2, 5-dimethoxyamphetamine.
w. 4-methoxyamphetamine.
x. Ethylamine analog of phencyclidine. Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1- phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE.
y. Pyrrolidine analog of phencyclidine. Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrol idine, PCPy, PHP.
z. Thiophene analog of phencyclidine. Some trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2- thienyl analog of phencyclidine, TPCP, TCP.
aa. 1-[1-(2-thienyl)cyclohexyl]pyrrolidine; Some other names: TCPy.
bb. Parahexyl.
cc. 4-Bromo-2, 5-Dimethoxyphenethylamine.
dd. Salvia divinorum, Salvinorin A.

(4) Any material compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, unless specifically excepted or unless listed in another schedule:
a. Mecloqualone.
b. Methaqualone.
c. Gamma hydroxybutyric acid; Some other names: GHB, gamma-hydroxybutyrate, 4-hydroxybutyrate, 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate.

(5) Stimulants. – Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:
a. Aminorex. Some trade or other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenly-2-oxazolamine.
b. Cathinone. Some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone.

c. Fenethylline.
d. Methcathinone. Some trade or other names: 2-(methylamino)propiophenone, alpha-(methylamino)propiophenone, 2-(methylamino)-1-phenylpropan-1-one, alpha-N-methylaminopropiophenone, monomethylproprion, ephedrone, N-methylcathinone, methylcathinone, AL- 464, AL-422, AL-463, and UR1432.
e. (+/-)cis-4-methylaminorex |(+/-)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine_ (also known as 2-amino-4-methyl-5-phenyl-2-o xazoline).
f. N,N-dimethylamphetamine. Some other names: N,N,alpha-trimethylbenzeneetha neamine; N,N,alpha-trimethylphenethyla mine.
g. N-ethylamphetamine."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 138
PROPOSED COMMITTEE SUBSTITUTE S138-CSRV-23 [v.2]

4/24/2009 5:24:14 PM

Short Title: Salvia Divinorum Unlawful. (Public)

Sponsors:

Referred to:

February 12, 2009

A BILL TO BE ENTITLED

AN ACT TO CREATE THE OFFENSE OF UNLAWFUL MANUFACTURE, SALE, DELIVERY, OR POSSESSSION OF SALVIA DIVINORUM.

The General Assembly of North Carolina enacts:

SECTION 1. Article 52 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§14-401.23. Unlawful manufacture, sale, delivery, or possession of Salvia divinorum.**

(a) It shall be unlawful for any person to knowingly or intentionally manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver Salvia divinorum or Salvinorin A.

(b) It shall be unlawful for any person to knowingly or intentionally possess Salvia divinorum or Salvinorin A.

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

(1) For a first or second offense under this section, the person is responsible for an infraction and shall be required to pay a fine of not less than twenty-five dollars ($25.00).

(2) For a third or subsequent offense under this section, the person is guilty of a a Class 3 misdemeanor.

(d) For purposes of this section:

(1) "Deliver" means the actual constructive or attempted transfer of Salvia divinorum or Salvinorin A from one person to another.

(2) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of Salvia divinorum or Salvinorin A by any means, whether directly or indirectly, artificially or naturally, or by extraction from substances of a natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis. Manufacture includes any packaging or repackaging of the substance, or labeling or relabeling of its container, except that this term does not include the preparation or compounding of the substance by an individual for the individual's own use.

(3) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a plant.

(e) The provisions of this Section shall not apply to:

(1) Employees or contractors of any accredited college or school of medicine or pharmacy at a public or private university in this state while performing medical or pharmacological research for such institution.

(2) The possession, planting, cultivation, growing, or harvesting of a plant strictly for aesthetic, landscaping, or decorative purposes."

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

SENATE BILL 138:
Salvia Divinorum Schedule I

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 24, 2009
Introduced by:	Sen. Purcell	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	PCS to First Edition S138-CSRV-23		

SUMMARY: This PCS for Senate Bill 138 would make it unlawful to manufacture, sell, deliver, or possess Salvia divinorum or salvinorin A. Exceptions apply for use in research & landscaping.

CURRENT LAW: Currently, neither Salvia divinorum nor any of its constituents, including salvinorin A, are controlled under the federal or the NC Controlled Substances Act (CSA).

BILL ANALYSIS: The proposed committee substitute for Senate Bill 138 would make it unlawful to manufacture, sell, deliver, or possess Salvia divinorum or salvinorin A. A first or second violation would be an infraction, and the penalty would be a fine not less than $25; A third or subsequent violation would be a Class 3 misdemeanor. An exception applies for use in medical or pharmacological research, and for use in landscaping.

An infraction is a noncriminal violation of law not punishable by imprisonment. Unless otherwise provided by law, the sanction for a person found responsible for an infraction is a penalty of not more than one hundred dollars ($100.00). The proceeds of penalties for infractions are payable to the county in which the infraction occurred for the use of the public schools.

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

BACKGROUND: Salvia divinorum is a perennial herb in the mint family native to certain areas of the Sierra Mazateca region of Oaxaca, Mexico. The active constituent of Salvia divinorum has been identified as salvinorin A. The abuse of Salvia Divinorum is reportedly gaining popularity in the United States, particularly by adolescents and young adults. A limited number of studies have reported the effects of using either plant material or salvinorin A. Psychic effects include perceptions of bright lights, vivid colors and shapes, as well as body movements and body or object distortions. Other effects include dysphoria, uncontrolled laughter, a sense of loss of body, overlapping realities, and hallucinations (seeing objects that are not present). Adverse physical effects may include incoordination, dizziness, and slurred speech. The US Drug Enforcement Administration (DEA) indicates that due to the hallucinogenic effects there is a substantial risk of injury or death as a result of impaired judgment due to disruptions of sensory and cognitive functions. According to the DEA, as of November 2008, thirteen states have enacted legislation placing regulatory controls on Salvia divinorum and/or salvinorin A. Delaware, Florida, Illinois, Kansas, Mississippi, Missouri, North Dakota, Oklahoma, and Virginia have placed Salvia divinorum and/or salvinorin A into schedule I of state law. California, Louisiana, Maine and Tennessee enacted other forms of legislation restricting the distribution of the plant. States in which legislative bills proposing regulatory controls died are Alabama, Alaska, Hawaii, Indiana, Iowa, Minnesota, Nebraska, Oregon, South Carolina, and Utah. Legislative bills proposing regulatory controls are pending in Michigan, New Jersey, New York, Ohio, Pennsylvania, Texas and Wisconsin.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 709

Short Title:	Home Improvement Fraud.	(Public)
Sponsors:	Senator Allran.	
Referred to:	Judiciary II.	

March 24, 2009

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF HOME IMPROVEMENT FRAUD.

The General Assembly of North Carolina enacts:

SECTION 1. Article 19 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-104.1. Home improvement fraud; penalties.**

(a) The following definitions apply in this section:

(1) Contractor. – A person who has contracted to perform any home improvement, or who has subcontracted for the performance of any home improvement.

(2) Home improvement. – Any alteration, repair, modification, or other improvement to any immovable or movable property primarily designed or used as a residence or to any structure within the residence or upon the land adjacent thereto.

(b) Home improvement fraud is committed when a contractor knowingly engages in any of the following actions:

(1) The use by a contractor, or by an agent or employee of a contractor, of any deception, false pretense, or false promise to cause any person to enter into a contract for home improvements.

(2) The damaging of any property of any person by a contractor, or by an agent or employee of a contractor, with the intent to induce that person to enter into a contract for home improvements.

(c) A person convicted of home improvement fraud shall be punished as follows:

(1) For a first offense a person is guilty of a Class H felony.

(2) For a second offense a person is guilty of a Class F felony.

(3) For a third or subsequent offense a person is guilty of a Class C felony.

(d) In addition to the penalties imposed under subsection (c) of this section, the court, in its discretion, may also order restitution."

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

SENATE BILL 710

Short Title:	False Pretenses/Increase Some Penalties.	(Public)
Sponsors:	Senator Allran.	
Referred to:	Judiciary II.	

March 24, 2009

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CRIMINAL PENALTY FOR THE OFFENSE OF OBTAINING PROPERTY BY FALSE PRETENSES WHEN THE MONEY OR PROPERTY OBTAINED IS VALUED BETWEEN FIVE THOUSAND DOLLARS AND ONE HUNDRED THOUSAND DOLLARS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-100 reads as rewritten:

"**§ 14-100. Obtaining property by false pretenses.**

(a) If any person shall knowingly and designedly by means of any kind of false pretense whatsoever, whether the false pretense is of a past or subsisting fact or of a future fulfillment or event, obtain or attempt to obtain from any person within this State any money, goods, property, services, chose in action, or other thing of value with intent to cheat or defraud any person of such money, goods, property, services, chose in action or other thing of value, such person shall be guilty of a felony: Provided, that if, on the trial of anyone indicted for such crime, it shall be proved that he obtained the property in such manner as to amount to larceny or embezzlement, the jury shall have submitted to them such other felony proved; and no person tried for such felony shall be liable to be afterwards prosecuted for larceny or embezzlement upon the same facts: Provided, further, that it shall be sufficient in any indictment for obtaining or attempting to obtain any such money, goods, property, services, chose in action, or other thing of value by false pretenses to allege that the party accused did the act with intent to defraud, without alleging an intent to defraud any particular person, and without alleging any ownership of the money, goods, property, services, chose in action or other thing of value; and upon the trial of any such indictment, it shall not be necessary to prove either an intent to defraud any particular person or that the person to whom the false pretense was made was the person defrauded, but it shall be sufficient to allege and prove that the party accused made the false pretense charged with an intent to defraud.

(a1) A person convicted of an offense under this section shall be punished as follows:

(1) If the value of the money, goods, property, services, chose in action, or other thing of value is one hundred thousand dollars ($100,000) or more, a violation of this section is a Class C felony.

(2) If the value of the money, goods, property, services, chose in action, or other thing of value is fifty thousand dollars ($50,000) or more, but less than one hundred thousand dollars ($100,000), a violation of this section is a Class E felony.

(3) If the value of the money, goods, property, services, chose in action, or other thing of value is twenty-five thousand dollars ($25,000) or more, but less

than fifty thousand dollars ($50,000), a violation of this section is a Class F felony.

(4) If the value of the money, goods, property, services, chose in action, or other thing of value is five thousand dollars ($5,000) or more, but less than twenty-five thousand dollars ($25,000), a violation of this section is a Class G felony.

(5) If the value of the money, goods, property, services, chose in action, or other thing of value is less than ~~one hundred thousand dollars ($100,000),~~ five thousand dollars ($5,000) a violation of this section is a Class H felony.

(b) Evidence of nonfulfillment of a contract obligation standing alone shall not establish the essential element of intent to defraud.

(c) For purposes of this section, "person" means person, association, consortium, corporation, body politic, partnership, or other group, entity, or organization."

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 925

Short Title:	Misrepresentation of Bottled NC Spring Water.	(Public)
Sponsors:	Senator Apodaca.	
Referred to:	Judiciary II.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE DECEPTIVE MISREPRESENTATION OF NORTH CAROLINA NATURAL SPRING WATER THAT IS OFFERED FOR SALE BY A BUSINESS IS AN UNFAIR TRADE PRACTICE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 75 of the General Statutes is amended by adding a new section to read:

"**§ 75-43. Deceptive misrepresentation of North Carolina natural spring water by a business.**

(a) A person who is engaged in the business of selling, or offering for sale, bottled water as a beverage shall not misrepresent the bottled water to be 'North Carolina natural spring water.' A person misrepresents the bottled water to be 'North Carolina natural spring water' if the water is not water that is both:

(1) Derived from an underground land formation from which the water freely flows without the use of a borehole and without the aid of mechanical means.

(2) Collected at the natural orifice in the earth's surface (i) that is connected to the underground land formation and through which this water freely flows and (ii) that is on land located in North Carolina.

(b) A violation of this section is an unfair trade practice under G.S. 75-1.1."

SECTION 2. This act becomes effective October 1, 2009, and applies to beverages that are sold or offered for sale on or after that date.

SENATE BILL 925:
Misrepresentation of Bottled NC Spring Water

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 21, 2009
Introduced by:	Senator Apodaca	**Prepared by:**	Jeff Hudson
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 925 would declare the misrepresentation of bottled water as "North Carolina natural spring water" an unfair trade practice.***

BILL ANALYSIS:

Senate Bill 925 would prohibit a person from selling or offering for sale bottled water as "North Carolina natural spring water" unless the water is derived from an underground land formation from which the water freely flows without the use of a borehole and without the aid of mechanical means and the water is collected at a natural orifice in the earth's surface that is connected to the underground land formation and through which this water freely flows and that is on land located in North Carolina.

A violation of this prohibition would be an unfair trade practice under Article 1 of Chapter 75 of the General Statutes. Under this Article, the Attorney General can seek to enjoin the unfair trade practice and seek to obtain a civil penalty of up to $5,000 for each violation. The Article also allows a person injured by an unfair trade practice to sue the violator for treble damages and reasonable attorney's fees.

CURRENT LAW:

Under federal law, the Food and Drug Administration (FDA), which is responsible for assuring that foods sold in the United States are safe, wholesome, and properly labeled, defines "spring water" as water derived from an underground formation from which water flows naturally to the surface of the earth. Spring water may be collected only at the spring or through a bore hole tapping the underground formation feeding the spring. Federal law also provides that no state may directly or indirectly establish any definition for food, including bottled water, for which there is a FDA definition unless the state definition is identical.

Federal law does provide an exemption process for a state that wants to use a definition different from the federal definition. The Secretary of Health and Human Services may exempt a state requirement from preemption if the requirement:

- Would not cause any food to be in violation of any applicable requirement under federal law.
- Would not unduly burden interstate commerce.
- Is designed to address a particular need for information that is not met by federal requirements.

EFFECTIVE DATE: The act would become effective October 1, 2009 and apply to beverages sold or offered for sale on or after that date.

SENATE BILL 926

Short Title:	Misbranding of Bottled NC Spring Water.	(Public)
Sponsors:	Senator Apodaca.	
Referred to:	Judiciary II.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT WATER THAT IS REPRESENTED AS NORTH CAROLINA NATURAL SPRING WATER AND OFFERED FOR SALE AS A BEVERAGE IS MISBRANDED AND, AS SUCH, THE PERSONS WHO BOTTLE, SELL, OR DELIVER SUCH ITEM ARE SUBJECT TO CIVIL AND CRIMINAL PENALTIES AND INJUNCTIONS, UNLESS IT IS FROM A NORTH CAROLINA NATURAL SPRING, WHICH IS WATER THAT IS DERIVED FROM AN UNDERGROUND LAND FORMATION FROM WHICH THE WATER FREELY FLOWS WITHOUT THE USE OF A BOREHOLE AND WITHOUT THE AID OF MECHANICAL MEANS AND THAT IS COLLECTED AT THE SPRING'S NATURAL ORIFICE IN THE EARTH'S SURFACE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 106-130 reads as rewritten:

"**§ 106-130. Foods deemed misbranded.**

A food shall be deemed to be misbranded:

(1) a. If its labeling is false or misleading in any particular, or

b. If its labeling or packaging fails to conform with the requirements of G.S. 106-139 and 106-139.1 of this Article.

...

(16) If it purports to be or is represented as 'North Carolina natural spring water' and is offered for sale as a beverage, unless it is from a North Carolina natural spring. As used in this subdivision, 'North Carolina natural spring water' means water that is derived from an underground land formation from which the water freely flows without the use of a borehole and without the aid of mechanical means and that is collected at the natural orifice in the earth's surface (i) that is connected to the underground land formation and through which this water freely flows and (ii) that is on land located in North Carolina."

SECTION 2. G.S. 106-122(1) reads as rewritten:

"(1) The manufacture, sale, or delivery, holding or offering for sale of any food, drug, device, or cosmetic that is adulterated or ~~misbranded.~~misbranded and the bottling, sale, or delivery of any water that is adulterated or misbranded."

SECTION 3. G.S. 106-121(8) reads as rewritten:

"(8) The term "food" ~~means~~means any of the following:

a. Articles used for food or drink for man or other animals, including water that is bottled and offered for sale as a beverage.

b. Chewing ~~gum, and~~gum.

c. Articles used for components of any such article."

SECTION 4. This act becomes effective October 1, 2009, and applies to food items sold or offered for sale on or after that date.

SENATE BILL 1078

Short Title:	Delay Bond/Probationer Arrested for Felony.	(Public)
Sponsors:	Senators Snow and Kinnaird.	
Referred to:	Judiciary II.	

March 31, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PROBATIONER WHO IS ARRESTED AND CHARGED WITH THE COMMISSION OF A FELONY SHALL BE TEMPORARILY DETAINED WITHOUT BOND UNTIL THE COURT HAS SUFFICIENT INFORMATION TO DETERMINE WHETHER THE PROBATIONER'S RELEASE POSES A DANGER TO THE PUBLIC.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1345(b) reads as rewritten:

"(b) Bail Following Arrest for Probation Violation. – If at any time during the period of probation the probationer is arrested for a violation of any of the conditions of probation, he must be taken without unnecessary delay before a judicial official to have conditions of release pending a revocation hearing set in the same manner as provided in G.S. 15A-534. If the probationer has been convicted of an offense at any time that requires registration under Article 27A of Chapter 14 of the General Statutes or an offense that would have required registration but for the effective date of the law establishing the Sex Offender and Public Protection Registration Program, the court must make a finding that the probationer is not a danger to the public prior to release with or without bail. If a probationer is arrested and charged with the commission of a felony, the probationer shall not be released with or without bail until the court makes a finding that the probationer is not a danger to the public. If a probationer is arrested and charged with the commission of a felony, and the court finds that it has insufficient information to determine whether the probationer poses a danger to the public, then the probationer shall be detained without bond, not to exceed seven working days from the date of the arrest, until the court is provided sufficient information to determine whether the probationer poses a danger to the public."

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

SENATE BILL 1078:
Delay Bond/Probationer Arrested for Felony

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 21, 2009
Introduced by:	Sen. Snow	**Prepared by:**	Jennifer McGinnis Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate bill 1078 would prevent the release, with or without bail, of a probationer arrested and charged with the commission of a felony until a court makes a finding that the probationer is not a danger to the public. If insufficient information exists to make the determination, the bill requires detention of the probationer without bond for a period not to exceed seven working days from the date of the arrest until the court has sufficient information to make the determination.***

CURRENT LAW: With regard to bail following arrest for a probation violation, GS 15A-1345 provides that if at any time during a period of probation a probationer is arrested for a violation of a condition of probation, the probationer must be taken before a judicial official to have conditions of release pending a revocation hearing set.

In 2008, the General Assembly amended this statute to provide that if the probationer has been convicted of an offense requiring registration on the sex offender registry, the court must make a finding that the probationer is not a danger to the public prior to release with or without bail.

BILL ANALYSIS: The bill would prevent the release, with or without bail, of a probationer arrested and charged with the commission of a felony until a court makes a finding that the probationer is not a danger to the public. The bill provides that if a court finds it has insufficient information to determine whether a probationer poses a danger to the public, then a probationer is to be detained without bond for a period not to exceed seven working days from the date of the arrest until the court has sufficient information to make the determination.

EFFECTIVE DATE: This bill would become effective December 1, 2009, and apply to offenses committed on or after that date.

S1078-SMRI-21(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 1091

Short Title:	Clarify Wt. Measurement/Meth Trafficking.	(Public)
Sponsors:	Senator Snow.	
Referred to:	Judiciary II.	

March 31, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING TRAFFICKING IN METHAMPHETAMINE AND AMPHETAMINE TO CLARIFY THAT THE CHARGE OF TRAFFICKING IS BASED ON THE WEIGHT OF THE ENTIRE POWDER OR LIQUID MIXTURE RATHER THAN THE WEIGHT OF THE ACTUAL AMOUNT OF THE CONTROLLED SUBSTANCE IN THE POWDER OR LIQUID MIXTURE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-95(h)(3b) reads as rewritten:

"(3b) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of ~~methamphetamine or amphetamine~~ methamphetamine, amphetamine, or any mixture containing such substance shall be guilty of a felony which felony shall be known as "trafficking in methamphetamine or amphetamine" and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of 90 months and a maximum term of 117 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class C felon and shall be sentenced to a minimum term of 225 months and a maximum term of 279 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000)."

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

Principal Clerk ____
Reading Clerk ____

Corrected Notice – Senate Bills 709, 710 and 1091 added

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	April 30, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 884	Renunciation Amendments.	Senator Hartsell
SB 928	The Castle Doctrine.	Senator Berger
SB 978	Firearms Qualification Sites/Retired LEOs.	Senator Bingham
SB 987	Safe Storage of Firearms.	Senator Graham
SB 709	Home Improvement Fraud.	Senator Allran
SB 710	False Pretenses/Increase Some Penalties.	Senator Allran
SB 1091	Clarify Wt. Measurement/Meth Trafficking.	Senator Snow

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

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Senator Fletcher L. Hartsell, Jr., Chair

SENATE JUDICIARY II COMMITTEE
Thursday, April 30, 2009 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 10:00 AM on April 30, 2009, in Room 1124 of the Legislative Building with sixteen members of the committee present. In the absence of Senator Hartsell, Committee Chair, Senator Vaughan presided.

SB 928 – (The Castle Doctrine.) Senator Allran moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Berger was recognized to explain the bill. Senator Berger and Ms. Brenda Carter, Staff Attorney, answered questions from Senators Jones and Apodaca. Mr. Hilton Cancel, Paul Valone, Colleen Kochanek, Anthony Roulette and Candida Panzo-Pambu spoke in regard to the bill. Senator Snow moved for a favorable report to the Proposed Committee Substitute, unfavorable to the original bill. All voted and the motion carried.

SB 709 – (Home Improvement Fraud.)
SB 710 – (False Pretenses/Increase Some Penalties. Senator Apodaca moved to adopt the Proposed Committee Substitute for SB 709 for purposes of discussion. All voted and the motion carried. Senator Allran chose to explain both bills and he and Ms. Kory Goldsmith, Staff Attorney, answered questions from Senators Apodaca, Goodall and Forrester. Senator Apodaca moved for a favorable report to both bills. All voted and the motion carried. The bills will be referred to Appropriations

SB 1091 – (Clarify Wt. Measurement/Meth Trafficking.) Senator Snow explained the bill. Senator Forrester moved for a favorable report. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

CORRECTED REPORT

Monday, May 04, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

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

S.B. **709** Home Improvement Fraud.

Draft Number:	35303
Sequential Referral:	None
Recommended Referral:	Appropriations/Base Budget
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

CORRECTED REPORT

Thursday, April 30, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **710** False Pretenses/Increase Some Penalties.
Sequential Referral: None
Recommended Referral: Appropriations/Base Budget

S.B. **1091** Clarify Wt. Measurement/Meth Trafficking.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Thursday, April 30, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **710** False Pretenses/Increase Some Penalties.
Sequential Referral: None
Recommended Referral: Appropriations/Base Budget

S.B. **1091** Clarify Wt. Measurement/Meth Trafficking.
Sequential Referral: None
Recommended Referral: Appropriations/Base Budget

TOTAL REPORTED: 2

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, May 05, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

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

S.B. **709** Home Improvement Fraud.

Draft Number:	35303
Sequential Referral:	None
Recommended Referral:	Appropriations/Base Budget
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — April 30, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
William Eric Ellis	"Self" 123 Skipworth Circle Cary NC
William Flowers	intern
Ann C. Hamlin	NCSBI / Raleigh Crime Laboratory
Wayne Woodard	NC DOJ - Criminal Justice Standards
Anthony Ranieri	NRA
Joe McClees	N.C. Gun Dealers
Roxane Kolar	NCGV
Hilton Cancel	NCGV
Lori Ann Harris	LAHA
David Lagos	Sentencing - Policy Advisory Commission
J. Bly Hall	General Statutes Commission

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
R. Paul Williams	WGR
JOHN LANDRETH	GRNC
Robert Youngblood	GRNC
Derold Hafner	GRNC
Paul Ulloa	GRNC
DAVID M. SCHMIDT	GRNC
Thomas Rhyne	GRNC
Jeff Gramm	GRNC
Mike Mauney	NCBAA
Jack Requarth	NASW-NC
Ledge Howell	NASW-NC

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 709

Short Title:	Home Improvement Fraud.	(Public)
Sponsors:	Senator Allran.	
Referred to:	Judiciary II.	

March 24, 2009

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF HOME IMPROVEMENT FRAUD.

The General Assembly of North Carolina enacts:

SECTION 1. Article 19 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-104.1. Home improvement fraud; penalties.**

(a) The following definitions apply in this section:

(1) Contractor. – A person who has contracted to perform any home improvement, or who has subcontracted for the performance of any home improvement.

(2) Home improvement. – Any alteration, repair, modification, or other improvement to any immovable or movable property primarily designed or used as a residence or to any structure within the residence or upon the land adjacent thereto.

(b) Home improvement fraud is committed when a contractor knowingly engages in any of the following actions:

(1) The use by a contractor, or by an agent or employee of a contractor, of any deception, false pretense, or false promise to cause any person to enter into a contract for home improvements.

(2) The damaging of any property of any person by a contractor, or by an agent or employee of a contractor, with the intent to induce that person to enter into a contract for home improvements.

(c) A person convicted of home improvement fraud shall be punished as follows:

(1) For a first offense a person is guilty of a Class H felony.

(2) For a second offense a person is guilty of a Class F felony.

(3) For a third or subsequent offense a person is guilty of a Class C felony.

(d) In addition to the penalties imposed under subsection (c) of this section, the court, in its discretion, may also order restitution."

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 709
PROPOSED COMMITTEE SUBSTITUTE S709-CSRC-14 [v.4]

4/29/2009 6:02:50 PM

Short Title: Home Improvement Fraud. (Public)

Sponsors:

Referred to:

March 24, 2009

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF HOME IMPROVEMENT FRAUD.

The General Assembly of North Carolina enacts:

SECTION 1. Article 19 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-104.1. Home improvement fraud; penalties.**

(a) The following definitions apply in this section:

(1) Contractor. – A person who has agreed to perform any home improvement in exchange for compensation, including any agent or employee of the person. The term includes a subcontractor who has agreed to perform any home improvement. The term does not include a person who is licensed as a general contractor under Article 1 of Chapter 87 of the General Statutes.

(2) Home improvement. – Any alteration, repair, modification, or other improvement to any dwelling house or to any structure within the curtilage of a dwelling house, and any other structure designed to house or secure within it any activity or property.

(b) Home improvement fraud is committed when a contractor knowingly engages in any of the following actions:

(1) The use by a contractor of any false pretense whatsoever, whether the false pretense is of a past or subsisting fact or of a future fulfillment or event, with the intent to cause any other person to enter into a home improvement contract.

(2) The damaging of any property of any person by a contractor with the intent to induce that person to enter into a home improvement contract.

(c) A person convicted of home improvement fraud shall be punished as follows:

(1) For a first offense a person is guilty of a Class H felony.

(2) For a second offense a person is guilty of a Class F felony.

(3) For a third or subsequent offense a person is guilty of a Class C felony.

(d) In addition to the penalties imposed under subsection (c) of this section, the court, in its discretion, may also order restitution."

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

SENATE BILL 709:
Home Improvement Fraud

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 24. 2009
Introduced by:	Sen. Allran	**Prepared by:**	Kory Goldsmith
Analysis of:	PCS to First Edition S709-CSRC-14		Committee Counsel

SUMMARY: ***Senate Bill 709 would make it a crime to use any false pretense to cause another to enter into a contract for home repair, or to damage any property of another to cause that person to enter into a contract for home repair. The crime of home improvement fraud would be punishable as a Class H felony for a first offense, a Class F felony for a second offense, and a Class C felony for a third or subsequent offense.***

The PCS exempts licensed general contractors from the provisions of the act..

CURRENT LAW: G.S. 14-100 (Obtaining property by false pretenses) makes it a crime for a person to make a false representation regarding a past, existing, or future event that is intended to and does deceive another person and by which the person making the false representation obtains or attempts to obtain anything of value from the other person. This is a Class H felony[1] if the value of the property is less than $100,000 and a Class C felony if the value of the property is $100,000 or more.

G.S. 14-104 (Obtaining advances under promise to work and pay for same) makes it a crime to obtain any advances of any description from another person under color of promise to work where the person making the promise to work intends to defraud another and willfully fails to commence or complete the work as agreed. A violation of this law is a Class 2 misdemeanor.[2]

G.S. 14 -127 (Willful and wanton injury to real property) makes it a Class 1 misdemeanor to willfully damage, injure or destroy real property.[3]

G.S. 14-160 (Willful and wanton injury to personal property) makes it a Class 2 misdemeanor to willfully injure personal property valued $200 or less. It is a Class 1 misdemeanor if the property is valued at over $200.

BILL ANALYSIS:

Section 1 creates the new criminal offense of "home improvement fraud". A first offense would be punishable as a Class H felony. A second offense would be punishable as a Class F felony[4]. A third or subsequent offense would be punishable as a Class C felony. A court could also order restitution.

The offense occurs in one of two situations:

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[1] The mandatory minimum sentence for a Class H felony for a defendant with no prior convictions is 4 to 8 months of either community, intermediate or active punishment. The mandatory minimum sentence for a Class C felony for a defendant with no prior convictions is 44 to 92 months of active punishment.

[2] The mandatory minimum sentence for a Class 2 misdemeanor for a defendant with no prior convictions is 1 to 30 days of community punishment.

[3] The mandatory minimum sentence for a Class 1 misdemeanor for a defendant with no prior convictions is 1 to 45 days of community punishment.

[4] The mandatory minimum sentence for a Class F felony for a defendant with no prior convictions is 10 to 20 months of intermediate or active punishment.

1. A contractor knowingly uses a false pretense to induce another person to enter into a contract for home improvements. The false pretense could be as to any past or present fact or any future fulfillment of an event.
2. A contractor knowingly damages another person's property with the intent to induce the person to enter into a home improvement contract.

A "contractor" is any person who has agreed to perform any home improvement in exchange for compensation. The term includes any employee or agent of the contractor as well as any subcontractor of the contractor, but it does not include a person who is a licensed general contractor under Article 1 of Chapter 87 of the General Statutes.

A "home improvement" is any alteration, repair, modification or improvement to the dwelling house or any structure within the cartilage and any other structure designed to house or secure any activity or property.

The proposed new criminal law differs from "Obtaining Property by False Pretenses" in that it only applies to fraudulent home improvement situations and the punishment levels depend upon whether the defendant is a repeat offender rather than the amount of damage to the victim.

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

S709-SMRC-19(CSRC-14) v3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 710

Short Title:	False Pretenses/Increase Some Penalties.	(Public)
Sponsors:	Senator Allran.	
Referred to:	Judiciary II.	

March 24, 2009

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CRIMINAL PENALTY FOR THE OFFENSE OF OBTAINING PROPERTY BY FALSE PRETENSES WHEN THE MONEY OR PROPERTY OBTAINED IS VALUED BETWEEN FIVE THOUSAND DOLLARS AND ONE HUNDRED THOUSAND DOLLARS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-100 reads as rewritten:

"**§ 14-100. Obtaining property by false pretenses.**

(a) If any person shall knowingly and designedly by means of any kind of false pretense whatsoever, whether the false pretense is of a past or subsisting fact or of a future fulfillment or event, obtain or attempt to obtain from any person within this State any money, goods, property, services, chose in action, or other thing of value with intent to cheat or defraud any person of such money, goods, property, services, chose in action or other thing of value, such person shall be guilty of a felony: Provided, that if, on the trial of anyone indicted for such crime, it shall be proved that he obtained the property in such manner as to amount to larceny or embezzlement, the jury shall have submitted to them such other felony proved; and no person tried for such felony shall be liable to be afterwards prosecuted for larceny or embezzlement upon the same facts: Provided, further, that it shall be sufficient in any indictment for obtaining or attempting to obtain any such money, goods, property, services, chose in action, or other thing of value by false pretenses to allege that the party accused did the act with intent to defraud, without alleging an intent to defraud any particular person, and without alleging any ownership of the money, goods, property, services, chose in action or other thing of value; and upon the trial of any such indictment, it shall not be necessary to prove either an intent to defraud any particular person or that the person to whom the false pretense was made was the person defrauded, but it shall be sufficient to allege and prove that the party accused made the false pretense charged with an intent to defraud.

(a1) A person convicted of an offense under this section shall be punished as follows:

(1) If the value of the money, goods, property, services, chose in action, or other thing of value is one hundred thousand dollars ($100,000) or more, a violation of this section is a Class C felony.

(2) If the value of the money, goods, property, services, chose in action, or other thing of value is fifty thousand dollars ($50,000) or more, but less than one hundred thousand dollars ($100,000), a violation of this section is a Class E felony.

(3) If the value of the money, goods, property, services, chose in action, or other thing of value is twenty-five thousand dollars ($25,000) or more, but less

SENATE BILL 710:
False Pretenses/Increase Some Penalties

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 24, 2009
Introduced by:	Sen. Allran	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	First Edition		

SUMMARY: Senate Bill 710 would amend the punishment levels for the crime of obtaining property under false pretenses. It would create more levels of punishment based upon the value of the money, goods, services, debts, or other things of value that were falsely obtained.

CURRENT LAW: G.S. 14-100 (Obtaining property by false pretenses) makes it a crime for a person to make a false representation regarding a past, existing, or future event that is intended to and does deceive another person and by which the person making the false representation obtains or attempts to obtain anything of value from the other person. Obtaining property by false pretenses is a Class H felony[1] if the value of the property is less than $100,000 and a Class C felony if the value of the property is $100,000 or more.

BILL ANALYSIS: Senate Bill 710 would amend G.S. 14-100 as follows:

- Make it a Class E felony if the value of the money, goods, services, debts, or other things of value that were falsely obtained were $50,000 or more, but less than $100,000.[2]
- Make it a Class F felony if the value of the money, goods, services, debts, or other things of value that were falsely obtained were less than $50,000, but more than $25,000.[3]
- Make it a Class G felony if the value of the money, goods, services, debts, or other things of value that were falsely obtained were less than $25,000, but more than $5,000.[4]
- Make it a Class G felony if the value of the money, goods, services, debts, or other things of value that were falsely obtained were less than $5,000.

It would still be a Class C felony if the value of the money, goods, services, debts, or other things of value that were falsely obtained were $100,000 or more.

EFFECTIVE DATE: The act would become effective December 1, 2009, and apply to offenses committed on or after that date.

S710-SMRC-20(e1) v2

[1] The mandatory minimum sentence for a Class H felony for a defendant with no prior convictions is 4 to 8 months of either community, intermediate or active punishment. The mandatory minimum sentence for a Class C felony for a defendant with no prior convictions is 44 to 92 months of active punishment.

[2] The mandatory minimum sentence for a Class E felony for a defendant with no prior convictions is 15 to 31 months of intermediate or active punishment.

[3] The mandatory minimum sentence for a Class F felony for a defendant with no prior convictions is 10 to 20 months of intermediate or active punishment.

[4] The mandatory minimum sentence for a Class G felony for a defendant with no prior convictions is 8 to 16 months of intermediate or active punishment.

S 1

SENATE BILL 884*

Short Title:	Renunciation Amendments.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW RELATING TO RENUNCIATIONS AND TO MAKE RELATED AMENDMENTS TO THE NORTH CAROLINA UNIFORM TRUST CODE AND THE LAW GOVERNING POWERS OF ATTORNEY AND ADMINISTRATION OF DECEDENTS' ESTATES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 31B-1 reads as rewritten:

"**§ 31B-1. Right to renounce succession.**

(a) A person who succeeds to a property interest as:

(1) ~~Heir, or~~ Heir;

(2) Next of ~~kin, or~~ kin;

(3) ~~Devisee, or~~ Devisee;

(4) ~~Legatee, or~~ Legatee;

(4a) Donee;

(5) Beneficiary of a life insurance policy who did not possess the incidents of ownership under the policy at the time of death of the ~~insured, or~~ insured;

(6) Person succeeding to a renounced ~~interest, or~~ interest;

(7) Beneficiary under a testamentary trust or under an inter vivos ~~trust, or~~ trust;

(8) Appointee under a power of appointment exercised by a testamentary instrument or a nontestamentary ~~instrument, or~~ instrument;

(9) Repealed by Session Laws 1989, c. 684, s. 2.

(9a) Surviving joint tenant, surviving tenant by the entireties, or surviving tenant of a tenancy with a right of ~~survivorship, or~~ survivorship;

(9b) Person entitled to share in a testator's estate under the provisions of ~~G.S. 31-5.5, or~~ G.S. 31-5.5;

(9c) Beneficiary under any other testamentary or nontestamentary instrument, including a beneficiary under:

a. Any qualified or nonqualified deferred compensation, employee benefit, retirement or death benefit, plan, fund, annuity, contract, policy, program or instrument, either funded or unfunded, which is established or maintained to provide retirement income or death benefits or results in, or is intended to result in, deferral of income;

b. An individual retirement account or individual retirement annuity; or

c. Any annuity, payable on ~~death,~~ death account, or other right to death benefits arising under ~~contract; or~~ contract;

(9d) ~~The duly~~ Duly authorized or appointed guardian of any of the persons listed in subdivisions (1) through (9c) of this subsection, but only with the prior or subsequent approval of the clerk of superior court, or if required, of the resident judge of the superior court, ~~of any of the above.~~ pursuant to a proceeding or action instituted in accordance with and subject to the requirements of G.S. 31B-1.2; or

(9e) Subject to G.S. 31B-1.1 and G.S. 31B-1.2, fiduciary, including a trustee of a charitable trust, an attorney-in-fact of any of the persons listed in subdivisions (1) through (9e) of this subsection if expressly authorized by the governing power of attorney, and a personal representative appointed under Chapter 28A of the General Statutes of any of the persons listed in subdivisions (1) through (9c) of this subsection;

~~(10) The personal representative appointed under Chapter 28A of any of the above,~~

~~or the attorney in fact of any of the above~~ may renounce at any time, in whole or in ~~part~~ part, the right of succession to any property or interest therein, including a future interest, by filing a written instrument under the provisions of this Chapter. A renunciation may be of a fractional share or any limited interest or estate. The renunciation shall be deemed to include the entire interest of the person whose property or interest is being renounced unless otherwise specifically limited. A person may renounce any interest in or power over property, including a power of appointment, even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to renounce. ~~Provided, however,~~ Notwithstanding the foregoing, there shall be no right of partial renunciation if ~~the decedent or donee of the power expressly so provided in~~ the instrument creating the ~~interest.~~interest expressly so provides.

(b) This Chapter shall apply to all renunciations of present and future interests, whether qualified or nonqualified for federal and State inheritance, estate, and gift tax purposes, unless expressly provided otherwise in the instrument creating the interest.

(c) The instrument of renunciation shall (i) identify the transferor of the property or interest in the property or the creator of the power or the holder of the power, (ii) describe the property or interest renounced, ~~(ii)~~ (iii) declare the renunciation and extent thereof, ~~(iii)~~ and (iv) be signed and acknowledged by the person ~~authorized to renounce.~~ renouncing.

(d) A parent of a minor for whom no general guardian or guardian of the estate has been appointed may renounce, in whole or in part, an interest in or power over property (including a power of appointment) that would have passed to the minor as the result of that parent's renunciation. The parent may renounce the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to renounce."

SECTION 2. G.S. 31B-1A is recodified as G.S. 31B-1.1. G.S. 31B-1.1, as recodified by this section, reads as rewritten:

"**§ 31B-1.1. ~~Right to renounce fiduciary powers.~~ Right of fiduciary to renounce.**

(a) Except as otherwise provided in the testamentary or nontestamentary instrument, a fiduciary under a testamentary or nontestamentary instrument may renounce, in whole or in part, fiduciary rights, privileges, powers, and ~~immunities by executing and by delivering, filing, or recording a written renunciation pursuant to the provisions of G.S. 31B-2. A~~ immunities; however, a fiduciary may not renounce the ~~rights of beneficiaries~~ personal rights exercisable by a beneficiary alone, unless the instrument creating the fiduciary relationship authorizes such a renunciation. The instrument of renunciation shall (i) identify the creator of the rights, powers, privileges, or immunities, (ii) describe any right, power, privilege, or immunity renounced, (iii) declare the renunciation and the extent thereof, and (iv) be signed and acknowledged by the fiduciary authorized to renounce.

(b) ~~The instrument of renunciation shall (i) describe any fiduciary right, power, privilege, or immunity renounced, (ii) declare the renunciation and the extent thereof, and (iii) be signed and acknowledged by the fiduciary authorized to renounce.~~ Except as provided in subsection (c) of this section and except to the extent a statute of this State expressly restricts or limits a fiduciary's right to renounce, a fiduciary acting in a fiduciary capacity may renounce the right of succession to any property or interest therein as permitted by this Chapter, even if the testamentary or nontestamentary instrument governing the fiduciary restricts or limits the right to renounce the fiduciary's right of succession to the property or interest therein.

(c) An attorney-in-fact for a principal acting under subsection (a) or subsection (b) of this section may renounce only if expressly authorized by the governing power of attorney."

SECTION 3. Chapter 31B of the General Statutes is amended by adding a new section to read:

"**§ 31B-1.2. Right of fiduciary to institute a proceeding for review of renunciation.**

(a) Prior to renouncing, if a fiduciary so elects, the fiduciary may institute a proceeding by petition before the clerk of court for a determination as to whether a renunciation would be compatible with the fiduciary's duties. Commencement of the proceeding, jurisdiction, venue, parties, representation, and notice shall be governed by Chapter 36C of the General Statutes. In addition to any other notice requirements, notice of the proceeding shall be given to all persons entitled to delivery of a copy of an instrument of renunciation under G.S. 31B-2.1.

(b) After renouncing, if a fiduciary so elects, the fiduciary has a right to institute a declaratory judgment action pursuant to Article 26 of Chapter 1 of the General Statutes for a determination as to whether the renunciation is compatible with the fiduciary's duties. In addition to any other notice requirements, notice of the action shall be given to all persons entitled to delivery of a copy of an instrument of renunciation under G.S. 31B-2.1.

(c) A proceeding or action instituted under this section shall comply with all of the following:

(1) The petition or complaint shall state the basis for the fiduciary's allegation that the renunciation is compatible with the fiduciary's duties, considering among other things the intended purposes of the trust or other instrument and the impact of the renunciation on beneficiaries and potential beneficiaries. A petition or complaint filed by a trustee of a charitable trust shall contain a statement that a copy of the petition or complaint is being provided to the Attorney General.

(2) After considering among other things the intended purposes of the trust or other instrument and the impact of the renunciation on beneficiaries and potential beneficiaries, the court shall enter an order stating the court's determination as to whether the renunciation is compatible with the fiduciary's duties.

(d) The effectiveness of a renunciation is not affected by a determination under this section that the renunciation is not compatible with a fiduciary's duties."

SECTION 4. G.S. 31B-2 reads as rewritten:

"**§ 31B-2. Time and place of filing renunciation.**

(a) To be a qualified disclaimer for federal and State inheritance, estate, and gift tax purposes, an instrument ~~renouncing a present interest~~ of renunciation shall be filed within the time period required under the applicable federal statute for a renunciation to be given effect as a disclaimer for federal estate and gift tax purposes. If there is no such federal statute the instrument shall be filed not later than nine months after the date the transfer of the renounced interest to the ~~renouncer~~ person whose property or interest is being renounced was complete for the purpose of such taxes.

(b) ~~An instrument renouncing a future interest shall be filed not later than six months after the event by which the taker of the property or interest is finally ascertained and his~~

~~interest indefeasibly vested and he is entitled to possession even though such renunciation may not be recognized as a disclaimer for federal estate tax purposes.~~ When a renunciation of real property or an interest in real property is made within the time period required under subsection (a) of this section, the spouse of the person whose property or interest is being renounced is not required to join in the execution of the instrument of renunciation, and, as provided in G.S. 31B-3(a)(1), the spouse has no statutory dower, inchoate marital rights, elective share, or any other marital interest in the real property or real property interest renounced.

(c) The renunciation ~~shall be~~ is effective when filed with the clerk of court ~~of~~ (i) in the county in which court proceedings have been commenced for the administration of the estate of the deceased owner or deceased ~~donee~~ creator of the power ~~or, if they have not been commenced, in which they could be commenced. A copy of the renunciation shall be delivered in person or mailed by registered or certified mail to any personal representative, or other fiduciary of the decedent or donee of the power. If the property interest renounced includes any proceeds of a life insurance policy being renounced pursuant to G.S. 31B-1(a)(5) the person renouncing shall mail, by registered or certified mail, a copy of the renunciation to the insurance company issuing the policy. If the property or property interest renounced is created by nontestamentary instrument, a copy of the renunciation shall be delivered in person, or mailed by registered or certified mail, to the trustee or other person who has legal title to, or possession of, the property or property interest renounced.~~ or holder of the power; or (ii) if proceedings have not been commenced, then in a county in which they could be commenced; or (iii) in all other cases, in a county with a court that has jurisdiction to enforce the terms of the instrument creating the interest renounced. In those cases in which an estate proceeding has not been commenced, the renunciation shall be filed as an estate matter. In addition to the above requirements, a renunciation of real property, or an interest therein, shall be registered in accordance with the provisions of G.S. 31B-2(d).

(d) If real property or an interest therein is renounced, ~~a copy of~~ the instrument of renunciation shall also be ~~filed for recording in the office of the register of deeds of all counties wherein any part of the interest renounced is situated.~~ registered as provided in G.S. 47-18 or G.S. 47-20. The instrument of renunciation shall be indexed in the grantor's index under (i) the name of the ~~deceased owner~~ transferor or ~~donee~~ creator of the ~~power,~~ power or holder of the power, and (ii) the name of the ~~person renouncing.~~ person whose property or interest is being renounced. ~~The renunciation of an interest, or a part thereof, in real property shall not be effective to renounce such interest until a copy of the renunciation is filed for recording in the office of the register of deeds in the county wherein such interest or part thereof is situated. A spouse of a person renouncing real property or an interest in real property shall have no statutory dower, inchoate marital rights, or any other interest in the real property or real property interest renounced.~~ Failure to file or register the instrument of renunciation does not affect the effectiveness of the renunciation as between the person whose property or interest is being renounced and persons to whom the property interest or power passes by reason of the renunciation; however, record title to a renounced interest in real property does not pass to persons receiving the renounced interest by reason of the renunciation until the instrument of renunciation is registered as provided in G.S. 47-18 or G.S. 47-20.

(e) If an instrument transferring an interest in or right, privilege, power, or immunity over property subject to a renunciation is required or permitted by law to be filed or registered, the instrument of renunciation may be so filed or registered. Failure to file or register the instrument of renunciation does not affect the effectiveness of the renunciation as between the person whose property or interest is being renounced and persons to whom the property interest or power passes by reason of the renunciation."

SECTION 5. Chapter 31B of the General Statutes is amended by adding a new section to read:

"§ 31B-2.1. Delivery to other persons of instrument of renunciation by the person renouncing.

(a) In this section:

(1) "Beneficiary designation" means an instrument, other than an instrument creating a trust, naming the beneficiary of:

a. An annuity or insurance policy;

b. An account with a designation for payment on death;

c. A security registered in beneficiary form;

d. A pension, profitsharing, retirement, or other employment-related benefit plan;

e. An individual retirement account or retirement annuity; or

f. Any other nonprobate transfer at death.

(2) "Deliver" means to deliver in person or to send, properly addressed, by first-class mail, telephonic facsimile transmission equipment, electronic mail, or third-party commercial carrier, or by any method permitted by G.S. 1A-1, Rule 4.

(b) The failure to deliver a copy of an instrument of renunciation by a method permitted by G.S. 1A-1, Rule 4, or by a method that results in actual receipt tolls any statute of limitations with regard to any right of action for breach of fiduciary duty.

(c) If a fiduciary renounces an interest in property pursuant to G.S. 31B-1(a)(9e), a copy of the instrument of renunciation shall be delivered to each living person whose beneficial interest is affected by the renunciation and to any co-fiduciary who did not join in the renunciation.

(d) In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust, a copy of the instrument of renunciation must:

(1) Be delivered to the personal representative of the decedent's estate; or

(2) If no personal representative is then serving, be filed as an estate matter with a court having jurisdiction to appoint the personal representative.

(e) In the case of a beneficiary renouncing an interest in a testamentary trust, a copy of the instrument of renunciation must:

(1) Be delivered to the trustee then serving;

(2) If no trustee is then serving, be delivered to the personal representative of the decedent's estate; or

(3) If no personal representative or trustee is then serving, be filed as an estate matter with a court having jurisdiction to enforce the trust.

(f) In the case of a beneficiary renouncing an interest in an inter vivos trust, a copy of the instrument of renunciation must:

(1) Be delivered to the trustee then serving;

(2) Except as provided in subdivision (3) of this subsection, if no trustee is then serving, be filed as an estate matter with a court having jurisdiction to enforce the trust; or

(3) If the renunciation is made before the time the instrument creating the trust becomes irrevocable, be delivered to the settlor of the trust or the transferor of the interest.

(g) In the case of a beneficiary renouncing an interest created by a beneficiary designation made before the time the designation becomes irrevocable, a copy of the instrument of renunciation must be delivered to the person making the beneficiary designation.

(h) In the case of a beneficiary renouncing an interest created by a beneficiary designation made after the time the designation becomes irrevocable, a copy of the instrument of renunciation must be delivered to the person obligated to distribute the interest.

(i) In the case of a renunciation by a surviving holder of an interest in property subject to a right of survivorship, a copy of the instrument of renunciation must be delivered to the persons to whom the person renouncing reasonably believes the renounced interest passes, at their last addresses known to the person renouncing, and to the personal representative of the deceased joint holder, if any.

(j) In the case of a renunciation by a permissible appointee, or taker in default of exercise, of a power of appointment at any time after the power was created, a copy of the instrument of renunciation must be delivered:

(1) To the holder of the power;

(2) To the fiduciary acting under the instrument that created the power or, if no fiduciary is then serving under the instrument that created the power, filed as an estate matter with a court having authority to appoint the fiduciary; and

(3) To any holder of legal title to the property subject to the power of appointment other than the fiduciary.

(k) In the case of a renunciation by an appointee of an exercised power of appointment, a copy of the instrument of renunciation must be delivered:

(1) To the holder of the power or the personal representative of the holder's estate;

(2) To the fiduciary under the instrument that created the power or, if no fiduciary is then serving under the instrument that created the power, filed as an estate matter with a court having authority to appoint the fiduciary; and

(3) To any holder of legal title to the property subject to the power of appointment other than the fiduciary.

(l) In the case of a renunciation of a power of appointment by the holder of the power, a copy of the instrument of renunciation must be delivered:

(1) To the fiduciary acting under the instrument that created the power or, if no fiduciary is then serving under the instrument that created the power, filed as an estate matter with a court having authority to appoint the fiduciary; and

(2) To any holder of legal title to the property subject to the power of appointment other than the fiduciary.

(m) In the case of a renunciation by a fiduciary of a right, privilege, power, or immunity relating to a trust or estate, a copy of the instrument of renunciation must be delivered as provided in subsection (c), (d), (e), or (f) of this section, as if the power renounced were an interest in property.

(n) In the case of a renunciation of a power by an agent, including an attorney-in-fact, a copy of the instrument of renunciation must be delivered to the principal or the principal's legal representative other than the agent.

(o) In the case of a renunciation by a trustee of a charitable trust, a copy of the instrument of renunciation must be delivered to the North Carolina Attorney General in addition to any other delivery required by this section.

(p) In the case of a renunciation by a donee, a copy of the instrument of renunciation must be delivered to the persons to whom the person renouncing reasonably believes the renounced interest passes, at their last addresses known to the person renouncing, and to the donor or the donor's legal representative other than the donee.

(q) The failure to deliver a copy of the instrument of renunciation as required in this section does not affect the validity of the renunciation for purposes of G.S. 31B-3 even though the renunciation may not be recognized as a disclaimer for federal estate tax purposes."

SECTION 6. G.S. 31B-3 reads as rewritten:

"**§ 31B-3. Effect of renunciation.**

(a) Unless the decedent, donee of a power of appointment, or creator of an interest under an inter vivos instrument has otherwise provided in the instrument creating the interest, the property or interest renounced devolves as follows:

(1) If the renunciation is filed within the time period described in G.S. 31B-2(a), the property or interest renounced devolves and any interest that takes effect in possession or enjoyment after the termination of the property or interest renounced takes effect as if the ~~renouncer~~ person whose property or interest is being renounced had predeceased the date the transfer of the renounced interest ~~to the renouncer~~ was complete for federal and State inheritance, estate, and gift tax purposes, or, in the case of the renunciation of a fiduciary right, power, privilege, or immunity, the property or interest subject to the power devolves as if the fiduciary right, power, privilege, or immunity never existed. Any such renunciation relates back for all purposes to the date the transfer of the renounced interest ~~to the renouncer~~ was complete for the purpose of those ~~taxes.~~ taxes, and the spouse of the person whose property or interest is being renounced has no elective share or other marital interest in the renounced property.

(2) If the renunciation is not filed within the time period described in G.S. 31B-2(a), the person whose property or interest is being renounced is deemed to have made a transfer of the property or interest and the property or interest devolves and any interest that takes effect in possession or enjoyment after the termination of the property or interest renounced takes effect as if the ~~renouncer~~ person whose property or interest is being renounced had died on the date the renunciation is filed, or, in the case of the renunciation of a fiduciary right, power, privilege, or immunity, the property or interest subject to the power devolves as if the fiduciary right, power, privilege, or immunity ceased to exist as of the date the renunciation is filed.

(3) Any future interest that takes effect in possession or enjoyment after the termination of the estate or interest renounced takes effect as if the ~~renouncer~~ person whose property or interest is being renounced had died on the date determined under subdivision (1) or (2) of this subsection, and upon the filing of the renunciation the persons in being as of the time the ~~renouncer~~ person whose property or interest is being renounced is deemed to have died will immediately become entitled to possession or enjoyment of any such future interest.

(b) In the event that the property or interest renounced was created by testamentary disposition, the devolution of the property or interest renounced shall be ~~governed by G.S. 31-42(a)~~ as provided in G.S. 31-42 notwithstanding that in fact the ~~renouncer~~ person whose property or interest is being renounced has not actually died before the testator.

(c) In the event that the decedent dies intestate, or the ownership or succession to property or to an interest is to be determined as though a decedent had died intestate, and the ~~renouncer~~ person whose property or interest is being renounced has living issue who would have been entitled to an interest in the property or interest if the ~~renouncer~~ person whose property or interest is being renounced had predeceased the decedent, then the property or interest renounced shall be distributed to such issue, per stirpes. If the ~~renouncer~~ person whose property or interest is being renounced does not have such issue, then the property or interest shall be distributed as though the ~~renouncer~~ person whose property or interest is being renounced had predeceased the decedent.

(d) In the event that the property or interest renounced was created by a revocable or irrevocable inter vivos trust, the devolution of the property or interest renounced shall be as provided in G.S. 36C-6-605 notwithstanding that in fact the person whose property or interest

is being renounced has not actually died before the event that would otherwise cause the property or interest renounced to pass to the person whose property or interest is being renounced.

(e) If a trustee files, within the time period described in G.S. 31B-2(a), a renunciation of an interest in property, the interest does not become trust property. If a trustee does not file a renunciation of an interest in property within the time period described in G.S. 31B-2(a), the interest passes to the person or persons who would have taken the interest as of the date of the renunciation if the trust had never existed.

(f) Except as provided in the instrument of renunciation, if a renunciation causes property to pass to a trust in which the person whose property or interest is being renounced holds a power of appointment, the person renouncing is deemed to have renounced the power of appointment with respect to assets passing into the trust by reason of the renunciation if the person renouncing is a person who holds a right to renounce the power of appointment.

(g) Unless otherwise provided in the instrument of renunciation, the interest in property being renounced by a surviving tenant by the entireties upon the death of the other tenant is deemed to be a one-half interest in the former entirety property, and title to that one-half interest passes as if the deceased tenant survived the tenant renouncing.

(h) Unless otherwise provided in the instrument of renunciation, the interest in property being renounced by a surviving joint tenant with right of survivorship is deemed to be the fractional interest of the deceased joint tenant to which the surviving joint tenant would have been entitled by right of survivorship, and title to that fractional interest passes as if the tenant renouncing predeceased the deceased joint tenant.

(i) Reserved for future codification.

(j) Reserved for future codification.

(k) A renunciation is binding upon the person whose interest is being renounced and all persons claiming through or under that person."

SECTION 7. G.S. 31B-4 reads as rewritten:

"**§ 31B-4. Waiver and bar.**

(a) The right to renounce property or an interest therein is barred by:

(1) An assignment, conveyance, encumbrance, pledge, or transfer of the property or interest, or a contract therefor by the person authorized to renounce,

(2) A written waiver of the right to renounce, or

(3) Repealed by Session Laws 1998-148, s. 4.

(4) A sale of the property or interest under judicial sale made before the renunciation is effected.

(b) ~~The renunciation or the written waiver of~~ An instrument waiving or barring the right to renounce is binding upon the ~~renouncer or~~ person waiving the right to renounce or the person barred from renouncing and all persons claiming through or under ~~him.~~ that person.

(c) A fiduciary's application for appointment or assumption of duties as fiduciary does not waive or bar the fiduciary's right to renounce a right, power, privilege, or immunity.

(d) No person shall be liable for distributing or disposing of property in reliance upon the terms of a renunciation that is invalid for the reason that the right of renunciation has been waived or barred, if the distribution or disposition is otherwise proper, and the person has no actual knowledge or record notice of the facts that constitute a waiver or bar to the right of renunciation.

(e) The right to renounce property or an interest in property pursuant to this Chapter is not barred by an acceptance of the property, interest, or benefit thereunder; provided, however, an acceptance of the property, interest, or benefit thereunder may preclude such renunciation from being a qualified renunciation for federal and State inheritance, estate, and gift tax purposes.

(f) An instrument waiving or barring the right to renounce an interest in real property is not effective as to persons protected under G.S. 47-18 or G.S. 47-20 until either (i) registered as provided in those sections or (ii) registered pursuant to a judicial sale proceeding as described in subdivision (4) of subsection (a) of this section in which the person renouncing is a party. The instrument of waiver or bar shall be indexed in the grantor's index under (i) the name of the transferor of the property or interest in the property or creator of the power or holder of the power and (ii) the name of the person whose renunciation is waived or barred."

SECTION 8. Chapter 31B of the General Statutes is amended by adding a new section to read:

"**§ 31B-4.1. Tax qualified renunciation.**

If, as a result of a renunciation, the renounced property is treated pursuant to the provisions of Title 26 of the United States Code, as now or hereafter amended, or any successor statute thereto, and the regulations promulgated thereunder, as never having been transferred to the person whose property or interest is being renounced, then the renunciation is an effective renunciation, notwithstanding any other provision of this Chapter. This section does not preclude an action for breach of fiduciary duty."

SECTION 9. G.S. 31B-6 is repealed.

SECTION 10. G.S. 28A-13-3 reads as rewritten:

"**§ 28A-13-3. Powers of a personal representative or fiduciary.**

(a) Except as qualified by express limitations imposed in a will of the decedent or a court order, and subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative has the power to perform in a reasonable and prudent manner every act which a reasonable and prudent person would perform incident to the collection, preservation, liquidation or distribution of a decedent's estate so as to accomplish the desired result of settling and distributing the decedent's estate in a safe, orderly, accurate and expeditious manner as provided by law, including the powers specified in the following subdivisions:

...

~~(33) To renounce in accordance with the provisions of Chapter 31B of the General Statutes.~~

(a1) Except as qualified by express limitations imposed in a will of the decedent, and subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative shall have absolute discretion to make the election as to which items of the decedent's personal and household effects shall be excluded from the carry over basis provision of the federal income tax law and such election shall be conclusive and binding on all concerned.

(a2) Subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative has the power to renounce in accordance with the provisions of Chapter 31B of the General Statutes.

(b) Any question arising out of the powers conferred by subsections ~~(a) and (a1) above~~ (a), (a1), and (a2) of this section shall be determined in accordance with the provisions of Article 18 of this Chapter.

(c) Prior to the personal representative exercising possession, custody or control over real property of the estate he shall petition the clerk of court to obtain an order authorizing such possession, custody or control. The petition shall include:

(1) A description of the real property which is the subject of the petition;

(2) The names, ages, and addresses, if known, of the devisees and heirs of the decedent;

(3) A statement by the personal representative that he has determined that such possession, custody or control is in the best interest of the administration of the estate.

The devisees and heirs will be made parties to the proceeding by service of summons in the manner prescribed by law. If the clerk of court determines that it is in the best interest of the administration of the estate to authorize the personal representative to take possession, custody or control he shall grant an order authorizing that power. If a special proceeding has been instituted by the personal representative pursuant to G.S. 28A-15-1(c), the personal representative may petition for possession, custody, or control of any real property as a part of that proceeding and is not required to institute a separate special proceeding."

SECTION 11. G.S. 32A-1 reads as rewritten:

"**§ 32A-1. Statutory Short Form of General Power of Attorney.**

The use of the following form in the creation of a power of attorney is lawful, and, when used, it shall be construed in accordance with the provisions of this Chapter.

"NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE DEFINED IN CHAPTER 32A OF THE NORTH CAROLINA GENERAL STATUTES WHICH EXPRESSLY PERMITS THE USE OF ANY OTHER OR DIFFERENT FORM OF POWER OF ATTORNEY DESIRED BY THE PARTIES CONCERNED.

State of _____

County of _____

I _____, appoint _____ to be my attorney-in-fact, to act in my name in any way which I could act for myself, with respect to the following matters as each of them is defined in Chapter 32A of the North Carolina General Statutes. (DIRECTIONS: Initial the line opposite any one or more of the subdivisions as to which the principal desires to give the attorney-in-fact authority.)

(1) Real property transactions ..... _____

(2) Personal property transactions ..... _____

(3) Bond, share, stock, securities and commodity transactions ..... _____

(4) Banking transactions ..... _____

(5) Safe deposits ..... _____

(6) Business operating transactions ..... _____

(7) Insurance transactions ..... _____

(8) Estate transactions ..... _____

(9) Personal relationships and affairs ..... _____

(10) Social security and unemployment ..... _____

(11) Benefits from military service ..... _____

(12) Tax matters ..... _____

(13) Employment of agents ..... _____

(14) Gifts to charities, and to individuals other than the attorney-in-fact ..... _____

(15) Gifts to the named attorney-in-fact ..... _____

(16) Renunciation of an interest in or power over property to benefit persons other than the attorney-in-fact ..... _____

(17) Renunciation of an interest in or power over property to benefit persons including the attorney-in-fact ..... _____

(If power of substitution and revocation is to be given, add: 'I also give to such person full power to appoint another to act as my attorney-in-fact and full power to revoke such appointment.')

(If period of power of attorney is to be limited, add: 'This power terminates_____, _____')

(If power of attorney is to be a durable power of attorney under the provision of Article 2 of Chapter 32A and is to continue in effect after the incapacity or mental incompetence of the principal, add: 'This power of attorney shall not be affected by my subsequent incapacity or mental incompetence.')

(If power of attorney is to take effect only after the incapacity or mental incompetence of the principal, add: 'This power of attorney shall become effective after I become incapacitated or mentally incompetent.')

(If power of attorney is to be effective to terminate or direct the administration of a custodial trust created under the Uniform Custodial Trust Act, add: 'In the event of my subsequent incapacity or mental incompetence, the attorney-in-fact of this power of attorney shall have the power to terminate or to direct the administration of any custodial trust of which I am the beneficiary.')

(If power of attorney is to be effective to determine whether a beneficiary under the Uniform Custodial Trust Act is incapacitated or ceases to be incapacitated, add: 'The attorney-in-fact of this power of attorney shall have the power to determine whether I am incapacitated or whether my incapacity has ceased for the purposes of any custodial trust of which I am the beneficiary.')

Dated_____, _____.

_____ (Seal)

Signature

STATE OF _____ COUNTY OF _____

On this _____ day of_____, _____, personally appeared before me, the said named _____ to me known and known to me to be the person described in and who executed the foregoing instrument and he (or she) acknowledged that he (or she) executed the same and being duly sworn by me, made oath that the statements in the foregoing instrument are true.

My Commission Expires _____.

_____

(Signature of Notary Public)

Notary Public (Official Seal)"

SECTION 12. G.S. 32A-2 is amended by adding two new subdivisions to read:

"(16) Renunciation of an interest in or power over property to benefit persons other than the attorney-in-fact. – To renounce an interest in or power over property, including a power of appointment, to benefit persons other than the attorney-in-fact or the estate, creditors, or the creditors of the estate of the attorney-in-fact, or an individual to whom the attorney-in-fact owes a legal obligation of support, in accordance with Chapter 31B of the General Statutes.

(17) Renunciation of an interest in or power over property to benefit persons including the attorney-in-fact. – To renounce an interest in or power over property, including a power of appointment, to benefit persons including the attorney-in-fact, or the estate, creditors, or the creditors of the estate of the attorney-in-fact, or an individual to whom the attorney-in-fact owes a legal obligation of support, in accordance with Chapter 31B of the General Statutes."

SECTION 13. The title of Article 2A of Chapter 32A of the General Statutes reads as rewritten:

"Article 2A.

Authority of Attorney-In-Fact to Make ~~Gifts.~~ Gifts and to Renounce."

SECTION 14. Article 2A of Chapter 32A of the General Statutes is amended by adding a new section to read:

"**§ 32A-14.2. Renunciation under power of attorney.**

(a) If any power of attorney authorizes an attorney-in-fact to do, execute, or perform any act that the principal might or could do or evidences the principal's intent to give the attorney-in-fact full power to handle the principal's affairs or deal with the principal's property, but does not expressly authorize the attorney-in-fact to renounce an interest in or power over property, the attorney-in-fact shall not have the power or authority to renounce on behalf of the principal pursuant to Chapter 31B of the General Statutes.

(b) Notwithstanding an express grant of general authority to renounce, an attorney-in-fact that is not an ancestor, spouse, or descendant of the principal may not renounce under a power of attorney to create in the attorney-in-fact or the estate, creditors, or the creditors of the estate of the attorney-in-fact, or in an individual to whom the attorney-in-fact owes a legal obligation of support, an interest in or power over the principal's property by reason of a renunciation unless the power of attorney expressly authorizes a renunciation that benefits the attorney-in-fact or the estate, creditors, or the creditors of the estate of the attorney-in-fact, or an individual to whom the attorney-in-fact owes a legal obligation of support."

SECTION 15. G.S. 36C-1-105(b) reads as rewritten:

"(b) The terms of a trust prevail over any provision of this Chapter except:

(1) The requirements for creating a ~~trust;~~ trust.

(2) The duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the ~~beneficiaries;~~ beneficiaries.

(3) The requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to ~~achieve;~~ achieve.

(4) The power of the court to modify or terminate a trust under G.S. 36C-4-410 through ~~G.S. 36C-4-416;~~ G.S. 36C-4-416.

(5) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Article 5 of this Chapter;

(6) The effect of an exculpatory term under ~~G.S. 36C-10-1008;~~ G.S. 36C-10-1008.

(7) The rights under G.S. 36C-10-1010 through G.S. 36C-10-1013 of a person other than a trustee or ~~beneficiary;~~ beneficiary.

(8) Periods of limitation for commencing a judicial ~~proceeding;~~ proceeding.

(9) The power of the court to take any action and exercise any jurisdiction as may be necessary in the interests of ~~justice;~~justice.

(10) The subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in G.S. 36C-2-203 and ~~G.S. 36C-2-204; and~~G.S. 36C-2-204.

(11) The requirement that the exercise of the powers described in G.S. 36C-6-602.1(a) shall not alter the designation of beneficiaries to receive property on the settlor's death under that settlor's existing estate plan.

(12) The power of a trustee to renounce an interest in or power over property in accordance with the provisions of Chapter 31B of the General Statutes."

SECTION 16. G.S. 36C-8-816 reads as rewritten:

"**§ 36C-8-816. Specific powers of trustee.**

Without limiting the authority conferred by G.S. 36C-8-815, a trustee may:

...

(30) Request an order from the court for the sale of real or personal property under Article 29A of Chapter 1 of the General Statutes, or for the exchange, partition, or other disposition or change in the character of, or for the grant of options or other rights in or to, such ~~property; and~~ property;

(31) Distribute the assets of an inoperative trust consistent with the authority granted under ~~G.S. 28A-22-10.~~G.S. 28A-22-110; and

(32) Renounce, in accordance with Chapter 31B of the General Statutes, an interest in or power over property, including property that is or may be burdened with liability for violation of environmental law."

SECTION 17. G.S. 36C-8-816(13)c. is repealed.

SECTION 18. The Revisor of Statutes shall cause to be printed along with this act all explanatory comments of the drafters of this act as the Revisor deems appropriate.

SECTION 19. This act becomes effective October 1, 2009, and applies to renunciations and powers of attorney executed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 928

Short Title:	The Castle Doctrine.	(Public)
Sponsors:	Senators Berger of Franklin, Snow; Allran, Apodaca, Brock, and Preston.	
Referred to:	Judiciary II.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY WHEN A PERSON MAY USE DEFENSIVE FORCE TO PROTECT AGAINST THE UNLAWFUL AND FORCIBLE ENTRY INTO THE PERSON'S DWELLING BY ANOTHER, TO PREVENT THE REMOVAL OF A PERSON AGAINST HIS OR HER WILL FROM THE PERSON'S DWELLING, TO PROVIDE THAT A PERSON WHO IS IN A PLACE WHERE THE PERSON HAS A RIGHT TO BE HAS NO DUTY TO RETREAT, AND TO PROVIDE THAT A PERSON IS JUSTIFIED IN USING DEFENSIVE FORCE IN THESE CIRCUMSTANCES AND SO IS IMMUNE FROM CRIMINAL PROSECUTION AND CIVIL ACTION FOR THE USE OF SUCH FORCE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 14 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-51.2. Home protection; use of deadly force; presumption of fear of death or great bodily harm; immunity from criminal prosecution and civil action for justifiable use of force.**

(a) The following definitions apply in this section:

(1) Criminal prosecution. – The term includes arresting, detaining in custody, and charging or prosecuting the defendant.

(2) Deadly force. – Force that is likely to cause death or great bodily harm.

(3) Dwelling. – A building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night.

(4) Forcible felony. – Treason; murder; manslaughter; rape, sexual offense, sexual battery; robbery; burglary; arson; kidnapping; aggravated assault; felonious stalking; malicious use of explosive or incendiary device; and any other felony which involves the use or threat of physical force or violence against any individual.

(5) Law enforcement officer. – Any person employed or appointed as a full-time, part-time, or auxiliary law enforcement officer, correctional officer, probation officer, post-release supervision officer, or parole officer.

(6) Residence. – A dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.

(b) A person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another when using defensive force that is intended or likely to cause death or great bodily harm to another if:

(1) The person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a dwelling or residence, or if that person had removed or was attempting to remove another against that person's will from the dwelling or residence; and

(2) The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

(c) The presumption set forth in subsection (b) does not apply if:

(1) The person against whom the defensive force is used has the right to be in or is a lawful resident of the dwelling or residence, such as an owner or lessee, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person; or

(2) The person sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship of, the person against whom the defensive force is used; or

(3) The person who uses defensive force is engaged in an unlawful activity or is using the dwelling or residence to further an unlawful activity; or

(4) The person against whom the defensive force is used is a law enforcement officer who enters or attempts to enter a dwelling or residence in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer.

(d) A person who is not engaged in an unlawful activity and who is attacked in any other place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony.

(e) A person who unlawfully and by force enters or attempts to enter a person's dwelling or residence is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

(f) A person who uses force as permitted by this section is justified in using such force and is immune from criminal prosecution and civil action for the use of such force, unless the person against whom force was used is a law enforcement officer, who was acting in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer."

SECTION 2. G.S. 14-51.1 is repealed.

SECTION 3. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 928
PROPOSED COMMITTEE SUBSTITUTE S928-CSRV-28 [v.2]

4/29/2009 7:44:46 PM

Short Title: The Castle Doctrine. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY WHEN A PERSON MAY USE DEFENSIVE FORCE TO PROTECT AGAINST THE UNLAWFUL AND FORCIBLE ENTRY INTO THE PERSON'S DWELLING BY ANOTHER, TO PREVENT THE REMOVAL OF A PERSON AGAINST HIS OR HER WILL FROM THE PERSON'S DWELLING, AND TO PROVIDE THAT A PERSON IS JUSTIFIED IN USING DEFENSIVE FORCE IN THESE CIRCUMSTANCES AND SO IS IMMUNE FROM CRIMINAL PROSECUTION AND CIVIL ACTION FOR THE USE OF SUCH FORCE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 14 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-51.2. Home protection; presumption of fear of death or great bodily harm; immunity from criminal prosecution and civil action for justifiable use of force.**

(a) The following definitions apply in this section:

(1) Criminal prosecution. – The term includes arresting, detaining in custody, and charging or prosecuting the defendant.

(2) Dwelling. – A building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night.

(3) Law enforcement officer. – Any person employed or appointed as a full-time, part-time, or auxiliary law enforcement officer, correctional officer, probation officer, post-release supervision officer, or parole officer.

(4) Residence. – A dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.

(b) A person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another when using defensive force that is intended or likely to cause death or great bodily harm to another if:

(1) The person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a dwelling or residence, or if that person had removed or was attempting to remove another against that person's will from the dwelling or residence; and

(2) The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

(c) The presumption set forth in subsection (b) of this section does not apply if:

(1) The person against whom the defensive force is used has the right to be in or is a lawful resident of the dwelling or residence, such as an owner or lessee, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person.

(2) The person sought to be removed from the dwelling or residence is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship of, the person against whom the defensive force is used.

(3) The person who uses defensive force is engaged in, attempting to escape from, or using the dwelling or residence to further any criminal offense which involves the use or threat of physical force or violence against any individual.

(4) The person against whom the defensive force is used is a law enforcement officer who enters or attempts to enter a dwelling or residence in the lawful performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer.

(d) A person who unlawfully and by force enters or attempts to enter a person's dwelling or residence is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

(e) A person who uses force as permitted by this section is justified in using such force and is immune from criminal prosecution and civil action for the use of such force, unless the person against whom force was used is a law enforcement officer, who was acting in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer."

SECTION 2. G.S. 14-51.1 is repealed.

SECTION 3. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

SENATE BILL 928:
The Castle Doctrine

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 29, 2009
Introduced by:	Sen. Berger of Franklin	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	PCS to First Edition S928-CSRV-28		

SUMMARY: ***This proposed committee substitute for Senate Bill 928 would repeal the existing law concerning the use of deadly physical force against an intruder, and enact a new law that would create a presumption that a person, when using defensive force against a person unlawfully and forcibly entering a residence, did so because he or she held a reasonable fear of imminent peril of death or great bodily harm. The bill would also create a presumption that a person who unlawfully and by force enters or attempts to enter a person's residence is doing so with the intent to commit an unlawful act involving force or violence. A person would be justified in using defensive force in accordance with provisions in the bill and would be immune from criminal prosecution or civil liability for the use of that force. The PCS differs from the original bill in that the PCS only applies to defense of a dwelling or residence.***

CURRENT LAW:

§ 14-51.1. Use of deadly physical force against an intruder.

(a) A lawful occupant within a home or other place of residence is justified in using any degree of force that the occupant reasonably believes is necessary, including deadly force, against an intruder to prevent a forcible entry into the home or residence or to terminate the intruder's unlawful entry (i) if the occupant reasonably apprehends that the intruder may kill or inflict serious bodily harm to the occupant or others in the home or residence, or (ii) if the occupant reasonably believes that the intruder intends to commit a felony in the home or residence.

(b) A lawful occupant within a home or other place of residence does not have a duty to retreat from an intruder in the circumstances described in this section.

(c) This section is not intended to repeal, expand, or limit any other defense that may exist under the common law.

BILL ANALYSIS: This proposed committee substitute for Senate Bill 928 would repeal the existing law concerning the use of deadly physical force against an intruder. The bill creates two presumptions. A legal presumption generally means that the court must assume a fact is true until such time as there is evidence which disproves or rebuts the presumption.

First, the bill creates a presumption that a person using defensive force intended or likely to cause great bodily did so because he or she held a reasonable fear of imminent peril of death or great bodily harm.

The fear of imminent peril presumption applies if both of the following apply:

- The person against whom the defensive force was used:
  - Unlawfully and forcefully entered or was entering a dwelling or residence; or
  - Removed or was attempting to remove another from the dwelling or residence against his or her will
- The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or act was occurring or had occurred

The fear of imminent peril presumption does not apply if:

- The person against whom the defensive force is used was
  - An owner, lessee, or lawful resident of the property, and there is not a domestic violence protection order or "no contact" order against that person.
  - A parent, grandparent, legal custodian or guardian of the person being removed from the property.
  - A law enforcement officer in the lawful performance of official duties, and the officer identified himself or herself or the person knew or should have known that the person was a law enforcement officer.

The fear of imminent peril presumption also would not apply if the person who uses defensive force is engaged in, attempting to escape from, or using the residence to further any criminal offense involving the use or threat of physical force or violence against any person.

Secondly, the bill would create a presumption that a person who unlawfully and by force enters or attempts to enter a person's residence is doing so with the intent to commit an unlawful act involving force or violence.

The bill would provide that a person is justified in using defensive force in accordance with provisions enacted in the bill and would be immune from criminal prosecution or civil liability for the use of that force; an exception applies for the use of force against a law enforcement officer.

EFFECTIVE DATE: The bill would become effective December 1, 2009 and apply to offenses committed on or after that date; the bill would not affect prosecutions for offenses committed before that date.

S928-SMRV-56(CSRV-28) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 978

Short Title:	Firearms Qualification Sites/Retired LEOs.	(Public)
Sponsors:	Senators Bingham; and Hartsell.	
Referred to:	Education/Higher Education.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION TO COORDINATE WITH LOCAL AND STATE LAW ENFORCEMENT OFFICERS AND WITH THE COMMUNITY COLLEGE SYSTEM TO PROVIDE MULTIPLE FIREARMS QUALIFICATION SITES FOR CERTIFICATION TO CARRY A CONCEALED HANDGUN PURSUANT TO FEDERAL LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-415.26 is amended by adding a new subsection to read:

"(b1) The Commission shall coordinate with local and State law enforcement officers and with the community college system to provide multiple firearms qualification sites throughout the State where a qualified law enforcement officer may satisfy the firearms qualification criteria required for certification under this section."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 987*

Short Title:	Safe Storage of Firearms.	(Public)
Sponsors:	Senator Graham.	
Referred to:	Judiciary II.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND REQUIREMENTS FOR THE STORAGE OF FIREARMS TO PROTECT MINORS, TO ENCOURAGE UNLOADED STORAGE OF FIREARMS, AND TO PROVIDE NOTICE OF SAFE STORAGE REQUIREMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-315.1 reads as rewritten:

"**§ 14-315.1. Storage of firearms to protect minors.**

(a) Any person who ~~resides in the same premises as a minor, owns or possesses a firearm, and~~ stores or leaves ~~the~~ a firearm ~~(i) in a condition that the firearm can be discharged and (ii)~~ in a manner that the person knew or should have known that an unsupervised minor would be able to gain access to the firearm, is guilty of a Class 1 misdemeanor if a minor gains access to the firearm without the lawful permission of the minor's parents or a person having charge of the minor and the minor:

(1) Possesses it in violation of G.S. 14-269.2(b); or

(2) Exhibits it in a public ~~place~~ place.~~in a careless, angry, or threatening manner;~~

~~(3) Causes personal injury or death with it not in self defense; or~~

~~(4) Uses it in the commission of a crime.~~

(a1) Any person who stores or leaves a firearm in a manner in which the person knew or should have known that a minor would be able to gain access to the firearm is guilty of a Class A1 misdemeanor if a minor gains access to the firearm without the lawful permission of the minor's parents or a person having charge of the minor and the minor:

(1) Uses the firearm to cause personal injury or death, not in self-defense; or

(2) Uses the firearm in the commission of a crime.

(a2) Subsections (a) and (a1) of this section shall not apply if:

(1) The firearm is kept unloaded in a locked box or container, with the ammunition stored separately; or

(2) The firearm is kept unloaded and equipped with a tamper-resistant mechanical lock or other safety device properly engaged so as to render the weapon inoperable by any person other than the owner or other lawfully authorized user.

(b) Nothing in this section shall prohibit a person from carrying a firearm on his or her body, or placed in such close proximity that it can be used as easily and quickly as if carried on the body.

(c) This section shall not apply if the minor obtained the firearm as a result of an unlawful entry by any person.

(d) "Minor" as used in this section means a person under 18 years of age who is not emancipated."

SECTION 2. G.S. 14-315.2(b) reads as rewritten:

"(b) Any retail or wholesale store, shop, or sales outlet that sells firearms shall conspicuously post at each purchase counter the following warning in block letters not less than one inch in height the phrase: "IT IS UNLAWFUL TO STORE OR LEAVE A FIREARM THAT CAN BE DISCHARGED IN A MANNER THAT A REASONABLE PERSON SHOULD KNOW IS ACCESSIBLE TO A MINOR. IF YOU KEEP A LOADED FIREARM WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A MINOR OBTAINS IT AND USES IT, RESULTING IN INJURY OR DEATH, OR CARRIES IT TO A PUBLIC PLACE, YOU MAY BE GUILTY OF A CRIMINAL OFFENSE UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER OR LOCKED THE FIREARM WITH A LOCKING DEVICE TO KEEP IT FROM TEMPORARILY FUNCTIONING."

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 1091

Short Title:	Clarify Wt. Measurement/Meth Trafficking.	(Public)
Sponsors:	Senator Snow.	
Referred to:	Judiciary II.	

March 31, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING TRAFFICKING IN METHAMPHETAMINE AND AMPHETAMINE TO CLARIFY THAT THE CHARGE OF TRAFFICKING IS BASED ON THE WEIGHT OF THE ENTIRE POWDER OR LIQUID MIXTURE RATHER THAN THE WEIGHT OF THE ACTUAL AMOUNT OF THE CONTROLLED SUBSTANCE IN THE POWDER OR LIQUID MIXTURE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-95(h)(3b) reads as rewritten:

"(3b) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of ~~methamphetamine or amphetamine~~ methamphetamine, amphetamine, or any mixture containing such substance shall be guilty of a felony which felony shall be known as "trafficking in methamphetamine or amphetamine" and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of 90 months and a maximum term of 117 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class C felon and shall be sentenced to a minimum term of 225 months and a maximum term of 279 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000)."

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

SENATE BILL 1091:
Clarify Wt. Measurement/Meth Trafficking

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 28, 2009
Introduced by:	Sen. Snow	**Prepared by:**	Jennifer McGinnis
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate bill 1091 amends the law pertaining to trafficking in amphetamines and methamphetamines by adding the clause "or any mixture containing such substance" to clarify that the charge of trafficking is based on the weight of the entire powder or liquid mixture seized rather than the weight of the actual amount of the controlled substance contained within the powder or liquid mixture.***

CURRENT LAW: G.S. 90-95(h)(3b) provides that any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of methamphetamine or amphetamine is guilty of trafficking in methamphetamine or amphetamine. If the quantity of such substance or mixture involved is:

- 28 grams or more, but less than 200 grams, the person is guilty of a Class F felony
- 200 grams or more, but less than 400 grams, the person is guilty of a Class E felony
- 400 grams or more, the person is guilty of a Class C felony

BACKGROUND: In 2008, a decision by the North Carolina Court of Appeals[1] revealed that the language in the statute pertaining to trafficking in amphetamines and methamphetamines differed from other trafficking statutes governing drugs which are commonly manufactured and sold in powder form – specifically the statute governing amphetamine and methamphetamine did not contain the clause "**or any mixture containing such substance.**" This clause is contained in the trafficking statutes pertaining to methaqualone, cocaine, heroin, and LSD, and allows a charge to be brought on the total weight of the powder seized rather than the actual amount of controlled substance contained within the powder mixture.

BILL ANALYSIS: The bill would amend the law pertaining to trafficking in amphetamines and methamphetamines by adding the clause "or any mixture containing such substance" to clarify that the charge of trafficking is based on the weight of the entire powder or liquid mixture seized rather than the weight of the actual amount of the controlled substance contained within the powder or liquid mixture.

EFFECTIVE DATE: The bill would become effective September 1, 2009, and apply to offenses committed on or after that date.

S1091-SMRI-25(e1) v1

[1] *State v. Conway*, 669 S.E.2d 40 (2008).

Principal Clerk ____
Reading Clerk ____

Please note time change. We will meet at 9:00 am.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	May 5, 2009	9:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 44	Appeals of Quasi-Judicial Land-Use Decisions.	Senator Kinnaird
SB 643	Amend Drug Exam Regulation.	Senator Swindell IV
SB 969	Amend Purpose/Child Placing/Child Care Laws.	Senator Queen
SB 1007	Amend Home Inspector Licensure Laws.	Senator Hoyle
SB 1062	Strengthen Dom. Vio. Protective Orders/Pets.	Senator Boseman
SB 94	Felony to Assault Probation/Parole Officer.	Senator Foriest
SB 1076	Modify Crim. Justice Partnership Program.	Senator Snow
SB 1077	Expand Parole Officers' Delegated Authority.	Senator Snow

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

Corrected Notice – SB 94, 1076, 1077 added

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	May 5, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 44	Appeals of Quasi-Judicial Land-Use Decisions.	Senator Kinnaird
SB 643	Amend Drug Exam Regulation.	Senator Swindell IV
SB 969	Amend Purpose/Child Placing/Child Care Laws.	Senator Queen
SB 1007	Amend Home Inspector Licensure Laws.	Senator Hoyle
SB 1062	Strengthen Dom. Vio. Protective Orders/Pets.	Senator Boseman
SB 94	Felony to Assault Probation/Parole Officer.	Senator Foriest
SB 1076	Modify Crim. Justice Partnership Program.	Senator Snow
SB 1077	Expand Parole Officers' Delegated Authority.	Senator Snow

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	May 5, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 44	Appeals of Quasi-Judicial Land-Use Decisions.	Senator Kinnaird
SB 643	Amend Drug Exam Regulation.	Senator Swindell IV
SB 969	Amend Purpose/Child Placing/Child Care Laws.	Senator Queen
SB 1007	Amend Home Inspector Licensure Laws.	Senator Hoyle
SB 1062	Strengthen Dom. Vio. Protective Orders/Pets.	Senator Boseman

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II Committee
Tuesday, May 5, 2009, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 44	Appeals of Quasi-Judicial Land-Use Decisions.	Senator Kinnaird
SB 94	Felony to Assault Probation/Parole Officer.	Senator Foriest
SB 643	Amend Drug Exam Regulation.	Senator Swindell IV
SB 969	Amend Purpose/Child Placing/Child Care Laws.	Senator Queen
SB 1007	Amend Home Inspector Licensure Laws.	Senator Hoyle
SB 1062	Strengthen Dom. Vio. Protective Orders/Pets.	Senator Boseman
SB 1076	Modify Crim. Justice Partnership Program.	Senator Snow
SB 1077	Expand Parole Officers' Delegated Authority.	Senator Snow

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE
Tuesday, May 5, 2009 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 9:00 AM on May 5, 2009, in Room 1124 of the Legislative Building with eighteen members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell introduced pages Tirzah Hansen, Candace McMurran, Troy Giovan and Ivan Howard and thanked them for serving.

SB 94 – (Felony to Assult Probation/Parole Officer.) Senator Vaughan, Sub-committee Chair for SB 94, was recognized for a report. Senator Vaughan noted that the committee had met and recommended that the Senate Judiciary II Committee accept the original bill. Senator Dannelly moved for a favorable report with a referral to Appropriations. All voted and the motion carried.

SB 969 – (Amend Purpose/Child Placing/Child Care Laws.) Senator Apodaca moved to adopt the Proposed Committee Substitute for purposes of discussion. Senator Queen was recognized to explain the bill. Ms. Angie Stephenson of the Office of the Attorney General, spoke on behalf of the Department of Social Services. Dr. Phyllis H. Crain from Crossnore School, Inc., also spoke on the bill. Senator Queen answered question from Senators Goodall, Bingham, Atwater and Dannelly. Senator Bingham moved for a favorable report, unfavorable to the original bill. All voted and the motion carried.

SB 44 – (Appeals of Quasi-Judicial Land-Use Decisions.) Senator Apodaca moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Kinnaird explained the bill. Ms. Kory Goldsmith, Staff Attorney gave additional explanation. Mr. Michael Brough, Attorney, spoke on the bill and answered questions from the committee members. Mr. Michael Carpenter, of the North Carolina Home Builders Association and Mr. Paul Meyer, of the North Carolina League of Municipalities, also spoke on the bill. Senator Vaughan moved for a favorable report, unfavorable to the original bill. All voted and the motion carried.

SB 1007 – (Amend Home Inspector Licensure Laws.) Senator Dannelly moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Hoyle explained the bill. Mr. Garry Walker, representing the Home Inspectors and Ms. Kory Goldsmith, Staff Attorney, along with Senator Hoyle answered questions. Mr. Chris Ferguson, and Mr. Ted Triebel, home inspectors and Mr. Rick Zechini of the North Carolina Association of Realtors, spoke on the bill. Senator Hartsell appointed Senator Vaughan to chair the sub-committee for the bill. The bill will be heard again at a later time.

SB 643 – (Amend Drug Exam Regulation.) As Senator Hartsell needed to leave for a short time, Senator Jones chaired the meeting. Senator Swindell explained the bill and answered questions

from Senators Forrester and Bingham. Senator Bingham moved for a favorable report. All voted and the motion carried.

SB 1062 – (Strengthen Dom. Vio. Protective Orders/Pets.) Senator Berger moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Boseman explained the bill. Ms. Teri Hairston and Ms. Jessie Croom spoke on the bill. Senator Allran moved for a favorable report, unfavorable to the original bill. All voted and the motion carried.

SB 1076 – (Modify Crim. Justice Partnership Program.) Senator Snow offered an amendment and moved that it be adopted. All voted and the motion carried. Senator Snow explained the bill and answered Senator Dannelly's question. Senator Queen moved for a favorable report as amended and rolled into a proposed committee substitute. All voted and the motion carried.

SB 1077 – (Expand Parole Officers' Delegated Authority.) Senator Snow offered an amendment and moved that it be adopted. All voted and the motion carried. Senator Snow explained the bill. Senator Dannelly moved for a favorable report as amended and rolled into a proposed committee substitute. All voted and the motion carried.

There being no further business, the meeting was adjourned.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, May 05, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B.	**94**	Felony to Assault Probation/Parole Officer.	
		Sequential Referral:	None
		Recommended Referral:	Appropriations/Base Budget
S.B.	**643**	Amend Drug Exam Regulation.	
		Sequential Referral:	None
		Recommended Referral:	None
S.B.	**1076**	Modify Crim. Justice Partnership Program.	
		Sequential Referral:	None
		Recommended Referral:	None
S.B.	**1077**	Expand Parole Officers' Delegated Authority.	
		Sequential Referral:	None
		Recommended Referral:	None

TOTAL REPORTED: 4

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Wednesday, May 06, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

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

S.B. **44** Appeals of Quasi-Judicial Land-Use Decisions.

Draft Number:	35307
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **969** Amend Purpose/Child Placing/Child Care Laws.

Draft Number:	85209
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **1062** Strengthen Dom. Vio. Protective Orders/Pets.

Draft Number:	35305
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 3

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — May 5, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mike Brough	Brough Law Firm
Julie Cerqueira	NCCBA
Carol Biggers Dabbs	Crossnore School
Phyllis H. Crain	Crossnore School
Norman Jameson	Biblical Recorder - Raleigh
Kim Hibbard	NCLM
Debra DeCamillis	UNC-IOG
R. Paul Wilms	WGR
David McGowan	NC Realtors
Cady Thomas	" "
Jennifer Haigwood	NCDOL
John Hamann	NCDOL

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jay Stem	NCAA
Jim Mocre	DCC
Angie Stephenson	AG's office on behalf of DHHS/DSS
Emily Gallimore	NCBA
MIKE MANN	NCBA
Cady Thomas	NCAR
Scott Gronon	Scott Gronon
Jeff Mixon	Civitas

SENATE BILL 44

Short Title:	Appeals of Quasi-Judicial Land-Use Decisions.	(Public)
Sponsors:	Senator Kinnaird.	
Referred to:	Judiciary II.	

February 4, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW REGARDING APPEALS OF QUASI-JUDICIAL DECISIONS MADE UNDER ARTICLE 19 OF CHAPTER 160A AND ARTICLE 18 OF CHAPTER 153A OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Part 3 of Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-393. Appeals in the nature of certiorari.**

(a) Applicability. – This section applies to appeals of quasi-judicial decisions of decision-making boards when that appeal is to superior court and in the nature of certiorari as required by this Article.

(b) For purposes of this section, the following terms mean:

(1) Decision-making board. – A city council, planning board, board of adjustment, or other board making quasi-judicial decisions appointed by the city council under this Article or under comparable provisions of any local act.

(2) Person. – Any legal entity authorized to bring suit in the legal entity's name.

(c) Filing the Petition. – An appeal in the nature of certiorari shall be initiated by filing with the superior court a petition for writ of certiorari. The petition shall:

(1) State the facts that demonstrate that the petitioner has standing to seek review.

(2) Set forth the grounds upon which the petitioner contends that an error was made. The facts, if any, in support of allegations that, as the result of impermissible conflict as described in G.S. 160A-388(e1), the decision-making body was not sufficiently impartial to comply with due process principles shall be set forth with particularity.

(3) Set forth the relief the petitioner seeks.

(d) Standing. – A petition may be filed under this section only by a petitioner who has standing to challenge the decision being appealed. The following persons shall have standing to file a petition under this section:

(1) Any person meeting any of the following criteria:

a. Has an ownership interest, leasehold interest, or other interest created by easement, restriction, or covenant in the property that is the subject of the decision being appealed.

b. Has an option or contract to purchase the property that is the subject of the decision being appealed.

c. Was an applicant before the decision-making board whose decision is being appealed.

(2) Any person with an ownership interest or leasehold interest in property any portion of which is located within 200 feet of the boundary of the property that is the subject of the decision being appealed.

(3) Any other person who will suffer special damages as the result of the decision being appealed. For purposes of this subdivision, 'special damages' mean a substantial harm suffered by a person that is distinct from the rest of the community, amounting to a reduction in the value of such person's property.

(4) An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of a particular neighborhood or local area, so long as at least one of the members of the association would have standing as an individual to challenge the decision being appealed, and the association was not created in response to the particular development or issue that is the subject of the appeal.

(5) A city whose decision-making board has made a decision that the council believes improperly grants a variance from or is otherwise inconsistent with the proper interpretation of an ordinance adopted by that council.

(e) Respondent. – The respondent named in the petition shall be the city whose decision-making board made the decision that is being appealed, except that if the petitioner is a city that has filed a petition pursuant to subdivision (d)(5) of this section, then the respondent shall be the decision-making board. If the petitioner is not the applicant before the decision-making board whose decision is being appealed, the petitioner shall also name that applicant as a respondent. Any petitioner may name as a respondent any person with an ownership or leasehold interest in the property that is the subject of the decision being appealed who participated in the hearing before the decision-making board.

(f) Writ of Certiorari. – Upon filing the petition, the petitioner shall present the petition and a proposed writ of certiorari to the clerk of court of the county in which the matter arose. The writ shall direct the respondent city (or the respondent decision-making board if the petitioner is a city that has filed a petition pursuant to subdivision (d)(5) of this section) to prepare and certify to the court the record of proceedings below within a specified date. The writ shall also direct that the petitioner shall serve the petition and the writ upon each respondent named therein in the manner provided for service of a complaint under Rule 4j of the Rules of Civil Procedure (except that, if the respondent is a decision-making board, the petition and the writ shall be served upon the chairman of that decision-making board). No summons shall be issued. The clerk shall issue the writ without notice to the respondent or respondents if the petition has been properly filed and the writ is in proper form. A copy of the executed writ shall be filed with the court.

(g) Answer to the Petition. – The respondent may, but need not, file an answer to the petition, except that if the respondent contends that any petitioner lacks standing to bring the appeal, that contention must be set forth in an answer served on all petitioners at least 30 days prior to the hearing on the petition.

(h) Intervention. – Rule 24 of the Rules of Civil Procedure shall govern motions to intervene as a petitioner or respondent in an action initiated under this section with the following exceptions:

(1) Any person described in subdivision (d)(1) of this section shall have standing to intervene and shall be allowed to intervene as a matter or right.

(2) Any person, other than one described in subdivision (d)(1) of this section, who seeks to intervene as a petitioner must demonstrate that the person would have had standing to challenge the decision being appealed in accordance with subdivisions (d)(2) through (d)(5) of this section.

(3) Any person, other than one described in subdivision (d)(1) of this section, who seeks to intervene as a respondent must demonstrate that the person would have had standing to file a petition in accordance with subdivisions (d)(2) through (d)(5) of this section if the decision-making board had made a decision that is consistent with the relief sought by the petitioner(s).

(i) The Record. – The record shall consist of all documents and exhibits submitted to the decision-making board whose decision is being appealed, together with the minutes of the meeting or meetings at which the decision being appealed was considered. Upon request of any party, the record shall also contain an audio or videotape of the meeting or meetings at which the decision being appealed was considered if such a recording was made. Any party may also include in the record a transcript of the proceedings, which shall be prepared at the cost of the party choosing to include it. The parties may agree, or the court may direct, that matters unnecessary to the court's decision be deleted from the record or that matters other than those specified herein be included. The record shall be bound and paginated or otherwise organized for the convenience of the parties and the court. A copy of the record shall be served by the municipal respondent upon all petitioners within three days after it is filed with the court.

(j) Hearing on the Record. – The court shall hear and decide all issues raised by the petition by reviewing the record submitted in accordance with subsection (h) of this section. Except that the court may, in its discretion, allow the record to be supplemented with affidavits, testimony of witnesses, or documentary or other evidence if, and to the extent that, the record is not adequate to allow an appropriate determination of the following issues:

(1) Whether a petitioner or intervenor has standing.

(2) Whether, as a result of impermissible conflict as described in G.S. 160A-388(e1), the decision-making body was not sufficiently impartial to comply with due process principles.

(3) Whether the decision-making body erred for the reasons set forth in sub-subdivisions a. and b. of subdivision (1) of subsection (k) of this section.

(k) Scope of Review. –

(1) When reviewing the decision of a decision-making board under the provisions of this section, the trial court shall ensure that the rights of petitioners have not been prejudiced because the decision-making body's findings, inferences, conclusions, or decisions were:

a. In violation of constitutional provisions, including those protecting procedural due process rights.

b. In excess of the statutory authority conferred upon the city or the authority conferred upon the decision-making board by ordinance.

c. Inconsistent with applicable procedures specified by statute or ordinance.

d. Affected by other error of law.

e. Unsupported by substantial competent evidence in view of the entire record.

f. Arbitrary or capricious.

(2) When the issue before the trial court is whether the decision-making board erred in interpreting an ordinance, the trial court may review that issue de novo and freely substitute its judgment for that of the decision-making board, provided that the court may give due consideration to the construction adopted by those entities charged with the execution and administration of

the ordinance, taking into account the extent to which such construction may have been based on sound reasoning and consistent application.

(3) The term "competent evidence," as used in this subsection, shall not preclude reliance by the decision-making board on evidence that would not be admissible under the rules of evidence as applied in the trial division of the General Court of Justice if (i) the evidence was admitted without objection, or (ii) the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the decision-making board to rely upon it. The term "competent evidence" shall not be deemed to include the opinion testimony of lay witnesses as to any of the following:

a. The use of property in a particular way would affect the value of other property.

b. The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety.

c. Matters about which only expert testimony would generally be admissible under the rules of evidence.

(l) Decision of the Trial Court. – Following its review of the decision-making board in accordance with subsection (k) of this section, the trial court may affirm the decision, reverse the decision and remand the case with appropriate instructions, or remand the case for further proceedings. If the court does not affirm the decision below in its entirety, then the court shall be guided by the following in determining what relief should be granted to the petitioners:

(1) If the court concludes that the error committed by the decision-making board is procedural only, the court may remand the case for further proceedings to correct the procedural error.

(2) If the court concludes that the decision-making board has erred by failing to make findings of fact such that the court cannot properly perform its function, then the court may remand the case with appropriate instructions so long as the record contains substantial competent evidence that could support the decision below with appropriate findings of fact. However, findings of fact are not necessary when the record sufficiently reveals the basis for the decision below or when the material facts are undisputed and the case presents only an issue of law.

(3) If the court concludes that the decision by the decision-making board is not supported by substantial competent evidence in the record or is based upon an error of law, then the court may remand the case with an order that directs the decision-making board to take whatever action should have been taken had the error not been committed or to take such other action as is necessary to correct the error. Specifically:

a. If the court concludes that a permit was wrongfully denied because the denial was not based on substantial competent evidence or was otherwise based on an error of law, the court shall remand with instructions that the permit be issued.

b. If the court concludes that a permit was wrongfully issued because the issuance was not based on substantial competent evidence or was otherwise based on an error of law, the court shall remand with instructions that the permit be revoked.

(m) Ancillary Injunctive Relief. – Upon motion of a party to a proceeding under this section, and under appropriate circumstances, the trial court may issue an injunctive order requiring any other party to that proceeding to take certain action or refrain from taking action that is consistent with the court's decision on the merits of the appeal."

SECTION 1.(b) Article 18 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-349. Appeals in the nature of certiorari.**

(a) Whenever appeals of quasi-judicial decisions of decision-making boards are to superior court and in the nature of certiorari as required by this Article, the provisions of G.S. 160A-393 shall be applicable to those appeals.

(b) For purposes of this section, as used in G.S. 160A-393, the term "city council" shall be deemed to refer to the "board of commissioners," and the term "city" or "municipal" shall be deemed to refer to the "county."

(c) For purposes of this section, the "impermissible conflict as described in G.S. 160A-388(e1)" shall mean "impermissible conflict as described in G.S. 153A-345(e1)."""

SECTION 2.(a) Part 2 of Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-377. Appeals of decisions on subdivision plats.**

(a) When a subdivision ordinance adopted under this Part provides that the decision whether to approve or deny a preliminary or final subdivision plat is to be made by a city council or a planning board, other than a planning board comprised solely of members of a city planning staff, and the ordinance authorizes the council or planning board to make a quasi-judicial decision in deciding whether to approve the subdivision plat, then that quasi-judicial decision of the council or planning board shall be subject to review by the superior court by proceedings in the nature of certiorari. The provisions of G.S. 160A-381(c), 160A-388(e2), and 160A-393 shall apply to those appeals.

(b) When a subdivision ordinance adopted under this Part provides that a city council, planning board, or staff member is authorized to make only an administrative or ministerial decision in deciding whether to approve a preliminary or final subdivision plat, then any party aggrieved by that administrative or ministerial decision may seek to have the decision reviewed by filing an action in superior court seeking appropriate declaratory or equitable relief. Such an action must be filed within the time frame specified in G.S. 160A-381(c) for petitions in the nature of certiorari.

(c) For purposes of this section, an ordinance shall be deemed to authorize a quasi-judicial decision if the city council or planning board is authorized to decide whether to approve or deny the plat based not only upon whether the application complies with the specific requirements set forth in the ordinance, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision to be made by the city council or planning board."

SECTION 2.(b) Part 2 of Article 18 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-336. Appeals of decisions on subdivision plats.**

(a) When a subdivision ordinance adopted under this Part provides that the decision whether to approve or deny a preliminary or final subdivision plat is to be made by a board of commissioners or a planning board, other than a planning board comprised solely of members of a county planning staff, and the ordinance authorizes the board of commissioners or planning board to make a quasi-judicial decision in deciding whether to approve the subdivision plat, then that quasi-judicial decision of the board of commissioners or planning board shall be subject to review by the superior court by proceedings in the nature of certiorari. The provisions of G.S. 153A-340(f), 153A-345(e2), and 153A-349 shall apply to those appeals.

(b) When a subdivision ordinance adopted under this Part provides that a board of commissioners, planning board, or staff member is authorized to make only an administrative or ministerial decision in deciding whether to approve a preliminary or final subdivision plat, then any party aggrieved by that administrative or ministerial decision may seek to have the decision reviewed by filing an action in superior court seeking appropriate declaratory or

equitable relief. Such an action must be filed within the time frame specified in G.S. 153A-340(f) for petitions in the nature of certiorari.

(c) For purposes of this section, an ordinance shall be deemed to authorize a quasi-judicial decision if the board of commissioners or planning board is authorized to decide whether to approve or deny the plat based not only upon whether the application complies with the specific requirements set forth in the ordinance, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision to be made by the board of commissioners or planning board."

SECTION 3. G.S. 63-34 reads as rewritten:

"**§ 63-34. Judicial review.**

(a) Any person aggrieved by any decision of the board of appeals, or any taxpayer, or any officer, department, board, or bureau of the political subdivision, may present to the superior court a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the decision is filed in the office of the board. Such petition shall comply with the provisions of G.S. 160A-393.

(b) ~~Upon presentation of such petition the court may allow a writ of certiorari directed to the board of appeals to review such decision of the board.~~The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

(c) The board of appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

~~(d) The court shall have exclusive jurisdiction to affirm, modify, or set aside the decision brought up for review, in whole or in part, and if need be, to order further proceedings by the board of appeals. The findings of fact by the board, if supported by substantial evidence, shall be accepted by the court as conclusive, and no objection to a decision of the board shall be considered by the court unless such objection shall have been urged before the board, or if it was not so urged, unless there were reasonable grounds for failure to do so.~~

(e) Costs shall not be allowed against the board of appeals unless it appears to the court that it acted with gross negligence, in bad faith, or with malice, in making the decision appealed from."

SECTION 4. G.S. 162A-93(b) reads as rewritten:

"(b) The provisions of subsection (a) shall not apply if the city council adopts an annexation ordinance including an area served by a district and finds, after a public hearing, that adequate fire protection cannot be provided in the area because of the level of available water service. Notice of the public hearing shall be provided by first class mail to each affected customer and by publication in a newspaper having general circulation in the area, each not less than 10 days before the hearing. The clerk's certification of the mailing shall be deemed conclusive in the absence of fraud. Any resident of the annexed area aggrieved by such a finding of the council may file a petition for review in the superior court in the nature of certiorari, within 30 days after the finding. The petition for review in the nature of certiorari shall comply with G.S. 160A-393."

SECTION 5. G.S. 160A-388(e1) reads as rewritten:

"(e1) A member of the board or any other body exercising ~~the functions of a board of adjustment~~quasi-judicial functions pursuant to this Article shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change,

undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection."

SECTION 6. G.S. 153A-345(e1) reads as rewritten:

"(e1) A member of the board or any other body exercising ~~the functions of a board of adjustment~~quasi-judicial functions pursuant to this Article shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection."

SECTION 7. This act becomes effective January 1, 2010, and applies to appeals filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 44
PROPOSED COMMITTEE SUBSTITUTE S44-CSRC-13 [v.2]

5/3/2009 2:13:41 PM

Short Title: Appeals of Quasi-Judicial Land-Use Decisions. (Public)

Sponsors:

Referred to:

February 4, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW REGARDING APPEALS OF QUASI-JUDICIAL DECISIONS MADE UNDER ARTICLE 19 OF CHAPTER 160A AND ARTICLE 18 OF CHAPTER 153A OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Part 3 of Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-393. Appeals in the nature of certiorari.**

(a) Applicability. – This section applies to appeals of quasi-judicial decisions of decision-making boards when that appeal is to superior court and in the nature of certiorari as required by this Article.

(b) For purposes of this section, the following terms mean:

(1) Decision-making board. – A city council, planning board, board of adjustment, or other board making quasi-judicial decisions appointed by the city council under this Article or under comparable provisions of any local act or any interlocal agreement authorized by law.

(2) Person. – Any legal entity authorized to bring suit in the legal entity's name.

(3) Quasi-judicial decision. – A decision involving the finding of facts regarding a specific application of an ordinance and the exercise of discretion when applying the standards of the ordinance. Quasi-judicial decisions include decisions involving variances, special and conditional use permits, and appeals of administrative determinations. Decisions on the approval of site plans are quasi-judicial in nature if the ordinance authorizes a decision-making board to approve or deny the site plan based not only upon whether the application complies with the specific requirements set forth in the ordinance, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision on the findings of fact to be made by the decision-making board.

(c) Filing the Petition. – An appeal in the nature of certiorari shall be initiated by filing with the superior court a petition for writ of certiorari. The petition shall:

(1) State the facts that demonstrate that the petitioner has standing to seek review.

(2) Set forth the grounds upon which the petitioner contends that an error was made.

(3) Set forth with particularity the allegations and facts, if any, in support of allegations that, as the result of impermissible conflict as described in G.S. 160A-388(e1), or locally adopted conflict rules, the decision-making body was not sufficiently impartial to comply with due process principles.

(4) Set forth the relief the petitioner seeks.

(d) Standing. – A petition may be filed under this section only by a petitioner who has standing to challenge the decision being appealed. The following persons shall have standing to file a petition under this section:

(1) Any person meeting any of the following criteria:

a. Has an ownership interest, leasehold interest, or other interest created by easement, restriction, or covenant in the property that is the subject of the decision being appealed.

b. Has an option or contract to purchase the property that is the subject of the decision being appealed.

c. Was an applicant before the decision-making board whose decision is being appealed.

(2) Any other person who will suffer special damages as the result of the decision being appealed.

(3) An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one of the members of the association would have standing as an individual to challenge the decision being appealed, and the association was not created in response to the particular development or issue that is the subject of the appeal.

(4) A city whose decision-making board has made a decision that the council believes improperly grants a variance from or is otherwise inconsistent with the proper interpretation of an ordinance adopted by that council.

(e) Respondent. – The respondent named in the petition shall be the city whose decision-making board made the decision that is being appealed, except that if the petitioner is a city that has filed a petition pursuant to subdivision (d)(4) of this section, then the respondent shall be the decision-making board. If the petitioner is not the applicant before the decision-making board whose decision is being appealed, the petitioner shall also name that applicant as a respondent. Any petitioner may name as a respondent any person with an ownership or leasehold interest in the property that is the subject of the decision being appealed who participated in the hearing, or was an applicant, before the decision-making board.

(f) Writ of Certiorari. – Upon filing the petition, the petitioner shall present the petition and a proposed writ of certiorari to the clerk of court of the county in which the matter arose. The writ shall direct the respondent city, or the respondent decision-making board if the petitioner is a city that has filed a petition pursuant to subdivision (d)(4) of this section, to prepare and certify to the court the record of proceedings below within a specified date. The writ shall also direct that the petitioner shall serve the petition and the writ upon each respondent named therein in the manner provided for service of a complaint under Rule 4(j) of the Rules of Civil Procedure, except that, if the respondent is a decision-making board, the petition and the writ shall be served upon the chair of that decision-making board. Rule 4(j)(5)d of the Rules of Civil Procedure shall apply in the event the chair of a decision-making board cannot be found. No summons shall be issued. The clerk shall issue the writ without notice to the respondent or respondents if the petition has been properly filed and the writ is in proper form. A copy of the executed writ shall be filed with the court.

(g) Answer to the Petition. – The respondent may, but need not, file an answer to the petition, except that, if the respondent contends that any petitioner lacks standing to bring the appeal, that contention must be set forth in an answer served on all petitioners at least 30 days prior to the hearing on the petition.

(h) Intervention. – Rule 24 of the Rules of Civil Procedure shall govern motions to intervene as a petitioner or respondent in an action initiated under this section with the following exceptions:

(1) Any person described in subdivision (d)(1) of this section shall have standing to intervene and shall be allowed to intervene as a matter or right.

(2) Any person, other than one described in subdivision (d)(1) of this section, who seeks to intervene as a petitioner must demonstrate that the person would have had standing to challenge the decision being appealed in accordance with subdivisions (d)(2) through (d)(4) of this section.

(3) Any person, other than one described in subdivision (d)(1) of this section, who seeks to intervene as a respondent must demonstrate that the person would have had standing to file a petition in accordance with subdivisions (d)(2) through (d)(4) of this section if the decision-making board had made a decision that is consistent with the relief sought by the petitioner.

(i) The Record. – The record shall consist of all documents and exhibits submitted to the decision-making board whose decision is being appealed, together with the minutes of the meeting or meetings at which the decision being appealed was considered. Upon request of any party, the record shall also contain an audio or videotape of the meeting or meetings at which the decision being appealed was considered if such a recording was made. Any party may also include in the record a transcript of the proceedings, which shall be prepared at the cost of the party choosing to include it. The parties may agree, or the court may direct, that matters unnecessary to the court's decision be deleted from the record or that matters other than those specified herein be included. The record shall be bound and paginated or otherwise organized for the convenience of the parties and the court. A copy of the record shall be served by the municipal respondent, or the respondent decision-making board, upon all petitioners within three days after it is filed with the court.

(j) Hearing on the Record. – The court shall hear and decide all issues raised by the petition by reviewing the record submitted in accordance with subsection (h) of this section. Except that the court may, in its discretion, allow the record to be supplemented with affidavits, testimony of witnesses, or documentary or other evidence if, and to the extent that, the record is not adequate to allow an appropriate determination of the following issues:

(1) Whether a petitioner or intervenor has standing.

(2) Whether, as a result of impermissible conflict as described in G.S. 160A-388(e1), or locally adopted conflict rules, the decision-making body was not sufficiently impartial to comply with due process principles.

(3) Whether the decision-making body erred for the reasons set forth in sub-subdivisions a. and b. of subdivision (1) of subsection (k) of this section.

(k) Scope of Review. –

(1) When reviewing the decision of a decision-making board under the provisions of this section, the court shall ensure that the rights of petitioners have not been prejudiced because the decision-making body's findings, inferences, conclusions, or decisions were:

a. In violation of constitutional provisions, including those protecting procedural due process rights.

b. In excess of the statutory authority conferred upon the city or the authority conferred upon the decision-making board by ordinance.

c. Inconsistent with applicable procedures specified by statute or ordinance.
d. Affected by other error of law.
e. Unsupported by substantial competent evidence in view of the entire record.
f. Arbitrary or capricious.

(2) When the issue before the court is whether the decision-making board erred in interpreting an ordinance, the court shall review that issue de novo, and freely substitute its judgment for that of the decision-making board.

(3) The term "competent evidence," as used in this subsection, shall not preclude reliance by the decision-making board on evidence that would not be admissible under the rules of evidence as applied in the trial division of the General Court of Justice if (i) the evidence was admitted without objection, or (ii) the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the decision-making board to rely upon it. The term "competent evidence," as used in this subsection, shall not be deemed to include the opinion testimony of lay witnesses as to any of the following:

a. The use of property in a particular way would affect the value of other property.
b. The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety.
c. Matters about which only expert testimony would generally be admissible under the rules of evidence.

(l) Decision of the Court. – Following its review of the decision-making board in accordance with subsection (k) of this section, the court may affirm the decision, reverse the decision and remand the case with appropriate instructions, or remand the case for further proceedings. If the court does not affirm the decision below in its entirety, then the court shall be guided by the following in determining what relief should be granted to the petitioners:

(1) If the court concludes that the error committed by the decision-making board is procedural only, the court may remand the case for further proceedings to correct the procedural error.

(2) If the court concludes that the decision-making board has erred by failing to make findings of fact such that the court cannot properly perform its function, then the court may remand the case with appropriate instructions so long as the record contains substantial competent evidence that could support the decision below with appropriate findings of fact. However, findings of fact are not necessary when the record sufficiently reveals the basis for the decision below or when the material facts are undisputed and the case presents only an issue of law.

(3) If the court concludes that the decision by the decision-making board is not supported by substantial competent evidence in the record or is based upon an error of law, then the court may remand the case with an order that directs the decision-making board to take whatever action should have been taken had the error not been committed or to take such other action as is necessary to correct the error. Specifically:

a. If the court concludes that a permit was wrongfully denied because the denial was not based on substantial competent evidence or was otherwise based on an error of law, the court may remand with instructions that the permit be issued, subject to reasonable and appropriate conditions.

b. If the court concludes that a permit was wrongfully issued because the issuance was not based on substantial competent evidence or was otherwise based on an error of law, the court may remand with instructions that the permit be revoked.

(m) Ancillary Injunctive Relief. – Upon motion of a party to a proceeding under this section, and under appropriate circumstances, the court may issue an injunctive order requiring any other party to that proceeding to take certain action or refrain from taking action that is consistent with the court's decision on the merits of the appeal."

SECTION 1.(b) Article 18 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-349. Appeals in the nature of certiorari.**

(a) Whenever appeals of quasi-judicial decisions of decision-making boards are to superior court and in the nature of certiorari as required by this Article, the provisions of G.S. 160A-393 shall be applicable to those appeals.

(b) For purposes of this section, as used in G.S. 160A-393, the term "city council" shall be deemed to refer to the "board of commissioners," and the term "city" or "municipal" shall be deemed to refer to the "county".

(c) For purposes of this section, the "impermissible conflict as described in G.S. 160A-388(e1)" shall mean "impermissible conflict as described in G.S. 153A-345(e1)"."

SECTION 2.(a) Part 2 of Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-377. Appeals of decisions on subdivision plats.**

(a) When a subdivision ordinance adopted under this Part provides that the decision whether to approve or deny a preliminary or final subdivision plat is to be made by a city council or a planning board, other than a planning board comprised solely of members of a city planning staff, and the ordinance authorizes the council or planning board to make a quasi-judicial decision in deciding whether to approve the subdivision plat, then that quasi-judicial decision of the council or planning board shall be subject to review by the superior court by proceedings in the nature of certiorari. The provisions of G.S. 160A-381(c), 160A-388(e2), and 160A-393 shall apply to those appeals.

(b) When a subdivision ordinance adopted under this Part provides that a city council, planning board, or staff member is authorized to make only an administrative or ministerial decision in deciding whether to approve a preliminary or final subdivision plat, then any party aggrieved by that administrative or ministerial decision may seek to have the decision reviewed by filing an action in superior court seeking appropriate declaratory or equitable relief. Such an action must be filed within the time frame specified in G.S. 160A-381(c) for petitions in the nature of certiorari.

(c) For purposes of this section, an ordinance shall be deemed to authorize a quasi-judicial decision if the city council or planning board is authorized to decide whether to approve or deny the plat based not only upon whether the application complies with the specific requirements set forth in the ordinance, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision to be made by the city council or planning board."

SECTION 2.(b) Part 2 of Article 18 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-336. Appeals of decisions on subdivision plats.**

(a) When a subdivision ordinance adopted under this Part provides that the decision whether to approve or deny a preliminary or final subdivision plat is to be made by a board of commissioners or a planning board, other than a planning board comprised solely of members of a county planning staff, and the ordinance authorizes the board of commissioners or planning board to make a quasi-judicial decision in deciding whether to approve the

subdivision plat, then that quasi-judicial decision of the board of commissioners or planning board shall be subject to review by the superior court by proceedings in the nature of certiorari. The provisions of G.S. 153A-340(f), 153A-345(e2), and 153A-349 shall apply to those appeals.

(b) When a subdivision ordinance adopted under this Part provides that a board of commissioners, planning board, or staff member is authorized to make only an administrative or ministerial decision in deciding whether to approve a preliminary or final subdivision plat, then any party aggrieved by that administrative or ministerial decision may seek to have the decision reviewed by filing an action in superior court seeking appropriate declaratory or equitable relief. Such an action must be filed within the time frame specified in G.S. 153A-340(f) for petitions in the nature of certiorari.

(c) For purposes of this section, an ordinance shall be deemed to authorize a quasi-judicial decision if the board of commissioners or planning board is authorized to decide whether to approve or deny the plat based not only upon whether the application complies with the specific requirements set forth in the ordinance, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision to be made by the board of commissioners or planning board."

SECTION 3. G.S. 63-34 reads as rewritten:

"**§ 63-34. Judicial review.**

(a) Any person aggrieved by any decision of the board of appeals, or any taxpayer, or any officer, department, board, or bureau of the political subdivision, may present to the superior court a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the decision is filed in the office of the board. Such petition shall comply with the provisions of G.S. 160A-393.

(b) ~~Upon presentation of such petition the court may allow a writ of certiorari directed to the board of appeals to review such decision of the board.~~ The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

(c) The board of appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

~~(d) The court shall have exclusive jurisdiction to affirm, modify, or set aside the decision brought up for review, in whole or in part, and if need be, to order further proceedings by the board of appeals. The findings of fact by the board, if supported by substantial evidence, shall be accepted by the court as conclusive, and no objection to a decision of the board shall be considered by the court unless such objection shall have been urged before the board, or if it was not so urged, unless there were reasonable grounds for failure to do so.~~

(e) Costs shall not be allowed against the board of appeals unless it appears to the court that it acted with gross negligence, in bad faith, or with malice, in making the decision appealed from."

SECTION 4. G.S. 162A-93(b) reads as rewritten:

"(b) The provisions of subsection (a) shall not apply if the city council adopts an annexation ordinance including an area served by a district and finds, after a public hearing, that adequate fire protection cannot be provided in the area because of the level of available water service. Notice of the public hearing shall be provided by first class mail to each affected customer and by publication in a newspaper having general circulation in the area, each not less than 10 days before the hearing. The clerk's certification of the mailing shall be deemed conclusive in the absence of fraud. Any resident of the annexed area aggrieved by such a finding of the council may file a petition for review in the superior court in the nature of

~~certiorari~~certiorari, within 30 days after the finding. The petition for review in the nature of certiorari shall comply with G.S. 160A-393."

SECTION 5. G.S. 160A-388(e1) reads as rewritten:

"(e1) A member of the board or any other body exercising ~~the functions of a board of adjustment~~quasi-judicial functions pursuant to this Article shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection."

SECTION 6. G.S. 153A-345(e1) reads as rewritten:

"(e1) A member of the board or any other body exercising ~~the functions of a board of adjustment~~quasi-judicial functions pursuant to this Article shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection."

SECTION 7. This act becomes effective January 1, 2010, and applies to quasi-judicial decisions rendered on or after that date.

SENATE BILL 44:
Appeals of Quasi-Judicial Land-Use Decisions

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 3, 2009
Introduced by:	Sen. Kinnaird	**Prepared by:**	Kory Goldsmith
Analysis of:	PCS to First Edition S44-CSRC-13		Committee Counsel

SUMMARY: ***This Proposed Committee Substitute for Senate Bill 44 would establish a statutory appeals procedure for quasi-judicial decisions of local governments on land use matters. It also provides that when any local board makes a quasi-judicial decision, it must observe the same conflict of interest standards that apply to boards of adjustment.***

CURRENT LAW: Currently there is little statutory guidance for appeals from the quasi-judicial decisions of local governments concerning land use. Those would include the decisions authorized under Article 19 of Chapter 160A for cities and Article 18 of Chapter 153A for counties to issue subdivision permits, special or conditional use permits, and zoning variances.

BILL ANALYSIS:

Section 1.(a) creates G.S. 160A-393 which establishes a statutory process for appealing quasi-judicial decisions of decision-making boards making quasi-judicial decisions. A "decision making board" is any city council, planning board, board of adjustment or other board appointed by the city council. A quasi-judicial decision is a decision involving the finding of facts regarding a specific application of an ordinance and the exercise of discretion when applying the standards of the ordinance. Examples of quasi-judicial decisions are decisions involving variances as well as special and conditional use permits. Decisions on the approval of site plans may be quasi-judicial if the ordinance authorizes the board to deny the application based in part on whether the application complies with generally stated standards requiring the application of discretion on the findings of fact to be made by the board.

An appeal would be initiated by the filing of a petition for writ of certiorari stating the facts to be reviewed, the grounds for the error, the relief the petitioner seeks, and whether the petitioner alleges an impermissible conflict of interest. The following persons would have standing to file a petition:

- The person has a property interest in the property, an option or contract to purchase the property, or was an applicant before the decision-making board.
- Any person who will suffer special damages as a result of the decision being appealed.
- A property owners association, neighborhood association, or similar civic association, if any of its members have standing as an individual, if the interests sought to be protected are germane to the association's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members who would have standing.
- A city if the city council believes the quasi-judicial decision is not consistent with the ordinance adopted by the council.

The respondent in the appeal is generally the city whose board or agency made the decision.

Upon filing the petition, the petitioner shall present a proposed writ of certiorari to the clerk of court in the county where the matter arises. The writ would direct the respondent to prepare and certify to the court a record of the proceedings. The writ also directs the petitioner to serve the writ on the

respondent. The writ is issued without notice to the respondent, and the respondent is not required to file an answer to the petition unless the respondent challenges the petitioner's standing.

Generally, the right to intervene is governed by Rule 24 of the Rules of Civil Procedure. In addition. G.S. 160A-393(h) would allow a person has a property interest in the property, an option or contract to purchase the property, or was an applicant before the decision-making board to intervene as a matter of right. Otherwise, a person seeking to intervene as a petitioner must have had standing to challenge the quasi-judicial decision, and a person seeking to intervene as a respondent must have had standing to file a petition if the decision had been in accordance with the relief the petitioner is seeking.

In a hearing on the record, the Superior Court shall ensure that the petitioner's rights were not prejudiced because the decision-making body's actions were:

1. Unconstitutional.
2. In excess of authority given it by statute or ordinance.
3. Inconsistent with what statute or ordinance prescribes as procedure.
4. Affected by other error of law.
5. Unsupported by competent evidence.
6. Arbitrary and capricious.

The trial court may affirm the decision, reverse the decision and remand with appropriate instructions or remand the case for further proceedings.

Section 1.(b) creates G.S. 153A-349 which makes the same procedures applicable to county decision-making boards quasi-judicial decisions.

Section 2.(a) and (b) applies the appeals principles of Section 1 to appeals from city and county subdivision plat decisions. It makes the distinction between quasi-judicial plat decisions and administrative ones.

Sections 3 and 4 applies the appeals principles to airport zoning decisions and a decision by a municipality to extend water or sewer lines into an area served by a county water and sewer district.

Section 5 clarifies that when any local board makes a quasi-judicial decision, it must observe the same conflict of interest standards that are applicable to boards of adjustment.

EFFECTIVE DATE: This act becomes effective January 12, 2010 and would apply to quasi-judicial decisions made on or after that date.

S44-SMRC-26(CSRC-13) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 94

Short Title:	Felony to Assault Probation/Parole Officer.	(Public)
Sponsors:	Senator Foriest.	
Referred to:	Judiciary II.	

February 10, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A FELONY TO ASSAULT OR OTHERWISE ENDANGER A PROBATION OR PAROLE OFFICER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-16.10 reads as rewritten:

"**§ 14-16.10. Definitions.**

The following definitions apply in this Article:

(1) Court officer. – Magistrate, clerk of superior court, acting clerk, assistant or deputy clerk, judge, or justice of the General Court of Justice; district attorney, assistant district attorney, or any other attorney designated by the district attorney to act for the State or on behalf of the district attorney; public defender or assistant defender; court reporter; probation or parole officer; juvenile court counselor as defined in G.S. 7B-1501(18a); any attorney or other individual employed by or acting on behalf of the department of social services in proceedings pursuant to Subchapter I of Chapter 7B of the General Statutes; any attorney or other individual appointed pursuant to G.S. 7B-601 or G.S. 7B-1108 or employed by the Guardian ad Litem Services Division of the Administrative Office of the Courts.

(2) Executive officer. – A person named in G.S. 147-3(c).

(3) Legislative officer. – A person named in G.S. 147-2(1), (2), or (3)."

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

SENATE BILL 94:
Felony to Assault Probation/Parole Officer

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 5, 2009
Introduced by:	Sen. Foriest	**Prepared by:**	Jennifer McGinnis Committee Counsel
Analysis of:	First Edition		

SUMMARY: Senate Bill 94 would add probation and parole officers to the list of persons covered under Article 5A of Chapter 14, which makes it a felony to assault or threaten executive, legislative, and court officers.

CURRENT LAW: Article 5A currently provides that a person who assaults a legislative, executive, or court officer ("covered persons") or makes a violent attack upon their residence, office, temporary accommodation or means of transport shall be punished as a Class I felon, except in cases where a deadly weapon is used or serious bodily injury is inflicted in which case the person committing the act shall be punished as a Class F felon. The Article also provides that a person who knowingly and willfully makes a threat to inflict serious bodily injury against a covered person, or knowingly and willfully deposits for conveyance in the mail such a threat, shall be punished as a Class I felon.

Persons currently covered by the statute include: magistrates, clerks of superior court (acting, assistant, or deputy clerks), judges or justices of the General Court of Justice; district attorneys (assistant DAs and other attorneys designated by the DA to act for the State or on behalf of the DA); public defenders (and assistants); court reporters; juvenile court counselors; any attorneys or other individuals employed by or acting on behalf of the department of social services in certain proceedings under the juvenile code, and certain attorneys or other individuals appointed pursuant to the juvenile code or employed by the Guardian ad Litem Services Division of the Administrative Office of the Courts.

BILL ANALYSIS: The bill would add probation and parole officers to the list of persons covered under the statute, making it a felony to assault probation and parole officers (Class I or F dependent on nature of assault) or threaten them with serious bodily injury (Class I).

Other sections of the General Statutes currently cover assaults on probation and parole officers, either by specific reference or in that they apply to assaults on any person. In at least two instances, the penalties under other statutes are higher than those proposed under the bill. For reference, attached is a table of relevant statutes that would cover various types of assaults on probation and parole officers.

Only one other statute found addresses threats. GS 14-277.1 (Communicating threats) makes it a Class 1 misdemeanor to threaten to physically injure another or their child, sibling, spouse, or dependent, or to threaten damage to another's property if that threat is communicated to the other person and the person believes that the threat will be carried out.

EFFECTIVE DATE: The bill would become effective December 1, 2009, and apply to offenses committed on or after that date.

STATUTE	*OFFENSE*	*PUNISHMENT CLASSIFICATION*
GS 14-16.6(a) (*if amended by bill under consideration*)	Assault on Executive, legislative, or court officer (*bill would add probation or parole officers*)	Class I felony[1]
GS 14-16.6(b) (*if amended by bill under consideration*)	Assault on Executive, legislative, or court officer **w/ deadly weapon** (*bill would add probation or parole officers*)	Class F felony[2]
GS 14-16.6(c) (*if amended by bill under consideration*)	Assault on Executive, legislative, or court officer **that inflicts serious injury** (*bill would add probation or parole officers*)	Class F felony[2]
GS 14-33(a)	Simple assault, battery, or affray on any person	Class 1 misdemeanor[4]
GS 14-33(b)	Simple assault ... inflicting serious injury, with use of a deadly weapon, or against an officer or employee of the State or political subdivision	Class A1 misdemeanor[5]
GS 14-32(b)	Assault on any person w/ a deadly weapon & inflicting serious injury	Class E felony[3]
GS 14-34.2	Assault w/ deadly weapon upon governmental officers and employees	Class F felony[2]
GS 14-34.5	Assault w/ firearm on law enforcement, probation, or parole officer	Class E felony[3]
GS 14-34.7	Assault inflicting serious injury on law enforcement, probation, or parole office	Class F felony[2]

S94-SMRI-35(e1) v1

[1] The presumptive range of punishment for a Class I felony when there are no prior convictions is 4 to 6 months of community punishment.
[2] The presumptive range of punishment for a Class F felony when there are no prior convictions is 1 of intermediate or active punishment.
[3] The presumptive range of punishment for a Class E felony when there are no prior convictions is 20 to 25 months of intermediate or active punishment.
[4] The presumptive range of punishment for a Class 1 misdemeanor when there are no prior convictions is 1 – 45 days of community punishment
[5] The presumptive range of punishment for a Class A1 misdemeanor when there are no prior convictions is 1 – 60 days of community, intermediate, or active punishment

SENATE BILL 643

Short Title:	Amend Drug Exam Regulation.	(Public)
Sponsors:	Senators Swindell; Apodaca, Bingham, Tillman, and Vaughan.	
Referred to:	Judiciary II.	

March 18, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON REQUIRED TO SUBMIT TO A CONTROLLED SUBSTANCE EXAMINATION WHOSE FIRST SCREENING TEST PRODUCES A POSITIVE RESULT MAY WAIVE A SECOND EXAMINATION THAT IS INTENDED TO CONFIRM THE RESULTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 95-232(c1) reads as rewritten:

"(c1) Confirmation test of samples: if a preliminary screening procedure or other screening test produces a positive result, an approved laboratory shall confirm that result by a second examination of the sample utilizing gas chromatography with mass spectrometry or an equivalent scientifically accepted ~~method.~~method, unless a second examination is waived by the examinee."

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

SENATE BILL 643:
Amend Drug Exam Regulation

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 5, 2009
Introduced by:	Sen. Swindell	**Prepared by:**	Jennifer McGinnis Committee Counsel
Analysis of:	First Edition		

SUMMARY: Senate Bill 643 would amend the statutes that govern employers' testing of employees for controlled substances, to allow an examinee whose first test shows a positive result to waive the second confirmation test required by current law.

CURRENT LAW: The stated purpose of Article 20 (Controlled Substance Examination) of Chapter 95 (Labor Regulations) is to "establish procedural and other requirements for the administration of controlled substance examinations" by businesses in the State (including the State and local governments) to employees or applicants for employment.

Under current law, if a screening procedure or test produces a positive result, an approved laboratory must confirm the result by a second examination utilizing gas chromatography with mass spectrometry or an equivalent scientifically accepted method.

BILL ANALYSIS: The bill would allow an examinee whose first test shows a positive result to waive the second confirmation test required by current law.

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

S643-SMRI-29(e1) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 969

Short Title:	Amend Purpose/Child Placing/Child Care Laws.	(Public)
Sponsors:	Senator Queen.	
Referred to:	Judiciary II.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE POLICY OF NORTH CAROLINA REGARDING THE PROTECTION OF CHILDREN'S WELFARE UNDER THE LAWS PERTAINING TO CHILD PLACING AND CARE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 131D-10.1 reads as rewritten:

"**§ 131D-10.1. Purpose.**

It is the policy of this State to strengthen and preserve the family as a ~~unit.~~unit consistent with a high priority of protecting children's welfare. When a child requires care outside the family unit, it is the duty of the State to assure that the quality of substitute care is as close as possible to the care and nurturing that society expects of a family. However, the State recognizes there are instances when protecting a child's welfare outweighs reunifying the family unit, and as such, the care of children in primarily educational institutions or residential education programs satisfies the standard of protecting a child's welfare, regardless of the child's age, particularly when the sibling groups can be kept in tact.

The purpose of this Article is to assign the authority to protect the health, safety and well-being of children separated from or being cared for away from their families."

SECTION 2. The Division of Social Services of the Department of Health and Human Services shall revise its rules to reflect the policy changes under G.S. 131D-10.1, as enacted in Section 1 of this act.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 969
PROPOSED COMMITTEE SUBSTITUTE S969-CSRV-30 [v.1]

5/4/2009 2:25:33 PM

Short Title: Amend Purpose/Child Placing/Child Care Laws. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE POLICY OF NORTH CAROLINA REGARDING THE PROTECTION OF CHILDREN'S WELFARE UNDER THE LAWS PERTAINING TO CHILD PLACING AND CARE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 131D-10.1 reads as rewritten:

"**§ 131D-10.1. Purpose.**

It is the policy of this State to strengthen and preserve the family as a ~~unit.~~unit consistent with a high priority of protecting children's welfare. When a child requires care outside the family unit, it is the duty of the State to assure that the quality of substitute care is as close as possible to the care and nurturing that society expects of a family. However, the State recognizes there are instances when protecting a child's welfare outweighs reunifying the family unit, and as such, the care of residential care facilities providing high quality services that include meeting the children's educational needs as determined by the Department of Health and Human Services Division of Social Services can satisfy the standard of protecting a child's welfare, regardless of the child's age, particularly when the sibling groups can be kept intact.

The purpose of this Article is to assign the authority to protect the health, safety and well-being of children separated from or being cared for away from their families."

SECTION 2. The Division of Social Services of the Department of Health and Human Services shall revise its rules to reflect the policy changes under G.S. 131D-10.1, as enacted in Section 1 of this act.

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



SENATE BILL 969:
Amend Purpose/Child Placing/Child Care Laws

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 4, 2009
Introduced by:	Sen. Queen	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	PCS to First Edition S969-CSRV-30		

SUMMARY: ***This proposed committee substitute for Senate Bill 969 would amend the policy statement for North Carolina laws governing child placing and child care, and direct the Division of Social Services of the Department of Health and Human Services to revise its rules to reflect the revised policy statement.***

CURRENT LAW: Article 1A of Chapter 131D of the General Statutes makes the Department of Health and Human Services responsible for investigating and licensing persons who provide foster care for children or receive and place children in residential group care, family foster homes, or adoptive homes. G.S. 131D-10.1 states that it is the policy of the State to strengthen and preserve the family as a unit, and that when a child requires care outside the family unit it is the duty of the State to assure that the quality of substitute care is as close as possible to the care and nurturing that society expects of a family.

BILL ANALYSIS: This proposed committee substitute for Senate Bill 969 would amend the policy statement for North Carolina laws governing child placing and child care, and direct the Division of Social Services of the Department of Health and Human Services to revise its rules to reflect the revised policy statement. The revised policy statement notes the high priority of protecting children's welfare, and notes that residential care facilities can satisfy the standard of protecting a child's welfare, regardless of the child's age, particularly when sibling groups can be kept intact.

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

S969-SMRV-57(CSRV-30) v1

SENATE BILL 1007*

Short Title:	Amend Home Inspector Licensure Laws.	(Public)
Sponsors:	Senators Hoyle and Vaughan.	
Referred to:	Judiciary II.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS UNDER THE NORTH CAROLINA HOME INSPECTOR LICENSURE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-151.51 reads as rewritten:

"**§ 143-151.51. Requirements to be licensed as a home inspector.**

(a) To be licensed as a home inspector, an applicant must do all of the following:

(1) Submit a completed application to the Board upon a form provided by the Board.

(2) Pass a licensing examination prescribed by the Board.

(3) Have minimum net assets or a bond in an amount determined by the Board. The amount may not be less than five thousand dollars ($5,000) nor more than ten thousand dollars ($10,000).

(4) Pay the applicable fees.

(5) Meet one of the following three conditions:

a. Have a high school diploma or its equivalent, have been engaged as a licensed associate home inspector for at least one year, and have completed 100 home inspections for compensation.

b. Have education and experience the Board considers to be equivalent to that required by ~~subpart~~ sub-subdivision a. of this subdivision.

c. Be licensed as a general contractor under Article 1 of Chapter 87 of the General Statutes, as an architect under Chapter 83A of the General Statutes, or as a professional engineer under Chapter 89C of the General Statutes.

(5a) Effective October 1, 2011, meet one of the following conditions:

a. Have satisfactorily completed an approved pre-licensing education program consisting of no more than 200 hours of instruction in subjects determined by the Board at least three years before the date the application is made. The instruction may include requirements of field training, classroom instruction, distance learning, peer review, or other educational formats approved by the Board.

b. Have education and experience the Board considers to be equivalent to the requirements of sub-subdivision a. of this subdivision.

c. Be licensed as a general contractor under Article 1 of Chapter 87 of the General Statutes, an architect under Chapter 83A of the General Statutes, or a professional engineer under Chapter 89C of the General

Statutes. A person qualifying under this sub-subdivision shall remain in good standing with the person's respective licensing board.

(b) When an applicant has satisfactorily completed the requirements in subsection (a) of this section, the Board shall notify the applicant and the applicant shall submit evidence to the Board that the applicant has the following:

(1) General liability insurance in the amount of two hundred fifty thousand dollars ($250,000), which insurance may be individual coverage or coverage under an employer policy, with coverage parameters established by the Board; and

(2) One of the following:

a. Minimum net assets in an amount determined by the Board, which amount may not be less than seventeen thousand five hundred dollars ($17,500) nor more than thirty-five thousand dollars ($35,000);

b. A bond in an amount determined by the Board, which amount may not be less than seventeen thousand five hundred dollars ($17,500) nor more than thirty-five thousand dollars ($35,000); or

c. Errors and omissions insurance in the amount of two hundred fifty thousand dollars ($250,000), which insurance may be individual coverage or coverage under an employer policy, with coverage parameters established by the Board.

Upon determining that an applicant has satisfied the requirements of this subsection, the Board shall issue a home inspector license to the applicant.

(c) All home inspectors licensed on or before September 30, 2011, shall, no later than October 1, 2013, complete an abbreviated licensing education program prescribed by the Board of not less than 50 educational hours of instruction and not more than 75 educational hours of instruction. The instruction may include requirements of field training, classroom instruction, distance learning, peer review, or other educational formats approved by the Board. A home inspector licensed before October 1, 2006, shall not be required to complete the abbreviated licensing education program required by this subsection if the home inspector submits to the Board a request to waive the abbreviated licensing education program requirement and an affidavit stating that the home inspector has completed at least 750 home inspections that meet the standards of practice guidelines of two or more systems. The Board may require each licensed home inspector submitting a request for waiver and an affidavit to submit up to three inspection reports for the Board's random review. Upon reviewing the inspection reports, the Board may request further inspection reports or information from the home inspector or require the home inspector to complete the abbreviated licensing education program. The Board shall either approve or deny a request for waiver within 120 days from the date the request and the affidavit are submitted unless the Board requests that a home inspector submit three inspection reports for review or further information regarding the request.

(d) All associate licensed home inspectors with an active license on October 1, 2011, shall do one of the following:

(1) No later than September 30, 2013, complete the associate licensure program and the abbreviated licensing education program prescribed by the Board under subsection (c) of this section.

(2) Enroll in the new licensing program prescribed by the Board pursuant to subsection (a)(5a) of this section.

Upon completing one of the options under subdivisions (1) or (2) of this subsection, the Board shall terminate the associate status of the associate home inspector's license and the associate home inspector shall be issued a home inspector license. If an associate home inspector fails to complete the requirements of this subsection before October 1, 2013, the Board shall cancel the associate home inspector's license."

SECTION 2. G.S. 143-151.54 reads as rewritten:

"**§ 143-151.54. Miscellaneous license provisions.**

(a) License as Property of the Board and Display of License. – A license issued by the Board is the property of the Board. If the Board suspends or revokes a license issued by it, the individual to whom it is issued must give it to the Board upon demand. An individual who is licensed by the Board must display the license certificate in the manner prescribed by the Board. A license holder whose address changes must report the change to the Board.

(b) Report Criminal Convictions and Disciplinary Actions. – A license holder who is convicted of any felony or misdemeanor or is disciplined by any governmental agency in connection with any other occupational or professional license shall file with the Board a written report of the conviction or disciplinary action within 60 days of the final judgment, order, or disposition of the case."

SECTION 3. G.S. 143-151.55 reads as rewritten:

"**§ 143-151.55. Renewal of license; inactive licenses; lapsed licenses.**

(a) Renewal. – A license expires on September 30 of each year. A license may be renewed by filing an application for renewal with the Board and paying the required renewal fee. The Board must notify license holders at least 30 days before their licenses expire. The Board must renew the license of a person who files an application for renewal, pays the required renewal fee, has fulfilled the continuing education requirements set by the Board, and is not in violation of this Article when the application is filed. If the Board imposes a continuing education requirement as a condition of renewing a license, the Board must ensure that the courses needed to fulfill the requirement are available in all geographic areas of the State.

(b) Late Renewal. – The Board may provide for the late renewal of a license upon the payment of a late fee, but no late renewal of a license may be granted more than ~~five years~~one year after the license expires.

(c) Inactive License. – A license holder may apply to the Board to be placed on inactive status. An applicant for inactive status must follow the procedure set by the Board. A license holder who is granted inactive status is not subject to the license renewal requirements during the period the license holder remains on inactive status.

A license holder whose application is granted and is placed on inactive status may apply to the Board to be reinstated to active status at any time. To change a license from inactive status to active status, the license holder must complete the same number of continuing education credit hours that would have been required of the license holder had the license holder maintained an active license. The number of continuing education credit hours required to return an inactive license to active status shall not exceed 24 credit hours. The Board may set conditions for reinstatement to active status. An individual who is on inactive status and applies to be reinstated to active status must comply with the conditions set by the Board.

(d) Lapsed License. – The license of a licensed home inspector shall lapse if the licensee fails to continuously maintain minimum net assets or a bond as required by G.S. 143-151.58. The license of a licensed associate home inspector shall lapse if the licensee fails to continuously be employed by or affiliated with a licensed home inspector as required by G.S. 143-151.58."

SECTION 4. G.S. 143-151.56(a) is amended by adding the following new subdivision to read:

"(a) The Board may deny or refuse to issue or renew a license, may suspend or revoke a license, or may impose probationary conditions on a license if the license holder or applicant for licensure has engaged in any of the following conduct:

...

(8) Failed to maintain the requirements prescribed by G.S. 143-151.51(b)."

SECTION 5. G.S. 143-151.57(b) reads as rewritten:

"(b) Subsequent Application. – An individual who applied for a license as a home inspector and who failed the home inspector examination is not required to pay an additional application fee if the individual submits another application for a license as a home inspector. The individual must pay the examination fee, however, to be eligible to take the examination again. An individual may take the examination only once every 180 days."

SECTION 6. G.S. 143-151.58 reads as rewritten:

"**§ 143-151.58. Duties of licensed home inspector or licensed associate home inspector.**

(a) Home Inspection Report. – A licensed home inspector or licensed associate home inspector must give to each person for whom the inspector performs a home inspection for compensation a written report of the home inspection. The inspector must give the person the report by the date set in a written agreement by the parties to the home inspection. If the parties to the home inspection did not agree on a date in a written agreement, the inspector must give the person the report within three business days after the inspection was performed.

(a1) Summary Page. – A licensed home inspector or licensed associate home inspector must provide a summary page with each written report of the home inspection for each prepurchase home inspection of three or more systems. The summary page must describe any system or component of the home that does not function as intended, warrants further investigation by a specialist, or requires subsequent observation. The summary page may also describe any system or component that poses a safety concern. All other subject matter pertaining to the home inspection must appear in the body of the report. The summary page must contain the following statement: 'This summary page is not the entire report. The complete report may include additional information of interest or concern to you. It is strongly recommended that you promptly read the complete report. For information regarding the negotiability of any item in this report under the real estate purchase contract, contact your North Carolina real estate agent or an attorney.'

(a2) North Carolina State Building Code. – If a licensed home inspector or licensed associate home inspector includes a deficiency in the written report of the home inspection that is stated as a violation of the North Carolina State Residential Building Code, the home inspector or associate home inspector is responsible for determining the construction dates of the home, State, and municipal building codes in effect at the time of construction and must conduct the home inspection using the building codes in effect at the time of the construction.

(b) Insurance, Net Assets, and Bond ~~Required.~~Requirements. – A licensed home inspector must continuously maintain general liability insurance and minimum net ~~assets or~~ assets, a ~~bond~~ bond, or errors and omissions insurance as required in G.S. ~~143-151.51(3).~~143-151.51(b).

(c) Supervision. – A licensed associate home inspector must be continuously employed by or affiliated with a licensed home inspector as required in G.S. 143-151.52(5).

(d) Record Keeping. – All licensees under this Article shall make and keep full and accurate records of business done under their licenses. Records shall include the written, signed contract and the written report required by the standards of practice referred to in G.S. 143-151.49(a)(2) and any other information the Board requires by rule. Records shall be retained by licensees for not less than three years. Licensees shall furnish their records to the Board on demand."

SECTION 7. G.S. 143-151.64(a) reads as rewritten:

"(a) Requirements. – The Board may establish programs of continuing education for licensees under this Article. A licensee subject to a program under this section shall present evidence to the Board upon the license renewal following initial licensure, and every renewal thereafter, that during the 12 months preceding the annual license expiration date the licensee has completed the required number of classroom hours of instruction in courses approved by the Board. Annual continuing education hour requirements shall be determined by the Board, but shall ~~not~~ be ~~more than~~no less than 12 credit ~~hours.~~hours and no more than 20 credit hours.

No member of the Board shall provide or sponsor a continuing education course under this section while that person is serving on the Board."

SECTION 8. Effective September 30, 2011, the Board shall not issue associate home inspector licenses. The Board shall not accept any applications for licensure as an associate home inspector after April 1, 2011.

SECTION 9. G.S. 143-151.51(a)(3) and (5) are repealed effective September 30, 2011.

SECTION 10. G.S. 143-151.52 is repealed effective September 30, 2013.

SECTION 11. Sections 2, 3, and 7 of this act become effective September 1, 2009. Sections 4 and 6 of this act become effective October 1, 2011. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 1007*
PROPOSED COMMITTEE SUBSTITUTE S1007-CSRCf-22 [v.3]

5/4/2009 9:39:33 PM

Short Title: Amend Home Inspector Licensure Laws. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS UNDER THE NORTH CAROLINA HOME INSPECTOR LICENSURE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-151.51 reads as rewritten:

"**§ 143-151.51. Requirements to be licensed as a home inspector.**

(a) To be licensed as a home inspector, an applicant must do all of the following:

(1) Submit a completed application to the Board upon a form provided by the Board.

(2) Pass a licensing examination prescribed by the Board.

(3) Have minimum net assets or a bond in an amount determined by the Board. The amount may not be less than five thousand dollars ($5,000) nor more than ten thousand dollars ($10,000).

(4) Pay the applicable fees.

(5) Meet one of the following three conditions:

a. Have a high school diploma or its equivalent, have been engaged as a licensed associate home inspector for at least one year, and have completed 100 home inspections for compensation.

b. Have education and experience the Board considers to be equivalent to that required by ~~subpart~~ sub-subdivision a. of this subdivision.

c. Be licensed as a general contractor under Article 1 of Chapter 87 of the General Statutes, as an architect under Chapter 83A of the General Statutes, or as a professional engineer under Chapter 89C of the General Statutes.

(b) All home inspectors licensed on or before September 30, 2011, shall, no later than October 1, 2013, complete an abbreviated licensing education program prescribed by the Board of not less than 50 educational hours of instruction and not more than 75 educational hours of instruction. The instruction may include requirements of field training, classroom instruction, distance learning, peer review, or other educational formats approved by the Board. A home inspector licensed before October 1, 2006, shall not be required to complete the abbreviated licensing education program required by this subsection if the home inspector submits to the Board a request to waive the abbreviated licensing education program requirement and an affidavit stating that the home inspector has completed at least 750 home inspections that meet the standards of practice guidelines of two or more systems. The Board may require each

licensed home inspector submitting a request for waiver and an affidavit to submit up to three inspection reports for the Board's random review. Upon reviewing the inspection reports, the Board may request further inspection reports or information from the home inspector or require the home inspector to complete the abbreviated licensing education program. The Board shall either approve or deny a request for waiver within 120 days from the date the request and the affidavit are submitted unless the Board requests that a home inspector submit three inspection reports for review or further information regarding the request."

SECTION 1.1. Effective September 30, 2011, G.S. 143-151.49(b) is repealed.

SECTION 1.2. Effective September 30, 2001, G.S. 151.51(a)(5), as amended by Section 1 of this act reads as rewritten:

"(a) To be licensed as a home inspector, an applicant must do all of the following:

. . .

(5) Meet one of the following three conditions:

a. ~~Have a high school diploma or its equivalent, have been engaged as a licensed associate home inspector for at least one year, and have completed 100 home inspections for compensation.~~ Have satisfactorily completed an approved pre-licensing education program consisting of no more than 200 hours of instruction in subjects determined by the Board at least three years before the date the application is made. The instruction may include requirements of field training, classroom instruction, distance learning, peer review, or other educational formats approved by the Board.

b. Have education and experience the Board considers to be equivalent to that required by sub-subdivision a. of this subdivision.

c. Be licensed for at least six months as a general contractor under Article 1 of Chapter 87 of the General Statutes, as an architect under Chapter 83A of the General Statutes, or as a professional engineer under Chapter 89C of the General Statutes."

(c) All licensed associate home inspectors with an active license on October 1, 2011, shall no later than September 30, 2013, do one of the following:

(1) Successfully complete the associate licensure program and the abbreviated licensing education program prescribed by the Board under subsection (b) of this section.

(2) Successfully complete the licensing program prescribed by the Board pursuant to sub-subdivision (a)(5)a. of this section.

Upon completing one of the options under subdivisions (1) or (2) of this subsection, the Board shall terminate the associate status of the associate home inspector's license and the associate home inspector shall be issued a home inspector license. If an associate home inspector fails to complete the requirements of this subsection before October 1, 2013, the Board shall cancel the associate home inspector's license."

SECTION 1.3. Effective September 30, 2011, G.S. 143-151.51(a)(3) is repealed.

SECTION 1.4. Effective September 30, 2011, G.S. 143-151.51 is amended by adding two new subsections to read:

". . .

(a1) When an applicant has satisfactorily completed the requirements in subsection (a) of this section, the Board shall notify the applicant and the applicant shall submit evidence to the Board that the applicant has the following:

(1) General liability insurance in the amount of two hundred fifty thousand dollars ($250,000), which insurance may be individual coverage or coverage

under an employer policy, with coverage parameters established by the Board; and

(2) One of the following:

a. Minimum net assets in an amount determined by the Board, which amount may not be less than seventeen thousand five hundred dollars ($17,500) nor more than thirty-five thousand dollars ($35,000);

b. A bond in an amount determined by the Board, which amount may not be less than seventeen thousand five hundred dollars ($17,500) nor more than thirty-five thousand dollars ($35,000); or

c. Errors and omissions insurance in the amount of two hundred fifty thousand dollars ($250,000), which insurance may be individual coverage or coverage under an employer policy, with coverage parameters established by the Board.

Upon determining that an applicant has satisfied the requirements of this subsection, the Board shall issue a home inspector license to the applicant.

...

(c) All associate licensed home inspectors with an active license on October 1, 2011, shall do one of the following:

(1) No later than September 30, 2013, complete the associate licensure program and the abbreviated licensing education program prescribed by the Board under subsection (c) of this section.

(2) Enroll in the new licensing program prescribed by the Board pursuant to subsection (a)(5) of this section.

Upon completing one of the options under subdivisions (1) or (2) of this subsection, the Board shall terminate the associate status of the associate home inspector's license and the associate home inspector shall be issued a home inspector license. If an associate home inspector fails to complete the requirements of this subsection before October 1, 2013, the Board shall cancel the associate home inspector's license."

SECTION 1.5. Effective September 30, 2011, the Board shall not issue associate home inspector licenses. The Board shall not accept any applications for licensure as an associate home inspector after April 1, 2011.

SECTION 2. G.S. 143-151.54 reads as rewritten:

"**§ 143-151.54. Miscellaneous license provisions.**

(a) License as Property of the Board and Display of License. – A license issued by the Board is the property of the Board. If the Board suspends or revokes a license issued by it, the individual to whom it is issued must give it to the Board upon demand. An individual who is licensed by the Board must display the license certificate in the manner prescribed by the Board. A license holder whose address changes must report the change to the Board.

(b) Report Criminal Convictions and Disciplinary Actions. – A license holder who is convicted of any felony or misdemeanor or is disciplined by any governmental agency in connection with any other occupational or professional license shall file with the Board a written report of the conviction or disciplinary action within 60 days of the final judgment, order, or disposition of the case."

SECTION 3. G.S. 143-151.55(b) and (c) read as rewritten:

"...

(b) Late Renewal. – The Board may provide for the late renewal of a license upon the payment of a late fee, but no late renewal of a license may be granted more than ~~five years~~one year after the license expires.

(c) Inactive License. – A license holder may apply to the Board to be placed on inactive status. An applicant for inactive status must follow the procedure set by the Board. A license

holder who is granted inactive status is not subject to the license renewal requirements during the period the license holder remains on inactive status.

A license holder whose application is granted and is placed on inactive status may apply to the Board to be reinstated to active status at any time. To change a license from inactive status to active status, the license holder must complete the same number of continuing education credit hours that would have been required of the license holder had the license holder maintained an active license. The number of continuing education credit hours required to return an inactive license to active status shall not exceed 24 credit hours. The Board may set conditions for reinstatement to active status. An individual who is on inactive status and applies to be reinstated to active status must comply with the conditions set by the Board.

. . ."

SECTION 3.1. Effective September 30, 2011, G.S. 143-151.55(d) reads as rewritten:

"(d) Lapsed License. – The license of a licensed home inspector shall lapse if the licensee fails to continuously maintain ~~minimum net assets or a bond as required by G.S. 143-151.58~~the requirements provided in G.S. 143-151.58(b). The license of a licensed associate home inspector shall lapse if the licensee fails to continuously be employed by or affiliated with a licensed home inspector as required by G.S. 143-151.58."

SECTION 4. Effective September 30, 2011, G.S. 143-151.56(a) is amended by adding the following new subdivision to read:

"(a) The Board may deny or refuse to issue or renew a license, may suspend or revoke a license, or may impose probationary conditions on a license if the license holder or applicant for licensure has engaged in any of the following conduct:

...

(8) Failed to maintain the requirements prescribed by G.S. 143-151.51(b)."

SECTION 5. G.S. 143-151.57(b) reads as rewritten:

"(b) Subsequent Application. – An individual who applied for a license as a home inspector and who failed the home inspector examination is not required to pay an additional application fee if the individual submits another application for a license as a home inspector. The individual must pay the examination fee, however, to be eligible to take the examination again. An individual may take the examination only once every 180 days."

SECTION 6. G.S. 143-151.58 is amended by adding two new subsections to read:

"(a1) Summary Page. – A licensed home inspector or licensed associate home inspector must provide a summary page with each written report of the home inspection for each prepurchase home inspection of three or more systems. The summary page must describe any system or component of the home that does not function as intended, allowing for normal wear and tear. The summary page may describe any system or component that, based upon documented visible evidence, either requires subsequent examination because the system or component appears to not function as intended or that requires further investigation by a specialist.. The summary page may also describe any system or component that poses a safety concern. All other subject matter pertaining to the home inspection must appear in the body of the report. The summary page must contain the following statement: 'This summary page is not the entire report. The complete report may include additional information of interest or concern to you. It is strongly recommended that you promptly read the complete report. For information regarding the negotiability of any item in this report under the real estate purchase contract, contact your North Carolina real estate agent or an attorney.'

(a2) North Carolina State Building Code. – If a licensed home inspector or licensed associate home inspector includes a deficiency in the written report of the home inspection that is stated as a violation of the North Carolina State Residential Building Code, the home inspector or associate home inspector is responsible for determining the construction dates of

the home, State, and municipal building codes in effect at the time of construction and must conduct the home inspection using the building codes in effect at the time of the construction."

SECTION 6.1. G.S. 143-151.58(d) reads as rewritten:

"(d) Record Keeping. – All licensees under this Article shall make and keep full and accurate records of business done under their licenses. Records shall include the written, signed contract and the written report required by subsection (a) of this section and the standards of practice referred to in G.S. 143-151.49(a)(2) and any other information the Board requires by rule. Records shall be retained by licensees for not less than three years. Licensees shall furnish their records to the Board on demand."

SECTION 6.2. Effective September 30, 2011, G.S. 143-151.58(b) reads as rewritten:

"(b) Insurance, Net Assets, and Bond ~~Required.~~Requirements. – A licensed home inspector must continuously maintain general liability insurance and minimum net ~~assets or~~ assets, a ~~bond~~ bond, or errors and omissions insurance as required in G.S. ~~143-151.51(3).~~143-151.51(b)."

SECTION 7. G.S. 143-151.64(a) reads as rewritten:

"(a) Requirements. – The Board may establish programs of continuing education for licensees under this Article. A licensee subject to a program under this section shall present evidence to the Board upon the license renewal following initial licensure, and every renewal thereafter, that during the 12 months preceding the annual license expiration date the licensee has completed the required number of classroom hours of instruction in courses approved by the Board. Annual continuing education hour requirements shall be determined by the Board, but shall ~~not~~ be ~~more than~~no less than 12 credit ~~hours.~~hours and no more than 20 credit hours. No member of the Board shall provide or sponsor a continuing education course under this section while that person is serving on the Board."

SECTION 8. G.S. 143-151.50(a) reads as rewritten:

"(a) Requirement. – To perform a home inspection for compensation ~~on or after October 1, 1996,~~ or to claim to be a licensed home inspector or a licensed associate home ~~inspector on or after that date,~~ inspector, an individual must be licensed by the Board. An individual who is not licensed by the Board may perform a home inspection without compensation."

SECTION 9. Effective September 30, 2013, G.S. 143-151.45(1), G.S. 143-151.52, G.S. 143-151.58(c) and G.S. 143-151.61 are repealed.

SECTION 10. Effective September 30, 2013, G.S. 143-151.50, as amended by Section 8of this Act reads as rewritten:

"**§ 143-151.50. License required to perform home inspections for compensation or to claim to be a "licensed home inspector".**

(a) Requirement. – To perform a home inspection for compensation or to claim to be a licensed home ~~inspector or a licensed associate home~~ inspector, an individual must be licensed by the Board. An individual who is not licensed by the Board may perform a home inspection without compensation.

(b) Form of License. – The Board may issue a license only to an individual and may not issue a license to a partnership, an association, a corporation, a firm, or another group. A licensed home ~~inspector or licensed associate home~~ inspector, however, may perform home inspections for or on behalf of a partnership, an association, a corporation, a firm, or another group, may conduct business as one of these entities, and may enter into and enforce contracts as one of these entities."

SECTION 11. Effective September 30, 2013, G.S. 143-151.55(d), as amended by Section 3.1 of this Act reads as rewritten:

"(d) Lapsed License. – The license of a licensed home inspector shall lapse if the licensee fails to continuously maintain the requirements provided in G.S. 143-151.58(b). ~~The~~

~~license of a licensed associate home inspector shall lapse if the licensee fails to continuously be employed by or affiliated with a licensed home inspector as required by G.S. 143-151.58.~~"

SECTION 12. Effective September 30, 2013, G.S. 143-151.57(a) reads as rewritten:

"(a) Maximum Fees. – The Board may adopt fees that do not exceed the amounts set in the following table for administering this Article:

Item	Maximum Fee
Application for home inspector license	$25.00
~~Application for associate home inspector~~	~~15.00~~
Home inspector examination	75.00
Issuance of home inspector license	150.00
~~Issuance of associate home inspector license~~	~~100.00~~
Late renewal of home inspector license	25.00
~~Late renewal of associate home inspector license~~	~~15.00~~
Application for course approval	150.00
Renewal of course approval	75.00
Course fee, per credit hour per license	5.00
Credit for unapproved continuing education course	50.00
Copies of Board rules or licensure standards	Cost of printing and mailing."

SECTION 13. Effective September 30, 2013, G.S. 143-151.58(a) reads as rewritten:

"(a) Home Inspection Report. – A licensed home inspector ~~or licensed associate home inspector~~ must give to each person for whom the inspector performs a home inspection for compensation a written report of the home inspection. The inspector must give the person the report by the date set in a written agreement by the parties to the home inspection. If the parties to the home inspection did not agree on a date in a written agreement, the inspector must give the person the report within three business days after the inspection was performed."

SECTION 14. Sections 1, 2, 3, 6, 6.1, 7 and 8 of this act become effective October 1, 2009. Except as otherwise provided, the remainder of this act is effective when it becomes law.

SENATE BILL 1007:
Amend Home Inspector Licensure Laws

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 4, 2009
Introduced by:	Sen. Hoyle	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	PCS to First Edition S1007-CSRCf-22		

SUMMARY: ***Senate Bill 1007 amends the laws related to the licensing of home inspectors to require a pre-licensing education requirement, insurance requirements, and phases-out the licensure category of "associate" home inspector. It also clarifies what information is to be included on the Summary page of a home inspection, requires home inspectors to self-report criminal or other disciplinary actions and increases from 12 to 20 hours of continuing education.***

[As introduced, this bill was identical to H979, as introduced by Reps. Gibson, Tillis, which is currently in House Commerce, Small Business, and Entrepreneurship, if favorable, Finance.]

BILL ANALYSIS:

Section 1 amends G.S. 143-151.51 to require home inspectors licensed between October 1, 2006, and September 30, 2011, to complete an abbreviated licensing education program of not less than 50, but not more than 75 hours of instruction as determined by the licensing board. These inspectors must complete this requirement no later than October 1, 2013. Inspectors licensed prior to October 1, 2006, are not required to complete the educational program if they submit a request to waive the requirement and provide an affidavit showing the inspector has conducted at least 750 home inspections that meet certain standard of practice guidelines. The Board may require the inspector submit up to three inspection reports for review. The Board has 120 days to approve or deny the request for a waiver. These provisions become effective September 30, 2011.

Section 1.1 repeals a provision related to the contents of the licensure exam that requires an emphasis on knowledge gained through experience. This provision becomes effective September 30, 2011.

Section 1.2 also amends G.S. 143-151.51 to require pre-licensing educational requirements, to require that a person who qualifies to take the licensing exam because they have a general contractor's, architect's or professional engineer's license to wait at least 6 months after receiving that license before taking the home inspector license exam. Currently, there are no pre-licensing educational requirements and person's with licenses in other fields are eligible to take the exam without any experience requirements.

This section also phases-out the associate home inspector license. Persons holding an active associate home inspector license on October 1, 2011 will have until September 30, 2013 to become a licensed home inspector.

These provisions become effective September 30, 2011.

Section 1.4 creates new requirements regarding a home inspector's ability to pay claims. Beginning September 30, 2011, an inspector must carry general liability insurance of at least $250,000 and one of the following: minimum net assets as determined by the Board, but not less than $17,500 and not more than $35,000; have a bond in a similar amount; or carry errors and omissions insurance in the amount of $250,000. Section 1.3 repeals a previous requirement that the inspector have a net worth of between $5,000 and $10,000. These provisions become effective September 30, 2011.

Section 1.5 prohibits the Board from issuing Associate home inspector licenses after September 30, 2011 and from admitting individuals into the associate program after April 1, 2011.

Section 2 requires home inspectors to report to the Board if the inspector is convicted of any felony or a crime of moral turpitude, or if the member is disciplined by another licensing board.

Section 3 reduces from 5 years to 1 year the amount of time that a license may be renewed as a late renewal. It also requires a member to take a certain number of continuing education hours in order to change a license from inactive to active status.

Section 3.1 requires that an inspector must complete the abbreviated education requirements or apply for a waiver in order to change a license from inactive to active status. This provision becomes effective September 30, 2011.

Section 4 makes failure to meet the abbreviated education or waiver requirements grounds for the Board to suspend or revoke a license. This provision becomes effective when the education and waiver requirements become effective.

Section 5 provides that an individual who fails to pass the licensure exam must wait at least 180 before retaking the exam.

Section 6 provides what information must be included in the Summary page of a home inspection. The information in the page would be limited to items that do not function as intended, warrant further investigation by a specialist, or does not function as intended taking into account normal wear and tear. The Summary page may contain a description of any system or component that poses a safety concern. An inspector may include a code deficiency in the report, but must determine the construction date of the home and the applicable code requirement when the home was built.

Section Sections 6.1 and 6.2 contain conforming amendments related to record-keeping and financial responsibility.

Section 7 increases the number of continuing education hours from 12 to 20.

Section 8 removes some obsolete dates.

Sections 9 – 13 remove statutory references to associate home inspectors.

EFFECTIVE DATE: Except as otherwise provided, the requirements become effective October 1, 2009.

S1007-SMRC-30(CSRCf-22) v2

SENATE BILL 1062*

Short Title:	Strengthen Dom. Vio. Protective Orders/Pets.	(Public)
Sponsors:	Senators Boseman; Kinnaird and McKissick.	
Referred to:	Judiciary II.	

March 31, 2009

A BILL TO BE ENTITLED

AN ACT STRENGTHENING DOMESTIC VIOLENCE PROTECTIVE ORDERS TO PROVIDE FOR THE PROTECTION OF PETS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50B-3(a) is amended by adding the following new subdivisions to read:

"(a) If the court, including magistrates as authorized under G.S. 50B-2(c1), finds that an act of domestic violence has occurred, the court shall grant a protective order restraining the defendant from further acts of domestic violence. A protective order may include any of the following types of relief:

...

(14) Provide for the care, custody, and control of any animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household.

(15) Direct a party to refrain from the cruel treatment or abuse of an animal owned, possessed, kept, or held as a pet."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 1062*
PROPOSED COMMITTEE SUBSTITUTE S1062-CSSB-20 [v.2]

5/2/2009 11:21:41 AM

Short Title: Strengthen Dom. Vio. Protective Orders/Pets. (Public)

Sponsors:

Referred to:

March 31, 2009

A BILL TO BE ENTITLED

AN ACT STRENGTHENING DOMESTIC VIOLENCE PROTECTIVE ORDERS TO PROVIDE FOR THE PROTECTION OF PETS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50B-3(a) reads as rewritten:

"(a) If the court, including magistrates as authorized under G.S. 50B-2(c1), finds that an act of domestic violence has occurred, the court shall grant a protective order restraining the defendant from further acts of domestic violence. A protective order may include any of the following types of relief:

(1) Direct a party to refrain from such acts.

(2) Grant to a party possession of the residence or household of the parties and exclude the other party from the residence or household.

(3) Require a party to provide a spouse and his or her children suitable alternate housing.

(4) Award temporary custody of minor children and establish temporary visitation rights pursuant to G.S. 50B-2 if the order is granted ex parte, and pursuant to subsection (a1) of this section if the order is granted after notice or service of process.

(5) Order the eviction of a party from the residence or household and assistance to the victim in returning to it.

(6) Order either party to make payments for the support of a minor child as required by law.

(7) Order either party to make payments for the support of a spouse as required by law.

(8) Provide for possession of personal property of the parties.

(9) Order a party to refrain from doing any or all of the following:

a. Threatening, abusing, or following the other party.

b. Harassing the other party, including by telephone, visiting the home or workplace, or other means.

c. Otherwise interfering with the other party.

(10) Award attorney's fees to either party.

(11) Prohibit a party from purchasing a firearm for a time fixed in the order.

(12) Order any party the court finds is responsible for acts of domestic violence to attend and complete an abuser treatment program if the program is approved by the Domestic Violence Commission.

(12a) Provide for the care, custody, and control of any animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household.

(12b) Direct a party to refrain from the cruel treatment or abuse of an animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household.

(13) Include any additional prohibitions or requirements the court deems necessary to protect any party or any minor child."

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

SENATE BILL 1062:
Strengthen Dom. Vio. Protective Orders/Pets

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 5, 2009
Introduced by:	Senator Boseman	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 1062 would provide that a domestic violence protective order may include provisions to ensure the proper care and treatment of pets owned by the parties subject to the order.***

CURRENT LAW: Under current law, if a court finds that an act of domestic violence has occurred, the court may grant a protective order restraining the defendant from further acts of domestic violence. The protective order may include any of the following types of relief:

- Direct a party to refrain from such acts.
- Exclude party from the residence or household.
- Require a party to provide a spouse and his or her children suitable alternate housing.
- Award temporary custody of minor children and establish temporary visitation.
- Order the eviction of a party from the residence or household.
- Order either party to make payments for the support of a minor child.
- Order either party to make payments for the support of a spouse.
- Provide for possession of personal property of the parties.
- Order a party to refrain from doing any or all of the following:
    - Threatening, abusing, or following the other party.
    - Harassing the other party.
    - Otherwise interfering with the other party.
- Award attorney's fees to either party.
- Prohibit a party from purchasing a firearm for a time fixed in the order.
- Order a party to attend and complete an abuser treatment program.
- Include any additional prohibitions or requirements the court deems necessary to protect any party or any minor child.

BILL ANALYSIS: Under Senate Bill 1062, a domestic violence protection order could also:

- Provide for the care, custody, and control of any animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household.
- Direct a party to refrain from the cruel treatment or abuse of an animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household.

EFFECTIVE DATE: This act would become effective when it becomes law.

S1062-SMSB-22(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

SENATE BILL 1076

Short Title:	Modify Crim. Justice Partnership Program.	(Public)
Sponsors:	Senators Snow, Kinnaird; and Atwater.	
Referred to:	Judiciary II.	

March 31, 2009

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE CRIMINAL JUSTICE PARTNERSHIP PROGRAM TO ALLOW COMMUNITY-LEVEL OFFENDERS TO BE SERVED BY THE PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-273.4 reads as rewritten:

"**§ 143B-273.4. Eligible population.**

(a) An eligible offender is an adult offender who was convicted of a misdemeanor or a felony offense and received a nonincarcerative sentence of a community punishment or an intermediate punishment or is serving a term of parole or post-release supervision after serving an active sentence of imprisonment.

(b) The priority populations for programs funded under this Article shall be offenders sentenced to intermediate punishments."

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

SENATE BILL 1076:
Modify Crim. Justice Partnership Program

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 4, 2009
Introduced by:	Sen. Snow	**Prepared by:**	Brenda J. Carter
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 1076 would amend the law concerning the Criminal Justice Partnership Program to make offenders sentenced to a community punishment eligible for the program.***

CURRENT LAW: The Criminal Justice Partnership Program is a State-County partnership intended to provide supplemental community-based corrections programs which expand sentencing options by adding community-based corrections programs for offenders receiving a non-incarcerative sentence, and which appropriately punish criminal behavior and provide effective rehabilitative services. The goals of the community-based programs include the following:

- To reduce recidivism;
- To reduce the number of probation revocations;
- To reduce alcoholism and other drug dependencies among offenders; and
- To reduce the cost to the State and the counties of incarceration.

An offender is eligible for the program if he or she is sentenced to an intermediate punishment or is serving a term of parole or post-release supervision after serving an active sentence of imprisonment.

BILL ANALYSIS: Senate Bill 1076 would amend the law concerning the Criminal Justice Partnership Program to make offenders sentenced to a community punishment eligible for the program. Community punishments include such things as supervised or unsupervised probation, outpatient drug/alcohol treatment, community service, restitution, and fines. Most misdemeanors and some Class H and Class I felonies are subject to community punishment.

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

S1076-SMRV-58(e1) v1

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1st

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

S. B. No. 1076 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) Snow

1 moves to amend the bill on page 1, line 13
2 ( ) WHICH CHANGES THE TITLE
3 by deleting "July 1" and substituting
4 "December 1".
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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE BILL 1077

Short Title:	Expand Parole Officers' Delegated Authority.	(Public)
Sponsors:	Senators Snow, Kinnaird; and Atwater.	
Referred to:	Judiciary II.	

March 31, 2009

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE AUTHORITY DELEGATED TO PROBATION OFFICERS IN ORDER TO MAKE INTERMEDIATE SANCTIONS AVAILABLE FOR AN OFFENDER SENTENCED TO COMMUNITY PUNISHMENT IF THE RISK ASSESSMENT JUSTIFIES THOSE SANCTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1343.2(e) reads as rewritten:

"(e) Delegation to Probation Officer in Community Punishment. – Unless the presiding judge specifically finds in the judgment of the court that delegation is not appropriate, the Division of Community Corrections in the Department of Correction may require an offender sentenced to community punishment to:

(1) Perform up to 20 hours of community service, and pay the fee prescribed by law for this supervision;

(2) Report to the offender's probation officer on a frequency to be determined by the officer; or

(3) Submit to substance abuse assessment, monitoring or ~~treatment.~~treatment, or to any of the conditions listed in G.S. 15A-1340.11(6).

If the Division imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

If the probation officer exercises authority delegated by the court pursuant to this subsection, the offender may file a motion with the court to review the action taken by the probation officer. The offender shall be given notice of the right to seek such a court review. The Division may exercise any authority delegated to it under this subsection only if it first determines that the offender has failed to comply with one or more of the conditions of probation imposed by the court."

SECTION 2. G.S. 15A-1340.11(2) reads as rewritten:

"(2) Community punishment. – A sentence in a criminal case that does not include an active punishment, an intermediate punishment, or any of the conditions of probation listed in subdivision (6) of this ~~section.~~ section, except to the extent that the court has delegated authority to a probation officer to include those conditions pursuant to G.S. 15A-1343.2(e)."

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

SENATE BILL 1077:
Expand Parole Officers' Delegated Authority

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 4, 2009
Introduced by:	Sen. Snow	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 1077 would amend the law concerning offenders sentenced to community punishment to allow the Division of Community Corrections in the Department of Correction to require offenders who fail to comply with one or more of the conditions of probation imposed by the court to submit to conditions of probation that would normally be incident to intermediate punishment.***

CURRENT LAW: Special probation rules for persons sentenced under structured sentencing are set out in G.S. 15A-1343.2. The Division of Community Corrections in the Department of Correction may require an offender sentenced to community punishment to perform up to 20 hours of community service and pay the fee for supervision, to report to the offender's probation officer as required, and to submit to substance abuse assessment, monitoring or treatment.

BILL ANALYSIS: **Section 1** of the bill would amend the law concerning offenders sentenced to community punishment to allow the Division of Community Corrections in the Department of Correction to require offenders who fail to comply with one or more of the conditions of probation imposed by the court to submit to special probation, assignment to a residential program, house arrest with electronic monitoring, intensive probation, or assignment to a day reporting center or a drug treatment court program. **Section 2** of the bill would amend the definition of "community punishment" to allow for imposing conditions of probation that would normally be incident to intermediate punishment, when the offender has failed to comply with one or more of the conditions of probation imposed by the court.

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

S1077-SMRV-59(e1) v1

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1st

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

S. B. No. 1077 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Snow
Sen.)

1 moves to amend the bill on page 1, line 32

2 ( ) WHICH CHANGES THE TITLE

3 by deleting "July 1" and substituting

4 "December 1."

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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE

Principal Clerk ____
Reading Clerk ____

REVISED – Note time change and SB 819 removed, SB 1007 added

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	May 7, 2009	9:00AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 220	General Statutes Comm. Technical Corrections.	Senator Hartsell
SB 884	Renunciation Amendments.	Senator Hartsell
SB 929	No Set Aside of Bond Forfeit/Actual Notice.	Senator Berger
SB 978	Firearms Qualification Sites/Retired LEOs.	Senator Bingham
SB 1013	Citizens' Right To Know Act/Pretrial Release.	Senator Berger
SB 143	Continue Child Supp./21 Yrs/College Students.	Senator Snow
SB 1089	Low-Risk Probationers May Be Unsupervised.	Senator Snow
SB 1007	Amend Home Inspector Licensure Laws.	Senator Hoyle

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

2nd Corrected Notice – SB 143 and 1089 added

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	May 7, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 220	General Statutes Comm. Technical Corrections.	Senator Hartsell
SB 819	Abolish Certain Deficiency Judgments.	Senator Hartsell
SB 884	Renunciation Amendments.	Senator Hartsell
SB 929	No Set Aside of Bond Forfeit/Actual Notice.	Senator Berger
SB 978	Firearms Qualification Sites/Retired LEOs.	Senator Bingham
SB 1013	Citizens' Right To Know Act/Pretrial Release.	Senator Berger
SB 143	Continue Child Supp./21 Yrs/College Students.	Senator Snow
SB 1089	Low-Risk Probationers May Be Unsupervised.	Senator Snow

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk _____
Reading Clerk _____

Corrected Notice – SB 930 removed

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	May 7, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 220	General Statutes Comm. Technical Corrections.	Senator Hartsell
SB 819	Abolish Certain Deficiency Judgments.	Senator Hartsell
SB 884	Renunciation Amendments.	Senator Hartsell
SB 929	No Set Aside of Bond Forfeit/Actual Notice.	Senator Berger
SB 978	Firearms Qualification Sites/Retired LEOs.	Senator Bingham
SB 1013	Citizens' Right To Know Act/Pretrial Release.	Senator Berger

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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Thursday	May 7, 2009	10:00 AM	1124 LB

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SB 884	Renunciation Amendments.	Senator Hartsell
SB 929	No Set Aside of Bond Forfeit/Actual Notice.	Senator Berger
SB 930	Workers' Comp/Firefighter Occupat'l Diseases.	Senator Berger
SB 978	Firearms Qualification Sites/Retired LEOs.	Senator Bingham
SB 1013	Citizens' Right To Know Act/Pretrial Release.	Senator Berger

Senator Fletcher L. Hartsell, Jr., Chair

SENATE JUDICIARY II COMMITTEE
Thursday, May 7, 2009 at 9:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 9:00 AM on May 7, 2009, in Room 1124 of the Legislative Building with seventeen members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell introduced pages Emma Jones, Chassity Bobbitt, Lauren Deville, Jared Knecht, Adam Welch and Caroline Lowcher and thanked them for their service.

SB 1007 – (Amend Home Inspector Licensure Laws.) Senator Vaughan was recognized to give his report from the sub-committee and moved to adopt the Proposed Committee Substitute. All voted and the motion carried. Senator Hoyle gave comments on the bill and the report. Mr. Chris Ferguson of Ferguson & Company, Mr. Thomas Moore, Attorney, and Mr. Henry Jones, Jr., Attorney, representing home inspectors, spoke on the bill. Senator Forrester moved for a favorable report, unfavorable to the original bill, with a referral to Finance. All voted and the motion carried.

SB 220 – (General Statutes Comm.. Technical Corrections.) As this was Senator Hartsell's bill, Senator Jones presided. Senator Hartsell explained the bill. Senator Apodaca moved for a favorable report. All voted and the motion carried.

SB 1076 – (Modify Crim. Justice Partnership Program.) The bill was returned to the Committee for a technical procedure. Senator Snow moved for a favorable report. All voted and the motion carried.

SB 1077 – (Expand Parole Officers' Delegated Authority.) The bill was returned to the Committee for a technical procedure. Senator Snow moved for a favorable report. All voted and the motion carried.

SB 884 – (Renunciation Amendments.) Senator Apodaca moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. As this was Senator Hartsell's bill, Senator Jones presided. Senator Hartsell explained the bill. Mr. Floyd Lewis, representing the General Statutes Commission, gave addition explanation. Senator Forrester moved for a favorable report, unfavorable to the original bill. All voted and the motion carried.

Due to Senator Hartsell's absence, Senator Jones presided.

SB 143 – (Continue Child Supp./21 Yrs/College Students.) Senator Snow explained the bill and answered questions from Senators Goodall, Apodaca, Swindell and Berger. Senator Berger moved for a favorable report. All voted and the motion carried.

SB 1089 – (Low-Risk Probationers May Be Unsupervised.) Senator Snow explained the bill and answered questions from Senators Apodaca and Jones. Senator Dannelly moved for a favorable report. All voted and the motion carried.

SB 1013 – (Citizen's Right To Know Act/Pretrial Release.) Senator Berger explained the bill. Mr. Brian Shipwright, Clerk of Superior Court, Davidson County, gave additional explanation and he and Senator Berger answered questions from the committee members. Ms. Patrice Roesler, Deputy Director County Commissioner, spoke on the bill as did Mr. Chuck Johnson, Assistant Director of ReEntry Inc., Major Glen Matayabas, Facility Director, Buncombe County Detention Facility, and Mr. Mike Mann representing the North Carolina Bail Agents Association. After much discussion, Senator Berger decided to withdraw the bill until a later time.

SB 929 – (No Set Aside of Bond Forfeit/Actual Notice.) Senator Bingham moved to adopt the Proposed Committee Substitute All voted and the motion carried. Senator Berger explained the bill. Ms. Leanne Winner, representing North Carolina School Association and North Carolina School Attorneys spoke on the bill and offered an amendment. Senator Berger accepted the amendment and moved that it be adopted. All voted and the motion carried. Mr. Rod Malone, Attorney, spoke on the bill. Mr. Malone and Senator Berger answered questions. Senator Bingham moved for a favorable report as amended, unfavorable to the original bill and rolled into a new Proposed Committee Substitute. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Thursday, May 07, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **143** Continue Child Supp./21 Yrs/College Students.
Sequential Referral: None
Recommended Referral: None

S.B. **220** General Statutes Comm. Technical Corrections.
Sequential Referral: None
Recommended Referral: None

S.B. **1089** Low-Risk Probationers May Be Unsupervised.
Sequential Referral: None
Recommended Referral: None

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

S.B. **1076** Modify Crim. Justice Partnership Program.
Draft Number: 55360
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **1077** Expand Parole Officers' Delegated Authority.
Draft Number: 85210
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 5

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Monday, May 11, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

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

S.B. **884** Renunciation Amendments.

Draft Number:	15266
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **929** No Set Aside of Bond Forfeit/Actual Notice.

Draft Number:	55371
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **1007** Amend Home Inspector Licensure Laws.

Draft Number:	35315
Sequential Referral:	None
Recommended Referral:	Appropriations/Base Budget
Long Title Amended:	No

TOTAL REPORTED: 3

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — May 7, 2009
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Melissa Seiler	NC Bail Agents Assoc
Steven F. Shell	NC BAA
Reggie Holley	NCBAA
Brian Shipwash	Davidson County Clerk of Superior Court
Fred Herndon	N.C. Licensed Home Inspector Assn
Thom Moore	Edelen ; Uebe
Glen Matayabas	Buncombe County Sheriff's Office
Kim Gordon	Buncombe County Pretrial Services
Dwen Andrews-Cita	Wake County Pretrial Services
Chuck Johnson	N.C. Pretrial Services Assoc.
John Madler	NC Sentencing Commission

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — May 7, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
SARA THOMAS	SENTENCING COMM.
ERIC COATES	Home Inspector
Rick Zechini	NC Assn. of Realtors
GERALD ROBBINS	NC DOJ
Barry Miller	NC DHHS/DSS/CSE
Zach KINCAID	WAKE County Criminal Justice
Patrice Roesler	NCACC
Joey Stansbury	Goodall Affair
Jennifer Willis	NCCS

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SENATE BILL 143

Short Title:	Continue Child Supp./21 Yrs/College Students.	(Public)
Sponsors:	Senators Snow; Berger of Franklin and Dorsett.	
Referred to:	Judiciary II.	

February 12, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW CHILD SUPPORT PAYMENTS TO CONTINUE UNTIL THE AGE OF TWENTY-ONE IF THE CHILD IS ATTENDING A COMMUNITY COLLEGE OR COLLEGE OR UNIVERSITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-13.4(c) reads as rewritten:

"(c) Payments ordered for the support of a minor child shall be in such amount as to meet the reasonable needs of the child for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the parties, the child care and homemaker contributions of each party, and other facts of the particular case. Payments ordered for the support of a minor child shall be on a monthly basis, due and payable on the first day of each month. The requirement that orders be established on a monthly basis does not affect the availability of garnishment of disposable earnings based on an obligor's pay period.

The court shall determine the amount of child support payments by applying the presumptive guidelines established pursuant to subsection (c1) of this section. However, upon request of any party, the Court shall hear evidence, and from the evidence, find the facts relating to the reasonable needs of the child for support and the relative ability of each parent to provide support. If, after considering the evidence, the Court finds by the greater weight of the evidence that the application of the guidelines would not meet or would exceed the reasonable needs of the child considering the relative ability of each parent to provide support or would be otherwise unjust or inappropriate the Court may vary from the guidelines. If the court orders an amount other than the amount determined by application of the presumptive guidelines, the court shall make findings of fact as to the criteria that justify varying from the guidelines and the basis for the amount ordered.

Payments ordered for the support of a child shall terminate when the child reaches the age of 18 except:

(1) If the child is otherwise emancipated, payments shall terminate at that time;

(2) If the child is still in primary or secondary school when the child reaches age 18, support payments shall continue until the child graduates, otherwise ceases to attend school on a regular basis, fails to make satisfactory academic progress towards graduation, or reaches age 20, whichever comes first, unless the court in its discretion orders that payments cease at age 18 or prior to high school ~~graduation.~~graduation; or

(3) If the child is attending a community college or college or university as a full-time student, support payments shall continue until the child reaches age 21, unless the child ceases to attend school on a regular basis or fails to make

satisfactory academic progress towards graduation. After age 18, child support payments may be given directly to the child or paid directly towards the child's college expenses.

In the case of ~~graduation,~~graduation or attaining age ~~20,~~20 or where the child is no longer attending a community college or college or university as a full-time student, payments shall terminate without order by the court, subject to the right of the party receiving support to show, upon motion and with notice to the opposing party, that the child has not graduated or attained the age of ~~20.~~20 or that the child is still attending a community college or college or university as a full-time student.

If an arrearage for child support or fees due exists at the time that a child support obligation terminates, payments shall continue in the same total amount that was due under the terms of the previous court order or income withholding in effect at the time of the support obligation. The total amount of these payments is to be applied to the arrearage until all arrearages and fees are satisfied or until further order of the court."

SECTION 2. This act is effective when it becomes law, and applies to actions for child support on or after that date.

SENATE BILL 143:
Continue Child Supp./21 Yrs/College Students

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 6, 2009
Introduced by:	Sen. Snow	**Prepared by:**	Kory Goldsmith
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 143 would require court-ordered child support to continue while a child is a full-time student in a college, university or community college. The payments may be given directly to the child who is over 18.

CURRENT LAW: Court-ordered child support payments terminate either (1) when the child is emancipated, or (2) if the child is still attending primary or secondary school on a regular basis at the age of 18, then until the child graduates, ceases to attend school on a regular basis , fails to make satisfactory progress towards graduation or reaches age 20.

EFFECTIVE DATE: This act is effective when it becomes law and applies to actions for child support on or after that date.

S143-SMRC-32(e1) v1

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SENATE BILL 220*

Short Title:	General Statutes Comm. Technical Corrections.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II.	

February 19, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS IN THE GENERAL STATUTES AS REQUESTED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-318.2 reads as rewritten:

"**§ 14-318.2. Child abuse a ~~Class 1~~ misdemeanor.**

(a) Any parent of a child less than 16 years of age, or any other person providing care to or supervision of such child, who inflicts physical injury, or who allows physical injury to be inflicted, or who creates or allows to be created a substantial risk of physical injury, upon or to such child by other than accidental means is guilty of the Class A1 misdemeanor of child abuse.

(b) The Class A1 misdemeanor of child abuse is an offense additional to other civil and criminal provisions and is not intended to repeal or preclude any other sanctions or remedies.

(c) A parent who abandons an infant less than seven days of age pursuant to G.S. 14-322.3 shall not be prosecuted under this section for any acts or omissions related to the care of that infant."

SECTION 2. G.S. 14-404(g) reads as rewritten:

"(g) An applicant shall not be ineligible to receive a permit under ~~subsection (4) of subsection (c)~~ subdivision (c)(4) of this section because of involuntary commitment to mental health services if the individual's rights have been restored under G.S. 122C-54.1."

SECTION 3. G.S. 144-3 reads as rewritten:

"**§ 144-3. Flags to be displayed on public buildings and institutions.**

The board of trustees or managers of the several State institutions and public buildings shall provide a North Carolina flag, of such dimensions and material as they may deem best, and the same shall be displayed from a staff upon the top of each and every such building, at all times except during inclement weather, and upon the death of any State officer or any prominent citizen the flag shall be put at ~~half-mast~~ half-staff until the burial of such person has taken place."

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

State of North Carolina
General Statutes Commission
9001 Mail Service Center
RALEIGH, NORTH CAROLINA
27699-9001

MEMORANDUM

TO: Senate Judiciary II Committee

FROM: General Statutes Commission

DATE: March 24, 2009

RE: SB 220 (General Statutes Comm. Technical Corrections)

General Comments

This bill contains corrections of a technical nature to the General Statutes that are recommended by the General Statutes Commission. These amendments make a conforming change and correct terminology.

Specific Comments

Section 1. This section amends the catchline of G.S. 14-318.2 to remove the reference to misdemeanor classification. G.S. 14-318.2 contains two misdemeanor offenses for particular forms of child abuse. For both offenses, the misdemeanor classification was increased last year by S.L. 2008-191 from Class 1 to Class A1. No change was made to the catchline, however, which continues to refer to "Class 1 misdemeanor" and needs to be corrected. The problem could be corrected by substituting "Class A1" for "Class 1" in the catchline, but deleting the reference to "Class 1" corrects the problem and also prevents repetition of the error if the misdemeanor's classification is changed again in the future.

Section 2. This section amends G.S. 14-404(g) to correct the terminology in a citation. "[S]ubsection (4)" of "subsection (c) of this section" is incorrect, because "(4)" is a subdivision, not a subsection. The phrase should read either "subdivision (4) of subsection (c) of this section" or the more concise "subdivision (c)(4) of this section," which is the correction in the bill.

Section 3. This section amends G.S. 144-3 to correct terminology. Because this section deals only with flags on buildings, the term "half-mast" should be "half-staff."

Section 4. This section provides for the bill to be effective when it becomes law.

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SENATE BILL 884*

Short Title:	Renunciation Amendments.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW RELATING TO RENUNCIATIONS AND TO MAKE RELATED AMENDMENTS TO THE NORTH CAROLINA UNIFORM TRUST CODE AND THE LAW GOVERNING POWERS OF ATTORNEY AND ADMINISTRATION OF DECEDENTS' ESTATES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 31B-1 reads as rewritten:

"**§ 31B-1. Right to renounce succession.**

(a) A person who succeeds to a property interest as:

(1) ~~Heir, or~~ Heir;

(2) Next of ~~kin, or~~ kin;

(3) ~~Devisee, or~~ Devisee;

(4) ~~Legatee, or~~ Legatee;

(4a) Donee;

(5) Beneficiary of a life insurance policy who did not possess the incidents of ownership under the policy at the time of death of the ~~insured, or~~ insured;

(6) Person succeeding to a renounced ~~interest, or~~ interest;

(7) Beneficiary under a testamentary trust or under an inter vivos ~~trust, or~~ trust;

(8) Appointee under a power of appointment exercised by a testamentary instrument or a nontestamentary ~~instrument, or~~ instrument;

(9) Repealed by Session Laws 1989, c. 684, s. 2.

(9a) Surviving joint tenant, surviving tenant by the entireties, or surviving tenant of a tenancy with a right of ~~survivorship, or~~ survivorship;

(9b) Person entitled to share in a testator's estate under the provisions of ~~G.S. 31-5.5, or~~ G.S. 31-5.5;

(9c) Beneficiary under any other testamentary or nontestamentary instrument, including a beneficiary under:

a. Any qualified or nonqualified deferred compensation, employee benefit, retirement or death benefit, plan, fund, annuity, contract, policy, program or instrument, either funded or unfunded, which is established or maintained to provide retirement income or death benefits or results in, or is intended to result in, deferral of income;

b. An individual retirement account or individual retirement annuity; or

c. Any annuity, payable on ~~death,~~ death account, or other right to death benefits arising under ~~contract; or~~ contract;

(9d) ~~The duly~~ Duly authorized or appointed guardian of any of the persons listed in subdivisions (1) through (9c) of this subsection, but only with the prior or subsequent approval of the clerk of superior court, or if required, of the resident judge of the superior court, ~~of any of the above.~~ pursuant to a proceeding or action instituted in accordance with and subject to the requirements of G.S. 31B-1.2; or

(9e) Subject to G.S. 31B-1.1 and G.S. 31B-1.2, fiduciary, including a trustee of a charitable trust, an attorney-in-fact of any of the persons listed in subdivisions (1) through (9e) of this subsection if expressly authorized by the governing power of attorney, and a personal representative appointed under Chapter 28A of the General Statutes of any of the persons listed in subdivisions (1) through (9c) of this subsection;

~~(10) The personal representative appointed under Chapter 28A of any of the above,~~

~~or the attorney in fact of any of the above~~ may renounce at any time, in whole or in ~~part~~ part, the right of succession to any property or interest therein, including a future interest, by filing a written instrument under the provisions of this Chapter. A renunciation may be of a fractional share or any limited interest or estate. The renunciation shall be deemed to include the entire interest of the person whose property or interest is being renounced unless otherwise specifically limited. A person may renounce any interest in or power over property, including a power of appointment, even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to renounce. ~~Provided, however,~~ Notwithstanding the foregoing, there shall be no right of partial renunciation if ~~the decedent or donee of the power expressly so provided in~~ the instrument creating the ~~interest.~~interest expressly so provides.

(b) This Chapter shall apply to all renunciations of present and future interests, whether qualified or nonqualified for federal and State inheritance, estate, and gift tax purposes, unless expressly provided otherwise in the instrument creating the interest.

(c) The instrument of renunciation shall (i) identify the transferor of the property or interest in the property or the creator of the power or the holder of the power, (ii) describe the property or interest renounced, ~~(ii)~~ (iii) declare the renunciation and extent thereof, ~~(iii)~~ and (iv) be signed and acknowledged by the person ~~authorized to renounce.~~ renouncing.

(d) A parent of a minor for whom no general guardian or guardian of the estate has been appointed may renounce, in whole or in part, an interest in or power over property (including a power of appointment) that would have passed to the minor as the result of that parent's renunciation. The parent may renounce the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to renounce."

SECTION 2. G.S. 31B-1A is recodified as G.S. 31B-1.1. G.S. 31B-1.1, as recodified by this section, reads as rewritten:

"**§ 31B-1.1. ~~Right to renounce fiduciary powers.~~ Right of fiduciary to renounce.**

(a) Except as otherwise provided in the testamentary or nontestamentary instrument, a fiduciary under a testamentary or nontestamentary instrument may renounce, in whole or in part, fiduciary rights, privileges, powers, and ~~immunities by executing and by delivering, filing, or recording a written renunciation pursuant to the provisions of G.S. 31B-2. A~~ immunities; however, a fiduciary may not renounce the ~~rights of beneficiaries~~ personal rights exercisable by a beneficiary alone, unless the instrument creating the fiduciary relationship authorizes such a renunciation. The instrument of renunciation shall (i) identify the creator of the rights, powers, privileges, or immunities, (ii) describe any right, power, privilege, or immunity renounced, (iii) declare the renunciation and the extent thereof, and (iv) be signed and acknowledged by the fiduciary authorized to renounce.

(b) ~~The instrument of renunciation shall (i) describe any fiduciary right, power, privilege, or immunity renounced, (ii) declare the renunciation and the extent thereof, and (iii) be signed and acknowledged by the fiduciary authorized to renounce.~~ Except as provided in subsection (c) of this section and except to the extent a statute of this State expressly restricts or limits a fiduciary's right to renounce, a fiduciary acting in a fiduciary capacity may renounce the right of succession to any property or interest therein as permitted by this Chapter, even if the testamentary or nontestamentary instrument governing the fiduciary restricts or limits the right to renounce the fiduciary's right of succession to the property or interest therein.

(c) An attorney-in-fact for a principal acting under subsection (a) or subsection (b) of this section may renounce only if expressly authorized by the governing power of attorney."

SECTION 3. Chapter 31B of the General Statutes is amended by adding a new section to read:

"**§ 31B-1.2. Right of fiduciary to institute a proceeding for review of renunciation.**

(a) Prior to renouncing, if a fiduciary so elects, the fiduciary may institute a proceeding by petition before the clerk of court for a determination as to whether a renunciation would be compatible with the fiduciary's duties. Commencement of the proceeding, jurisdiction, venue, parties, representation, and notice shall be governed by Chapter 36C of the General Statutes. In addition to any other notice requirements, notice of the proceeding shall be given to all persons entitled to delivery of a copy of an instrument of renunciation under G.S. 31B-2.1.

(b) After renouncing, if a fiduciary so elects, the fiduciary has a right to institute a declaratory judgment action pursuant to Article 26 of Chapter 1 of the General Statutes for a determination as to whether the renunciation is compatible with the fiduciary's duties. In addition to any other notice requirements, notice of the action shall be given to all persons entitled to delivery of a copy of an instrument of renunciation under G.S. 31B-2.1.

(c) A proceeding or action instituted under this section shall comply with all of the following:

(1) The petition or complaint shall state the basis for the fiduciary's allegation that the renunciation is compatible with the fiduciary's duties, considering among other things the intended purposes of the trust or other instrument and the impact of the renunciation on beneficiaries and potential beneficiaries. A petition or complaint filed by a trustee of a charitable trust shall contain a statement that a copy of the petition or complaint is being provided to the Attorney General.

(2) After considering among other things the intended purposes of the trust or other instrument and the impact of the renunciation on beneficiaries and potential beneficiaries, the court shall enter an order stating the court's determination as to whether the renunciation is compatible with the fiduciary's duties.

(d) The effectiveness of a renunciation is not affected by a determination under this section that the renunciation is not compatible with a fiduciary's duties."

SECTION 4. G.S. 31B-2 reads as rewritten:

"**§ 31B-2. Time and place of filing renunciation.**

(a) To be a qualified disclaimer for federal and State inheritance, estate, and gift tax purposes, an instrument ~~renouncing a present interest~~ of renunciation shall be filed within the time period required under the applicable federal statute for a renunciation to be given effect as a disclaimer for federal estate and gift tax purposes. If there is no such federal statute the instrument shall be filed not later than nine months after the date the transfer of the renounced interest to the ~~renouncer~~ person whose property or interest is being renounced was complete for the purpose of such taxes.

(b) ~~An instrument renouncing a future interest shall be filed not later than six months after the event by which the taker of the property or interest is finally ascertained and his~~

~~interest indefeasibly vested and he is entitled to possession even though such renunciation may not be recognized as a disclaimer for federal estate tax purposes.~~ When a renunciation of real property or an interest in real property is made within the time period required under subsection (a) of this section, the spouse of the person whose property or interest is being renounced is not required to join in the execution of the instrument of renunciation, and, as provided in G.S. 31B-3(a)(1), the spouse has no statutory dower, inchoate marital rights, elective share, or any other marital interest in the real property or real property interest renounced.

(c) The renunciation ~~shall be~~ is effective when filed with the clerk of court ~~of~~ (i) in the county in which court proceedings have been commenced for the administration of the estate of the deceased owner or deceased ~~donee~~ creator of the power ~~or, if they have not been commenced, in which they could be commenced. A copy of the renunciation shall be delivered in person or mailed by registered or certified mail to any personal representative, or other fiduciary of the decedent or donee of the power. If the property interest renounced includes any proceeds of a life insurance policy being renounced pursuant to G.S. 31B-1(a)(5) the person renouncing shall mail, by registered or certified mail, a copy of the renunciation to the insurance company issuing the policy. If the property or property interest renounced is created by nontestamentary instrument, a copy of the renunciation shall be delivered in person, or mailed by registered or certified mail, to the trustee or other person who has legal title to, or possession of, the property or property interest renounced.~~ or holder of the power; or (ii) if proceedings have not been commenced, then in a county in which they could be commenced; or (iii) in all other cases, in a county with a court that has jurisdiction to enforce the terms of the instrument creating the interest renounced. In those cases in which an estate proceeding has not been commenced, the renunciation shall be filed as an estate matter. In addition to the above requirements, a renunciation of real property, or an interest therein, shall be registered in accordance with the provisions of G.S. 31B-2(d).

(d) If real property or an interest therein is renounced, ~~a copy of~~ the instrument of renunciation shall also be ~~filed for recording in the office of the register of deeds of all counties wherein any part of the interest renounced is situated.~~ registered as provided in G.S. 47-18 or G.S. 47-20. The instrument of renunciation shall be indexed in the grantor's index under (i) the name of the ~~deceased owner~~ transferor or ~~donee~~ creator of the ~~power,~~ power or holder of the power, and (ii) the name of the ~~person renouncing.~~ person whose property or interest is being renounced. ~~The renunciation of an interest, or a part thereof, in real property shall not be effective to renounce such interest until a copy of the renunciation is filed for recording in the office of the register of deeds in the county wherein such interest or part thereof is situated. A spouse of a person renouncing real property or an interest in real property shall have no statutory dower, inchoate marital rights, or any other interest in the real property or real property interest renounced.~~ Failure to file or register the instrument of renunciation does not affect the effectiveness of the renunciation as between the person whose property or interest is being renounced and persons to whom the property interest or power passes by reason of the renunciation; however, record title to a renounced interest in real property does not pass to persons receiving the renounced interest by reason of the renunciation until the instrument of renunciation is registered as provided in G.S. 47-18 or G.S. 47-20.

(e) If an instrument transferring an interest in or right, privilege, power, or immunity over property subject to a renunciation is required or permitted by law to be filed or registered, the instrument of renunciation may be so filed or registered. Failure to file or register the instrument of renunciation does not affect the effectiveness of the renunciation as between the person whose property or interest is being renounced and persons to whom the property interest or power passes by reason of the renunciation."

SECTION 5. Chapter 31B of the General Statutes is amended by adding a new section to read:

"§ 31B-2.1. Delivery to other persons of instrument of renunciation by the person renouncing.

(a) In this section:

(1) "Beneficiary designation" means an instrument, other than an instrument creating a trust, naming the beneficiary of:

a. An annuity or insurance policy;

b. An account with a designation for payment on death;

c. A security registered in beneficiary form;

d. A pension, profitsharing, retirement, or other employment-related benefit plan;

e. An individual retirement account or retirement annuity; or

f. Any other nonprobate transfer at death.

(2) "Deliver" means to deliver in person or to send, properly addressed, by first-class mail, telephonic facsimile transmission equipment, electronic mail, or third-party commercial carrier, or by any method permitted by G.S. 1A-1, Rule 4.

(b) The failure to deliver a copy of an instrument of renunciation by a method permitted by G.S. 1A-1, Rule 4, or by a method that results in actual receipt tolls any statute of limitations with regard to any right of action for breach of fiduciary duty.

(c) If a fiduciary renounces an interest in property pursuant to G.S. 31B-1(a)(9e), a copy of the instrument of renunciation shall be delivered to each living person whose beneficial interest is affected by the renunciation and to any co-fiduciary who did not join in the renunciation.

(d) In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust, a copy of the instrument of renunciation must:

(1) Be delivered to the personal representative of the decedent's estate; or

(2) If no personal representative is then serving, be filed as an estate matter with a court having jurisdiction to appoint the personal representative.

(e) In the case of a beneficiary renouncing an interest in a testamentary trust, a copy of the instrument of renunciation must:

(1) Be delivered to the trustee then serving;

(2) If no trustee is then serving, be delivered to the personal representative of the decedent's estate; or

(3) If no personal representative or trustee is then serving, be filed as an estate matter with a court having jurisdiction to enforce the trust.

(f) In the case of a beneficiary renouncing an interest in an inter vivos trust, a copy of the instrument of renunciation must:

(1) Be delivered to the trustee then serving;

(2) Except as provided in subdivision (3) of this subsection, if no trustee is then serving, be filed as an estate matter with a court having jurisdiction to enforce the trust; or

(3) If the renunciation is made before the time the instrument creating the trust becomes irrevocable, be delivered to the settlor of the trust or the transferor of the interest.

(g) In the case of a beneficiary renouncing an interest created by a beneficiary designation made before the time the designation becomes irrevocable, a copy of the instrument of renunciation must be delivered to the person making the beneficiary designation.

(h) In the case of a beneficiary renouncing an interest created by a beneficiary designation made after the time the designation becomes irrevocable, a copy of the instrument of renunciation must be delivered to the person obligated to distribute the interest.

(i) In the case of a renunciation by a surviving holder of an interest in property subject to a right of survivorship, a copy of the instrument of renunciation must be delivered to the persons to whom the person renouncing reasonably believes the renounced interest passes, at their last addresses known to the person renouncing, and to the personal representative of the deceased joint holder, if any.

(j) In the case of a renunciation by a permissible appointee, or taker in default of exercise, of a power of appointment at any time after the power was created, a copy of the instrument of renunciation must be delivered:

(1) To the holder of the power;

(2) To the fiduciary acting under the instrument that created the power or, if no fiduciary is then serving under the instrument that created the power, filed as an estate matter with a court having authority to appoint the fiduciary; and

(3) To any holder of legal title to the property subject to the power of appointment other than the fiduciary.

(k) In the case of a renunciation by an appointee of an exercised power of appointment, a copy of the instrument of renunciation must be delivered:

(1) To the holder of the power or the personal representative of the holder's estate;

(2) To the fiduciary under the instrument that created the power or, if no fiduciary is then serving under the instrument that created the power, filed as an estate matter with a court having authority to appoint the fiduciary; and

(3) To any holder of legal title to the property subject to the power of appointment other than the fiduciary.

(l) In the case of a renunciation of a power of appointment by the holder of the power, a copy of the instrument of renunciation must be delivered:

(1) To the fiduciary acting under the instrument that created the power or, if no fiduciary is then serving under the instrument that created the power, filed as an estate matter with a court having authority to appoint the fiduciary; and

(2) To any holder of legal title to the property subject to the power of appointment other than the fiduciary.

(m) In the case of a renunciation by a fiduciary of a right, privilege, power, or immunity relating to a trust or estate, a copy of the instrument of renunciation must be delivered as provided in subsection (c), (d), (e), or (f) of this section, as if the power renounced were an interest in property.

(n) In the case of a renunciation of a power by an agent, including an attorney-in-fact, a copy of the instrument of renunciation must be delivered to the principal or the principal's legal representative other than the agent.

(o) In the case of a renunciation by a trustee of a charitable trust, a copy of the instrument of renunciation must be delivered to the North Carolina Attorney General in addition to any other delivery required by this section.

(p) In the case of a renunciation by a donee, a copy of the instrument of renunciation must be delivered to the persons to whom the person renouncing reasonably believes the renounced interest passes, at their last addresses known to the person renouncing, and to the donor or the donor's legal representative other than the donee.

(q) The failure to deliver a copy of the instrument of renunciation as required in this section does not affect the validity of the renunciation for purposes of G.S. 31B-3 even though the renunciation may not be recognized as a disclaimer for federal estate tax purposes."

SECTION 6. G.S. 31B-3 reads as rewritten:

"**§ 31B-3. Effect of renunciation.**

(a) Unless the decedent, donee of a power of appointment, or creator of an interest under an inter vivos instrument has otherwise provided in the instrument creating the interest, the property or interest renounced devolves as follows:

(1) If the renunciation is filed within the time period described in G.S. 31B-2(a), the property or interest renounced devolves and any interest that takes effect in possession or enjoyment after the termination of the property or interest renounced takes effect as if the ~~renouncer~~ person whose property or interest is being renounced had predeceased the date the transfer of the renounced interest ~~to the renouncer~~ was complete for federal and State inheritance, estate, and gift tax purposes, or, in the case of the renunciation of a fiduciary right, power, privilege, or immunity, the property or interest subject to the power devolves as if the fiduciary right, power, privilege, or immunity never existed. Any such renunciation relates back for all purposes to the date the transfer of the renounced interest ~~to the renouncer~~ was complete for the purpose of those ~~taxes.~~ taxes, and the spouse of the person whose property or interest is being renounced has no elective share or other marital interest in the renounced property.

(2) If the renunciation is not filed within the time period described in G.S. 31B-2(a), the person whose property or interest is being renounced is deemed to have made a transfer of the property or interest and the property or interest devolves and any interest that takes effect in possession or enjoyment after the termination of the property or interest renounced takes effect as if the ~~renouncer~~ person whose property or interest is being renounced had died on the date the renunciation is filed, or, in the case of the renunciation of a fiduciary right, power, privilege, or immunity, the property or interest subject to the power devolves as if the fiduciary right, power, privilege, or immunity ceased to exist as of the date the renunciation is filed.

(3) Any future interest that takes effect in possession or enjoyment after the termination of the estate or interest renounced takes effect as if the ~~renouncer~~ person whose property or interest is being renounced had died on the date determined under subdivision (1) or (2) of this subsection, and upon the filing of the renunciation the persons in being as of the time the ~~renouncer~~ person whose property or interest is being renounced is deemed to have died will immediately become entitled to possession or enjoyment of any such future interest.

(b) In the event that the property or interest renounced was created by testamentary disposition, the devolution of the property or interest renounced shall be ~~governed by G.S. 31-42(a)~~ as provided in G.S. 31-42 notwithstanding that in fact the ~~renouncer~~ person whose property or interest is being renounced has not actually died before the testator.

(c) In the event that the decedent dies intestate, or the ownership or succession to property or to an interest is to be determined as though a decedent had died intestate, and the ~~renouncer~~ person whose property or interest is being renounced has living issue who would have been entitled to an interest in the property or interest if the ~~renouncer~~ person whose property or interest is being renounced had predeceased the decedent, then the property or interest renounced shall be distributed to such issue, per stirpes. If the ~~renouncer~~ person whose property or interest is being renounced does not have such issue, then the property or interest shall be distributed as though the ~~renouncer~~ person whose property or interest is being renounced had predeceased the decedent.

(d) In the event that the property or interest renounced was created by a revocable or irrevocable inter vivos trust, the devolution of the property or interest renounced shall be as provided in G.S. 36C-6-605 notwithstanding that in fact the person whose property or interest

is being renounced has not actually died before the event that would otherwise cause the property or interest renounced to pass to the person whose property or interest is being renounced.

(e) If a trustee files, within the time period described in G.S. 31B-2(a), a renunciation of an interest in property, the interest does not become trust property. If a trustee does not file a renunciation of an interest in property within the time period described in G.S. 31B-2(a), the interest passes to the person or persons who would have taken the interest as of the date of the renunciation if the trust had never existed.

(f) Except as provided in the instrument of renunciation, if a renunciation causes property to pass to a trust in which the person whose property or interest is being renounced holds a power of appointment, the person renouncing is deemed to have renounced the power of appointment with respect to assets passing into the trust by reason of the renunciation if the person renouncing is a person who holds a right to renounce the power of appointment.

(g) Unless otherwise provided in the instrument of renunciation, the interest in property being renounced by a surviving tenant by the entireties upon the death of the other tenant is deemed to be a one-half interest in the former entirety property, and title to that one-half interest passes as if the deceased tenant survived the tenant renouncing.

(h) Unless otherwise provided in the instrument of renunciation, the interest in property being renounced by a surviving joint tenant with right of survivorship is deemed to be the fractional interest of the deceased joint tenant to which the surviving joint tenant would have been entitled by right of survivorship, and title to that fractional interest passes as if the tenant renouncing predeceased the deceased joint tenant.

(i) Reserved for future codification.

(j) Reserved for future codification.

(k) A renunciation is binding upon the person whose interest is being renounced and all persons claiming through or under that person."

SECTION 7. G.S. 31B-4 reads as rewritten:

"**§ 31B-4. Waiver and bar.**

(a) The right to renounce property or an interest therein is barred by:

(1) An assignment, conveyance, encumbrance, pledge, or transfer of the property or interest, or a contract therefor by the person authorized to renounce,

(2) A written waiver of the right to renounce, or

(3) Repealed by Session Laws 1998-148, s. 4.

(4) A sale of the property or interest under judicial sale made before the renunciation is effected.

(b) ~~The renunciation or the written waiver of~~ An instrument waiving or barring the right to renounce is binding upon the ~~renouncer or~~ person waiving the right to renounce or the person barred from renouncing and all persons claiming through or under ~~him.~~ that person.

(c) A fiduciary's application for appointment or assumption of duties as fiduciary does not waive or bar the fiduciary's right to renounce a right, power, privilege, or immunity.

(d) No person shall be liable for distributing or disposing of property in reliance upon the terms of a renunciation that is invalid for the reason that the right of renunciation has been waived or barred, if the distribution or disposition is otherwise proper, and the person has no actual knowledge or record notice of the facts that constitute a waiver or bar to the right of renunciation.

(e) The right to renounce property or an interest in property pursuant to this Chapter is not barred by an acceptance of the property, interest, or benefit thereunder; provided, however, an acceptance of the property, interest, or benefit thereunder may preclude such renunciation from being a qualified renunciation for federal and State inheritance, estate, and gift tax purposes.

(f) An instrument waiving or barring the right to renounce an interest in real property is not effective as to persons protected under G.S. 47-18 or G.S. 47-20 until either (i) registered as provided in those sections or (ii) registered pursuant to a judicial sale proceeding as described in subdivision (4) of subsection (a) of this section in which the person renouncing is a party. The instrument of waiver or bar shall be indexed in the grantor's index under (i) the name of the transferor of the property or interest in the property or creator of the power or holder of the power and (ii) the name of the person whose renunciation is waived or barred."

SECTION 8. Chapter 31B of the General Statutes is amended by adding a new section to read:

"**§ 31B-4.1. Tax qualified renunciation.**

If, as a result of a renunciation, the renounced property is treated pursuant to the provisions of Title 26 of the United States Code, as now or hereafter amended, or any successor statute thereto, and the regulations promulgated thereunder, as never having been transferred to the person whose property or interest is being renounced, then the renunciation is an effective renunciation, notwithstanding any other provision of this Chapter. This section does not preclude an action for breach of fiduciary duty."

SECTION 9. G.S. 31B-6 is repealed.

SECTION 10. G.S. 28A-13-3 reads as rewritten:

"**§ 28A-13-3. Powers of a personal representative or fiduciary.**

(a) Except as qualified by express limitations imposed in a will of the decedent or a court order, and subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative has the power to perform in a reasonable and prudent manner every act which a reasonable and prudent person would perform incident to the collection, preservation, liquidation or distribution of a decedent's estate so as to accomplish the desired result of settling and distributing the decedent's estate in a safe, orderly, accurate and expeditious manner as provided by law, including the powers specified in the following subdivisions:

...

~~(33) To renounce in accordance with the provisions of Chapter 31B of the General Statutes.~~

(a1) Except as qualified by express limitations imposed in a will of the decedent, and subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative shall have absolute discretion to make the election as to which items of the decedent's personal and household effects shall be excluded from the carry over basis provision of the federal income tax law and such election shall be conclusive and binding on all concerned.

(a2) Subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative has the power to renounce in accordance with the provisions of Chapter 31B of the General Statutes.

(b) Any question arising out of the powers conferred by subsections ~~(a) and (a1) above~~ (a), (a1), and (a2) of this section shall be determined in accordance with the provisions of Article 18 of this Chapter.

(c) Prior to the personal representative exercising possession, custody or control over real property of the estate he shall petition the clerk of court to obtain an order authorizing such possession, custody or control. The petition shall include:

(1) A description of the real property which is the subject of the petition;

(2) The names, ages, and addresses, if known, of the devisees and heirs of the decedent;

(3) A statement by the personal representative that he has determined that such possession, custody or control is in the best interest of the administration of the estate.

The devisees and heirs will be made parties to the proceeding by service of summons in the manner prescribed by law. If the clerk of court determines that it is in the best interest of the administration of the estate to authorize the personal representative to take possession, custody or control he shall grant an order authorizing that power. If a special proceeding has been instituted by the personal representative pursuant to G.S. 28A-15-1(c), the personal representative may petition for possession, custody, or control of any real property as a part of that proceeding and is not required to institute a separate special proceeding."

SECTION 11. G.S. 32A-1 reads as rewritten:

"**§ 32A-1. Statutory Short Form of General Power of Attorney.**

The use of the following form in the creation of a power of attorney is lawful, and, when used, it shall be construed in accordance with the provisions of this Chapter.

"NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE DEFINED IN CHAPTER 32A OF THE NORTH CAROLINA GENERAL STATUTES WHICH EXPRESSLY PERMITS THE USE OF ANY OTHER OR DIFFERENT FORM OF POWER OF ATTORNEY DESIRED BY THE PARTIES CONCERNED.

State of _____

County of _____

I _____, appoint _____ to be my attorney-in-fact, to act in my name in any way which I could act for myself, with respect to the following matters as each of them is defined in Chapter 32A of the North Carolina General Statutes. (DIRECTIONS: Initial the line opposite any one or more of the subdivisions as to which the principal desires to give the attorney-in-fact authority.)

(1) Real property transactions ..... _____

(2) Personal property transactions ..... _____

(3) Bond, share, stock, securities and commodity transactions ..... _____

(4) Banking transactions ..... _____

(5) Safe deposits ..... _____

(6) Business operating transactions ..... _____

(7) Insurance transactions ..... _____

(8) Estate transactions ..... _____

(9) Personal relationships and affairs ..... _____

(10) Social security and unemployment ..... _____

(11) Benefits from military service ..... _____

(12) Tax matters ..... _____

(13) Employment of agents ..... _____

(14) Gifts to charities, and to individuals other than the attorney-in-fact ..... _____

(15) Gifts to the named attorney-in-fact ..... _____

(16) Renunciation of an interest in or power over property to benefit persons other than the attorney-in-fact ..... _____

(17) Renunciation of an interest in or power over property to benefit persons including the attorney-in-fact ..... _____

(If power of substitution and revocation is to be given, add: 'I also give to such person full power to appoint another to act as my attorney-in-fact and full power to revoke such appointment.')

(If period of power of attorney is to be limited, add: 'This power terminates_____, _____')

(If power of attorney is to be a durable power of attorney under the provision of Article 2 of Chapter 32A and is to continue in effect after the incapacity or mental incompetence of the principal, add: 'This power of attorney shall not be affected by my subsequent incapacity or mental incompetence.')

(If power of attorney is to take effect only after the incapacity or mental incompetence of the principal, add: 'This power of attorney shall become effective after I become incapacitated or mentally incompetent.')

(If power of attorney is to be effective to terminate or direct the administration of a custodial trust created under the Uniform Custodial Trust Act, add: 'In the event of my subsequent incapacity or mental incompetence, the attorney-in-fact of this power of attorney shall have the power to terminate or to direct the administration of any custodial trust of which I am the beneficiary.')

(If power of attorney is to be effective to determine whether a beneficiary under the Uniform Custodial Trust Act is incapacitated or ceases to be incapacitated, add: 'The attorney-in-fact of this power of attorney shall have the power to determine whether I am incapacitated or whether my incapacity has ceased for the purposes of any custodial trust of which I am the beneficiary.')

Dated_____, _____.

_____ (Seal)
Signature

STATE OF _____ COUNTY OF _____

On this _____ day of_____, _____, personally appeared before me, the said named _____ to me known and known to me to be the person described in and who executed the foregoing instrument and he (or she) acknowledged that he (or she) executed the same and being duly sworn by me, made oath that the statements in the foregoing instrument are true.

My Commission Expires _____.

_____
(Signature of Notary Public)
Notary Public (Official Seal)"

SECTION 12. G.S. 32A-2 is amended by adding two new subdivisions to read:

"(16) Renunciation of an interest in or power over property to benefit persons other than the attorney-in-fact. – To renounce an interest in or power over property, including a power of appointment, to benefit persons other than the attorney-in-fact or the estate, creditors, or the creditors of the estate of the attorney-in-fact, or an individual to whom the attorney-in-fact owes a legal obligation of support, in accordance with Chapter 31B of the General Statutes.

(17) Renunciation of an interest in or power over property to benefit persons including the attorney-in-fact. – To renounce an interest in or power over property, including a power of appointment, to benefit persons including the attorney-in-fact, or the estate, creditors, or the creditors of the estate of the attorney-in-fact, or an individual to whom the attorney-in-fact owes a legal obligation of support, in accordance with Chapter 31B of the General Statutes."

SECTION 13. The title of Article 2A of Chapter 32A of the General Statutes reads as rewritten:

"Article 2A.

Authority of Attorney-In-Fact to Make ~~Gifts.~~ Gifts and to Renounce."

SECTION 14. Article 2A of Chapter 32A of the General Statutes is amended by adding a new section to read:

"**§ 32A-14.2. Renunciation under power of attorney.**

(a) If any power of attorney authorizes an attorney-in-fact to do, execute, or perform any act that the principal might or could do or evidences the principal's intent to give the attorney-in-fact full power to handle the principal's affairs or deal with the principal's property, but does not expressly authorize the attorney-in-fact to renounce an interest in or power over property, the attorney-in-fact shall not have the power or authority to renounce on behalf of the principal pursuant to Chapter 31B of the General Statutes.

(b) Notwithstanding an express grant of general authority to renounce, an attorney-in-fact that is not an ancestor, spouse, or descendant of the principal may not renounce under a power of attorney to create in the attorney-in-fact or the estate, creditors, or the creditors of the estate of the attorney-in-fact, or in an individual to whom the attorney-in-fact owes a legal obligation of support, an interest in or power over the principal's property by reason of a renunciation unless the power of attorney expressly authorizes a renunciation that benefits the attorney-in-fact or the estate, creditors, or the creditors of the estate of the attorney-in-fact, or an individual to whom the attorney-in-fact owes a legal obligation of support."

SECTION 15. G.S. 36C-1-105(b) reads as rewritten:

"(b) The terms of a trust prevail over any provision of this Chapter except:

(1) The requirements for creating a ~~trust;~~ trust.

(2) The duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the ~~beneficiaries;~~ beneficiaries.

(3) The requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to ~~achieve;~~ achieve.

(4) The power of the court to modify or terminate a trust under G.S. 36C-4-410 through ~~G.S. 36C-4-416;~~ G.S. 36C-4-416.

(5) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Article 5 of this Chapter;

(6) The effect of an exculpatory term under ~~G.S. 36C-10-1008;~~ G.S. 36C-10-1008.

(7) The rights under G.S. 36C-10-1010 through G.S. 36C-10-1013 of a person other than a trustee or ~~beneficiary;~~ beneficiary.

(8) Periods of limitation for commencing a judicial ~~proceeding;~~ proceeding.

(9) The power of the court to take any action and exercise any jurisdiction as may be necessary in the interests of ~~justice;~~justice.

(10) The subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in G.S. 36C-2-203 and ~~G.S. 36C-2-204; and~~G.S. 36C-2-204.

(11) The requirement that the exercise of the powers described in G.S. 36C-6-602.1(a) shall not alter the designation of beneficiaries to receive property on the settlor's death under that settlor's existing estate plan.

(12) The power of a trustee to renounce an interest in or power over property in accordance with the provisions of Chapter 31B of the General Statutes."

SECTION 16. G.S. 36C-8-816 reads as rewritten:

"**§ 36C-8-816. Specific powers of trustee.**

Without limiting the authority conferred by G.S. 36C-8-815, a trustee may:

...

(30) Request an order from the court for the sale of real or personal property under Article 29A of Chapter 1 of the General Statutes, or for the exchange, partition, or other disposition or change in the character of, or for the grant of options or other rights in or to, such ~~property; and~~ property;

(31) Distribute the assets of an inoperative trust consistent with the authority granted under ~~G.S. 28A-22-10.~~G.S. 28A-22-110; and

(32) Renounce, in accordance with Chapter 31B of the General Statutes, an interest in or power over property, including property that is or may be burdened with liability for violation of environmental law."

SECTION 17. G.S. 36C-8-816(13)c. is repealed.

SECTION 18. The Revisor of Statutes shall cause to be printed along with this act all explanatory comments of the drafters of this act as the Revisor deems appropriate.

SECTION 19. This act becomes effective October 1, 2009, and applies to renunciations and powers of attorney executed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 884*
PROPOSED COMMITTEE SUBSTITUTE S884-CSRC-18 [v.1]

4/29/2009 3:46:53 PM

Short Title: Renunciation Amendments. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW RELATING TO RENUNCIATIONS AND TO MAKE RELATED AMENDMENTS TO THE NORTH CAROLINA UNIFORM TRUST CODE AND THE LAW GOVERNING POWERS OF ATTORNEY AND ADMINISTRATION OF DECEDENTS' ESTATES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 31B-1 reads as rewritten:

"**§ 31B-1. Right to renounce succession.**

(a) A person who succeeds to a property interest as:

(1) ~~Heir, or~~ Heir;

(2) Next of ~~kin, or~~ kin;

(3) ~~Devisee, or~~ Devisee;

(4) ~~Legatee, or~~ Legatee;

(4a) Donee;

(5) Beneficiary of a life insurance policy who did not possess the incidents of ownership under the policy at the time of death of the ~~insured, or~~ insured;

(6) Person succeeding to a renounced ~~interest, or~~ interest;

(7) Beneficiary under a testamentary trust or under an inter vivos ~~trust, or~~ trust;

(8) Appointee under a power of appointment exercised by a testamentary instrument or a nontestamentary ~~instrument, or~~ instrument;

(9) Repealed by Session Laws 1989, c. 684, s. 2.

(9a) Surviving joint tenant, surviving tenant by the entireties, or surviving tenant of a tenancy with a right of ~~survivorship, or~~ survivorship;

(9b) Person entitled to share in a testator's estate under the provisions of ~~G.S. 31-5.5, or~~ G.S. 31-5.5;

(9c) Beneficiary under any other testamentary or nontestamentary instrument, including a beneficiary under:

a. Any qualified or nonqualified deferred compensation, employee benefit, retirement or death benefit, plan, fund, annuity, contract, policy, program or instrument, either funded or unfunded, which is established or maintained to provide retirement income or death benefits or results in, or is intended to result in, deferral of income;

b. An individual retirement account or individual retirement annuity; or

c. Any annuity, payable on ~~death,~~ death account, or other right to death benefits arising under ~~contract; or~~ contract;

(9d) ~~The duly~~ Duly authorized or appointed guardian of any of the persons listed in subdivisions (1) through (9c) of this subsection, but only with the prior or subsequent approval of the clerk of superior court, or if required, of the resident judge of the superior court, ~~of any of the above.~~ pursuant to a proceeding or action instituted in accordance with and subject to the requirements of G.S. 31B-1.2; or

(9e) Subject to G.S. 31B-1.1 and G.S. 31B-1.2, fiduciary, including a trustee of a charitable trust, an attorney-in-fact of any of the persons listed in subdivisions (1) through (9e) of this subsection if expressly authorized by the governing power of attorney, and a personal representative appointed under Chapter 28A of the General Statutes of any of the persons listed in subdivisions (1) through (9c) of this subsection;

~~(10) The personal representative appointed under Chapter 28A of any of the above,~~

~~or the attorney in fact of any of the above~~ may renounce at anytime, in whole or in ~~part~~ part, the right of succession to any property or interest therein, including a future interest, by filing a written instrument under the provisions of this Chapter. A renunciation may be of a fractional share or any limited interest or estate. The renunciation shall be deemed to include the entire interest of the person whose property or interest is being renounced unless otherwise specifically limited. A person may renounce any interest in or power over property, including a power of appointment, even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to renounce. ~~Provided, however,~~ Notwithstanding the foregoing, there shall be no right of partial renunciation if ~~the decedent or donee of the power expressly so provided in~~ the instrument creating the ~~interest.~~interest expressly so provides.

(b) This Chapter shall apply to all renunciations of present and future interests, whether qualified or nonqualified for federal and State inheritance, estate, and gift tax purposes, unless expressly provided otherwise in the instrument creating the interest.

(c) The instrument of renunciation shall (i) identify the transferor of the property or interest in the property or the creator of the power or the holder of the power, (ii) describe the property or interest renounced, ~~(ii)~~ (iii) declare the renunciation and extent thereof, ~~(iii)~~ and (iv) be signed and acknowledged by the person ~~authorized to renounce.~~ renouncing.

(d) A parent of a minor for whom no general guardian or guardian of the estate has been appointed may renounce, in whole or in part, an interest in or power over property (including a power of appointment) that would have passed to the minor as the result of that parent's renunciation. The parent may renounce the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to renounce."

SECTION 2. G.S. 31B-1A is recodified as G.S. 31B-1.1. G.S. 31B-1.1, as recodified by this section, reads as rewritten:

"**§ 31B-1.1. ~~Right to renounce fiduciary powers.~~ Right of fiduciary to renounce.**

(a) Except as otherwise provided in the testamentary or nontestamentary instrument, a fiduciary under a testamentary or nontestamentary instrument may renounce, in whole or in part, fiduciary rights, privileges, powers, and ~~immunities by executing and by delivering, filing, or recording a written renunciation pursuant to the provisions of G.S. 31B-2. A~~ immunities; however, a fiduciary may not renounce the ~~rights of beneficiaries~~ personal rights exercisable by a beneficiary alone, unless the instrument creating the fiduciary relationship authorizes such a renunciation. The instrument of renunciation shall (i) identify the creator of the rights, powers, privileges, or immunities, (ii) describe any right, power, privilege, or immunity renounced, (iii)

declare the renunciation and the extent thereof, and (iv) be signed and acknowledged by the fiduciary authorized to renounce.

(b) ~~The instrument of renunciation shall (i) describe any fiduciary right, power, privilege, or immunity renounced, (ii) declare the renunciation and the extent thereof, and (iii) be signed and acknowledged by the fiduciary authorized to renounce.~~ Except as provided in subsection (c) of this section and except to the extent a statute of this State expressly restricts or limits a fiduciary's right to renounce, a fiduciary acting in a fiduciary capacity may renounce the right of succession to any property or interest therein as permitted by this Chapter, even if the testamentary or nontestamentary instrument governing the fiduciary restricts or limits the right to renounce the fiduciary's right of succession to the property or interest therein.

(c) An attorney-in-fact for a principal acting under subsection (a) or subsection (b) of this section may renounce only if expressly authorized by the governing power of attorney."

SECTION 3. Chapter 31B of the General Statutes is amended by adding a new section to read:

"**§ 31B-1.2. Right of fiduciary to institute a proceeding for review of renunciation.**

(a) Prior to renouncing, if a fiduciary so elects, the fiduciary may institute a proceeding by petition before the clerk of court for a determination as to whether a renunciation would be compatible with the fiduciary's duties. Commencement of the proceeding, jurisdiction, venue, parties, representation, and notice shall be governed by Chapter 36C of the General Statutes. In addition to any other notice requirements, notice of the proceeding shall be given to all persons entitled to delivery of a copy of an instrument of renunciation under G.S. 31B-2.1.

(b) After renouncing, if a fiduciary so elects, the fiduciary has a right to institute a declaratory judgment action pursuant to Article 26 of Chapter 1 of the General Statutes for a determination as to whether the renunciation is compatible with the fiduciary's duties. In addition to any other notice requirements, notice of the action shall be given to all persons entitled to delivery of a copy of an instrument of renunciation under G.S. 31B-2.1.

(c) A proceeding or action instituted under this section shall comply with all of the following:

(1) The petition or complaint shall state the basis for the fiduciary's allegation that the renunciation is compatible with the fiduciary's duties, considering among other things the intended purposes of the trust or other instrument and the impact of the renunciation on beneficiaries and potential beneficiaries. A petition or complaint filed by a trustee of a charitable trust shall contain a statement that a copy of the petition or complaint is being provided to the Attorney General.

(2) After considering among other things the intended purposes of the trust or other instrument and the impact of the renunciation on beneficiaries and potential beneficiaries, the court shall enter an order stating the court's determination as to whether the renunciation is compatible with the fiduciary's duties.

(d) The effectiveness of a renunciation is not affected by a determination under this section that the renunciation is not compatible with a fiduciary's duties."

SECTION 4. G.S. 31B-2 reads as rewritten:

"**§ 31B-2. ~~Time and place of filing renunciation.~~Filing and registering of renunciations; failure to file or register; spouse's interest.**

(a) To be a qualified disclaimer for federal and State inheritance, estate, and gift tax purposes, an instrument ~~renouncing a present interest~~ of renunciation shall be filed within the time period required under the applicable federal statute for a renunciation to be given effect as a disclaimer for federal estate and gift tax purposes. If there is no such federal statute the instrument shall be filed not later than nine months after the date the transfer of the renounced

interest to the ~~renouncer~~ person whose property or interest is being renounced was complete for the purpose of such taxes.

(b) ~~An instrument renouncing a future interest shall be filed not later than six months after the event by which the taker of the property or interest is finally ascertained and his interest indefeasibly vested and he is entitled to possession even though such renunciation may not be recognized as a disclaimer for federal estate tax purposes.~~ When a renunciation of real property or an interest in real property is made within the time period required under subsection (a) of this section, the spouse of the person whose property or interest is being renounced is not required to join in the execution of the instrument of renunciation, and, as provided in G.S. 31B-3(a)(1), the spouse has no statutory dower, inchoate marital rights, elective share, or any other marital interest in the real property or real property interest renounced.

(c) The renunciation ~~shall be~~ is effective when filed with the clerk of court ~~of~~ (i) in the county in which court proceedings have been commenced for the administration of the estate of the deceased owner or deceased ~~donee~~ creator of the power ~~or, if they have not been commenced, in which they could be commenced. A copy of the renunciation shall be delivered in person or mailed by registered or certified mail to any personal representative, or other fiduciary of the decedent or donee of the power. If the property interest renounced includes any proceeds of a life insurance policy being renounced pursuant to G.S. 31B-1(a)(5) the person renouncing shall mail, by registered or certified mail, a copy of the renunciation to the insurance company issuing the policy. If the property or property interest renounced is created by nontestamentary instrument, a copy of the renunciation shall be delivered in person, or mailed by registered or certified mail, to the trustee or other person who has legal title to, or possession of, the property or property interest renounced.~~ or holder of the power; or (ii) if proceedings have not been commenced, then in a county in which they could be commenced; or (iii) in all other cases, in a county with a court that has jurisdiction to enforce the terms of the instrument creating the interest renounced. In those cases in which an estate proceeding has not been commenced, the renunciation shall be filed as an estate matter. In addition to the above requirements, a renunciation of real property, or an interest therein, shall be registered in accordance with the provisions of subsection (d) of this section.

(d) If real property or an interest therein is renounced, ~~a copy of~~ the instrument of renunciation shall also be ~~filed for recording in the office of the register of deeds of all counties wherein any part of the interest renounced is situated.~~ registered as provided in G.S. 47-18 or G.S. 47-20. The instrument of renunciation shall be indexed in the grantor's index under (i) the name of the ~~deceased owner~~ transferor or ~~donee~~ creator of the ~~power,~~ power or holder of the power, and (ii) the name of the ~~person renouncing.~~ person whose property or interest is being renounced. ~~The renunciation of an interest, or a part thereof, in real property shall not be effective to renounce such interest until a copy of the renunciation is filed for recording in the office of the register of deeds in the county wherein such interest or part thereof is situated. A spouse of a person renouncing real property or an interest in real property shall have no statutory dower, inchoate marital rights, or any other interest in the real property or real property interest renounced.~~ Failure to file or register the instrument of renunciation does not affect the effectiveness of the renunciation as between the person whose property or interest is being renounced and persons to whom the property interest or power passes by reason of the renunciation; however, record title to a renounced interest in real property does not pass to persons receiving the renounced interest by reason of the renunciation until the instrument of renunciation is registered as provided in G.S. 47-18 or G.S. 47-20.

(e) If an instrument transferring an interest in or right, privilege, power, or immunity over property subject to a renunciation is required or permitted by law to be filed or registered, the instrument of renunciation may be so filed or registered. Failure to file or register the instrument of renunciation does not affect the effectiveness of the renunciation as between the

person whose property or interest is being renounced and persons to whom the property interest or power passes by reason of the renunciation."

SECTION 5. Chapter 31B of the General Statutes is amended by adding a new section to read:

"**§ 31B-2.1. Delivery to other persons of instrument of renunciation by the person renouncing.**

(a) In this section:

(1) "Beneficiary designation" means an instrument, other than an instrument creating a trust, naming the beneficiary of:

a. An annuity or insurance policy;

b. An account with a designation for payment on death;

c. A security registered in beneficiary form;

d. A pension, profitsharing, retirement, or other employment-related benefit plan;

e. An individual retirement account or retirement annuity; or

f. Any other nonprobate transfer at death.

(2) "Deliver" means to deliver in person or to send, properly addressed, by first-class mail, telephonic facsimile transmission equipment, electronic mail, or third-party commercial carrier, or by any method permitted by G.S. 1A-1, Rule 4.

(b) The failure to deliver a copy of an instrument of renunciation by a method permitted by G.S. 1A-1, Rule 4, or by a method that results in actual receipt tolls any statute of limitations with regard to any right of action for breach of fiduciary duty.

(c) If a fiduciary renounces an interest in property pursuant to G.S. 31B-1(a)(9e), a copy of the instrument of renunciation shall be delivered to each living person whose beneficial interest is affected by the renunciation and to any co-fiduciary who did not join in the renunciation.

(d) In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust, a copy of the instrument of renunciation must:

(1) Be delivered to the personal representative of the decedent's estate; or

(2) If no personal representative is then serving, be filed as an estate matter with a court having jurisdiction to appoint the personal representative.

(e) In the case of a beneficiary renouncing an interest in a testamentary trust, a copy of the instrument of renunciation must:

(1) Be delivered to the trustee then serving;

(2) If no trustee is then serving, be delivered to the personal representative of the decedent's estate; or

(3) If no personal representative or trustee is then serving, be filed as an estate matter with a court having jurisdiction to enforce the trust.

(f) In the case of a beneficiary renouncing an interest in an inter vivos trust, a copy of the instrument of renunciation must:

(1) Be delivered to the trustee then serving;

(2) Except as provided in subdivision (3) of this subsection, if no trustee is then serving, be filed as an estate matter with a court having jurisdiction to enforce the trust; or

(3) If the renunciation is made before the time the instrument creating the trust becomes irrevocable, be delivered to the settlor of the trust or the transferor of the interest.

(g) In the case of a beneficiary renouncing an interest created by a beneficiary designation made before the time the designation becomes irrevocable, a copy of the instrument of renunciation must be delivered to the person making the beneficiary designation.

(h) In the case of a beneficiary renouncing an interest created by a beneficiary designation made after the time the designation becomes irrevocable, a copy of the instrument of renunciation must be delivered to the person obligated to distribute the interest.

(i) In the case of a renunciation by a surviving holder of an interest in property subject to a right of survivorship, a copy of the instrument of renunciation must be delivered to the persons to whom the person renouncing reasonably believes the renounced interest passes, at their last addresses known to the person renouncing, and to the personal representative of the deceased joint holder, if any.

(j) In the case of a renunciation by a permissible appointee, or taker in default of exercise, of a power of appointment at anytime after the power was created, a copy of the instrument of renunciation must be delivered:

(1) To the holder of the power;

(2) To the fiduciary acting under the instrument that created the power or, if no fiduciary is then serving under the instrument that created the power, filed as an estate matter with a court having authority to appoint the fiduciary; and

(3) To any holder of legal title to the property subject to the power of appointment other than the fiduciary.

(k) In the case of a renunciation by an appointee of an exercised power of appointment, a copy of the instrument of renunciation must be delivered:

(1) To the holder of the power or the personal representative of the holder's estate;

(2) To the fiduciary under the instrument that created the power or, if no fiduciary is then serving under the instrument that created the power, filed as an estate matter with a court having authority to appoint the fiduciary; and

(3) To any holder of legal title to the property subject to the power of appointment other than the fiduciary.

(l) In the case of a renunciation of a power of appointment by the holder of the power, a copy of the instrument of renunciation must be delivered:

(1) To the fiduciary acting under the instrument that created the power or, if no fiduciary is then serving under the instrument that created the power, filed as an estate matter with a court having authority to appoint the fiduciary; and

(2) To any holder of legal title to the property subject to the power of appointment other than the fiduciary.

(m) In the case of a renunciation by a fiduciary of a right, privilege, power, or immunity relating to a trust or estate, a copy of the instrument of renunciation must be delivered as provided in subsection (c), (d), (e), or (f) of this section, as if the power renounced were an interest in property.

(n) In the case of a renunciation of a power by an agent, including an attorney-in-fact, a copy of the instrument of renunciation must be delivered to the principal or the principal's legal representative other than the agent.

(o) In the case of a renunciation by a trustee of a charitable trust, a copy of the instrument of renunciation must be delivered to the North Carolina Attorney General in addition to any other delivery required by this section.

(p) In the case of a renunciation by a donee, a copy of the instrument of renunciation must be delivered to the persons to whom the person renouncing reasonably believes the renounced interest passes, at their last addresses known to the person renouncing, and to the donor or the donor's legal representative other than the donee.

(q) The failure to deliver a copy of the instrument of renunciation as required in this section does not affect the validity of the renunciation for purposes of G.S. 31B-3 even though the renunciation may not be recognized as a disclaimer for federal estate tax purposes."

SECTION 6. G.S. 31B-3 reads as rewritten:

"**§ 31B-3. Effect of renunciation.**

(a) Unless the decedent, donee of a power of appointment, or creator of an interest under an inter vivos instrument has otherwise provided in the instrument creating the interest, the property or interest renounced devolves as follows:

(1) If the renunciation is filed within the time period described in G.S. 31B-2(a), the property or interest renounced devolves and any interest that takes effect in possession or enjoyment after the termination of the property or interest renounced takes effect as if the ~~renouncer~~ person whose property or interest is being renounced had predeceased the date the transfer of the renounced interest ~~to the renouncer~~ was complete for federal and State inheritance, estate, and gift tax purposes, or, in the case of the renunciation of a fiduciary right, power, privilege, or immunity, the property or interest subject to the power devolves as if the fiduciary right, power, privilege, or immunity never existed. Any such renunciation relates back for all purposes to the date the transfer of the renounced interest ~~to the renouncer~~ was complete for the purpose of those ~~taxes.~~ taxes, and the spouse of the person whose property or interest is being renounced has no elective share or other marital interest in the renounced property.

(2) If the renunciation is not filed within the time period described in G.S. 31B-2(a), the person whose property or interest is being renounced is deemed to have made a transfer of the property or interest and the property or interest devolves and any interest that takes effect in possession or enjoyment after the termination of the property or interest renounced takes effect as if the ~~renouncer~~ person whose property or interest is being renounced had died on the date the renunciation is filed, or, in the case of the renunciation of a fiduciary right, power, privilege, or immunity, the property or interest subject to the power devolves as if the fiduciary right, power, privilege, or immunity ceased to exist as of the date the renunciation is filed.

(3) Any future interest that takes effect in possession or enjoyment after the termination of the estate or interest renounced takes effect as if the ~~renouncer~~ person whose property or interest is being renounced had died on the date determined under subdivision (1) or (2) of this subsection, and upon the filing of the renunciation the persons in being as of the time the ~~renouncer~~ person whose property or interest is being renounced is deemed to have died will immediately become entitled to possession or enjoyment of any such future interest.

(b) In the event that the property or interest renounced was created by testamentary disposition, the devolution of the property or interest renounced shall be ~~governed by G.S. 31-42(a)~~ as provided in G.S. 31-42 notwithstanding that in fact the ~~renouncer~~ person whose property or interest is being renounced has not actually died before the testator.

(c) In the event that the decedent dies intestate, or the ownership or succession to property or to an interest is to be determined as though a decedent had died intestate, and the ~~renouncer~~ person whose property or interest is being renounced has living issue who would have been entitled to an interest in the property or interest if the ~~renouncer~~ person whose property or interest is being renounced had predeceased the decedent, then the property or interest renounced shall be distributed to such issue, per stirpes. If the ~~renouncer~~ person whose property or interest is being renounced does not have such issue, then the property or interest

shall be distributed as though the ~~renouncer~~ person whose property or interest is being renounced had predeceased the decedent.

(d) In the event that the property or interest renounced was created by a revocable or irrevocable inter vivos trust, the devolution of the property or interest renounced shall be as provided in G.S. 36C-6-605 notwithstanding that in fact the person whose property or interest is being renounced has not actually died before the event that would otherwise cause the property or interest renounced to pass to the person whose property or interest is being renounced.

(e) If a trustee files, within the time period described in G.S. 31B-2(a), a renunciation of an interest in property, the interest does not become trust property. If a trustee does not file a renunciation of an interest in property within the time period described in G.S. 31B-2(a), the interest passes to the person or persons who would have taken the interest as of the date of the renunciation if the trust had never existed.

(f) Except as provided in the instrument of renunciation, if a renunciation causes property to pass to a trust in which the person whose property or interest is being renounced holds a power of appointment, the person renouncing is deemed to have renounced the power of appointment with respect to assets passing into the trust by reason of the renunciation if the person renouncing is a person who holds a right to renounce the power of appointment.

(g) Unless otherwise provided in the instrument of renunciation, the interest in property being renounced by a surviving tenant by the entireties upon the death of the other tenant is deemed to be a one-half interest in the former entirety property, and title to that one-half interest passes as if the deceased tenant survived the tenant renouncing.

(h) Unless otherwise provided in the instrument of renunciation, the interest in property being renounced by a surviving joint tenant with right of survivorship is deemed to be the fractional interest of the deceased joint tenant to which the surviving joint tenant would have been entitled by right of survivorship, and title to that fractional interest passes as if the tenant renouncing predeceased the deceased joint tenant.

(i) **Reserved for future codification purposes.**

(j) **Reserved for future codification purposes.**

(k) A renunciation is binding upon the person whose property or interest is being renounced and all persons claiming through or under that person."

SECTION 7. G.S. 31B-4 reads as rewritten:

"**§ 31B-4. Waiver and bar.**

(a) The right to renounce property or an interest therein is barred by:

(1) An assignment, conveyance, encumbrance, pledge, or transfer of the property or interest, or a contract therefor by the person authorized to renounce,

(2) A written waiver of the right to renounce, or

(3) Repealed by Session Laws 1998-148, s. 4.

(4) A sale of the property or interest under judicial sale made before the renunciation is effected.

(b) ~~The renunciation or the written waiver of~~ An instrument waiving or barring the right to renounce is binding upon the ~~renouncer or~~ person waiving the right to renounce or the person barred from renouncing and all persons claiming through or under ~~him.~~ that person.

(c) A fiduciary's application for appointment or assumption of duties as fiduciary does not waive or bar the fiduciary's right to renounce a right, power, privilege, or immunity.

(d) No person shall be liable for distributing or disposing of property in reliance upon the terms of a renunciation that is invalid for the reason that the right of renunciation has been waived or barred, if the distribution or disposition is otherwise proper, and the person has no actual knowledge or record notice of the facts that constitute a waiver or bar to the right of renunciation.

(e) The right to renounce property or an interest in property pursuant to this Chapter is not barred by an acceptance of the property, interest, or benefit thereunder; provided, however, an acceptance of the property, interest, or benefit thereunder may preclude such renunciation from being a qualified renunciation for federal and State inheritance, estate, and gift tax purposes.

(f) An instrument waiving or barring the right to renounce an interest in real property is not effective as to persons protected under G.S. 47-18 or G.S. 47-20 until either (i) registered as provided in those sections or (ii) registered pursuant to a judicial sale proceeding as described in subdivision (4) of subsection (a) of this section in which the person renouncing is a party. The instrument of waiver or bar shall be indexed in the grantor's index under (i) the name of the transferor of the property or interest in the property or creator of the power or holder of the power and (ii) the name of the person whose renunciation is waived or barred."

SECTION 8. Chapter 31B of the General Statutes is amended by adding a new section to read:

"**§ 31B-4.1. Tax qualified renunciation.**

If, as a result of a renunciation, the renounced property is treated pursuant to the provisions of Title 26 of the United States Code, as now or hereafter amended, or any successor statute thereto, and the regulations promulgated thereunder, as never having been transferred to the person whose property or interest is being renounced, then the renunciation is an effective renunciation, notwithstanding any other provision of this Chapter. This section does not preclude an action for breach of fiduciary duty."

SECTION 9. G.S. 31B-6 is repealed.

SECTION 10. G.S. 28A-13-3 reads as rewritten:

"**§ 28A-13-3. Powers of a personal representative or fiduciary.**

(a) Except as qualified by express limitations imposed in a will of the decedent or a court order, and subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative has the power to perform in a reasonable and prudent manner every act which a reasonable and prudent person would perform incident to the collection, preservation, liquidation or distribution of a decedent's estate so as to accomplish the desired result of settling and distributing the decedent's estate in a safe, orderly, accurate and expeditious manner as provided by law, including the powers specified in the following subdivisions:

...

~~(33) To renounce in accordance with the provisions of Chapter 31B of the General Statutes.~~

(a1) Except as qualified by express limitations imposed in a will of the decedent, and subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative shall have absolute discretion to make the election as to which items of the decedent's personal and household effects shall be excluded from the carry over basis provision of the federal income tax law and such election shall be conclusive and binding on all concerned.

(a2) Subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative has the power to renounce in accordance with the provisions of Chapter 31B of the General Statutes.

(b) Any question arising out of the powers conferred by subsections ~~(a) and (a1) above~~ (a), (a1), and (a2) of this section shall be determined in accordance with the provisions of Article 18 of this Chapter.

(c) Prior to the personal representative exercising possession, custody or control over real property of the estate he shall petition the clerk of court to obtain an order authorizing such possession, custody or control. The petition shall include:

(1) A description of the real property which is the subject of the petition;

(2) The names, ages, and addresses, if known, of the devisees and heirs of the decedent;

(3) A statement by the personal representative that he has determined that such possession, custody or control is in the best interest of the administration of the estate.

The devisees and heirs will be made parties to the proceeding by service of summons in the manner prescribed by law. If the clerk of court determines that it is in the best interest of the administration of the estate to authorize the personal representative to take possession, custody or control he shall grant an order authorizing that power. If a special proceeding has been instituted by the personal representative pursuant to G.S. 28A-15-1(c), the personal representative may petition for possession, custody, or control of any real property as a part of that proceeding and is not required to institute a separate special proceeding."

SECTION 11. G.S. 32A-1 reads as rewritten:

"**§ 32A-1. Statutory Short Form of General Power of Attorney.**

The use of the following form in the creation of a power of attorney is lawful, and, when used, it shall be construed in accordance with the provisions of this Chapter.

"NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE DEFINED IN CHAPTER 32A OF THE NORTH CAROLINA GENERAL STATUTES WHICH EXPRESSLY PERMITS THE USE OF ANY OTHER OR DIFFERENT FORM OF POWER OF ATTORNEY DESIRED BY THE PARTIES CONCERNED.

State of _____

County of _____

I _____, appoint _____ to be my attorney-in-fact, to act in my name in any way which I could act for myself, with respect to the following matters as each of them is defined in Chapter 32A of the North Carolina General Statutes. (DIRECTIONS: Initial the line opposite any one or more of the subdivisions as to which the principal desires to give the attorney-in-fact authority.)

(1) Real property transactions ..... _____

(2) Personal property transactions ..... _____

(3) Bond, share, stock, securities and commodity transactions ..... _____

(4) Banking transactions ..... _____

(5) Safe deposits ..... _____

(6) Business operating transactions ..... _____

(7) Insurance transactions ..... _____

(8) Estate transactions ..... _____

(9) Personal relationships and affairs ..... _____

(10) Social security and unemployment ..... _____

(11) Benefits from military service ..... _____

(12) Tax matters ..... _____

(13) Employment of agents ..... _____

(14) Gifts to charities, and to individuals other than the attorney-in-fact ..... _____

(15) Gifts to the named attorney-in-fact ..... _____

(16) Renunciation of an interest in or power over property to benefit persons other than the attorney-in-fact ..... _____

(17) Renunciation of an interest in or power over property to benefit persons including the

attorney-in-fact.....

(If power of substitution and revocation is to be given, add: 'I also give to such person full power to appoint another to act as my attorney-in-fact and full power to revoke such appointment.')

(If period of power of attorney is to be limited, add: 'This power terminates_____, _____')

(If power of attorney is to be a durable power of attorney under the provision of Article 2 of Chapter 32A and is to continue in effect after the incapacity or mental incompetence of the principal, add: 'This power of attorney shall not be affected by my subsequent incapacity or mental incompetence.')

(If power of attorney is to take effect only after the incapacity or mental incompetence of the principal, add: 'This power of attorney shall become effective after I become incapacitated or mentally incompetent.')

(If power of attorney is to be effective to terminate or direct the administration of a custodial trust created under the Uniform Custodial Trust Act, add: 'In the event of my subsequent incapacity or mental incompetence, the attorney-in-fact of this power of attorney shall have the power to terminate or to direct the administration of any custodial trust of which I am the beneficiary.')

(If power of attorney is to be effective to determine whether a beneficiary under the Uniform Custodial Trust Act is incapacitated or ceases to be incapacitated, add: 'The attorney-in-fact of this power of attorney shall have the power to determine whether I am incapacitated or whether my incapacity has ceased for the purposes of any custodial trust of which I am the beneficiary.')

Dated_____, _____ .

_____ (Seal)

Signature

STATE OF _____ COUNTY OF _____

On this _____ day of_____, _____, personally appeared before me, the said named _____ to me known and known to me to be the person described in and who executed the foregoing instrument and he (or she) acknowledged that he (or she) executed the same and being duly sworn by me, made oath that the statements in the foregoing instrument are true.

My Commission Expires _____.

_____

(Signature of Notary Public)

Notary Public (Official Seal)"

SECTION 12. G.S. 32A-2 is amended by adding two new subdivisions to read:

"(16) Renunciation of an interest in or power over property to benefit persons other than the attorney-in-fact. – To renounce, in accordance with Chapter 31B of the General Statutes, an interest in or power over property, including a power of appointment, to benefit persons other than the attorney-in-fact or the estate, creditors, or the creditors of the estate of the attorney-in-fact, or an individual to whom the attorney-in-fact owes a legal obligation of support.

(17) Renunciation of an interest in or power over property to benefit persons including the attorney-in-fact. – To renounce, in accordance with Chapter 31B of the General Statutes, an interest in or power over property, including a power of appointment, to benefit persons including the attorney-in-fact, or the estate, creditors, or the creditors of the estate of the attorney-in-fact, or

an individual to whom the attorney-in-fact owes a legal obligation of support."

SECTION 13. The title of Article 2A of Chapter 32A of the General Statutes reads as rewritten:

"Article 2A.

Authority of Attorney-In-Fact to Make ~~Gifts.~~ Gifts and to Renounce."

SECTION 14. Article 2A of Chapter 32A of the General Statutes is amended by adding a new section to read:

"**§ 32A-14.2. Renunciation under power of attorney.**

(a) If any power of attorney authorizes an attorney-in-fact to do, execute, or perform any act that the principal might or could do or evidences the principal's intent to give the attorney-in-fact full power to handle the principal's affairs or deal with the principal's property, but does not expressly authorize the attorney-in-fact to renounce an interest in or power over property, the attorney-in-fact shall not have the power or authority to renounce on behalf of the principal pursuant to Chapter 31B of the General Statutes.

(b) Notwithstanding an express grant of general authority to renounce, an attorney-in-fact that is not an ancestor, spouse, or descendant of the principal may not renounce under a power of attorney to create in the attorney-in-fact or the estate, creditors, or the creditors of the estate of the attorney-in-fact, or in an individual to whom the attorney-in-fact owes a legal obligation of support, an interest in or power over the principal's property by reason of a renunciation unless the power of attorney expressly authorizes a renunciation that benefits the attorney-in-fact or the estate, creditors, or the creditors of the estate of the attorney-in-fact, or an individual to whom the attorney-in-fact owes a legal obligation of support."

SECTION 15. G.S. 36C-1-105(b) reads as rewritten:

"(b) The terms of a trust prevail over any provision of this Chapter except:

(1) The requirements for creating a ~~trust;~~ trust.

(2) The duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the ~~beneficiaries;~~ beneficiaries.

(3) The requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to ~~achieve;~~ achieve.

(4) The power of the court to modify or terminate a trust under G.S. 36C-4-410 through ~~G.S. 36C-4-416;~~ G.S. 36C-4-416.

(5) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Article 5 of this Chapter;

(6) The effect of an exculpatory term under ~~G.S. 36C-10-1008;~~ G.S. 36C-10-1008.

(7) The rights under G.S. 36C-10-1010 through G.S. 36C-10-1013 of a person other than a trustee or ~~beneficiary;~~ beneficiary.

(8) Periods of limitation for commencing a judicial ~~proceeding;~~ proceeding.

(9) The power of the court to take any action and exercise any jurisdiction as may be necessary in the interests of ~~justice;~~justice.

(10) The subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in G.S. 36C-2-203 and ~~G.S. 36C-2-204; and~~G.S. 36C-2-204.

(11) The requirement that the exercise of the powers described in G.S. 36C-6-602.1(a) shall not alter the designation of beneficiaries to receive property on the settlor's death under that settlor's existing estate plan.

(12) The power of a trustee to renounce an interest in or power over property under G.S. 36C-8-816(32)."

SECTION 16. G.S. 36C-8-816 reads as rewritten:

"**§ 36C-8-816. Specific powers of trustee.**

Without limiting the authority conferred by G.S. 36C-8-815, a trustee may:

...

(30) Request an order from the court for the sale of real or personal property under Article 29A of Chapter 1 of the General Statutes, or for the exchange, partition, or other disposition or change in the character of, or for the grant of options or other rights in or to, such ~~property; and~~ property;

(31) Distribute the assets of an inoperative trust consistent with the authority granted under ~~G.S. 28A-22-10.~~G.S. 28A-22-110; and

(32) Renounce, in accordance with Chapter 31B of the General Statutes, an interest in or power over property, including property that is or may be burdened with liability for violation of environmental law."

SECTION 17. G.S. 36C-8-816(13)c. is repealed.

SECTION 18. The Revisor of Statutes shall cause to be printed along with this act all explanatory comments of the drafters of this act as the Revisor deems appropriate.

SECTION 19. This act becomes effective October 1, 2009, and applies to renunciations and powers of attorney executed on or after that date.

State of North Carolina
General Statutes
Commission

9001 Mail Service Center
RALEIGH, NORTH CAROLINA
27699-9001

MEMORANDUM
April 24, 2009

TO: Senate Judiciary II Committee
FROM: General Statutes Commission
RE: **Senate Bill 884 (Renunciation Amendments)**

General Comments

Current Law. Chapter 31B of the General Statutes ("Chapter 31B") provides a procedure for a person to renounce an interest in or power over property ("property") that the person would otherwise become entitled to, as for example, by inheritance. Reasons for renouncing property include unfavorable tax consequences and environmental contamination. If the renunciation occurs within the nine-month time limit for a qualified disclaimer for federal estate and gift tax purposes, the person who renounces the property is treated as having died immediately before that person would have taken the property and the next taker's interest in the property relates back to that date. The effect is that the person is deemed never to have had the property. If the renunciation does not occur within that time limit, the person is treated as having died the day of the renunciation, and the property is deemed to have been transferred to the next taker then.

Changes Made in this Bill. This bill makes changes to Chapter 31B. Primarily, the bill:

- Adds trustees to the list of persons who can renounce, whereas guardians, personal representatives of decedents' estates, and attorneys-in-fact are already able to renounce. (Secs. 1 and 2)

- Adds donees to the list of persons who can renounce, and allows the parent of a minor to renounce, on the minor's behalf, property that would have passed to the minor as the result of that parent's renunciation. (Sec. 1)

- Provides that a personal representative or trustee may renounce as permitted by Chapter 31B even if the governing instrument provides otherwise. (Secs. 1, 2, 10, and 15)

- Provides that an attorney-in-fact may renounce only if expressly authorized by the principal; the bill also makes co-ordinating changes to the statutes on powers of attorney. (Secs. 1, 2, and 11-14)

- Provides optional procedures for a fiduciary to obtain a judicial determination as to whether a renunciation would be or is compatible with the fiduciary's duties. (Sec. 3)

- Gives more detailed instructions on delivering and filing renunciations. (Secs. 4, 5, and 7)

- Makes various other amendments to Chapter 31B, including clarifying, stylistic, and organizational changes, and makes conforming amendments elsewhere in the General Statutes.

Specific Comments

Section 1 amends G.S. 31B-1, which authorizes the persons listed to renounce an interest in property by filing an instrument of renunciation under Chapter 31B. In addition to stylistic and clarifying changes:

- Subsection (a)'s list of persons who can renounce is amended (i) to add "donee" (subdivision (4a)) and (ii) to add a new entry for fiduciaries (subdivision (9e)). The new subdivision (9e) includes trustees. The existing entries for personal representatives (subdivision (10)) and attorneys-in-fact (immediately after subdivision (10)) are moved to new subdivision (9e). The separate entry for guardians is retained (subdivision (9d)).

- Subsection (a) is amended to clarify that, unless otherwise specifically limited in the instrument of renunciation, a renunciation is deemed to include the entire interest of the person whose property or interest is being renounced.

- Subsection (a) is also amended to expressly provide that a person may renounce an interest in or power over property even if the creator of the interest or power imposed a restriction or limitation on the right to renounce. The creator of the interest or power may prohibit partial renunciations.

- Subsection (c) is amended to require that the instrument of renunciation identify the transferor of the property or the creator or holder of the power over property. This amendment is designed to assist registers of deeds with indexing instruments of renunciation of real property as required under G.S. 31B-2(d).

- New subsection (d) authorizes the parent of a minor who does not have a general guardian or guardian of the estate to renounce an interest in or power over property that would have passed to the minor as the result of that parent's own renunciation.

Section 2 recodifies and amends G.S. 31B-1A, which currently addresses only the renunciation of fiduciary powers. Section 2 first recodifies G.S. 31B-1A as G.S. 31B-1.1, because "31B-1A" is not a proper G.S. number. Section 2 then amends G.S. 31B-1.1, as recodified, to address both the renunciation of fiduciary powers and the renunciation of an interest in or power over property by a fiduciary. The provisions relating to the renunciation of fiduciary powers are consolidated into subsection (a), which also addresses the contents of an instrument of renunciation under that subsection. Subsection (b) is completely rewritten to provide that, except as provided in new subsection (c) and to the extent a statute of this State expressly restricts or limits a fiduciary's right to renounce, a fiduciary may renounce property as permitted by G.S. 31B-1, even if the instrument governing the fiduciary restricts or limits the right to renounce. New subsection (c) provides that an attorney-in-fact may renounce only if expressly authorized by the governing power of attorney.

Section 3 adds new G.S. 31B-1.2 to permit a fiduciary to institute a pre-renunciation proceeding to have the clerk of superior court determine whether a renunciation would be compatible with the fiduciary's duties. The general procedural provisions are those of Chapter 36C of the General Statutes (the North Carolina Uniform Trust Code). Post-renunciation, a

fiduciary who wants a judicial determination of that issue may institute a declaratory judgment action. Either procedure is permissive and does not affect the effectiveness of the renunciation.

Section 4 amends G.S. 31B-2, dealing with filing and registering a renunciation. Among other things, Section 4 makes stylistic and conforming changes in subsections (a), (c), and (d).

Section 4 rewrites subsection (b), deleting a six-month time period for renouncing a future interest in property. The effect is to treat the renunciation of a future interest the same as the renunciation of a present interest, which has no time limit on when the renunciation can be made. In addition, the six-month time period is inconsistent with the nine-month time period for a qualified disclaimer for federal estate and gift tax purposes. As rewritten, subsection (b) contains the gist of a provision moved from subsection (d), that the spouse of the person whose property or interest is being renounced has no marital rights in the property or interest renounced, and clarifies that this provision applies only to renunciations made within the time period for qualified disclaimers for federal estate and gift tax purposes. Subsection (b) further specifies that the spouse in this case is not required to join in the execution of the instrument of renunciation.

Section 4 amends subsection (c) (which requires filing an instrument of renunciation with the clerk of superior court) to delete the current requirements for delivering a copy to persons who have a duty to distribute the renounced property; more detailed instructions with regard to delivering copies of an instrument of renunciation are provided in new G.S. 31B-2.1. As amended, subsection (c) also provides that a renunciation is effective when filed with the clerk and includes more detailed instructions for filing a renunciation with the clerk.

Section 4 amends subsection (d) (which requires registering an instrument of renunciation with the register of deeds if an interest in real property is being renounced) to provide that the failure to file or register an instrument of renunciation does not affect the effectiveness of the renunciation as between the person whose property or interest is being renounced and persons to whom the property interest or power passes by reason of the renunciation, although record title does not pass to persons receiving the renounced interest until the instrument of renunciation is registered.

New subsection (e) provides that, if an instrument transferring an interest in or right, privilege, power, or immunity over property subject to a renunciation is required or permitted by law to be filed or registered, the instrument of renunciation may be so filed or registered. The failure to file or register the instrument of renunciation does not affect the effectiveness of the renunciation as between the person whose property or interest is being renounced and persons to whom the property interest or power passes by reason of the renunciation.

Section 5 adds new G.S. 31B-2.1 to provide more detailed instructions with regard to the delivery and filing of an instrument of renunciation in order to provide notice of the renunciation to anyone who has a duty to distribute the renounced property. The failure to deliver a copy as required does not affect the validity of the renunciation but tolls any statute of limitations with regard to any right of action for breach of fiduciary duty.

Section 6 amends G.S. 31B-3, governing the effect of a renunciation, to make stylistic and clarifying changes to subsections (a), (b), and (c) and to add new subsections.

New subsection (d) provides that, in the event that the renounced property or interest was created by a revocable or irrevocable inter vivos trust, the property or interest devolves as provided in the North Carolina Uniform Trust Code.

New subsection (e) provides that a property interest renounced by a trustee within the time for a qualified disclaimer for federal estate and gift tax purposes does not become trust property. If the renunciation is not filed within this time, the property interest passes to the person who would have taken the interest as of the date of the renunciation if the trust had never existed.

New subsection (f) addresses the case where a renunciation causes property to pass to a trust in which the person whose property or interest is being renounced holds a power of appointment. Unless the instrument of renunciation provides otherwise, the person renouncing is deemed to have renounced the power of appointment with respect to assets passing into the trust by reason of the renunciation if the person renouncing holds a right to renounce the power of appointment.

New subsections (g) and (h) expressly provide for the effect of a renunciation of property held in a tenancy by the entireties and property held in a joint tenancy with right of survivorship. Under subsection (g), unless otherwise provided in the instrument of renunciation, the property interest being renounced by a surviving tenant by the entireties upon the death of the other tenant is deemed to be a one-half interest in the former entirety property, and title to that one-half interest passes as if the deceased tenant survived the tenant renouncing. Under subsection (h), unless otherwise provided in the instrument of renunciation, the property interest being renounced by a surviving joint tenant with right of survivorship is deemed to be the fractional interest of the deceased joint tenant to which the surviving joint tenant would have been entitled by right of survivorship, and title to that fractional interest passes as if the tenant renouncing predeceased the deceased joint tenant.

New subsection (k) is a restatement and a recodification of the provision in G.S. 31B-4(b) stating the binding effect of a renunciation. G.S. 31B-3, addressing the effect of a renunciation, is a more appropriate location for the provision.

Section 7 amends G.S. 31B-4, which specifies the events that bar the right to renounce property. Subsection (b) is amended to apply only to the binding effect of an instrument waiving or barring the right to renounce; the binding effect of a renunciation is moved to new G.S. 31B-3(k). Subsection (d) currently provides that a person is not liable for distributing or disposing of property in reliance upon a renunciation that is invalid because the right to renounce has been barred, if the person has no actual knowledge of the bar. Subsection (d) is amended to include record notice of the bar, because a person has record notice of instruments registered in the register of deeds' office. New subsection (f) provides that an instrument waiving or barring the right to renounce real property is not effective as to lien creditors or purchasers for value until either (i) registered in the office of the register of deeds in the county in which the real property or any part thereof is situated or (ii) registered pursuant to a judicial sale proceeding in which the person renouncing is a party. New subsection (f) also provides instructions to the register of deeds for indexing an instrument of waiver or bar.

Section 8 adds new G.S. 31B-4.1 to coordinate Chapter 31B with the requirements for a qualified renunciation for tax purposes under Internal Revenue Code § 2518. Any renunciation which is qualified for federal estate and gift tax purposes is a valid renunciation under Chapter

31B even if the renunciation does not otherwise meet the Chapter's more specific requirements. New G.S. 31B-4.1 does not preclude an action for breach of fiduciary duty.

Section 9 repeals G.S. 31B-6 ("Application of Chapter"), a transition provision dating from 1975 when Chapter 31B was enacted. The statute, which has become obsolete, reads:

> A present interest in property existing on October 1, 1975, as to which the time for filing a renunciation under this Chapter has not expired may be renounced within six months after October 1, 1975. A future interest in property existing on October 1, 1975, as to which the time for filing a renunciation under this Chapter has not expired may be renounced within six months after October 1, 1975, or within six months after the future interest has become indefeasibly vested and the taker is entitled to possession, whichever is later.

There is currently no time limit on a person's ability to renounce unless the renunciation is intended to be a qualified disclaimer for federal estate and gift tax purposes.

Section 10 amends G.S. 28A-13-3, dealing with a personal representative's powers, to provide that a testator cannot eliminate the power to renounce under Chapter 31B.

Section 11 amends the statutory short form power of attorney in G.S. 32A-1 to allow a principal to expressly authorize an attorney-in-fact to renounce an interest in or power over property to benefit persons other than the attorney-in-fact or to benefit persons including the attorney-in-fact. Section 12 amends G.S. 32A-2 to describe these powers.

Section 13 amends the title of Article 2A of Chapter 32A of the General Statutes to reflect the addition of G.S. 32A-14.2, governing the authority to renounce under a power of attorney.

Section 14 enacts new G.S. 32A-14.2, placing limitations on the authority of an attorney-in-fact to renounce an interest in or power over property. Subsection (a) requires express authorization in the power of attorney for an attorney-in-fact to renounce an interest in or power over property; mere authorization to do whatever the principal could do (or words to that effect) is not sufficient. Subsection (b) provides that an attorney-in-fact who is not an ancestor, spouse, or descendent of the principal and who has an express grant of general renunciation authority may nevertheless not exercise that authority to create in the attorney-in-fact, or in an individual to whom the attorney-in-fact owes a legal obligation of support, an interest in the principal's property, unless expressly authorized to do so by the power of attorney.

Sections 15, 16, and 17 amend the North Carolina Uniform Trust Code to provide that the terms of a trust may not alter the authority of a trustee to renounce an interest in or power over property under Chapter 31B.

Section 18 authorizes the printing of drafters comments.

Section 19 provides that the act becomes effective October 1, 2009, and applies to renunciations and powers of attorney executed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 929

Short Title:	No Set Aside of Bond Forfeit/Actual Notice.	(Public)
Sponsors:	Senator Berger of Franklin.	
Referred to:	Judiciary II.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A COURT MAY REFUSE TO SET ASIDE A BOND FORFEITURE ONLY IF, BEFORE EXECUTING THE BOND, THE SURETY OR BAIL AGENT HAD ACTUAL NOTICE OF A DEFENDANT'S FAILURE TO APPEAR ON TWO OR MORE PRIOR OCCASIONS IN THE CASE FOR WHICH THE BOND WAS EXECUTED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-544.5(f) reads as rewritten:

"(f) No More Than Two Forfeitures May Be Set Aside Per Case. – In any case in which ~~the State proves that~~ the surety or the bail agent had ~~notice or actual knowledge,~~ actual notice before executing ~~a~~ the bail bond, as indicated on the defendant's release order, that the defendant had already failed to appear on two or more prior ~~occasions,~~occasions in the case for which the bond was executed, no forfeiture of that bond may be set aside for any ~~reason.~~reason; except that the bond may be set aside if, prior to the final judgment date, the surety or the bail agent provides documentation showing that all of the charges for which the defendant was bonded to appear were finally disposed by the court other than by the State taking a dismissal with leave or a dismissal due to inability to prosecute."

SECTION 2. This act becomes effective October 1, 2009, and applies to bail bonds executed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 929
PROPOSED COMMITTEE SUBSTITUTE S929-CSRI-13 [v.9]

5/6/2009 6:08:42 PM

Short Title: No Set Aside of Bond Forfeit/Actual Notice. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO: (1) AMEND REQUIREMENTS APPLICABLE TO AND CLARIFY SANCTIONS THAT MAY BE IMPOSED IN CONJUNCTION WITH MOTIONS TO SET ASIDE FORFEITURES; AND (2) PROVIDE THAT A COURT MAY REFUSE TO SET ASIDE A BOND FORFEITURE ONLY IF, BEFORE EXECUTING THE BOND, THE SURETY OR BAIL AGENT HAD ACTUAL NOTICE OF A DEFENDANT'S FAILURE TO APPEAR ON TWO OR MORE PRIOR OCCASIONS IN THE CASE FOR WHICH THE BOND WAS EXECUTED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-544.5(d) reads as rewritten:

"(d) Motion Procedure. – If a forfeiture is not set aside under subsection (c) of this section, the only procedure for setting it aside is as follows:

...

(4) If neither the district attorney nor the board of education has filed a written objection to the motion by the ~~tenth~~ twentieth day after the motion is served, the clerk shall enter an order setting aside the forfeiture.

...

(8) If at the hearing the court determines that the motion to set aside was not signed or that the documentation required to be attached pursuant to subdivision (1) of this subsection is fraudulent or was not attached to the motion at the time the motion was filed, the court may order monetary sanctions against the surety filing the motion, unless the court also finds that the failure to sign the motion or attach the required documentation was unintentional. A motion for sanctions and notice of the hearing thereof shall be served on the surety not later than ten (10) days before the time specified for the hearing. If the court concludes that a sanction should be ordered, in addition to ordering the denial of the motion to set aside, sanctions shall be imposed as follows: (i) twenty-five percent (25%) of the bond amount for failure to sign the motion; (ii) fifty percent (50%) of the bond amount for failure to attach the required documentation; and (iii) not less than one hundred percent (100%) of the bond amount for the filing of fraudulent documentation. This subdivision shall not limit the criminal prosecution of any individual involved in the creation or filing of any fraudulent documentation."

SECTION 2. G.S. 15A-544.5(f) reads as rewritten:

"(f) ~~No More Than Two Forfeitures May Be~~ Set Aside Prohibited in Certain Circumstances. ~~Per Case.~~ No forfeiture of a bond may be set aside for any reason ~~In~~ in any case in which ~~the State proves that~~ the surety or the bail agent had actual notice ~~or actual knowledge,~~ before executing a bail ~~bond,~~ bond that the defendant had already failed to appear on two or more prior occasions in the case for which the bond was executed. Actual notice as required by this subsection shall only occur if two or more failures to appear are indicated on the defendant's release order by a judicial official.~~occasions, no forfeiture of that bond may be set aside for any reason.~~"

SECTION 3. Section 1 of this act becomes effective October 1, 2009, and applies to all motions to set aside filed on or after that date. Section 2 of this act becomes effective October 1, 2009, and applies to bail bonds executed on or after that date.

SENATE BILL 929:
No Set Aside of Bond Forfeit/Actual Notice

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 7, 2009
Introduced by:	Sen. Berger of Franklin	**Prepared by:**	Jennifer McGinnis Committee Counsel
Analysis of:	PCS to First Edition S929-CSRI-13 [v.9]		

SUMMARY: ***The Proposed Committee Substitute (PCS) for Senate Bill 919 would amend requirements applicable to and clarify sanctions that may be imposed in conjunction with motions to set aside forfeitures; and (2) provide that a court may refuse to set aside a bond forfeiture only if, before executing the bond, the surety or bail agent had actual notice of a defendant's failure to appear on two or more prior occasions in the case for which the bond was executed.***

CURRENT LAW: If a defendant released upon execution of bail fails to appear as required, the court must generally enter a forfeiture for the amount of the bail bond in favor of the State against the defendant and each surety on the bond (GS 15A-44.3). A forfeiture may be set aside, however, in certain circumstances (death of the defendant, incarceration elsewhere, etc) and if certain procedures are followed in accordance with the statute (GS 15A-44.3).

BILL ANALYSIS: The PCS would amend the statute governing the process pertaining to a motion to set aside a forfeiture by:

Section 1:

- Changing the period of time during which the district attorney or county board of education may file a written objection to a motion to set aside from ten to twenty days
- Providing that, in addition to failure to attach required documentation to a motion to set aside or attachment of fraudulent information, failure to sign a motion is grounds for sanctions and denial of the motion – unless failure to sign or attach the required documentation was unintentional. In addition, the PCS: (i) provides that a motion for sanctions and notice of same must be provided to a surety not later than 10 days before a hearing; and (ii) specifies the amount of sanctions to be imposed for failure to sign a motion (25% of bond), failure to attach required documentation (50% of bond), and attachment of fraudulent documentation (not less than 100%).

Section 2: With regard to cases in which a defendant has failed to appear on two or more prior occasions, which would give rise to a prohibition on setting aside a forfeiture under existing law, the PCS would amend the language to provide that a surety or bail agent must have *actual notice* (rather than "notice or actual knowledge" under current law) and specify that actual notice will only occur if the two prior failures to appear are indicated on the defendant's release order.

EFFECTIVE DATE: . Section 1 of the PCS would become effective October 1, 2009, and apply to all motions to set aside filed on or after that date. Section 2 of the PCS would become effective October 1, 2009, and apply to bail bonds executed on or after that date.

S929-SMRI-39(CSRI-13) v3

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. _____ DATE 4/7/19

S. B. No. S929-CSR1-13 [v.9] Amendment No. _____ (to be filled in by Principal Clerk)

Rep.)
Sen.) _____

moves to amend the bill on page 2, line 7 at the end of line 9

by _____

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 978

Short Title:	Firearms Qualification Sites/Retired LEOs.	(Public)
Sponsors:	Senators Bingham; and Hartsell.	
Referred to:	Education/Higher Education.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION TO COORDINATE WITH LOCAL AND STATE LAW ENFORCEMENT OFFICERS AND WITH THE COMMUNITY COLLEGE SYSTEM TO PROVIDE MULTIPLE FIREARMS QUALIFICATION SITES FOR CERTIFICATION TO CARRY A CONCEALED HANDGUN PURSUANT TO FEDERAL LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-415.26 is amended by adding a new subsection to read:

"(b1) The Commission shall coordinate with local and State law enforcement officers and with the community college system to provide multiple firearms qualification sites throughout the State where a qualified law enforcement officer may satisfy the firearms qualification criteria required for certification under this section."

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

S 1

SENATE BILL 1007*

Short Title:	Amend Home Inspector Licensure Laws.	(Public)
Sponsors:	Senators Hoyle and Vaughan.	
Referred to:	Judiciary II.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS UNDER THE NORTH CAROLINA HOME INSPECTOR LICENSURE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-151.51 reads as rewritten:

"**§ 143-151.51. Requirements to be licensed as a home inspector.**

(a) To be licensed as a home inspector, an applicant must do all of the following:

(1) Submit a completed application to the Board upon a form provided by the Board.

(2) Pass a licensing examination prescribed by the Board.

(3) Have minimum net assets or a bond in an amount determined by the Board. The amount may not be less than five thousand dollars ($5,000) nor more than ten thousand dollars ($10,000).

(4) Pay the applicable fees.

(5) Meet one of the following three conditions:

a. Have a high school diploma or its equivalent, have been engaged as a licensed associate home inspector for at least one year, and have completed 100 home inspections for compensation.

b. Have education and experience the Board considers to be equivalent to that required by ~~subpart~~ sub-subdivision a. of this subdivision.

c. Be licensed as a general contractor under Article 1 of Chapter 87 of the General Statutes, as an architect under Chapter 83A of the General Statutes, or as a professional engineer under Chapter 89C of the General Statutes.

(5a) Effective October 1, 2011, meet one of the following conditions:

a. Have satisfactorily completed an approved pre-licensing education program consisting of no more than 200 hours of instruction in subjects determined by the Board at least three years before the date the application is made. The instruction may include requirements of field training, classroom instruction, distance learning, peer review, or other educational formats approved by the Board.

b. Have education and experience the Board considers to be equivalent to the requirements of sub-subdivision a. of this subdivision.

c. Be licensed as a general contractor under Article 1 of Chapter 87 of the General Statutes, an architect under Chapter 83A of the General Statutes, or a professional engineer under Chapter 89C of the General

Statutes. A person qualifying under this sub-subdivision shall remain in good standing with the person's respective licensing board.

(b) When an applicant has satisfactorily completed the requirements in subsection (a) of this section, the Board shall notify the applicant and the applicant shall submit evidence to the Board that the applicant has the following:

(1) General liability insurance in the amount of two hundred fifty thousand dollars ($250,000), which insurance may be individual coverage or coverage under an employer policy, with coverage parameters established by the Board; and

(2) One of the following:

a. Minimum net assets in an amount determined by the Board, which amount may not be less than seventeen thousand five hundred dollars ($17,500) nor more than thirty-five thousand dollars ($35,000);

b. A bond in an amount determined by the Board, which amount may not be less than seventeen thousand five hundred dollars ($17,500) nor more than thirty-five thousand dollars ($35,000); or

c. Errors and omissions insurance in the amount of two hundred fifty thousand dollars ($250,000), which insurance may be individual coverage or coverage under an employer policy, with coverage parameters established by the Board.

Upon determining that an applicant has satisfied the requirements of this subsection, the Board shall issue a home inspector license to the applicant.

(c) All home inspectors licensed on or before September 30, 2011, shall, no later than October 1, 2013, complete an abbreviated licensing education program prescribed by the Board of not less than 50 educational hours of instruction and not more than 75 educational hours of instruction. The instruction may include requirements of field training, classroom instruction, distance learning, peer review, or other educational formats approved by the Board. A home inspector licensed before October 1, 2006, shall not be required to complete the abbreviated licensing education program required by this subsection if the home inspector submits to the Board a request to waive the abbreviated licensing education program requirement and an affidavit stating that the home inspector has completed at least 750 home inspections that meet the standards of practice guidelines of two or more systems. The Board may require each licensed home inspector submitting a request for waiver and an affidavit to submit up to three inspection reports for the Board's random review. Upon reviewing the inspection reports, the Board may request further inspection reports or information from the home inspector or require the home inspector to complete the abbreviated licensing education program. The Board shall either approve or deny a request for waiver within 120 days from the date the request and the affidavit are submitted unless the Board requests that a home inspector submit three inspection reports for review or further information regarding the request.

(d) All associate licensed home inspectors with an active license on October 1, 2011, shall do one of the following:

(1) No later than September 30, 2013, complete the associate licensure program and the abbreviated licensing education program prescribed by the Board under subsection (c) of this section.

(2) Enroll in the new licensing program prescribed by the Board pursuant to subsection (a)(5a) of this section.

Upon completing one of the options under subdivisions (1) or (2) of this subsection, the Board shall terminate the associate status of the associate home inspector's license and the associate home inspector shall be issued a home inspector license. If an associate home inspector fails to complete the requirements of this subsection before October 1, 2013, the Board shall cancel the associate home inspector's license."

SECTION 2. G.S. 143-151.54 reads as rewritten:

"**§ 143-151.54. Miscellaneous license provisions.**

(a) License as Property of the Board and Display of License. – A license issued by the Board is the property of the Board. If the Board suspends or revokes a license issued by it, the individual to whom it is issued must give it to the Board upon demand. An individual who is licensed by the Board must display the license certificate in the manner prescribed by the Board. A license holder whose address changes must report the change to the Board.

(b) Report Criminal Convictions and Disciplinary Actions. – A license holder who is convicted of any felony or misdemeanor or is disciplined by any governmental agency in connection with any other occupational or professional license shall file with the Board a written report of the conviction or disciplinary action within 60 days of the final judgment, order, or disposition of the case."

SECTION 3. G.S. 143-151.55 reads as rewritten:

"**§ 143-151.55. Renewal of license; inactive licenses; lapsed licenses.**

(a) Renewal. – A license expires on September 30 of each year. A license may be renewed by filing an application for renewal with the Board and paying the required renewal fee. The Board must notify license holders at least 30 days before their licenses expire. The Board must renew the license of a person who files an application for renewal, pays the required renewal fee, has fulfilled the continuing education requirements set by the Board, and is not in violation of this Article when the application is filed. If the Board imposes a continuing education requirement as a condition of renewing a license, the Board must ensure that the courses needed to fulfill the requirement are available in all geographic areas of the State.

(b) Late Renewal. – The Board may provide for the late renewal of a license upon the payment of a late fee, but no late renewal of a license may be granted more than ~~five years~~one year after the license expires.

(c) Inactive License. – A license holder may apply to the Board to be placed on inactive status. An applicant for inactive status must follow the procedure set by the Board. A license holder who is granted inactive status is not subject to the license renewal requirements during the period the license holder remains on inactive status.

A license holder whose application is granted and is placed on inactive status may apply to the Board to be reinstated to active status at any time. To change a license from inactive status to active status, the license holder must complete the same number of continuing education credit hours that would have been required of the license holder had the license holder maintained an active license. The number of continuing education credit hours required to return an inactive license to active status shall not exceed 24 credit hours. The Board may set conditions for reinstatement to active status. An individual who is on inactive status and applies to be reinstated to active status must comply with the conditions set by the Board.

(d) Lapsed License. – The license of a licensed home inspector shall lapse if the licensee fails to continuously maintain minimum net assets or a bond as required by G.S. 143-151.58. The license of a licensed associate home inspector shall lapse if the licensee fails to continuously be employed by or affiliated with a licensed home inspector as required by G.S. 143-151.58."

SECTION 4. G.S. 143-151.56(a) is amended by adding the following new subdivision to read:

"(a) The Board may deny or refuse to issue or renew a license, may suspend or revoke a license, or may impose probationary conditions on a license if the license holder or applicant for licensure has engaged in any of the following conduct:

...

(8) Failed to maintain the requirements prescribed by G.S. 143-151.51(b)."

SECTION 5. G.S. 143-151.57(b) reads as rewritten:

"(b) Subsequent Application. – An individual who applied for a license as a home inspector and who failed the home inspector examination is not required to pay an additional application fee if the individual submits another application for a license as a home inspector. The individual must pay the examination fee, however, to be eligible to take the examination again. An individual may take the examination only once every 180 days."

SECTION 6. G.S. 143-151.58 reads as rewritten:

"**§ 143-151.58. Duties of licensed home inspector or licensed associate home inspector.**

(a) Home Inspection Report. – A licensed home inspector or licensed associate home inspector must give to each person for whom the inspector performs a home inspection for compensation a written report of the home inspection. The inspector must give the person the report by the date set in a written agreement by the parties to the home inspection. If the parties to the home inspection did not agree on a date in a written agreement, the inspector must give the person the report within three business days after the inspection was performed.

(a1) Summary Page. – A licensed home inspector or licensed associate home inspector must provide a summary page with each written report of the home inspection for each prepurchase home inspection of three or more systems. The summary page must describe any system or component of the home that does not function as intended, warrants further investigation by a specialist, or requires subsequent observation. The summary page may also describe any system or component that poses a safety concern. All other subject matter pertaining to the home inspection must appear in the body of the report. The summary page must contain the following statement: 'This summary page is not the entire report. The complete report may include additional information of interest or concern to you. It is strongly recommended that you promptly read the complete report. For information regarding the negotiability of any item in this report under the real estate purchase contract, contact your North Carolina real estate agent or an attorney.'

(a2) North Carolina State Building Code. – If a licensed home inspector or licensed associate home inspector includes a deficiency in the written report of the home inspection that is stated as a violation of the North Carolina State Residential Building Code, the home inspector or associate home inspector is responsible for determining the construction dates of the home, State, and municipal building codes in effect at the time of construction and must conduct the home inspection using the building codes in effect at the time of the construction.

(b) Insurance, Net Assets, and Bond ~~Required.~~Requirements. – A licensed home inspector must continuously maintain general liability insurance and minimum net ~~assets or~~ assets, a ~~bond~~ bond, or errors and omissions insurance as required in G.S. ~~143-151.51(3).~~143-151.51(b).

(c) Supervision. – A licensed associate home inspector must be continuously employed by or affiliated with a licensed home inspector as required in G.S. 143-151.52(5).

(d) Record Keeping. – All licensees under this Article shall make and keep full and accurate records of business done under their licenses. Records shall include the written, signed contract and the written report required by the standards of practice referred to in G.S. 143-151.49(a)(2) and any other information the Board requires by rule. Records shall be retained by licensees for not less than three years. Licensees shall furnish their records to the Board on demand."

SECTION 7. G.S. 143-151.64(a) reads as rewritten:

"(a) Requirements. – The Board may establish programs of continuing education for licensees under this Article. A licensee subject to a program under this section shall present evidence to the Board upon the license renewal following initial licensure, and every renewal thereafter, that during the 12 months preceding the annual license expiration date the licensee has completed the required number of classroom hours of instruction in courses approved by the Board. Annual continuing education hour requirements shall be determined by the Board, but shall ~~not~~ be ~~more than~~no less than 12 credit ~~hours.~~hours and no more than 20 credit hours.

No member of the Board shall provide or sponsor a continuing education course under this section while that person is serving on the Board."

SECTION 8. Effective September 30, 2011, the Board shall not issue associate home inspector licenses. The Board shall not accept any applications for licensure as an associate home inspector after April 1, 2011.

SECTION 9. G.S. 143-151.51(a)(3) and (5) are repealed effective September 30, 2011.

SECTION 10. G.S. 143-151.52 is repealed effective September 30, 2013.

SECTION 11. Sections 2, 3, and 7 of this act become effective September 1, 2009. Sections 4 and 6 of this act become effective October 1, 2011. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1007*
PROPOSED COMMITTEE SUBSTITUTE S1007-CSRCf-22 [v.5]

5/6/2009 9:28:11 PM

Short Title: Amend Home Inspector Licensure Laws. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS UNDER THE NORTH CAROLINA HOME INSPECTOR LICENSURE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-151.51 reads as rewritten:

"**§ 143-151.51. Requirements to be licensed as a home inspector.**

(a) To be licensed as a home inspector, an applicant must do all of the following:

(1) Submit a completed application to the Board upon a form provided by the Board.

(2) Pass a licensing examination prescribed by the Board.

(3) Have minimum net assets or a bond in an amount determined by the Board. The amount may not be less than five thousand dollars ($5,000) nor more than ten thousand dollars ($10,000).

(4) Pay the applicable fees.

(5) Meet one of the following three conditions:

a. Have a high school diploma or its equivalent, have been engaged as a licensed associate home inspector for at least one year, and have completed 100 home inspections for compensation.

b. Have education and experience the Board considers to be equivalent to that required by ~~subpart~~ sub-subdivision a. of this subdivision.

c. Be licensed as a general contractor under Article 1 of Chapter 87 of the General Statutes, as an architect under Chapter 83A of the General Statutes, or as a professional engineer under Chapter 89C of the General Statutes.

(b) All home inspectors licensed on or before September 30, 2011, shall, no later than October 1, 2013, complete an abbreviated licensing education program prescribed by the Board of not less than 50 educational hours of instruction and not more than 75 educational hours of instruction. The instruction may include requirements of field training, classroom instruction, distance learning, peer review, or other educational formats approved by the Board. A home inspector licensed before October 1, 2006, shall not be required to complete the abbreviated licensing education program required by this subsection if the home inspector submits to the Board a request to waive the abbreviated licensing education program requirement and an affidavit stating that the home inspector has completed at least 750 home inspections that meet the standards of practice guidelines of two or more systems. The Board may require each

licensed home inspector submitting a request for waiver and an affidavit to submit up to three inspection reports for the Board's random review. Upon reviewing the inspection reports, the Board may request further inspection reports or information from the home inspector or require the home inspector to complete the abbreviated licensing education program. The Board shall either approve or deny a request for waiver within 120 days from the date the request and the affidavit are submitted unless the Board requests that a home inspector submit three inspection reports for review or further information regarding the request."

SECTION 1.1. Effective September 30, 2011, G.S. 143-151.49(b) is repealed.

SECTION 1.2. Effective September 30, 2011, G.S. 151.51(a)(5), as amended by Section 1 of this act reads as rewritten:

"(a) To be licensed as a home inspector, an applicant must do all of the following:

. . .

(5) Meet one of the following three conditions:

a. ~~Have a high school diploma or its equivalent, have been engaged as a licensed associate home inspector for at least one year, and have completed 100 home inspections for compensation.~~ Within three years preceding the date the application is made to the Board and prior to taking the licensing examination, have satisfactorily completed an approved pre-licensing education program consisting of no more than 200 hours of instruction in subjects determined by the Board. The instruction may include requirements of field training, classroom instruction, distance learning, peer review, or other educational formats approved by the Board.

b. Have education and experience the Board considers to be equivalent to that required by sub-subdivision a. of this subdivision.

c. Be licensed for at least six months as a general contractor under Article 1 of Chapter 87 of the General Statutes, as an architect under Chapter 83A of the General Statutes, or as a professional engineer under Chapter 89C of the General Statutes. A person qualifying under this sub-subdivision shall remain in good standing with that person's respective licensing board."

SECTION 1.3. Effective September 30, 2011, G.S. 143-151.51(a)(3) is repealed.

SECTION 1.4. Effective September 30, 2011, G.S. 143-151.51 is amended by adding two new subsections to read:

". . .

(a1) When an applicant has satisfactorily completed the requirements in subsection (a) of this section, the Board shall notify the applicant and the applicant shall submit evidence to the Board that the applicant has the following:

(1) General liability insurance in the amount of two hundred fifty thousand dollars ($250,000), which insurance may be individual coverage or coverage under an employer policy, with coverage parameters established by the Board; and

(2) One of the following:

a. Minimum net assets in an amount determined by the Board, which amount may not be less than seventeen thousand five hundred dollars ($17,500) nor more than thirty-five thousand dollars ($35,000);

b. A bond in an amount determined by the Board, which amount may not be less than seventeen thousand five hundred dollars ($17,500) nor more than thirty-five thousand dollars ($35,000); or

c. Errors and omissions insurance in the amount of two hundred fifty thousand dollars ($250,000), which insurance may be individual

coverage or coverage under an employer policy, with coverage parameters established by the Board.

Upon determining that an applicant has satisfied the requirements of this subsection, the Board shall issue a home inspector license to the applicant.

. . .

(c) All licensed associate home inspectors with an active license on October 1, 2011, shall do one of the following:

(1) No later than September 30, 2013, complete the associate licensure program and the abbreviated licensing education program prescribed by the Board under subsection (c) of this section.

(2) Enroll in the new licensing program prescribed by the Board pursuant to subsection (a)(5) of this section.

Upon completing one of the options under subdivisions (1) or (2) of this subsection and passing the examination required by subdivision (2) of subsection (a) of this section, the Board shall terminate the associate status of the associate home inspector's license and the licensed associate home inspector shall be issued a home inspector license. If an associate home inspector fails to complete the requirements of this subsection before October 1, 2013, the Board shall cancel the associate home inspector's license."

SECTION 1.5. The Board shall not accept any applications for licensure as an associate home inspector after April 1, 2011. Beginning September 30, 2011, the Board shall not issue new associate home inspector licenses. The Board may renew existing associate home licenses on September 30, 2012.

SECTION 2. G.S. 143-151.54 reads as rewritten:

"**§ 143-151.54. Miscellaneous license provisions.**

(a) License as Property of the Board and Display of License. – A license issued by the Board is the property of the Board. If the Board suspends or revokes a license issued by it, the individual to whom it is issued must give it to the Board upon demand. An individual who is licensed by the Board must display the license certificate in the manner prescribed by the Board. A license holder whose address changes must report the change to the Board.

(b) Report Criminal Convictions and Disciplinary Actions. – A license holder who is convicted of any felony or misdemeanor or is disciplined by any governmental agency in connection with any other occupational or professional license shall file with the Board a written report of the conviction or disciplinary action within 60 days of the final judgment, order, or disposition of the case."

SECTION 3. G.S. 143-151.55(b) and (c) read as rewritten:

". . .

(b) Late Renewal. – The Board may provide for the late renewal of a license upon the payment of a late fee, but no late renewal of a license may be granted more than ~~five years~~ one year after the license expires.

(c) Inactive License. – A license holder may apply to the Board to be placed on inactive status. An applicant for inactive status must follow the procedure set by the Board. A license holder who is granted inactive status is not subject to the license renewal requirements during the period the license holder remains on inactive status.

A license holder whose application is granted and is placed on inactive status may apply to the Board to be reinstated to active status at any time. To change a license from inactive status to active status, the license holder must complete the same number of continuing education credit hours that would have been required of the license holder had the license holder maintained an active license. The number of continuing education credit hours required to return an inactive license to active status shall not exceed 24 credit hours. The Board may set conditions for reinstatement to active status. An individual who is on inactive status and applies to be reinstated to active status must comply with the conditions set by the Board.

..."

SECTION 3.1. Effective September 30, 2011, G.S. 143-151.55(d) reads as rewritten:

"(d) Lapsed License. – The license of a licensed home inspector shall lapse if the licensee fails to continuously maintain ~~minimum net assets or a bond as required by G.S. 143-151.58~~the requirements provided in G.S. 143-151.58(b). The license of a licensed associate home inspector shall lapse if the licensee fails to continuously be employed by or affiliated with a licensed home inspector as required by G.S. 143-151.58."

SECTION 4. Effective September 30, 2011, G.S. 143-151.56(a) is amended by adding the following new subdivision to read:

"(a) The Board may deny or refuse to issue or renew a license, may suspend or revoke a license, or may impose probationary conditions on a license if the license holder or applicant for licensure has engaged in any of the following conduct:

...

(8) Failed to maintain the requirements prescribed by G.S. 143-151.58(b)."

SECTION 5. G.S. 143-151.57(b) reads as rewritten:

"(b) Subsequent Application. – An individual who applied for a license as a home inspector and who failed the home inspector examination is not required to pay an additional application fee if the individual submits another application for a license as a home inspector. The individual must pay the examination fee, however, to be eligible to take the examination again. An individual may take the examination only once every 180 days."

SECTION 6. G.S. 143-151.58 is amended by adding two new subsections to read:

"(a1) Summary Page. – A licensed home inspector or licensed associate home inspector must provide a summary page with each written report of the home inspection for each prepurchase home inspection of three or more systems. The summary page must describe any system or component of the home that does not function as intended, allowing for normal wear and tear. The summary page may describe any system or component that, based upon documented visible evidence, either requires subsequent examination because the system or component appears to not function as intended or that requires further investigation by a specialist. The summary page may also describe any system or component that poses a safety concern. All other subject matters pertaining to the home inspection must appear in the body of the report. The summary page must contain the following statement: 'This summary page is not the entire report. The complete report may include additional information of interest or concern to you. It is strongly recommended that you promptly read the complete report. For information regarding the negotiability of any item in this report under the real estate purchase contract, contact your North Carolina real estate agent or an attorney.'

(a2) North Carolina State Building Code. – If a licensed home inspector or licensed associate home inspector includes a deficiency in the written report of the home inspection that is stated as a violation of the North Carolina State Residential Building Code, the home inspector or associate home inspector is responsible for determining the construction dates of the home, State, and municipal building codes in effect at the time of construction and must conduct the home inspection using the building codes in effect at the time of the construction."

SECTION 6.1. G.S. 143-151.58(d) reads as rewritten:

"(d) Record Keeping. – All licensees under this Article shall make and keep full and accurate records of business done under their licenses. Records shall include the written, signed contract and the written report required by subsection (a) of this section and the standards of practice referred to in G.S. 143-151.49(a)(2) and any other information the Board requires by rule. Records shall be retained by licensees for not less than three years. Licensees shall furnish their records to the Board on demand."

SECTION 6.2. Effective September 30, 2011, G.S. 143-151.58(b) reads as rewritten:

"(b) Insurance, Net Assets, and Bond ~~Required.~~Requirements. – A licensed home inspector must continuously maintain general liability insurance and minimum net ~~assets or~~ assets, a ~~bond~~ bond, or errors and omissions insurance as required in G.S. ~~143-151.51(3).~~143-151.51(a1)."

SECTION 7. G.S. 143-151.64(a) reads as rewritten:

"(a) Requirements. – The Board may establish programs of continuing education for licensees under this Article. A licensee subject to a program under this section shall present evidence to the Board upon the license renewal following initial licensure, and every renewal thereafter, that during the 12 months preceding the annual license expiration date the licensee has completed the required number of classroom hours of instruction in courses approved by the Board. Annual continuing education hour requirements shall be determined by the Board, but shall ~~not~~ be ~~more than~~no less than 12 credit ~~hours.~~hours and no more than 20 credit hours. No member of the Board shall provide or sponsor a continuing education course under this section while that person is serving on the Board."

SECTION 8. G.S. 143-151.50(a) reads as rewritten:

"(a) Requirement. – To perform a home inspection for compensation ~~on or after October 1, 1996,~~ or to claim to be a licensed home inspector or a licensed associate home ~~inspector on or after that date,~~ inspector, an individual must be licensed by the Board. An individual who is not licensed by the Board may perform a home inspection without compensation."

SECTION 9. Effective September 30, 2013, G.S. 143-151.45(1), G.S. 143-151.52, G.S. 143-151.58(c) and G.S. 143-151.61 are repealed.

SECTION 10. Effective September 30, 2013, G.S. 143-151.50, as amended by Section 8 of this Act reads as rewritten:

"§ 143-151.50. License required to perform home inspections for compensation or to claim to be a "licensed home inspector".

(a) Requirement. – To perform a home inspection for compensation or to claim to be a licensed home ~~inspector or a licensed associate home~~ inspector, an individual must be licensed by the Board. An individual who is not licensed by the Board may perform a home inspection without compensation.

(b) Form of License. – The Board may issue a license only to an individual and may not issue a license to a partnership, an association, a corporation, a firm, or another group. A licensed home ~~inspector or licensed associate home~~ inspector, however, may perform home inspections for or on behalf of a partnership, an association, a corporation, a firm, or another group, may conduct business as one of these entities, and may enter into and enforce contracts as one of these entities."

SECTION 11. Effective September 30, 2013, G.S. 143-151.55(d), as amended by Section 3.1 of this Act reads as rewritten:

"(d) Lapsed License. – The license of a licensed home inspector shall lapse if the licensee fails to continuously maintain the requirements provided in G.S. 143-151.58(b). ~~The license of a licensed associate home inspector shall lapse if the licensee fails to continuously be employed by or affiliated with a licensed home inspector as required by G.S. 143-151.58.~~"

SECTION 12. Effective September 30, 2013, G.S. 143-151.57(a) reads as rewritten:

"(a) Maximum Fees. – The Board may adopt fees that do not exceed the amounts set in the following table for administering this Article:

Item	Maximum Fee
Application for home inspector license	$25.00
~~Application for associate home inspector~~	~~15.00~~
Home inspector examination	75.00
Issuance of home inspector license	150.00
~~Issuance of associate home inspector license~~	~~100.00~~

Late renewal of home inspector license	25.00
~~Late renewal of associate home inspector license~~	~~15.00~~
Application for course approval	150.00
Renewal of course approval	75.00
Course fee, per credit hour per license	5.00
Credit for unapproved continuing education course	50.00
Copies of Board rules or licensure standards	Cost of printing and mailing."

SECTION 13. Effective September 30, 2013, G.S. 143-151.58(a) reads as rewritten:

"(a) Home Inspection Report. – A licensed home inspector ~~or licensed associate home inspector~~ must give to each person for whom the inspector performs a home inspection for compensation a written report of the home inspection. The inspector must give the person the report by the date set in a written agreement by the parties to the home inspection. If the parties to the home inspection did not agree on a date in a written agreement, the inspector must give the person the report within three business days after the inspection was performed."

SECTION 14. Effective September 30, 2013, G.S. 143-151.58(a1) and (a2) as enacted in Section 6 of this Act reads as rewritten:

"(a1) Summary Page. – A licensed home inspector ~~or licensed associate home inspector~~ must provide a summary page with each written report of the home inspection for each prepurchase home inspection of three or more systems. The summary page must describe any system or component of the home that does not function as intended, allowing for normal wear and tear. The summary page may describe any system or component that, based upon documented visible evidence, either requires subsequent examination because the system or component appears to not function as intended or that requires further investigation by a specialist. The summary page may also describe any system or component that poses a safety concern. All other subject matters pertaining to the home inspection must appear in the body of the report. The summary page must contain the following statement: 'This summary page is not the entire report. The complete report may include additional information of interest or concern to you. It is strongly recommended that you promptly read the complete report. For information regarding the negotiability of any item in this report under the real estate purchase contract, contact your North Carolina real estate agent or an attorney.'

(a2) North Carolina State Building Code. – If a licensed home inspector ~~or licensed associate home inspector~~ includes a deficiency in the written report of the home inspection that is stated as a violation of the North Carolina State Residential Building Code, the home inspector ~~or associate home inspector~~ is responsible for determining the construction dates of the home, State, and municipal building codes in effect at the time of construction and must conduct the home inspection using the building codes in effect at the time of the construction."

SECTION 15. Sections 1, 2, 3, 6, 6.1, and 7 of this act become effective October 1, 2009. Except as otherwise provided, the remainder of this act is effective when it becomes law.

SENATE BILL 1007:
Amend Home Inspector Licensure Laws

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 6, 2009
Introduced by:	Sen. Hoyle	**Prepared by:**	Kory Goldsmith
Analysis of:	PCS to First Edition S1007-CSRCf-22		Committee Counsel

SUMMARY: Senate Bill 1007 amends the laws related to the licensing of home inspectors to require a pre-licensing education requirement, certain insurance requirements, and phases-out the licensure category of "associate" home inspector. It also clarifies what information is to be included on the Summary page of a home inspection, requires home inspectors to self-report criminal or other disciplinary actions and increases from 12 to 20 hours of continuing education.

[As introduced, this bill was identical to H979, as introduced by Reps. Gibson, Tillis, which is currently in House Commerce, Small Business, and Entrepreneurship, if favorable, Finance.]

BILL ANALYSIS:

Section 1 amends G.S. 143-151.51 to require home inspectors licensed between October 1, 2006, and September 30, 2011, to complete an abbreviated licensing education program of not less than 50, but not more than 75 hours of instruction as determined by the licensing board. These inspectors must complete his requirement no later than October 1, 2013. Inspectors licensed prior to October 1, 2006, are not equired to complete the educational program if they submit a request to waive the requirement and provide an affidavit showing the inspector has conducted at least 750 home inspections that meet certain standard of practice guidelines. The Board may require the inspector to submit up to three inspection reports for review. The Board has 120 days to approve or deny the request for a waiver.

Section 1.1 repeals a provision related to the contents of the licensure exam that requires an emphasis on knowledge gained through experience.

Section 1.2 also amends G.S. 143-151.51 to require pre-licensing educational requirements, to require that a person who qualifies to take the licensing exam because they have a general contractor's, architect's or professional engineer's license to wait at least 6 months after receiving that license before taking the home inspector license exam. It also requires these individuals to remain in good standing with their respective licensing boards. Currently, there are no pre-licensing educational requirements and persons with licenses these fields are eligible to take the exam without any experience requirements. This provision becomes effective September 30, 2011.

Section 1.3 repeals a previous requirement that the inspector have a net worth of between $5,000 and $10,000.

Section 1.4 creates new requirements regarding a home inspector's ability to pay claims. Beginning September 30, 2011, an inspector must carry general liability insurance of at least $250,000 and one of the following: minimum net assets as determined by the Board, but not less than $17,500 and not more than $35,000; have a bond in a similar amount; or carry errors and omissions insurance in the amount of $250,000.

his section also phases-out the associate home inspector license. Persons holding an active associate nome inspector license on October 1, 2011 will have until September 30, 2013 to become a licensed home inspector. These provisions become effective September 30, 2011.

Section 1.5 prohibits the Board from issuing associate home inspector licenses after October 1, 2011 and from admitting individuals into the associate program after April 1, 2011.

Section 2 requires home inspectors to report to the Board if the inspector is convicted of any felony or a misdemeanor, or if the member is disciplined by a governmental agency or another licensing board.

Section 3 reduces from 5 years to 1 year the amount of time that a license may be renewed as a late renewal. It also requires a member to take a certain number of continuing education hours in order to change a license from inactive to active status.

Section 3.1 requires that an inspector must complete the abbreviated education requirements or apply for a waiver in order to change a license from inactive to active status. This provision becomes effective September 30, 2011.

Section 4 makes failure to meet the abbreviated education or waiver requirements grounds for the Board to suspend or revoke a license. This provision becomes effective when the education and waiver requirements become effective.

Section 5 provides that an individual who fails to pass the licensure exam must wait at least 180 before retaking the exam.

Section 6 provides what information must be included in the Summary page of a home inspection. The information in the page would be limited to items that do not function as intended, warrant further investigation by a specialist, or does not function as intended taking into account normal wear and tear. The Summary page may contain a description of any system or component that poses a safety concern. An inspector may include a code deficiency in the report, but must determine the construction date of the home and the applicable code requirement when the home was built.

Section Sections 6.1 and 6.2 contain conforming amendments related to record-keeping and financial responsibility.

Section 7 increases the number of continuing education hours from 12 to 20.

Section 8 removes some obsolete dates.

Sections 9 – 14 repeal statutory references to associate home inspectors once that license no longer exists.

EFFECTIVE DATE: Except as otherwise provided, the requirements become effective October 1, 2009.

S1007-SMRC-31(CSRCf-22) v1

SENATE BILL 1007:
Amend Home Inspector Licensure Laws

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 6, 2009
Introduced by:	Sen. Hoyle	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	PCS to First Edition S1007-CSRCF-22		

SUMMARY: ***Senate Bill 1007 amends the laws related to the licensing of home inspectors to require a pre-licensing education requirement, certain insurance requirements, and phases-out the licensure category of "associate" home inspector. It also clarifies what information is to be included on the Summary page of a home inspection, requires home inspectors to self-report criminal or other disciplinary actions and increases from 12 to 20 hours of continuing education.***

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This section also phases-out the associate home inspector license. Persons holding an active associate home inspector license on October 1, 2011 will have until September 30, 2013 to become a licensed home inspector. These provisions become effective September 30, 2011.

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Sections 9 – 14 repeal statutory references to associate home inspectors once that license no longer exists.

EFFECTIVE DATE: Except as otherwise provided, the requirements become effective October 1, 2009.

S1007-SMRC-31(CSRCf-22) v1

S 1

SENATE BILL 1013

Short Title:	Citizens' Right to Know Act/Pretrial Release.	(Public)
Sponsors:	Senator Berger of Franklin.	
Referred to:	Judiciary II.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO DIRECT EACH PRETRIAL RELEASE PROGRAM TO PREPARE AND MAINTAIN A PUBLIC REGISTER THAT MAKES READILY ACCESSIBLE TO THE PUBLIC CERTAIN INFORMATION REGARDING THE PRETRIAL RELEASE PROGRAM AND THE DEFENDANTS RELEASED THROUGH THE PROGRAM, TO REQUIRE THAT A COPY OF THE REGISTER BE LOCATED IN THE OFFICE OF THE APPROPRIATE CLERK OF COURT, AND TO REQUIRE THAT EACH PRETRIAL RELEASE PROGRAM SUBMIT AN ANNUAL REPORT THAT INCLUDES CERTAIN INFORMATION REGARDING THE PRETRIAL RELEASE PROGRAM AND THE DEFENDANTS RELEASED THROUGH THE PROGRAM TO THE COUNTY COMMISSIONERS AND THE CLERK OF COURT IN THE APPROPRIATE COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Chapter 132 of the General Statutes is amended by constituting G.S. 132-1 through G.S. 132-10 into a new Article 1, entitled "General Provisions."

SECTION 1.(b) Chapter 132 of the General Statutes is amended by adding a new Article to read:

"Article 2.
"Citizens Right to Know Act.

"**§ 132-20. Short title.**

This Article may be cited as the "Citizens Right to Know Act."

"**§ 132-21. Definitions.**

Definitions. – The following definitions apply in this Article:

(1) Nonsecured release. – The release of a defendant from pretrial custody when no secured surety or cash bond is required as a condition of the release.

(2) Pretrial release program. – An entity, public or private, that conducts investigations of pretrial detainees, makes pretrial release recommendations to a court, and electronically monitors and supervises pretrial defendants. The term does not include the Department of Correction.

(3) Register. – A public record prepared by a pretrial release program that furnishes specified data and is readily available to the public at the office of the Clerk of Superior Court.

"**§ 132-22. Pretrial release register.**

Pretrial release register. – Each pretrial release program shall prepare a register displaying information that is relevant to the defendants released through the program. A copy of the register shall be located at the office of the clerk of superior court in the county where the

program is located and shall be readily accessible to the public. The register shall be updated weekly and display accurate data regarding the following information:

(1) The name, location, and funding source of the pretrial release program.
(2) The number of defendants assessed and interviewed for pretrial release.
(3) The number of indigent defendants assessed and interviewed for pretrial release.
(4) The names and number of defendants accepted into the pretrial release program.
(5) The names and number of indigent defendants accepted into the pretrial release program.
(6) The charges filed against and the case numbers of defendants accepted into the pretrial release program.
(7) The nature of any prior criminal conviction of a defendant accepted into the pretrial release program.
(8) The court appearances required of defendants accepted into the pretrial release program.
(9) The date of each defendant's failure to appear for a scheduled court appearance.
(10) The number of warrants, if any, that have been issued for a defendant's arrest for failing to appear at a scheduled court appearance.
(11) The number and type of program noncompliance infractions committed by a defendant in the pretrial release program and whether the pretrial release program recommended that the court revoke the defendant's release.

"**§ 132-23. Annual report.**

Annual report. – No later than March 31 of each year, each pretrial release program shall submit an annual report for the previous calendar year to the county commissioners and to the clerk of superior court in the county where the pretrial release program is located. The annual report shall be readily accessible to the public. The annual report shall contain all of the following:

(1) The name, location, and funding sources of the pretrial release program, including the amount of public funds, if any, received by the pretrial release program.
(2) The operating and capital budget of each pretrial release program receiving public funds.
(3) The following financial information:
  a. The percentage of the pretrial release program's total budget representing receipt of public funds.
  b. The percentage of the total budget which is allocated to assisting defendants obtain release through a nonpublicly funded program.
  c. The amount of fees paid by defendants to the pretrial release program.
(4) The number of persons employed by the pretrial release program.
(5) The number of defendants assessed and interviewed for pretrial release.
(6) The number of defendants recommended for pretrial release.
(7) The number of defendants for whom the pretrial release program recommended against nonsecured release.
(8) The number of defendants granted nonsecured release after the pretrial release program recommended nonsecured release.
(9) The number of defendants assessed and interviewed for pretrial release who were declared indigent by the court.
(10) The name and case number of each person granted nonsecured release who:

a. Failed to attend a scheduled court appearance.
b. Was issued a warrant for failing to appear.
c. Was arrested for any offense while on release through the pretrial release program.

(11) Any additional information deemed necessary by the county commissioners of the county in which the program is operating to assess the performance and cost-efficiency of the pretrial release program."

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

SENATE BILL 1013:
Citizens' Right to Know Act/Pretrial Release

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 6, 2009
Introduced by:	Sen. Berger of Franklin	**Prepared by:**	Brenda J. Carter
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 1013 would amend the NC Public Records Act to require a pretrial release program to prepare and maintain a public register providing information about the pretrial release program and the defendants released through the program, and to require that a copy of that register be located in the office of the clerk of court. The bill would also require that each pretrial release program submit an annual report to the county commissioners and the clerk of court in the appropriate county.***

CURRENT LAW: G.S. 15A-531 through 15A-547 contain the basic provisions on pretrial release. Under G.S. 15A-535(a), the senior resident superior court judge, in consultation with chief district court judge, issues pretrial release policies in each judicial district. Generally, under G.S. 15A-533(b), defendants charged with a noncapital offense are entitled to have pretrial release conditions determined, except in specified circumstances. Defendants charged with a capital offense do not have the right to have pretrial release conditions determined; however, a judge has the discretion to authorize pretrial release.

Several North Carolina counties have pretrial services programs. In any county in which there is a pretrial release program, the senior resident superior court judge may, after consultation with the chief district court judge, order that defendants accepted by a pretrial release program for supervision be released by judicial officials to the supervision of such programs, and be subject to the program's rules and regulations. Some programs primarily gather information through interviews and record checks of defendants; others may arrange for pretrial release for defendants before first appearance and then supervise them after release; and others become closely involved with defendants, obtaining substance abuse treatment for them and coordinating educational and employment activities. Defendants may have to comply with various conditions, such as reporting periodically to a pretrial services caseworker, obtaining substance abuse treatment, etc.[1]

BILL ANALYSIS: Senate Bill 1013 would amend the NC Public Records Act by adding a new Article entitled the "Citizens Right to Know Act". The Act would require each pretrial release program to prepare a register that would be located in the office of the clerk of superior court in the county where the program is located. The register, which would be updated on a weekly basis, would contain specified information about the pretrial release program, including:

- Name, location, and funding source of the program
- Number of defendants/indigent defendants assessed and interviewed for pretrial release
- Names and number of defendants/indigent defendants accepted into the program
- Charges filed against and the case numbers of defendants accepted into the program
- The nature of any prior criminal conviction of a defendant accepted into the program
- Court appearances required of defendants accepted into the program

[1] NC Defender Manual, May 1998,Institute of Government

- The date of each defendant's failure to appear for a scheduled court appearance
- The number of warrants issued for a defendant's arrest for failure to appear in court
- The number and type of program noncompliance infractions committed by a defendant in the pretrial release program and whether the pretrial release program recommended that the court revoke the defendant's release.

Each pretrial release program would also be required to submit an annual report by March 31 of each year, containing information for the preceding calendar year. The report would include specified information about offenders served by the program as well as information concerning program operations, finances, and budget, and including the amount of public funding. The annual report, which would be submitted to the county commissioners and to the clerk of superior court in the county where the program is located, may contain any additional information deemed necessary by the county commissioners to assess the performance and cost-efficiency of the program. The bill would require that the report be readily accessible to the public.

EFFECTIVE DATE: The bill would become effective October 1, 2009

S1013-SMRV-68(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

SENATE BILL 1089

Short Title:	Low-Risk Probationers May Be Unsupervised.	(Public)
Sponsors:	Senators Snow, Kinnaird; and Atwater.	
Referred to:	Judiciary II.	

March 31, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE PROBATION OFFICERS TO TRANSFER LOW-RISK MISDEMEANANTS WITH NO SPECIAL CONDITIONS TO UNSUPERVISED PROBATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1343(g) reads as rewritten:

"(g) Probation Officer May Determine Payment ~~Schedules.~~Schedules and May Transfer Low-Risk Misdemeanants to Unsupervised Probation. – If a person placed on supervised probation is required as a condition of that probation to pay any moneys to the clerk of superior court, the court may delegate to a probation officer the responsibility to determine the payment schedule. The court may also authorize the probation officer to transfer the person to unsupervised probation after all the moneys are paid to the clerk. If the probation officer transfers a person to unsupervised probation, he must notify the clerk of that action. In addition, a probation officer may transfer a misdemeanant from supervised to unsupervised probation if the misdemeanant is not subject to any special conditions and was placed on probation solely for the collection of court-ordered payments, and the risk assessment shows the misdemeanant to be a low-risk offender."

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

Principal Clerk ____
Reading Clerk ____

Please note time.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	May 12, 2009	9:00 – 11:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 372	Clarification of Nuisance Abatement Laws.	Senator Boseman
SB 612	Partition Sales/Extend Report & Answer Times.	Senator Atwater
SB 613	Partition Sales/Commrs., Sellers, Buyers.	Senator Atwater
SB 614	Partition Sales/Notice, Credit, Appraisal.	Senator Atwater
SB 807	Public Safety Registration.	Senator Jones
SB 850	Liens/Condominiums and Planned Communities.	Senator Vaughan
SB 880	Certificates of Rehabilitation.	Senator Atwater
SB 978	Firearms Qualification Sites/Retired LEOs.	Senator Bingham
SB 1013	Citizens' Right To Know Act/Pretrial Release.	Senator Berger
SB 7	Allow Hunting on Sunday.	Senator Boseman

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II Committee
Tuesday, May 12, 2009, 9:00 - 11:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 7	Allow Hunting on Sunday.	Senator Boseman
SB 372	Clarification of Nuisance Abatement Laws.	Senator Boseman
SB 612	Partition Sales/Extend Report & Answer Times.	Senator Atwater
SB 613	Partition Sales/Commrs., Sellers, Buyers.	Senator Atwater
SB 614	Partition Sales/Notice, Credit, Appraisal.	Senator Atwater
SB 880	Certificates of Rehabilitation.	Senator Atwater
SB 978	Firearms Qualification Sites/Retired LEOs.	Senator Bingham
SB 1013	Citizens' Right to Know Act/Pretrial Release.	Senator Berger
SB 1062	Strengthen Dom. Viol. Protective Orders/Pets	Senator Boseman

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE
Tuesday, May 12, 2009 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met from 9:00 to 11:00 AM on May 12, 2009, in Room 1124 of the Legislative Building with thirteen members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell welcomed pages Steven Dace, Kayla Hutchins and Kris Cooper and thanked them for their assistance.

SB 1062 – (Strengthen Dom. Viol. Protective Orders/Pets) Senator Hartsell explained that the bill was being recalled. Senator Jones moved to accept the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Hartsell explained the bill and Senator Jones moved for a favorable report, unfavorable to the original bill. All voted and the motion carried.

SB 612 – (Partition Sales/Extend Report & Answer Times.) Senator Atwater was recognized to explain the bill. Mr. Travis Payne, Attorney, spoke on the bill. Senator Vaughan moved for a favorable report. All voted and the motion carried.

SB 7 – (Allow Hunting on Sunday.) Senator Jones moved to accept the Proposed Committee Substitute for purposes of discussion. Senator Boseman explained the bill. Mr. Art Manning spoke in favor of the bill. The Reverend Mark Creech, Executive Director, Christian Action League, of North Carolina spoke in opposition to the bill. After much discussion, Senator Boseman decided to withdraw the bill.

SB 372 – (Clarification of Nuisance Abatement Laws.) Senator Vaughan moved to adopt the Proposed Committee Substitute for purposes of discussion. Senator Boseman introduced the bill and Ms. Kory Goldsmith, Staff Attorney, explained it. Mr. Phil Berger, Jr., District Attorney for Rockingham County, spoke on the bill as did Mr. Patrick Buffkin, Attorney. After much discussion, Senator Hartsell appointed Senator Vaughan as Chairman of a sub-committee for the bill. The bill will be heard at a later time.

SB 978 – (Firearms Qualification Sites/Retired LEO's.) Senator Bingham explained the bill and answered questions from Senators Dorsett, Jones and Queen. Mr. Wayne Wood, representing the Attorney General's Office, spoke on the bill. Senator East moved for a favorable report. All voted and the motion carried.

SB 1013 – (Citizens' Right to Know Act/Pretrial Release.) Senator Snow moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. In Senator Berger's absence, Ms. Brenda Carter, Staff Attorney, explained the bill. Ms. Patrice Roesler, Deputy Director North Carolina Association of County Commissioners and Ms. Veronica Edmisten-Schooley, Assistant District Attorney from Greensboro, spoke on the bill. No action was taken on the bill.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr. Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

CORRECTED REPORT

Tuesday, May 12, 2009

Senator ,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **612** Partition Sales/Extend Report & Answer Times.
Sequential Referral: None
Recommended Referral: None

S.B. **978** Firearms Qualification Sites/Retired LEOs.
Sequential Referral: None
Recommended Referral: None

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

S.B. **928** The Castle Doctrine.
Draft Number: 75245
Sequential Referral: None
Recommended Referral: Appropriations/Base Budget
Long Title Amended: Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1) **1062** Strengthen Dom. Vio. Protective Orders/Pets.
Draft Number: 55389
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 4

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, May 12, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **612** Partition Sales/Extend Report & Answer Times.
Sequential Referral: None
Recommended Referral: None

S.B. **978** Firearms Qualification Sites/Retired LEOs.
Sequential Referral: None
Recommended Referral: None

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

S.B. **928** The Castle Doctrine.
Draft Number: 75245
Sequential Referral: None
Recommended Referral: Appropriations/Base Budget
Long Title Amended: Yes

S.B. **1062** Strengthen Dom. Vio. Protective Orders/Pets.
Draft Number: 55389
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 4

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

May 12, 2009
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Quinton Robinson	North Carolina Land Loss Prevention
Travis Payne	Edelstein & Payne On behalf of Land Loss Prevention Project PO Box 28186 Raleigh NC 27611
Henri McClees	McClees Consulting
Sarah Clapp	NC WRC
David Hoyle Jr.	NCWRC
Carroll Myers	NCWRC
Art Manning	Sunday Hunting 138 Aleah Ct. Clayton
Patrice Reeder	NCACC
Mindy Skinner	Conservators' Center
Douglas Evans	NCACS + NCEAKA
[illegible]	[illegible]

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
P Powell	AOC
Wheaton Casey	Pretrial Services Guilford
Veronica Edmisten-Schooley	Guilford Co. DA's office
Alicia Davis	NAWC
Kim Crouch	NCBA
Leslie Arnold	SOG-Daily Bulletin
Phil Berger, Jr.	DA-17A
Peg Dorer	Conference of DAs
Chuck Johnson	NC Pretrial Services Assoc.
Kim Gordon	NC Pretrial Services Assoc.
Mildred Spearman	NCDOC

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Nicole Sullivan	NCDOC
Kim. Hibbard	NCLM
[illegible]	NMRS
Hope Carmichael	Atty-Raleigh
Wayne Woodard	NC Dept of Justice
Annette Newkirk	Office of the Governor
Bill Brooks	NCFPC

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2009

S 1

SENATE BILL 7

Short Title:	Allow Hunting on Sunday.	(Public)
Sponsors:	Senator Boseman.	
Referred to:	Judiciary II .	

January 29, 2009

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE LAW PROHIBITING HUNTING ON SUNDAY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 103-2 is repealed.

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

S7-V-1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 7
PROPOSED COMMITTEE SUBSTITUTE S7-CSSB-8 [v.1]

4/4/2009 1:22:11 PM

Short Title: Allow Hunting after 1 pm on Sunday. (Public)

Sponsors:

Referred to:

January 29, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW HUNTING AFTER 1 P.M. ON SUNDAY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 103-2 reads as rewritten:

"**§ 103-2. Hunting on Sunday.**

If any person shall, except in defense of his own property, hunt from one-half hour before sunrise until 1:00 p.m. on Sunday, having with him a shotgun, rifle, or pistol, he shall be guilty of a Class 3 misdemeanor. Provided, that the provisions hereof shall not be applicable to military reservations, the jurisdiction of which is exclusively in the federal government, or to field trials authorized by the Wildlife Resources Commission. Wildlife protectors are granted authority to enforce the provisions of this section."

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

SENATE BILL 7:
Allow Hunting on Sunday

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 12, 2009
Introduced by:	Senator Boseman	**Prepared by:**	Jeff Hudson
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 7 would repeal the prohibition on Sunday hunting.

CURRENT LAW:

Under current law, if a person hunts on Sunday and is in possession of a shotgun, rifle, or pistol, the person would be guilty of a Class 3 misdemeanor. (Assuming no prior convictions, a Class 3 misdemeanor is punishable by 1-10 days of community service and a fine of up to $200.) The prohibition on Sunday hunting does not apply to someone defending their property, federal military reservations, or field trials authorized by the Wildlife Resources Commission.

BILL ANALYSIS:

Senate Bill 7 would repeal the prohibition on Sunday hunting.

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

SENATE BILL 372

Short Title:	Clarification of Nuisance Abatement Laws.	(Public)
Sponsors:	Senator Boseman.	
Referred to:	Judiciary II.	

March 4, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY TYPES OF NUISANCES WHEREIN OBSCENE OR LEWD MATTER OR OTHER CONDUCT PROHIBITED IS INVOLVED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 19-1.2(1) reads as rewritten:

"(1) Any and every place in the State where lewd films are publicly exhibited as a predominant ~~and regular~~ course of business, or possessed for the purpose of such exhibition;".

SECTION 2. G.S. 19-1.1(1a) reads as rewritten:

"(1a) "Knowledge" or "knowledge of such nuisance" means having knowledge of the contents and character of the patently offensive sexual conduct which appears in the lewd matter, or knowledge of the acts of lewdness. With regard to nuisances involving assignation, prostitution, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or repeated acts which create and constitute a breach of the ~~peace,~~peace, or repeated activities or conditions which violate a local ordinance regulating sexually oriented businesses, or evidence that the defendant knew or by the exercise of due diligence should have known of the acts or conduct constitutes proof of knowledge."

SECTION 3. G.S. 19-1.2(6) reads as rewritten:

"(6) Every place ~~which, as a regular course of business,~~ which is used for the purposes of lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or prostitution, and every such place in or upon which acts of lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or prostitution, are held or occur. Knowledge of, acquiescence to, or participation in activities proscribed by this Chapter by any person charged with maintaining a nuisance shall be prima facie evidence that the person used the place for the purposes of such activities."

SECTION 4. G.S. 19-1.3(3) reads as rewritten:

"(3) All money or other valuable consideration, vehicles, conveyances, or other property received or used in gambling, prostitution, the illegal sale of alcoholic ~~beverages or~~beverages, the illegal sale of substances proscribed under the North Carolina Controlled Substances ~~Act,~~Act, or the operation of

a sexually oriented business in violation of G.S. 19-1(b1).~~as well as the furniture and movable contents of a place used in connection with such prohibited conduct.~~"

SECTION 5. G.S. 19-1.3 is amended by adding a new subdivision to read:

"(4) The furniture and movable contents of a place used in connection with conduct prohibited by G.S. 19-1(a), (b), or (b1)."

SECTION 6. G.S. 19-2.1 reads as rewritten:

"**§ 19-2.1. Action for abatement; injunction.**

Wherever a nuisance is kept, maintained, or exists, as defined in this Article, the Attorney General, district attorney, county, municipality, or any private citizen of the county may maintain a civil action in the name of the State of North Carolina to abate a nuisance under this Chapter, perpetually to enjoin all persons from maintaining the same, and to enjoin the use of any structure or thing adjudged to be a nuisance under this Chapter; provided, however, that no private citizen may maintain such action where the alleged nuisance involves the illegal possession or sale of obscene or lewd matter.

Upon request from the Attorney General, district attorney, county or municipality, including the sheriff or chief of police of any county or municipality, the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety or any other law enforcement agency with jurisdiction may investigate alleged public nuisances and make recommendations regarding actions to abate the public nuisances.

If an action is instituted by a private person, the complainant shall execute a bond prior to the issuance of a temporary restraining order or a ~~temporary~~ preliminary injunction, with good and sufficient surety to be approved by the court or clerk thereof, in the sum of not less than one thousand dollars ($1,000), to secure to the party enjoined the damages he may sustain if such action is wrongfully brought, not prosecuted to final judgment, or is dismissed, or is not maintained, or if it is finally decided that the temporary restraining order or preliminary injunction ought not to have been granted. The party enjoined shall have recourse against said bond for all damages suffered, including damages to his property, person, or character and including reasonable attorney's fees incurred by him in making defense to said action. No bond shall be required of the prosecuting attorney, the Attorney General, county, or municipality, and no action shall be maintained against any public official or public entity, their employees, or agents for investigating or maintaining an action for abatement of a nuisance under the provisions of this Chapter."

SECTION 7. G.S. 19-2.3 reads as rewritten:

"**§ 19-2.3. Temporary order restraining removal of personal property from premises; service; punishment.**

Where such application for a preliminary injunction is made, the court may, on application of the complainant showing good cause, issue an ex parte temporary restraining order in accordance with G.S. 1A-1, Rule 65(b), preserving the status quo and restraining the defendant and all other persons from removing or in any manner interfering with any evidence specifically described, or in any manner removing or interfering with the personal property and contents of the place where such nuisance is alleged to exist, until the decision of the court granting or refusing such preliminary injunction and until further order of the court thereon. Nothing herein shall be interpreted to allow the prior restraint of the distribution of any matter or the sale of the stock in trade, but an inventory and full accounting of all business transactions involving alleged obscene or lewd matter thereafter shall be required. The inventory provisions provided by this section shall not apply to nuisances occurring at a private dwelling place unless the court finds the private dwelling place is used for profit.

Any person, firm, or corporation enjoined pursuant to this section may file with the court a motion to dissolve any temporary restraining order. Such a motion shall be heard within 24 hours of the time a copy of the motion is served on the complaining party, or on the next day

the superior courts are open in the district, whichever is later. At such hearing the complaining party shall have the burden of showing why the restraining order should be continued.

In the event a temporary restraining order is issued, it may be served in accordance with the provisions of G.S. 1A-1, Rule 4, or may be served by handing to and leaving a copy of such order with any person in charge of such place or residing therein, or by posting a copy thereof in a conspicuous place at or upon one or more of the principal doors or entrances to such place, or by such service under said ~~Rule 4, delivery and posting.~~ Rule 4. The officer serving such temporary restraining order shall forthwith enter upon the property and make and return into court an inventory of the personal property and contents situated in and used in conducting or maintaining such nuisance.

Any violation of such temporary restraining order is a contempt of court, and where such order is posted, mutilation or removal thereof, while the same remains in force, is a contempt of court, provided such posted order contains therein a notice to that effect."

SECTION 8. G.S. 19-3(a) reads as rewritten:

"(a) The action provided for in this Chapter ~~shall~~ shall, on application of either of the parties, be set down for trial at the first term of the court and shall have precedence over all other cases except crimes, election contests, or injunctions."

SECTION 9. G.S. 19-6 reads as rewritten:

"**§ 19-6. Civil penalty; forfeiture; accounting; lien as to expenses of abatement; invalidation of lease.**

Lewd matter is contraband, and there are no property rights therein. All personal property, including all money and other considerations, declared to be a nuisance under the provisions of G.S. 19-1.3 and other sections of this Article, are subject to forfeiture to the local government and are recoverable as damages in the county wherein such matter is sold, exhibited or otherwise used. Such property including moneys may be traced to and shall be recoverable from persons who, under G.S. 19-2.4, have knowledge of the nuisance at the time such moneys are received by them.

Upon judgment against the defendant or defendants in legal proceedings brought pursuant to this Article, an accounting shall be made by such defendant or defendants of all moneys received by them which have been declared to be a nuisance under this Article. An amount equal to the sum of all moneys estimated to have been taken in as gross income from such unlawful commercial activity shall be forfeited to the general funds of the city and county governments wherein such activity took place, to be shared equally, as a forfeiture of the fruits of an unlawful enterprise, and as partial restitution for damages done to the public welfare; provided, however, that no provision of this Article shall authorize the recovery of any moneys or gross income received from the sale of any book, magazine, or exhibition of any motion picture prior to the issuance of a preliminary injunction. Where the action is brought pursuant to this Article, special injury need not be proven, and the costs of abatement are a lien on both the real and personal property used in maintaining the nuisance. Costs of abatement include, but are not limited to, reasonable attorney's fees and court costs.

Upon the filing of the action, the plaintiff may file a notice of lis pendens in the official records of the county where the property is located.

If it is judicially found after an adversary hearing pursuant to this Article that a tenant or occupant of a building or tenement, under a lawful title, uses such place for the purposes of lewdness, assignation, prostitution, gambling, sale or possession of illegal alcoholic beverages or substances proscribed under the North Carolina Controlled Substances Act, or repeated acts which create and constitute a breach of the ~~peace,~~ peace, or repeated acts or omissions that violate a local ordinance regulating sexually oriented businesses, or such use makes void the lease or other title under which he holds, at the option of the owner, and, without any act of the owner, causes the right of possession to revert and vest in such owner.

The clear proceeds of civil penalties and forfeitures provided for in this section, except for penalties and properties that accrue to local governments instead of the State, shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 10. G.S. 19-6.1 reads as rewritten:

"**§ 19-6.1. Forfeiture of real property.**

In all actions where a preliminary injunction, permanent injunction, or an order of abatement is issued pursuant to this Article in which the nuisance consists of or includes at least two prior occurrences within five years of the manufacture, possession with intent to sell, or sale of controlled substances as defined by the North Carolina Controlled Substances Act, two prior occurrences of the possession of any controlled substance included within Schedule I or II of that Act, or two prior convictions within five years of violation of G.S. 14-72.7, the real property on which the nuisance exists or is maintained is subject to forfeiture in accordance with this section. In the case of the two prior convictions of G.S. 14-72.7, the convictions shall not arise out of the same transaction or occurrence.

If all of the owners of the property are defendants in the action, the plaintiff, other than a plaintiff who is a private citizen, may request forfeiture of the real property as part of the relief sought. If forfeiture is requested, and if jurisdiction over all defendant owners is established, upon judgment against the defendant or defendants, the court shall order forfeiture as follows:

(1) If the court finds by clear and convincing evidence that all the owners either (i) have participated in maintaining the nuisance on the property, or (ii) prior to the action had written notice from the plaintiff, or any governmental agent or entity authorized to bring an action pursuant to this Chapter, that the nuisance existed or was maintained on the property and have not made good faith efforts to stop the nuisance from occurring or recurring, the court shall order that the property be forfeited;

(2) If the court finds that one or more of the owners did not participate in maintaining the nuisance on the property or did not have written notice from the plaintiff prior to the action that the nuisance existed or was maintained on the property, the court shall not order forfeiture of the property immediately upon judgment. However, if after judgment and an order directing the defendants to abate the nuisance, the nuisance either continues, begins again, or otherwise recurs within five years of the order and the defendants have not made good faith efforts to abate the nuisance, the plaintiff may petition the court for forfeiture. Upon such petition, the defendant owner or owners shall be given notice and an opportunity to appear and be heard at a hearing to determine the continuation or recurrence of the nuisance. If, in this hearing (i) the plaintiff establishes by clear and convincing evidence that the nuisance, with the owner's or owners' knowledge, has either continued, begun again, or otherwise recurred, and (ii) the defendants fail to establish that they have made and are continuing to make good faith efforts to abate the nuisance, the court shall order that the property be forfeited.

For the purposes of this section, factors which may evidence good faith by the defendant to abate the nuisance include but are not limited to (i) cooperation with law enforcement authorities to abate the nuisance; (ii) lease restrictions prohibiting the illegal possession or sale of ~~narcotic drugs~~controlled substances and an action to evict a tenant for any violations of the lease provision; (iii) a criminal record check of prospective tenants; and (iv) reference checks of prior residency of prospective tenants.

Upon an order of forfeiture, title to the property shall vest in the school board of the county in which the property is located. If at the time of forfeiture the property is subject to a lien or security interest of a person not participating in the maintenance of the nuisance, the school

board shall either (i) pay an amount to that person satisfying the lien or security interest; or (ii) sell the property and satisfy the lien or security interest from the proceeds of the sale. If the property is not subject to any lien or security interest at the time of forfeiture, the school board may hold, maintain, lease, sell, or otherwise dispose of the property as it sees fit.

Upon the filing of the action, the plaintiff may file a notice of lis pendens in the official records of the county where the property is located. If the plaintiff files a notice of lis pendens, any person purchasing or obtaining an interest in the property thereafter shall be considered to have notice of the alleged nuisance, and shall forfeit his interest in the property upon a judgment of forfeiture in favor of the plaintiff.

If in the same action in which real property is forfeited the court finds that a tenant or occupant of the property participated in or maintained the nuisance, the lease or other title under which the tenant or occupant holds is void, and the right of possession vests in the new owner. Upon forfeiture, the rights of innocent tenants occupying separate units of the property who were not involved in the nuisance at the time the action was filed shall be in accordance with any relevant lease provisions in effect at the time or, in the absence of relevant lease provisions, in accordance with the law applying to other tenants or occupants of property that is sold, foreclosed upon, or otherwise obtained by new owners."

SECTION 11. This act becomes effective October 1, 2009, and applies to offenses committed and abatement actions commenced on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 372
PROPOSED COMMITTEE SUBSTITUTE S372-PCS35318-RC-24

Short Title: Clarification of Nuisance Abatement Laws. (Public)

Sponsors:

Referred to:

March 4, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY TYPES OF NUISANCES WHEREIN OBSCENE OR LEWD MATTER OR OTHER CONDUCT PROHIBITED IS INVOLVED AND TO PROVIDE THAT INDIVIDUALS ENGAGED IN A PATTERN OF STREET GANG ACTIVITY ARE SUBJECT TO INJUNCTIONS PURSUANT TO CHAPTER 19 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 19-1.2 reads as rewritten:

"**§ 19-1.2. Types of nuisances.**

The following are declared to be nuisances wherein obscene or lewd matter or other conduct prohibited in G.S. 19-1(a) is involved:

(1) Any and every place in the State where lewd films are publicly exhibited as a predominant ~~and regular~~ course of business, or possessed for the purpose of such ~~exhibition;~~exhibition.

(2) Any and every place in the State where a lewd film is publicly and repeatedly exhibited, or possessed for the purpose of such ~~exhibition;~~exhibition.

(3) Any and every lewd film which is publicly exhibited, or possessed for such purpose at a place which is a nuisance under this ~~Article;~~Article.

(4) Any and every place of business in the State in which lewd publications constitute a principal or substantial part of the stock in ~~trade;~~trade.

(5) Any and every lewd publication possessed at a place which is a nuisance under this ~~Article;~~Article.

(6) Every place ~~which, as a regular course of business,~~ which is used for the purposes of lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or prostitution, and every such place in or upon which acts of lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or prostitution, are held or occur. Knowledge of, acquiescence to, or participation in activities proscribed by this Chapter by any person charged with maintaining a nuisance shall be prima facie evidence that the person used the place for the purposes of such activities."

SECTION 2. G.S. 19-1.1(1a) reads as rewritten:

"**§ 19-1.1. Definitions.**

As used in this Chapter relating to illegal possession or sale of obscene matter or to the other conduct prohibited in G.S. 19-1(a), the following definitions shall apply:

...

(1a) "Knowledge" or "knowledge of such nuisance" means having knowledge of the contents and character of the patently offensive sexual conduct which appears in the lewd matter, or knowledge of the acts of lewdness. With regard to nuisances involving assignation, prostitution, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or repeated acts which create and constitute a breach of the ~~peace;~~peace, or repeated activities or conditions which violate a local ordinance regulating sexually oriented businesses, or evidence that the defendant knew or by the exercise of due diligence should have known of the acts or conduct constitutes proof of knowledge."

SECTION 3. G.S. 19-1.3 reads as rewritten:

"**§ 19-1.3. Personal property as a nuisance; knowledge of nuisance.**

The following are also declared to be nuisances, as personal property used in conducting and maintaining a nuisance under this Chapter:

(1) All moneys paid as admission price to the exhibition of any lewd film found to be a ~~nuisance;~~nuisance.

(2) All valuable consideration received for the sale of any lewd publication which is found to be a ~~nuisance;~~nuisance.

(3) All money or other valuable consideration, vehicles, conveyances, or other property received or used in gambling, prostitution, the illegal sale of alcoholic ~~beverages or~~beverages, the illegal sale of substances proscribed under the North Carolina Controlled Substances ~~Act;~~Act, or the operation of a sexually oriented business in violation of G.S. 19-1(b1).~~as well as the furniture and movable contents of a place used in connection with such prohibited conduct.~~

(4) The furniture and movable contents of a place used in connection with conduct prohibited by G.S. 19-1(a), (b), or (b1).

From and after service of a copy of the notice of hearing of the application for a preliminary injunction, provided for in G.S. 19-2.4 upon the place, or its manager, or acting manager, or person then in charge, all such parties are deemed to have knowledge of the contents of the restraining order and the use of the place occurring thereafter. Where the circumstantial proof warrants a determination that a person had knowledge of the nuisance prior to such service of process, the court may make such finding."

SECTION 4. G.S. 19-2.1 reads as rewritten:

"**§ 19-2.1. Action for abatement; injunction.**

Wherever a nuisance is kept, maintained, or exists, as defined in this Article, the Attorney General, district attorney, county, municipality, or any private citizen of the county may maintain a civil action in the name of the State of North Carolina to abate a nuisance under this Chapter, perpetually to enjoin all persons from maintaining the same, and to enjoin the use of any structure or thing adjudged to be a nuisance under this Chapter; provided, however, that no private citizen may maintain such action where the alleged nuisance involves the illegal possession or sale of obscene or lewd matter.

Upon request from the Attorney General, district attorney, county or municipality, including the sheriff or chief of police of any county or municipality, the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety or any other law

enforcement agency with jurisdiction may investigate alleged public nuisances and make recommendations regarding actions to abate the public nuisances.

If an action is instituted by a private person, the complainant shall execute a bond prior to the issuance of a temporary restraining order or a ~~temporary~~ preliminary injunction, with good and sufficient surety to be approved by the court or clerk thereof, in the sum of not less than one thousand dollars ($1,000), to secure to the party enjoined the damages he may sustain if such action is wrongfully brought, not prosecuted to final judgment, or is dismissed, or is not maintained, or if it is finally decided that the temporary restraining order or preliminary injunction ought not to have been granted. The party enjoined shall have recourse against said bond for all damages suffered, including damages to his property, person, or character and including reasonable attorney's fees incurred by him in making defense to said action. No bond shall be required of the prosecuting attorney, the Attorney General, county, or municipality, and no action shall be maintained against any public official or public entity, their employees, or agents for investigating or maintaining an action for abatement of a nuisance under the provisions of this Chapter."

SECTION 5. G.S. 19-2.3 reads as rewritten:

"**§ 19-2.3. Temporary order restraining removal of personal property from premises; service; punishment.**

Where such application for a preliminary injunction is made, the court may, on application of the complainant showing good cause, issue an ex parte temporary restraining order in accordance with G.S. 1A-1, Rule 65(b), preserving the status quo and restraining the defendant and all other persons from removing or in any manner interfering with any evidence specifically described, or in any manner removing or interfering with the personal property and contents of the place where such nuisance is alleged to exist, until the decision of the court granting or refusing such preliminary injunction and until further order of the court thereon. Nothing herein shall be interpreted to allow the prior restraint of the distribution of any matter or the sale of the stock in trade, but an inventory and full accounting of all business transactions involving alleged obscene or lewd matter thereafter shall be required. The inventory provisions provided by this section shall not apply to nuisances occurring at a private dwelling place unless the court finds the private dwelling place is used for profit.

Any person, firm, or corporation enjoined pursuant to this section may file with the court a motion to dissolve any temporary restraining order. Such a motion shall be heard within 24 hours of the time a copy of the motion is served on the complaining party, or on the next day the superior courts are open in the district, whichever is later. At such hearing the complaining party shall have the burden of showing why the restraining order should be continued.

In the event a temporary restraining order is issued, it may be served in accordance with the provisions of G.S. 1A-1, Rule 4, or may be served by handing to and leaving a copy of such order with any person in charge of such place or residing therein, or by posting a copy thereof in a conspicuous place at or upon one or more of the principal doors or entrances to such place, or by such service under said ~~Rule 4, delivery and posting.~~ Rule 4. The officer serving such temporary restraining order shall forthwith enter upon the property and make and return into court an inventory of the personal property and contents situated in and used in conducting or maintaining such nuisance.

Any violation of such temporary restraining order is a contempt of court, and where such order is posted, mutilation or removal thereof, while the same remains in force, is a contempt of court, provided such posted order contains therein a notice to that effect."

SECTION 6. G.S. 19-3(a) reads as rewritten:

"(a) The action provided for in this Chapter ~~shall~~ shall, on application of either of the parties, be set down for trial at the first term of the court and shall have precedence over all other cases except crimes, election contests, or injunctions."

SECTION 7. G.S. 19-6 reads as rewritten:

"§ 19-6. Civil penalty; forfeiture; accounting; lien as to expenses of abatement; invalidation of lease.

Lewd matter is contraband, and there are no property rights therein. All personal property, including all money and other considerations, declared to be a nuisance under the provisions of G.S. 19-1.3 and other sections of this Article, are subject to forfeiture to the local government and are recoverable as damages in the county wherein such matter is sold, exhibited or otherwise used. Such property including moneys may be traced to and shall be recoverable from persons who, under G.S. 19-2.4, have knowledge of the nuisance at the time such moneys are received by them.

Upon judgment against the defendant or defendants in legal proceedings brought pursuant to this Article, an accounting shall be made by such defendant or defendants of all moneys received by them which have been declared to be a nuisance under this Article. An amount equal to the sum of all moneys estimated to have been taken in as gross income from such unlawful commercial activity shall be forfeited to the general funds of the city and county governments wherein such activity took place, to be shared equally, as a forfeiture of the fruits of an unlawful enterprise, and as partial restitution for damages done to the public welfare; provided, however, that no provision of this Article shall authorize the recovery of any moneys or gross income received from the sale of any book, magazine, or exhibition of any motion picture prior to the issuance of a preliminary injunction. Where the action is brought pursuant to this Article, special injury need not be proven, and the costs of abatement are a lien on both the real and personal property used in maintaining the nuisance. Costs of abatement include, but are not limited to, reasonable attorney's fees and court costs.

Upon the filing of the action, the plaintiff may file a notice of lis pendens in the official records of the county where the property is located.

If it is judicially found after an adversary hearing pursuant to this Article that a tenant or occupant of a building or tenement, under a lawful title, uses such place for the purposes of lewdness, assignation, prostitution, gambling, sale or possession of illegal alcoholic beverages or substances proscribed under the North Carolina Controlled Substances Act, or repeated acts which create and constitute a breach of the ~~peace,~~ peace, or repeated acts or omissions that violate a local ordinance regulating sexually oriented businesses, or such use makes void the lease or other title under which he holds, at the option of the owner, and, without any act of the owner, causes the right of possession to revert and vest in such owner.

The clear proceeds of civil penalties and forfeitures provided for in this section, except for penalties and properties that accrue to local governments instead of the State, shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 8. G.S. 19-6.1 reads as rewritten:

"§ 19-6.1. Forfeiture of real property.

In all actions where a preliminary injunction, permanent injunction, or an order of abatement is issued pursuant to this Article in which the nuisance consists of or includes at least two prior occurrences within five years of the manufacture, possession with intent to sell, or sale of controlled substances as defined by the North Carolina Controlled Substances Act, two prior occurrences of the possession of any controlled substance included within Schedule I or II of that Act, or two prior convictions within five years of violation of G.S. 14-72.7, the real property on which the nuisance exists or is maintained is subject to forfeiture in accordance with this section. In the case of the two prior convictions of G.S. 14-72.7, the convictions shall not arise out of the same transaction or occurrence.

If all of the owners of the property are defendants in the action, the plaintiff, other than a plaintiff who is a private citizen, may request forfeiture of the real property as part of the relief sought. If forfeiture is requested, and if jurisdiction over all defendant owners is established, upon judgment against the defendant or defendants, the court shall order forfeiture as follows:

(1) If the court finds by clear and convincing evidence that all the owners either (i) have participated in maintaining the nuisance on the property, or (ii) prior to the action had written notice from the plaintiff, or any governmental agent or entity authorized to bring an action pursuant to this Chapter, that the nuisance existed or was maintained on the property and have not made good faith efforts to stop the nuisance from occurring or recurring, the court shall order that the property be forfeited;

(2) If the court finds that one or more of the owners did not participate in maintaining the nuisance on the property or did not have written notice from the plaintiff prior to the action that the nuisance existed or was maintained on the property, the court shall not order forfeiture of the property immediately upon judgment. However, if after judgment and an order directing the defendants to abate the nuisance, the nuisance either continues, begins again, or otherwise recurs within five years of the order and the defendants have not made good faith efforts to abate the nuisance, the plaintiff may petition the court for forfeiture. Upon such petition, the defendant owner or owners shall be given notice and an opportunity to appear and be heard at a hearing to determine the continuation or recurrence of the nuisance. If, in this hearing (i) the plaintiff establishes by clear and convincing evidence that the nuisance, with the owner's or owners' knowledge, has either continued, begun again, or otherwise recurred, and (ii) the defendants fail to establish that they have made and are continuing to make good faith efforts to abate the nuisance, the court shall order that the property be forfeited.

For the purposes of this section, factors which may evidence good faith by the defendant to abate the nuisance include but are not limited to (i) cooperation with law enforcement authorities to abate the nuisance; (ii) lease restrictions prohibiting the illegal possession or sale of ~~narcotic drugs~~controlled substances and an action to evict a tenant for any violations of the lease provision; (iii) a criminal record check of prospective tenants; and (iv) reference checks of prior residency of prospective tenants.

Upon an order of forfeiture, title to the property shall vest in the school board of the county in which the property is located. If at the time of forfeiture the property is subject to a lien or security interest of a person not participating in the maintenance of the nuisance, the school board shall either (i) pay an amount to that person satisfying the lien or security interest; or (ii) sell the property and satisfy the lien or security interest from the proceeds of the sale. If the property is not subject to any lien or security interest at the time of forfeiture, the school board may hold, maintain, lease, sell, or otherwise dispose of the property as it sees fit.

Upon the filing of the action, the plaintiff may file a notice of lis pendens in the official records of the county where the property is located. If the plaintiff files a notice of lis pendens, any person purchasing or obtaining an interest in the property thereafter shall be considered to have notice of the alleged nuisance, and shall forfeit his interest in the property upon a judgment of forfeiture in favor of the plaintiff.

If in the same action in which real property is forfeited the court finds that a tenant or occupant of the property participated in or maintained the nuisance, the lease or other title under which the tenant or occupant holds is void, and the right of possession vests in the new owner. Upon forfeiture, the rights of innocent tenants occupying separate units of the property who were not involved in the nuisance at the time the action was filed shall be in accordance with any relevant lease provisions in effect at the time or, in the absence of relevant lease provisions, in accordance with the law applying to other tenants or occupants of property that is sold, foreclosed upon, or otherwise obtained by new owners."

SECTION 9. G.S. 14-50.24 is repealed.

SECTION 10. Chapter 14 of the General Statutes is amended by adding a new Article to read:

"Article 13B.

"North Carolina Street Gang Nuisance Abatement Act.

"**§ 14-50.31. Short title.**

This Article shall be known and may be cited as the "North Carolina Street Gang Nuisance Abatement Act."

"**§ 14-50.32. Real property used by criminal street gangs declared a public nuisance; abatement.**

(a) Public Nuisance. – Any real property that is erected, established, maintained, owned, leased, or used by any criminal street gang for the purpose of conducting criminal street gang activity, as defined in G.S. 14-50.16, shall constitute a public nuisance and may be abated as provided by Article 1 of Chapter 19 of the General Statutes.

(b) Innocent Activities. – The provisions of this section shall not apply to real property used for criminal street gang activity where the owner or person who has legal possession of the real property does not have actual knowledge that the real property is being used for criminal street gang activity.

"**§ 14-50.33. Street gangs declared a public nuisance.**

(a) A street gang, as defined in G.S. 14-50.16(b), which regularly associates in street gang activities, as defined in G.S. 14-50.16(c), constitutes a public nuisance. For the purposes of this section, "regularly" means at least five times in a period not more than 12 months.

(b) Any person who regularly associates with others to engage in street gang activity, as defined in G.S. 14-50.16, may be made a defendant in a suit, brought pursuant to Chapter 19 of the General Statutes, to abate any public nuisance resulting from street gang activity.

(c) If the court finds that a public nuisance exists under this section, the court may enter an order enjoining the defendant in the suit from engaging in gang activities and impose other reasonable requirements to prevent the defendant or a gang from engaging in future gang activities."

SECTION 11. This act becomes effective October 1, 2009, and applies to offenses committed and abatement actions commenced on or after that date.

SENATE BILL 372:
Clarification of Nuisance Abatement Laws

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 11, 2009
Introduced by:	Sen. Boseman	**Prepared by:**	Kory Goldsmith
Analysis of:	PCS to First Edition S372-CSRC-24		Committee Counsel

SUMMARY: Senate Bill 372 makes changes to the nuisance abatement laws to clarify that a place need not be operated solely for the purpose of carrying on nuisance activity in order to be considered a nuisance. The Proposed Committee Substitute also makes a street gang that regularly engages in street gang activity a public nuisance. Individuals who regularly associate with others to engage in street gang activity may be enjoined from engaging in street gang activities.

CURRENT LAW: Article 1 of Chapter 19 of the General Statutes deals with the abatement of nuisances. It provides a civil process by which individuals who control real property may be enjoined from maintaining that property and allowing certain illegal activities occur. The Article covers buildings used for the purpose of: assignation, prostitution, gambling, illegal possession or sale of alcoholic beverages, illegal possession or sale of controlled substances, illegal possession or sale of obscene or lewd matter, repeated acts that constitute a breach of the peace, repeated activities or conditions that violate a local ordinance regulating sexually oriented business, or maintaining a "chop shop".

G.S. 14-50.24 provides real property used by and criminal street gang for the purpose of conducting criminal street gang activity may be declared a public nuisance and enjoined. The following definitions apply:

- "criminal street gang" or "street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, that:
  - (1) Has as one of its primary activities the commission of one or more felony offenses, or delinquent acts that would be felonies if committed by an adult;
  - (2) Has three or more members individually or collectively engaged in, or who have engaged in, criminal street gang activity; and
  - (3) May have a common name, common identifying sign or symbol.
- "criminal street gang activity" means to commit, to attempt to commit, or to solicit, coerce, or intimidate another person to commit an act or acts, with the specific intent that such act or acts were intended or committed for the purpose, or in furtherance, of the person's involvement in a criminal street gang or street gang. An act or acts are included if accompanied by the necessary mens rea or criminal intent and would be chargeable by indictment under the following laws of this State:
  - (1) Any offense under Article 5 of Chapter 90 of the General Statutes (Controlled Substances Act).
  - (2) Any offense under Chapter 14 of the General Statutes except Articles 9, 22A, 40, 46, 47, 59 thereof; and further excepting G.S. 14-78.1, 14-82, 14-86, 14-145, 14-179, 14-183, 14-184, 14-186, 14-190.9, 14-195, 14-197, 14-201, 14-247, 14-248, 14-313 thereof.
- "pattern of criminal street gang activity" means engaging in, and having a conviction for, at least two prior incidents of criminal street gang activity; that have the same or similar purposes,

results, accomplices, victims, or methods of commission or otherwise are interrelated by common characteristics and are not isolated and unrelated incidents, provided that at least one of these offenses occurred after December 1, 2008, and the last of the offenses occurred within three years, excluding any periods of imprisonment, of prior criminal street gang activity. Any offenses committed by a defendant prior to indictment for an offense based upon a pattern of street gang activity shall not be used as the basis for any subsequent indictments for offenses involving a pattern of street gang activity.

BILL ANALYSIS:

Section 1 deletes existing language that has been interpreted as requiring that a place be operated *solely* for the purpose of carrying on nuisance activity in order to be deemed a nuisance.[1] This amendment also clarifies that an owner who knowingly allows nuisance activities to occur may be found to have used his property "for the purpose of" such activities.
Section 2 makes the statute consistent by including all nuisances defined in §19-1.
Section 3 amends existing language to clarify that a sexually oriented business is a "for profit" nuisance, the proceeds of which are subject to forfeiture. The proceeds of all "for profit" nuisances are subject to forfeiture, as provided in §19-6. The Section also separates "contents" from "proceeds" and clarifies that the contents of any nuisance, whether "for profit" or not, are declared a nuisance and are subject to a lien and available to satisfy the costs of abatement, as already provided in § 19-1(c) and §19-6.
Section 4 corrects the terminology used in the statute to conform to the North Carolina Rules of Civil Procedure.

Section 5 deletes unnecessary language.

Section 6 conforms the statute to the way these cases are usually scheduled for trial (like any other civil action), while leaving open the option for any party to insist on an immediate trial.

Section 7 clarifies that the State is entitled to a money judgment against the defendant in an amount equal to the gross income from the operation of a "for profit" nuisance, consistent with the prior paragraph.

Section 8 corrects certain language to make G.S. 19-6.1 consistent with the remainder of the Article.
Section 9 repeals the provisions in Chapter 14 related to the abatement of street gang activity as a nuisance.

Section 10 re-enacts the language from G.S. 14-50.24 in a new Article 13B. Individuals who regularly associate with others to engage in street gang activity may be enjoined from engaging in street gang activities.

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

S372-SMRC-33(CSRC-24) v1

[1] Salisbury v. Campbell, 169 N.C. App. 829 (2005).

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 612*

Short Title:	Partition Sales/Extend Report & Answer Times.	(Public)
Sponsors:	Senator Atwater.	
Referred to:	Judiciary II.	

March 17, 2009

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE DEADLINE FOR THE COMMISSIONERS IN A PARTITION ACTION TO REPORT BACK TO THE COURT ON THEIR PROPOSED DIVISION OF THE LAND, AND TO EXTEND THE DEADLINE FOR RESPONDING TO A SUMMONS IN A PARTITION ACTION FROM TEN DAYS TO THIRTY DAYS, AS RECOMMENDED BY THE PARTITION SALES STUDY COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 46-17 reads as rewritten:

"**§ 46-17. Report of commissioners; contents; filing.**

The commissioners, within a reasonable time, not exceeding ~~60~~ 90 days after the notification of their appointment, shall make a full and ample report of their proceedings, under the hands of any two of them, specifying therein the manner of executing their trust and describing particularly the land or parcels of land divided, and the share allotted to each tenant in severalty, with the sum or sums charged on the more valuable dividends to be paid to those of inferior value. The report shall be filed in the office of the superior court clerk: Provided, that the clerk of the superior court may, in ~~his~~ the clerk's discretion, for good cause shown, extend the time for the filing of the report of said commissioners for an additional period not exceeding 60 days. This proviso shall be applicable to proceedings now pending for the partition of real property."

SECTION 2.(a) G.S. 1-394 reads as rewritten:

"**§ 1-394. Contested special proceedings; commencement; summons.**

Special proceedings against adverse parties shall be commenced as is prescribed for civil actions. The summons shall notify the defendant or defendants to appear and answer the complaint, or petition, of the plaintiff within 10 days after its service upon the defendant or defendants, and must contain a notice stating in substance that if the defendant or defendants fail to answer the complaint, or petition, within the time specified, plaintiff will apply to the court for the relief demanded in the complaint, or petition. The summons must run in the name of the State, and be dated and signed by the clerk, assistant clerk or deputy clerk of the superior court having jurisdiction in the special proceeding, and be directed to the defendant or defendants; and be delivered for service to some proper person, as defined by Rule 4(a) of the Rules of Civil Procedure. The clerk shall indicate on the summons by appropriate words that the summons is issued in a special proceeding and not in a civil action. The manner of service shall be as is prescribed for summons in civil actions by Rule 4 of the Rules of Civil Procedure: Provided, in partition proceedings under Chapter 46 of the General Statutes or where the defendant is an agency of the federal government, or an agency of the State, or a local government, or an agency of a local government, the time for filing answer or other plea shall

be within 30 days after the date of service of summons or after the final determination of any motion required to be made prior to the filing of an answer."

SECTION 2.(b) Article 1 of Chapter 46 of the General Statutes is amended by adding a new section to read:

"**§ 46-2.1 Summons.**

In partition proceedings initiated under this Chapter, the period of time for answering a summons is provided in G.S. 1-394."

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

SENATE BILL 612:
Partition Sales/Extend Report & Answer Times

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 11, 2009
Introduced by:	Sen. Atwater	**Prepared by:**	Brenda J. Carter
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 612 extends the deadline for the commissioners in a partition action to report back to the court on their proposed division of the land, and extends the deadline for responding to a summons in a partition action from ten days to thirty days, as recommended by the Partition Sales Study Committee. This act becomes effective October 1, 2009.***

[As introduced, this bill was identical to H581, as introduced by Reps. Bryant, Spear, Stam, Michaux, which is currently in Senate Judiciary II.]

CURRENT LAW: Under the laws governing the partition of real property (Chapter 46 of the General Statutes), one or more persons claiming joint ownership in real property may petition the superior court for partition of the property. To "partition" property means to bring a proceeding in court to force the physical division or sale of real property, and to have the property or proceeds from sale of the property divided among co-owners of the property. The court appoints three disinterested commissioners to divide and apportion the real estate among the joint owners of the property. The action is a special proceeding. Generally a defendant in a special proceeding is allowed 10 days to respond to a summons; however, thirty days are allowed when the defendant is an agency of the federal government, a State or local agency, or a local government.

BILL ANALYSIS: **Section 1** of the bill would extend from 60 days to 90 days the deadline for the commissioners in a partition action to report back to the court on their proposed division of the land.

Section 2 of the bill would amend the procedural rules applicable to special proceedings, by extending the length of time for responding to a summons in a partition action from 10 days to 30 days.

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

S612-SMRV-73(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 613*

Short Title:	Partition Sales/Commrs., Sellers, Buyers.	(Public)
Sponsors:	Senator Atwater.	
Referred to:	Judiciary II.	

March 17, 2009

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT ATTORNEYS REPRESENTING PARTIES IN A PARTITION ACTION FROM SERVING AS COMMISSIONERS TO DIVIDE THE LAND, EXCEPT BY CONSENT OF THE PARTIES, AND TO SPECIFY WHO MAY NOT HOLD A PARTITION SALE OF PROPERTY AND WHO MAY NOT PURCHASE PROPERTY IN A PARTITION SALE, AS RECOMMENDED BY THE PARTITION SALES STUDY COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 46-7 reads as rewritten:

"**§ 46-7. Commissioners appointed.**

The superior court shall appoint three disinterested commissioners to divide and apportion such real estate, or so much thereof as the court may deem best, among the several tenants in common, or joint tenants. Provided, in cases where the land to be partitioned lies in more than one county, then the court may appoint such additional commissioners as it may deem necessary from counties where the land lies other than the county where the proceedings are instituted. For purposes of this section, attorneys who currently represent the parties in the pending partition proceeding and attorneys who have previously represented the parties in a related partition proceeding are not "disinterested" and cannot serve as commissioners, except by consent of the parties."

SECTION 2.(a) G.S. 46-31 reads as rewritten:

"**§ 46-31. ~~Clerk not to appoint self, assistant or deputy to sell real property.~~Who may not hold sale.**

~~No clerk of the superior court shall appoint himself or his assistant or deputy to make sale of any property in any proceeding before him.~~ The following persons shall not sell or be appointed to sell the property in a partition sale under Article 2 of Chapter 46 of the General Statutes:

(1) The clerk of superior court, the clerk's assistant clerk, or the clerk's deputy clerk if there has been a proceeding before that clerk of court.

(2) Attorneys who currently represent the parties in the pending partition proceeding.

(3) Attorneys who have previously represented the parties in a related partition proceeding."

SECTION 2.(b) Article 4 of Chapter 46 is amended by adding a new section to read:

"**§ 46-31.1. Ineligible purchasers.**

The following persons are not eligible to purchase land in a partition sale under Article 2 of Chapter 46 of the General Statutes:

(1) Attorneys who currently represent the parties in the pending partition proceeding or the attorneys' agents.
(2) Attorneys who have previously represented the parties in a related partition proceeding or the attorneys' agents.
(3) Commissioners who have been involved in the partition proceedings at any time or the commissioners' agents.
(4) Appraisers who have been involved in the partition proceedings at any time or the appraisers' agents."

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

SENATE BILL 614*

Short Title:	Partition Sales/Notice, Credit, Appraisal.	(Public)
Sponsors:	Senator Atwater.	
Referred to:	Judiciary II.	

March 17, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE GREATER NOTICE TO PARTIES WHO MAY BE UNKNOWN IN A PARTITION PROCEEDING, TO CODIFY THE CURRENT PRACTICE OF GRANTING OWNERS CREDIT FOR THEIR EXISTING INTEREST IN LAND WHEN BIDDING ON A PARTITION SALE, AND TO REQUIRE A COURT TO ORDER AN INDEPENDENT APPRAISAL IF A PARTY TO THE PARTITION CHALLENGES THE AMOUNT BID IN A PARTITION SALE, AS RECOMMENDED BY THE PARTITION SALES STUDY COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 46-6 reads as rewritten:

"**§ 46-6. Unknown parties; ~~summons and~~ summons, notice, and representation.**

(a) If, upon the filing of a petition for partition, it be made to appear to the court by affidavit or otherwise that there are any persons interested in the premises whose names are unknown to and cannot after due diligence be ascertained by the petitioner, the court shall order notices as provided in this section. The petitioner must specifically allege in an affidavit or otherwise the facts showing what due diligence the petitioner exercised. The petitioner shall set forth facts based upon the personal knowledge of the petitioner concerning the methods, means, and attempts to locate and to effect personal service on the unknown or unlocatable persons, including efforts to utilize, review, or otherwise draw upon sources of information readily available to the petitioner, including Internet sources. Before ordering notice by publication, the clerk must determine that the petitioner did exercise due diligence in attempting to find unknown or unlocatable persons who may have an interest in the property.

(b) The court shall order notices to be given to all such persons by a publication of the petition, or of the substance thereof, with the order of the court thereon, in one or more newspapers to be designated in the order. The notice by publication shall include a description of the property which includes the street address or other common designation for the property, the legal description, and the acreage of the property.

(c) ~~If~~ Before or after such general notice by publication if any person interested in the premises and entitled to notice fails to appear, the court shall ~~in its discretion~~ appoint some disinterested person to represent the owner of any shares in the property to be divided, the ownership of which is unknown and unrepresented. For purposes of this section, attorneys who currently represent the parties in the pending partition proceeding and attorneys who have previously represented the parties in a related partition proceeding cannot represent unknown or unlocatable persons who may have an interest in the property."

SECTION 2. G.S. 46-28 reads as rewritten:

"**§ 46-28. Sale procedure.**

(a) The procedure for a partition sale shall be the same as is provided in Article 29A of Chapter 1 of the General ~~Statutes.~~ Statutes, except as provided herein.

(b) The commissioners shall certify to the court that at least 20 days prior to sale a copy of the notice of sale was sent by first class mail to the last known address of all petitioners and respondents who previously were served by personal delivery or by registered or certified mail. The commissioners shall also certify to the court that at least ten days prior to any resale pursuant to G.S. 46-28.1(e) a copy of the notice of resale was sent by first class mail to the last known address of all parties to the partition proceeding who have filed a written request with the court that they be given notice of any resale. An affidavit from the commissioners that copies of the notice of sale and resale were mailed to all parties entitled to notice in accordance with this section shall satisfy the certification requirement and shall also be deemed prima facie true. If after hearing it is proven that a party seeking to revoke the order of confirmation of a sale or subsequent resale was mailed notice as required by this section prior to the date of the sale or subsequent resale, then that party shall not prevail under the provisions of G.S. 46-28.1(a)(2)a. and b.

(c) Any cotenant making an offer in a sale of an entire parcel shall receive credit for the interest the cotenant already owns and shall receive a corresponding reduction in the amount of money owed after deducting the costs and fees associated with the sale. When making a joint offer, cotenants may aggregate the credit for the cotenants' interests."

SECTION 3. G.S. 46-28.1 reads as rewritten:

"**§ 46-28.1. Petition for revocation of confirmation order.**

(a) Notwithstanding G.S. 46-28 or any other provision of law, an order confirming the partition sale of real property shall not become final and effective until 15 days after entered. At any time before the confirmation order becomes final and effective, any party to the partition proceeding or the purchaser may petition the court to revoke its order of confirmation and to order the withdrawal of the purchaser's offer to purchase the property upon the following grounds:

(1) In the case of a purchaser, a lien remains unsatisfied on the property to be conveyed.

(2) In the case of any party to the partition proceeding:

a. Notice of the partition was not served on the petitioner for revocation as required by Rule 4 of the Rules of Civil Procedure; or

b. Notice of the sale was not mailed to the petitioner for revocation as required by G.S. 46-28(b); or

c. The amount bid or price offered is inadequate and inequitable and will result in irreparable damage to the owners of the real property.

In no event shall the confirmation order become final or effective during the pendency of a petition under this section. No upset bid shall be permitted after the entry of the confirmation order.

(b) The party petitioning for revocation shall deliver a copy of the petition to all parties required to be served under Rule 5 of G.S. 1A-1, and the officer or person designated to make such sale in the manner provided for service of process in Rule 4(j) of G.S. 1A-1. The court shall schedule a hearing on the petition within a reasonable time and shall cause a notice of the hearing to be served on the petitioner, the officer or person designated to make such a sale and all parties required to be served under Rule 5 of G.S. 1A-1.

(c) In the case of a petition brought under this section by a purchaser claiming the existence of an unsatisfied lien on the property to be conveyed, if the purchaser proves by a preponderance of the evidence that:

(1) A lien remains unsatisfied on the property to be conveyed; and

(2) The purchaser has not agreed in writing to assume the lien; and

(3) The lien will not be satisfied out of the proceeds of the sale; and

(4) The existence of the lien was not disclosed in the notice of sale of the property, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer.

The order of the court in revoking an order of confirmation under this section may not be introduced in any other proceeding to establish or deny the existence of a lien.

(d) In the case of a petition brought pursuant to this section by a party to the partition proceeding, if the court finds by a preponderance of the evidence that petitioner has proven a case pursuant to a., b., or c. of subsection (a)(2), the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer.

(d1) In the case of a petition brought pursuant to sub-subdivision c. of subdivision (2) of subsection (a) of this section, the court shall order an independent appraisal. Based on the appraisal, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer. The cost of an independent appraisal shall be apportioned to all parties, pro rata.

(e) If the court revokes its order of confirmation under this section, the court shall order a resale. The procedure for a resale is the same as is provided for an original public sale under Article 29A of Chapter 1 of the General Statutes."

SECTION 4. This act becomes effective October 1, 2009.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 880

Short Title:	Certificates of Rehabilitation.	(Public)
Sponsors:	Senator Atwater.	
Referred to:	Judiciary II.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE POST-RELEASE SUPERVISION AND PAROLE COMMISSION TO CONSIDER REQUESTS FOR AND ISSUE CERTIFICATES OF REHABILITATION FOR NONVIOLENT EX-OFFENDERS WHO HAVE DEMONSTRATED SIGNIFICANT REHABILITATION IN ORDER TO ASSIST THOSE OFFENDERS IN OBTAINING EMPLOYMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-266 is amended by adding a new subsection to read:

"(f) The Commission may accept and consider requests from nonviolent ex-offenders for the issuance of a certificate of rehabilitation. For purposes of this subsection, a certificate of rehabilitation is a document that may be supplied to prospective employers stating that, in the opinion of the Commission, the ex-offender for whom the certificate is issued has demonstrated significant rehabilitation and is worthy of consideration for employment. The Commission shall develop appropriate requirements for application for a certificate of rehabilitation and shall develop procedures for determining whether to issue such a certificate to an applicant."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 978

Short Title:	Firearms Qualification Sites/Retired LEOs.	(Public)
Sponsors:	Senators Bingham; and Hartsell.	
Referred to:	Education/Higher Education.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION TO COORDINATE WITH LOCAL AND STATE LAW ENFORCEMENT OFFICERS AND WITH THE COMMUNITY COLLEGE SYSTEM TO PROVIDE MULTIPLE FIREARMS QUALIFICATION SITES FOR CERTIFICATION TO CARRY A CONCEALED HANDGUN PURSUANT TO FEDERAL LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-415.26 is amended by adding a new subsection to read:

"(b1) The Commission shall coordinate with local and State law enforcement officers and with the community college system to provide multiple firearms qualification sites throughout the State where a qualified law enforcement officer may satisfy the firearms qualification criteria required for certification under this section."

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

SENATE BILL 978:
Firearms Qualification Sites/Retired LEOs

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	April 30, 2009
Introduced by:	Sen. Bingham	**Prepared by:**	Jennifer McGinnis
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 978 would require the North Carolina Criminal Justice Education and Training Standards Commission (Commission) to coordinate with local and State law enforcement officers and with the community college system to provide multiple firearms qualification sites throughout the State where qualified law enforcement officers may satisfy the firearms qualification criteria required for certification under the statutes.***

CURRENT LAW: In 2007, the General Assembly enacted SL 2007-427, which waived the requirement to obtain a concealed handgun permit for certain persons authorized by federal law to carry concealed handguns, if they are in compliance with federal law, and for certain federal and state retired law enforcement officers. The act gave the Commission the responsibility and authority to establish the necessary standards and guidelines to certify and recertify qualified retired law enforcement officers to carry concealed weapons, pursuant to federal law, and to adopt rules and charge a reasonable fee. A qualified retired law enforcement officer may apply to the Commission for certification, instead of applying for a concealed carry permit. The Commission is required to notify the person of the limitations applicable under federal or State law, but failure to receive such a notification is not a defense to a violation of federal or State laws.[1]

BILL ANALYSIS: The bill would amend the statute that provides that in lieu of obtaining a concealed handgun permit, a qualified retired law enforcement officer may apply to the Commission for certification. The bill would add a requirement to the statute that the Commission coordinate with local and State law enforcement officers and with the community college system to provide multiple firearms qualification sites throughout the State where qualified law enforcement officers may satisfy the firearms qualification criteria required for certification.

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

S978-SMRI-27(e1) v1

[1] GS 14-415.25 and GS 14-415.26.

program is located and shall be readily accessible to the public. The register shall be updated weekly and display accurate data regarding the following information:

(1) The name, location, and funding source of the pretrial release program.
(2) The number of defendants assessed and interviewed for pretrial release.
(3) The number of indigent defendants assessed and interviewed for pretrial release.
(4) The names and number of defendants accepted into the pretrial release program.
(5) The names and number of indigent defendants accepted into the pretrial release program.
(6) The charges filed against and the case numbers of defendants accepted into the pretrial release program.
(7) The nature of any prior criminal conviction of a defendant accepted into the pretrial release program.
(8) The court appearances required of defendants accepted into the pretrial release program.
(9) The date of each defendant's failure to appear for a scheduled court appearance.
(10) The number of warrants, if any, that have been issued for a defendant's arrest for failing to appear at a scheduled court appearance.
(11) The number and type of program noncompliance infractions committed by a defendant in the pretrial release program and whether the pretrial release program recommended that the court revoke the defendant's release.

"**§ 132-23. Annual report.**

Annual report. – No later than March 31 of each year, each pretrial release program shall submit an annual report for the previous calendar year to the county commissioners and to the clerk of superior court in the county where the pretrial release program is located. The annual report shall be readily accessible to the public. The annual report shall contain all of the following:

(1) The name, location, and funding sources of the pretrial release program, including the amount of public funds, if any, received by the pretrial release program.
(2) The operating and capital budget of each pretrial release program receiving public funds.
(3) The following financial information:
  a. The percentage of the pretrial release program's total budget representing receipt of public funds.
  b. The percentage of the total budget which is allocated to assisting defendants obtain release through a nonpublicly funded program.
  c. The amount of fees paid by defendants to the pretrial release program.
(4) The number of persons employed by the pretrial release program.
(5) The number of defendants assessed and interviewed for pretrial release.
(6) The number of defendants recommended for pretrial release.
(7) The number of defendants for whom the pretrial release program recommended against nonsecured release.
(8) The number of defendants granted nonsecured release after the pretrial release program recommended nonsecured release.
(9) The number of defendants assessed and interviewed for pretrial release who were declared indigent by the court.
(10) The name and case number of each person granted nonsecured release who:

a. Failed to attend a scheduled court appearance.
b. Was issued a warrant for failing to appear.
c. Was arrested for any offense while on release through the pretrial release program.

(11) Any additional information deemed necessary by the county commissioners of the county in which the program is operating to assess the performance and cost-efficiency of the pretrial release program."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1013
PROPOSED COMMITTEE SUBSTITUTE S1013-CSRV-37 [v.1]

5/11/2009 4:51:35 PM

Short Title: Citizens' Right to Know Act/Pretrial Release. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO DIRECT EACH PRETRIAL RELEASE PROGRAM TO PREPARE AND MAINTAIN A PUBLIC REGISTER THAT MAKES READILY ACCESSIBLE TO THE PUBLIC CERTAIN INFORMATION REGARDING THE PRETRIAL RELEASE PROGRAM AND THE DEFENDANTS RELEASED THROUGH THE PROGRAM, TO REQUIRE THAT A COPY OF THE REGISTER BE LOCATED IN THE OFFICE OF THE APPROPRIATE CLERK OF COURT, AND TO REQUIRE THAT EACH PRETRIAL RELEASE PROGRAM SUBMIT AN ANNUAL REPORT THAT INCLUDES CERTAIN INFORMATION REGARDING THE PRETRIAL RELEASE PROGRAM AND THE DEFENDANTS RELEASED THROUGH THE PROGRAM TO THE COUNTY COMMISSIONERS AND THE CLERK OF COURT IN THE APPROPRIATE COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Chapter 132 of the General Statutes is amended by constituting G.S. 132-1 through G.S. 132-10 into a new Article 1, entitled "General Provisions."

SECTION 1.(b) Chapter 132 of the General Statutes is amended by adding a new Article to read:

"Article 2.
"Citizens Right to Know Act.

"**§ 132-20. Short title.**

This Article may be cited as the "Citizens Right to Know Act."

"**§ 132-21. Definitions.**

Definitions. – The following definitions apply in this Article:

(1) Nonsecured release. – The release of a defendant from pretrial custody when no secured surety or cash bond is required as a condition of the release.

(2) Pretrial release program. – An entity, public or private, that conducts investigations of pretrial detainees, makes pretrial release recommendations to a court, or electronically monitors or supervises pretrial defendants. The term does not include the Department of Correction.

(3) Register. – A public record prepared by a pretrial release program that furnishes specified data and is readily available to the public at the office of the Clerk of Superior Court.

"**§ 132-22. Pretrial release register.**

Pretrial release register. – Each pretrial release program shall prepare a register displaying information that is relevant to the defendants released through the program. A copy of the register shall be located at the office of the clerk of superior court in the county where the program is located and shall be readily accessible to the public. The register shall be updated monthly and display accurate data regarding the following information:

(1) The name, location, and funding source of the pretrial release program.
(2) The number of defendants assessed and interviewed for pretrial release.
(3) The names and number of defendants accepted into the pretrial release program.
(4) The charges filed against and the case numbers of defendants accepted into the pretrial release program.
(5) The court appearances required of each defendant accepted into the pretrial release program.
(6) The number of each defendant's failure to appear for a scheduled court appearance.
(7) The program noncompliance infractions committed by a defendant in the pretrial release program and whether the pretrial release program recommended that the court revoke the defendant's release.

"**§ 132-23. Annual report.**

Annual report. – No later than March 31 of each year, each pretrial release program shall submit an annual report for the previous calendar year to the county commissioners and to the clerk of superior court in the county where the pretrial release program is located. The annual report shall be readily accessible to the public. The annual report shall contain all of the following:

(1) The name, location, and funding sources of the pretrial release program, including the amount of public funds, if any, received by the pretrial release program.
(2) The operating and capital budget of each pretrial release program receiving public funds.
(3) The following financial information:
  a. The percentage of the pretrial release program's total budget representing receipt of public funds.
  b. The percentage of the total budget which is allocated to assisting defendants obtain release through a nonpublicly funded program.
  c. The amount of fees paid by defendants to the pretrial release program.
(4) The number of persons employed by the pretrial release program.
(5) The number of defendants assessed and interviewed for pretrial release.
(6) The number of defendants recommended for pretrial release.
(7) The number of defendants for whom the pretrial release program recommended against nonsecured release.
(8) The number of defendants granted nonsecured release after the pretrial release program recommended nonsecured release.
(9) The name and case number of each person granted nonsecured release who:
  a. Failed to attend a scheduled court appearance.
  b. Was arrested for any offense while on release through the pretrial release program.
(10) Any additional information deemed necessary by the county commissioners of the county in which the program is operating to assess the performance and cost-efficiency of the pretrial release program."

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

SENATE BILL 1062*
Judiciary II Committee Substitute Adopted 5/6/09

Short Title: Strengthen Dom. Vio. Protective Orders/Pets. (Public)

Sponsors:

Referred to:

March 31, 2009

A BILL TO BE ENTITLED

AN ACT STRENGTHENING DOMESTIC VIOLENCE PROTECTIVE ORDERS TO PROVIDE FOR THE PROTECTION OF PETS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50B-3(a) reads as rewritten:

"(a) If the court, including magistrates as authorized under G.S. 50B-2(c1), finds that an act of domestic violence has occurred, the court shall grant a protective order restraining the defendant from further acts of domestic violence. A protective order may include any of the following types of relief:

(1) Direct a party to refrain from such acts.

(2) Grant to a party possession of the residence or household of the parties and exclude the other party from the residence or household.

(3) Require a party to provide a spouse and his or her children suitable alternate housing.

(4) Award temporary custody of minor children and establish temporary visitation rights pursuant to G.S. 50B-2 if the order is granted ex parte, and pursuant to subsection (a1) of this section if the order is granted after notice or service of process.

(5) Order the eviction of a party from the residence or household and assistance to the victim in returning to it.

(6) Order either party to make payments for the support of a minor child as required by law.

(7) Order either party to make payments for the support of a spouse as required by law.

(8) Provide for possession of personal property of the parties.

(9) Order a party to refrain from doing any or all of the following:

a. Threatening, abusing, or following the other party.

b. Harassing the other party, including by telephone, visiting the home or workplace, or other means.

c. Otherwise interfering with the other party.

(10) Award attorney's fees to either party.

(11) Prohibit a party from purchasing a firearm for a time fixed in the order.

(12) Order any party the court finds is responsible for acts of domestic violence to attend and complete an abuser treatment program if the program is approved by the Domestic Violence Commission.

(12a) Provide for the care, custody, and control of any animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household.

(12b) Direct a party to refrain from the cruel treatment or abuse of an animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household.

(13) Include any additional prohibitions or requirements the court deems necessary to protect any party or any minor child."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1062*
Judiciary II Committee Substitute Adopted 5/6/09
PROPOSED COMMITTEE SUBSTITUTE S1062-CSSB-36 [v.1]

5/11/2009 4:56:09 PM

Short Title: Strengthen Dom. Vio. Protective Orders/Pets. (Public)

Sponsors:

Referred to:

March 31, 2009

A BILL TO BE ENTITLED

AN ACT STRENGTHENING DOMESTIC VIOLENCE PROTECTIVE ORDERS TO PROVIDE FOR THE PROTECTION OF PETS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50B-3(a) reads as rewritten:

"(a) If the court, including magistrates as authorized under G.S. 50B-2(c1), finds that an act of domestic violence has occurred, the court shall grant a protective order restraining the defendant from further acts of domestic violence. A protective order may include any of the following types of relief:

(1) Direct a party to refrain from such acts.

(2) Grant to a party possession of the residence or household of the parties and exclude the other party from the residence or household.

(3) Require a party to provide a spouse and his or her children suitable alternate housing.

(4) Award temporary custody of minor children and establish temporary visitation rights pursuant to G.S. 50B-2 if the order is granted ex parte, and pursuant to subsection (a1) of this section if the order is granted after notice or service of process.

(5) Order the eviction of a party from the residence or household and assistance to the victim in returning to it.

(6) Order either party to make payments for the support of a minor child as required by law.

(7) Order either party to make payments for the support of a spouse as required by law.

(8) Provide for possession of personal property of the ~~parties.~~parties, including the care, custody, and control of any animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household.

(9) Order a party to refrain from doing any or all of the following:

a. Threatening, abusing, or following the other party.

b. Harassing the other party, including by telephone, visiting the home or workplace, or other means.

b1. Cruelly treating or abusing an animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household.

c. Otherwise interfering with the other party.

(10) Award attorney's fees to either party.

(11) Prohibit a party from purchasing a firearm for a time fixed in the order.

(12) Order any party the court finds is responsible for acts of domestic violence to attend and complete an abuser treatment program if the program is approved by the Domestic Violence Commission.

(13) Include any additional prohibitions or requirements the court deems necessary to protect any party or any minor child."

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

Senate Judiciary II Committee
Tuesday, May 12, 2009, 60:00 PM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 12	Ban Mobile Phone Use While Driving.	Senator Dannelly
SB 372	Clarification of Nuisance Abatement Laws.	Senator Boseman

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE
Tuesday, May 12, 2009 at 9:00-11:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 6:00 PM on May 12, 2009, in Room 1124 of the Legislative Building with eight members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

SB 12 – (Ban Mobile Phone Use While Driving.) Senator Allran moved to adopt the Proposed Committee Substitute for the purpose of discussion. All voted and the motion carried. No further action was taken on the bill.

SB 372 – (Clarification of Nuisance Abatement Laws.) Senator Jones moved to adopt the Proposed Committee Substitute for the purpose of discussion. All voted and the motion carried. Senator Vaughan presented his report from the sub-committee. Ms. Kory Goldsmith, Staff Attorney, gave additional information. After clarifying discussion, Senator Allran moved for a favorable report, unfavorable to the original bill. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, May 12, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

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

S.B. **372** Clarification of Nuisance Abatement Laws.

Draft Number:	PCS 35329
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 12
PROPOSED COMMITTEE SUBSTITUTE S12-CSRC-26 [v.1]

5/12/2009 11:34:22 AM

Short Title: Ban Mobile Phone Use While Driving. (Public)

Sponsors:

Referred to:

January 29, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE USING A MOBILE PHONE OR ACCESSING ADDITIONAL TECHNOLOGY UNLAWFUL WHILE OPERATING A MOTOR VEHICLE ON A PUBLIC STREET OR HIGHWAY OR PUBLIC VEHICULAR AREA AND TO APPROPRIATE FUNDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-137.4 reads as rewritten:

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

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

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

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

(3) Mobile telephone. – As defined in G.S. 20-137.3(a)(2).

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

(5) Wireless telephone service. – As defined in G.S. 20-137.3(a)(3).

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

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

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

(1) The use of a mobile telephone for the sole purpose of communicating with any of the following regarding an emergency situation: an emergency response operator; a hospital, physician's office, or health clinic; a public or privately owned ambulance company or service; a fire department; or a law enforcement agency.

(2) Any of the following while in the performance of their official duties: a law enforcement officer; a member of a fire department; or the operator of a public or private ambulance.

(3) The use of a hands-free mobile telephone to make a call only and not for the purpose of accessing additional technology.

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

(f) Penalty. – A violation of this section by a person driving a school bus shall be a Class 2 misdemeanor and shall be punishable by a fine of not less than one hundred dollars ($100.00). A violation of this section by any other driver who is 18 years old or older and not subject to the provisions of G.S. 20-137.3 shall be an infraction and shall be punishable by a fine of one hundred dollars ($100.00) and the cost of court. No drivers license points or insurance surcharge shall be assessed as a result of a violation of this section. Failure to comply with the provisions of this section shall not constitute negligence per se or contributory negligence by the operator in any action for the recovery of damages arising out of the operation, ownership, or maintenance of a ~~school bus.~~motor vehicle."

SECTION 2. There is appropriated from the General Fund to the Department of Transportation, Division of Motor Vehicles, the sum of ten thousand dollars ($10,000) for the 2009-2010 fiscal year for the implementation of Section 1 of this Act.

SECTION 3. Section 1 of this act becomes effective December 1, 2009, and applies to offenses committed on or after that date. Section 2 of this act becomes effective July 1, 2009. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2009

S 1

SENATE BILL 12

Short Title:	Ban Mobile Phone Use While Driving.	(Public)
Sponsors:	Senators Dannelly; Dorsett, Forrester, Garrou, Goss, Jones, Malone, and Purcell.	
Referred to:	Commerce.	

January 29, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE USING A MOBILE PHONE OR ACCESSING ADDITIONAL TECHNOLOGY UNLAWFUL WHILE OPERATING A MOTOR VEHICLE ON A PUBLIC STREET OR HIGHWAY OR PUBLIC VEHICULAR AREA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-137.4 reads as rewritten:

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

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

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

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

(3) Mobile telephone. – As defined in G.S. 20-137.3(a)(2).

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

(5) Wireless telephone service. – As defined in G.S. 20-137.3(a)(3).

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

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

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

(1) The use of a mobile telephone for the sole purpose of communicating with any of the following regarding an emergency situation: an emergency response operator; a hospital, physician's office, or health clinic; a public or privately owned ambulance company or service; a fire department; or a law enforcement agency.

(2) Any of the following while in the performance of their official duties: a law enforcement officer; a member of a fire department; or the operator of a public or private ambulance.

(3) The use of a hands-free mobile telephone to make a call only and not for the purpose of accessing additional technology.

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

(f) Penalty. – A violation of this section by a person driving a school bus shall be a Class 2 misdemeanor and shall be punishable by a fine of not less than one hundred dollars ($100.00). A violation of this section by any other driver who is 18 years old or older and not subject to the provisions of G.S. 20-137.3 shall be an infraction and shall be punishable by a fine of one hundred dollars ($100.00) and the cost of court. No drivers license points or insurance surcharge shall be assessed as a result of a violation of this section. Failure to comply with the provisions of this section shall not constitute negligence per se or contributory negligence by the operator in any action for the recovery of damages arising out of the operation, ownership, or maintenance of a ~~school bus.~~motor vehicle."

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 372
PROPOSED COMMITTEE SUBSTITUTE S372-PCS35329-RC-27

Short Title: Clarification of Nuisance Abatement Laws. (Public)

Sponsors:

Referred to:

March 4, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY TYPES OF NUISANCES WHEREIN OBSCENE OR LEWD MATTER OR OTHER CONDUCT PROHIBITED IS INVOLVED AND TO PROVIDE THAT INDIVIDUALS ENGAGED IN A PATTERN OF STREET GANG ACTIVITY ARE SUBJECT TO INJUNCTIONS PURSUANT TO CHAPTER 19 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

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

"**§ 19-1. What are nuisances under this Chapter.**

(a) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place for the purpose of regular and repeated acts of assignation, prostitution, gambling, illegal possession or sale of alcoholic beverages, illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or illegal possession or sale of obscene or lewd matter, as defined in this Chapter, shall constitute a nuisance."

SECTION 1.1. G.S. 19-1.2 reads as rewritten:

"**§ 19-1.2. Types of nuisances.**

The following are declared to be nuisances wherein obscene or lewd matter or other conduct prohibited in G.S. 19-1(a) is involved:

(1) Any and every place in the State where lewd films are publicly exhibited as a predominant ~~and regular~~ course of business, or possessed for the purpose of such ~~exhibition;~~exhibition.

(2) Any and every place in the State where a lewd film is publicly and repeatedly exhibited, or possessed for the purpose of such ~~exhibition;~~exhibition.

(3) Any and every lewd film which is publicly exhibited, or possessed for such purpose at a place which is a nuisance under this ~~Article;~~Article.

(4) Any and every place of business in the State in which lewd publications constitute a principal or substantial part of the stock in ~~trade;~~trade.

(5) Any and every lewd publication possessed at a place which is a nuisance under this ~~Article;~~Article.

(6) Every place ~~which, as a regular course of business,~~ which is used for the regular and repeated purposes of lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of

controlled substances as defined in the North Carolina Controlled Substances Act, or prostitution, and every such place in or upon which acts of lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or prostitution, are held or occur. Knowledge of, acquiescence to, or participation in the regular and repeated activities proscribed by this Chapter by any person charged with maintaining a nuisance shall be prima facie evidence that the person used the place for the purposes of such activities."

SECTION 2. G.S. 19-1.1(1a) reads as rewritten:

"**§ 19-1.1. Definitions.**

As used in this Chapter relating to illegal possession or sale of obscene matter or to the other conduct prohibited in G.S. 19-1(a), the following definitions shall apply:

...

(1a) "Knowledge" or "knowledge of such nuisance" means having knowledge of the contents and character of the patently offensive sexual conduct which appears in the lewd matter, or knowledge of the acts of lewdness. With regard to nuisances involving assignation, prostitution, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or repeated acts which create and constitute a breach of the ~~peace;~~peace, or repeated activities or conditions which violate a local ordinance regulating sexually oriented businesses, or evidence that the defendant knew or by the exercise of due diligence should have known of the acts or conduct constitutes proof of knowledge."

SECTION 3. G.S. 19-1.3 reads as rewritten:

"**§ 19-1.3. Personal property as a nuisance; knowledge of nuisance.**

The following are also declared to be nuisances, as personal property used in conducting and maintaining a nuisance under this Chapter:

(1) All moneys paid as admission price to the exhibition of any lewd film found to be a ~~nuisance;~~nuisance.

(2) All valuable consideration received for the sale of any lewd publication which is found to be a ~~nuisance;~~nuisance.

(3) All money or other valuable consideration, vehicles, conveyances, or other property received or used in gambling, prostitution, the illegal sale of alcoholic ~~beverages or~~beverages, the illegal sale of substances proscribed under the North Carolina Controlled Substances ~~Act;~~Act, or the operation of a sexually oriented business in violation of G.S. 19-1(b1).~~as well as the furniture and movable contents of a place used in connection with such prohibited conduct.~~

(4) The furniture and movable contents of a place used in connection with conduct prohibited by G.S. 19-1(a), (b), or (b1).

From and after service of a copy of the notice of hearing of the application for a preliminary injunction, provided for in G.S. 19-2.4 upon the place, or its manager, or acting manager, or person then in charge, all such parties are deemed to have knowledge of the contents of the restraining order and the use of the place occurring thereafter. Where the circumstantial proof warrants a determination that a person had knowledge of the nuisance prior to such service of process, the court may make such finding."

SECTION 4. G.S. 19-2.1 reads as rewritten:

"**§ 19-2.1. Action for abatement; injunction.**

Wherever a nuisance is kept, maintained, or exists, as defined in this Article, the Attorney General, district attorney, county, municipality, or any private citizen of the county may maintain a civil action in the name of the State of North Carolina to abate a nuisance under this Chapter, perpetually to enjoin all persons from maintaining the same, and to enjoin the use of any structure or thing adjudged to be a nuisance under this Chapter; provided, however, that no private citizen may maintain such action where the alleged nuisance involves the illegal possession or sale of obscene or lewd matter.

Upon request from the Attorney General, district attorney, county or municipality, including the sheriff or chief of police of any county or municipality, the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety or any other law enforcement agency with jurisdiction may investigate alleged public nuisances and make recommendations regarding actions to abate the public nuisances.

If an action is instituted by a private person, the complainant shall execute a bond prior to the issuance of a temporary restraining order or a ~~temporary~~ preliminary injunction, with good and sufficient surety to be approved by the court or clerk thereof, in the sum of not less than one thousand dollars ($1,000), to secure to the party enjoined the damages he may sustain if such action is wrongfully brought, not prosecuted to final judgment, or is dismissed, or is not maintained, or if it is finally decided that the temporary restraining order or preliminary injunction ought not to have been granted. The party enjoined shall have recourse against said bond for all damages suffered, including damages to his property, person, or character and including reasonable attorney's fees incurred by him in making defense to said action. No bond shall be required of the prosecuting attorney, the Attorney General, county, or municipality, and no action shall be maintained against any public official or public entity, their employees, or agents for investigating or maintaining an action for abatement of a nuisance under the provisions of this Chapter."

SECTION 5. G.S. 19-2.3 reads as rewritten:

"**§ 19-2.3. Temporary order restraining removal of personal property from premises; service; punishment.**

Where such application for a preliminary injunction is made, the court may, on application of the complainant showing good cause, issue an ex parte temporary restraining order in accordance with G.S. 1A-1, Rule 65(b), preserving the status quo and restraining the defendant and all other persons from removing or in any manner interfering with any evidence specifically described, or in any manner removing or interfering with the personal property and contents of the place where such nuisance is alleged to exist, until the decision of the court granting or refusing such preliminary injunction and until further order of the court thereon. Nothing herein shall be interpreted to allow the prior restraint of the distribution of any matter or the sale of the stock in trade, but an inventory and full accounting of all business transactions involving alleged obscene or lewd matter thereafter shall be required. The inventory provisions provided by this section shall not apply to nuisances occurring at a private dwelling place unless the court finds the private dwelling place is used for profit.

Any person, firm, or corporation enjoined pursuant to this section may file with the court a motion to dissolve any temporary restraining order. Such a motion shall be heard within 24 hours of the time a copy of the motion is served on the complaining party, or on the next day the superior courts are open in the district, whichever is later. At such hearing the complaining party shall have the burden of showing why the restraining order should be continued.

In the event a temporary restraining order is issued, it may be served in accordance with the provisions of G.S. 1A-1, Rule 4, or may be served by handing to and leaving a copy of such order with any person in charge of such place or residing therein, or by posting a copy thereof in a conspicuous place at or upon one or more of the principal doors or entrances to such place, or by such service under said ~~Rule 4, delivery and posting.~~ Rule 4. The officer serving such temporary restraining order shall forthwith enter upon the property and make and return into

court an inventory of the personal property and contents situated in and used in conducting or maintaining such nuisance.

Any violation of such temporary restraining order is a contempt of court, and where such order is posted, mutilation or removal thereof, while the same remains in force, is a contempt of court, provided such posted order contains therein a notice to that effect."

SECTION 6. G.S. 19-3(a) reads as rewritten:

"(a) The action provided for in this Chapter ~~shall~~ shall, on application of either of the parties, be set down for trial at the first term of the court and shall have precedence over all other cases except crimes, election contests, or injunctions."

SECTION 7. G.S. 19-6 reads as rewritten:

"**§ 19-6. Civil penalty; forfeiture; accounting; lien as to expenses of abatement; invalidation of lease.**

Lewd matter is contraband, and there are no property rights therein. All personal property, including all money and other considerations, declared to be a nuisance under the provisions of G.S. 19-1.3 and other sections of this Article, are subject to forfeiture to the local government and are recoverable as damages in the county wherein such matter is sold, exhibited or otherwise used. Such property including moneys may be traced to and shall be recoverable from persons who, under G.S. 19-2.4, have knowledge of the nuisance at the time such moneys are received by them.

Upon judgment against the defendant or defendants in legal proceedings brought pursuant to this Article, an accounting shall be made by such defendant or defendants of all moneys received by them which have been declared to be a nuisance under this Article. An amount equal to the sum of all moneys estimated to have been taken in as gross income from such unlawful commercial activity shall be forfeited to the general funds of the city and county governments wherein such activity took place, to be shared equally, as a forfeiture of the fruits of an unlawful enterprise, and as partial restitution for damages done to the public welfare; provided, however, that no provision of this Article shall authorize the recovery of any moneys or gross income received from the sale of any book, magazine, or exhibition of any motion picture prior to the issuance of a preliminary injunction. Where the action is brought pursuant to this Article, special injury need not be proven, and the costs of abatement are a lien on both the real and personal property used in maintaining the nuisance. Costs of abatement include, but are not limited to, reasonable attorney's fees and court costs.

Upon the filing of the action, the plaintiff may file a notice of lis pendens in the official records of the county where the property is located.

If it is judicially found after an adversary hearing pursuant to this Article that a tenant or occupant of a building or tenement, under a lawful title, uses such place for the purposes of lewdness, assignation, prostitution, gambling, sale or possession of illegal alcoholic beverages or substances proscribed under the North Carolina Controlled Substances Act, or repeated acts which create and constitute a breach of the ~~peace,~~ peace, or repeated acts or omissions that violate a local ordinance regulating sexually oriented businesses, or such use makes void the lease or other title under which he holds, at the option of the owner, and, without any act of the owner, causes the right of possession to revert and vest in such owner.

The clear proceeds of civil penalties and forfeitures provided for in this section, except for penalties and properties that accrue to local governments instead of the State, shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 8. G.S. 19-6.1 reads as rewritten:

"**§ 19-6.1. Forfeiture of real property.**

In all actions where a preliminary injunction, permanent injunction, or an order of abatement is issued pursuant to this Article in which the nuisance consists of or includes at least two prior occurrences within five years of the manufacture, possession with intent to sell, or sale of controlled substances as defined by the North Carolina Controlled Substances Act, two

prior occurrences of the possession of any controlled substance included within Schedule I or II of that Act, or two prior convictions within five years of violation of G.S. 14-72.7, the real property on which the nuisance exists or is maintained is subject to forfeiture in accordance with this section. In the case of the two prior convictions of G.S. 14-72.7, the convictions shall not arise out of the same transaction or occurrence.

If all of the owners of the property are defendants in the action, the plaintiff, other than a plaintiff who is a private citizen, may request forfeiture of the real property as part of the relief sought. If forfeiture is requested, and if jurisdiction over all defendant owners is established, upon judgment against the defendant or defendants, the court shall order forfeiture as follows:

(1) If the court finds by clear and convincing evidence that all the owners either (i) have participated in maintaining the nuisance on the property, or (ii) prior to the action had written notice from the plaintiff, or any governmental agent or entity authorized to bring an action pursuant to this Chapter, that the nuisance existed or was maintained on the property and have not made good faith efforts to stop the nuisance from occurring or recurring, the court shall order that the property be forfeited;

(2) If the court finds that one or more of the owners did not participate in maintaining the nuisance on the property or did not have written notice from the plaintiff prior to the action that the nuisance existed or was maintained on the property, the court shall not order forfeiture of the property immediately upon judgment. However, if after judgment and an order directing the defendants to abate the nuisance, the nuisance either continues, begins again, or otherwise recurs within five years of the order and the defendants have not made good faith efforts to abate the nuisance, the plaintiff may petition the court for forfeiture. Upon such petition, the defendant owner or owners shall be given notice and an opportunity to appear and be heard at a hearing to determine the continuation or recurrence of the nuisance. If, in this hearing (i) the plaintiff establishes by clear and convincing evidence that the nuisance, with the owner's or owners' knowledge, has either continued, begun again, or otherwise recurred, and (ii) the defendants fail to establish that they have made and are continuing to make good faith efforts to abate the nuisance, the court shall order that the property be forfeited.

For the purposes of this section, factors which may evidence good faith by the defendant to abate the nuisance include but are not limited to (i) cooperation with law enforcement authorities to abate the nuisance; (ii) lease restrictions prohibiting the illegal possession or sale of ~~narcotic drugs~~controlled substances and an action to evict a tenant for any violations of the lease provision; (iii) a criminal record check of prospective tenants; and (iv) reference checks of prior residency of prospective tenants.

Upon an order of forfeiture, title to the property shall vest in the school board of the county in which the property is located. If at the time of forfeiture the property is subject to a lien or security interest of a person not participating in the maintenance of the nuisance, the school board shall either (i) pay an amount to that person satisfying the lien or security interest; or (ii) sell the property and satisfy the lien or security interest from the proceeds of the sale. If the property is not subject to any lien or security interest at the time of forfeiture, the school board may hold, maintain, lease, sell, or otherwise dispose of the property as it sees fit.

Upon the filing of the action, the plaintiff may file a notice of lis pendens in the official records of the county where the property is located. If the plaintiff files a notice of lis pendens, any person purchasing or obtaining an interest in the property thereafter shall be considered to have notice of the alleged nuisance, and shall forfeit his interest in the property upon a judgment of forfeiture in favor of the plaintiff.

If in the same action in which real property is forfeited the court finds that a tenant or occupant of the property participated in or maintained the nuisance, the lease or other title under which the tenant or occupant holds is void, and the right of possession vests in the new owner. Upon forfeiture, the rights of innocent tenants occupying separate units of the property who were not involved in the nuisance at the time the action was filed shall be in accordance with any relevant lease provisions in effect at the time or, in the absence of relevant lease provisions, in accordance with the law applying to other tenants or occupants of property that is sold, foreclosed upon, or otherwise obtained by new owners."

SECTION 9. G.S. 14-50.24 is repealed.

SECTION 10. Chapter 14 of the General Statutes is amended by adding a new Article to read:

"Article 13B.

"North Carolina Street Gang Nuisance Abatement Act.

"**§ 14-50.31. Short title.**

This Article shall be known and may be cited as the "North Carolina Street Gang Nuisance Abatement Act."

"**§ 14-50.32. Real property used by criminal street gangs declared a public nuisance; abatement.**

(a) Public Nuisance. – Any real property that is erected, established, maintained, owned, leased, or used by any criminal street gang for the purpose of conducting criminal street gang activity, as defined in G.S. 14-50.16, shall constitute a public nuisance and may be abated as provided by Article 1 of Chapter 19 of the General Statutes.

(b) Innocent Activities. – The provisions of this section shall not apply to real property used for criminal street gang activity where the owner or person who has legal possession of the real property does not have actual knowledge that the real property is being used for criminal street gang activity.

"**§ 14-50.33. Street gangs declared a public nuisance.**

(a) A street gang, as defined in G.S. 14-50.16(b), which regularly associates in street gang activities, as defined in G.S. 14-50.16(c), constitutes a public nuisance. For the purposes of this section, "regularly" means at least five times in a period not more than 12 months.

(b) Any person who regularly associates with others to engage in street gang activity, as defined in G.S. 14-50.16, may be made a defendant in a suit, brought pursuant to Chapter 19 of the General Statutes, to abate any public nuisance resulting from street gang activity.

(c) If the court finds that a public nuisance exists under this section, the court may enter an order enjoining the defendant in the suit from engaging in gang activities and impose other reasonable requirements to prevent the defendant or a gang from engaging in future gang activities."

SECTION 11. This act becomes effective October 1, 2009, and applies to offenses committed and abatement actions commenced on or after that date.

SENATE BILL 372

Short Title:	Clarification of Nuisance Abatement Laws.	(Public)
Sponsors:	Senator Boseman.	
Referred to:	Judiciary II.	

March 4, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY TYPES OF NUISANCES WHEREIN OBSCENE OR LEWD MATTER OR OTHER CONDUCT PROHIBITED IS INVOLVED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 19-1.2(1) reads as rewritten:

"(1) Any and every place in the State where lewd films are publicly exhibited as a predominant ~~and regular~~ course of business, or possessed for the purpose of such exhibition;".

SECTION 2. G.S. 19-1.1(1a) reads as rewritten:

"(1a) "Knowledge" or "knowledge of such nuisance" means having knowledge of the contents and character of the patently offensive sexual conduct which appears in the lewd matter, or knowledge of the acts of lewdness. With regard to nuisances involving assignation, prostitution, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or repeated acts which create and constitute a breach of the ~~peace,~~peace, or repeated activities or conditions which violate a local ordinance regulating sexually oriented businesses, or evidence that the defendant knew or by the exercise of due diligence should have known of the acts or conduct constitutes proof of knowledge."

SECTION 3. G.S. 19-1.2(6) reads as rewritten:

"(6) Every place ~~which, as a regular course of business,~~ which is used for the purposes of lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or prostitution, and every such place in or upon which acts of lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or prostitution, are held or occur. Knowledge of, acquiescence to, or participation in activities proscribed by this Chapter by any person charged with maintaining a nuisance shall be prima facie evidence that the person used the place for the purposes of such activities."

SECTION 4. G.S. 19-1.3(3) reads as rewritten:

"(3) All money or other valuable consideration, vehicles, conveyances, or other property received or used in gambling, prostitution, the illegal sale of alcoholic ~~beverages or~~beverages, the illegal sale of substances proscribed under the North Carolina Controlled Substances ~~Act,~~Act, or the operation of

a sexually oriented business in violation of G.S. 19-1(b1).~~as well as the furniture and movable contents of a place used in connection with such prohibited conduct.~~"

SECTION 5. G.S. 19-1.3 is amended by adding a new subdivision to read:

"(4) The furniture and movable contents of a place used in connection with conduct prohibited by G.S. 19-1(a), (b), or (b1)."

SECTION 6. G.S. 19-2.1 reads as rewritten:

"**§ 19-2.1. Action for abatement; injunction.**

Wherever a nuisance is kept, maintained, or exists, as defined in this Article, the Attorney General, district attorney, county, municipality, or any private citizen of the county may maintain a civil action in the name of the State of North Carolina to abate a nuisance under this Chapter, perpetually to enjoin all persons from maintaining the same, and to enjoin the use of any structure or thing adjudged to be a nuisance under this Chapter; provided, however, that no private citizen may maintain such action where the alleged nuisance involves the illegal possession or sale of obscene or lewd matter.

Upon request from the Attorney General, district attorney, county or municipality, including the sheriff or chief of police of any county or municipality, the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety or any other law enforcement agency with jurisdiction may investigate alleged public nuisances and make recommendations regarding actions to abate the public nuisances.

If an action is instituted by a private person, the complainant shall execute a bond prior to the issuance of a temporary restraining order or a ~~temporary~~ preliminary injunction, with good and sufficient surety to be approved by the court or clerk thereof, in the sum of not less than one thousand dollars ($1,000), to secure to the party enjoined the damages he may sustain if such action is wrongfully brought, not prosecuted to final judgment, or is dismissed, or is not maintained, or if it is finally decided that the temporary restraining order or preliminary injunction ought not to have been granted. The party enjoined shall have recourse against said bond for all damages suffered, including damages to his property, person, or character and including reasonable attorney's fees incurred by him in making defense to said action. No bond shall be required of the prosecuting attorney, the Attorney General, county, or municipality, and no action shall be maintained against any public official or public entity, their employees, or agents for investigating or maintaining an action for abatement of a nuisance under the provisions of this Chapter."

SECTION 7. G.S. 19-2.3 reads as rewritten:

"**§ 19-2.3. Temporary order restraining removal of personal property from premises; service; punishment.**

Where such application for a preliminary injunction is made, the court may, on application of the complainant showing good cause, issue an ex parte temporary restraining order in accordance with G.S. 1A-1, Rule 65(b), preserving the status quo and restraining the defendant and all other persons from removing or in any manner interfering with any evidence specifically described, or in any manner removing or interfering with the personal property and contents of the place where such nuisance is alleged to exist, until the decision of the court granting or refusing such preliminary injunction and until further order of the court thereon. Nothing herein shall be interpreted to allow the prior restraint of the distribution of any matter or the sale of the stock in trade, but an inventory and full accounting of all business transactions involving alleged obscene or lewd matter thereafter shall be required. The inventory provisions provided by this section shall not apply to nuisances occurring at a private dwelling place unless the court finds the private dwelling place is used for profit.

Any person, firm, or corporation enjoined pursuant to this section may file with the court a motion to dissolve any temporary restraining order. Such a motion shall be heard within 24 hours of the time a copy of the motion is served on the complaining party, or on the next day

the superior courts are open in the district, whichever is later. At such hearing the complaining party shall have the burden of showing why the restraining order should be continued.

In the event a temporary restraining order is issued, it may be served in accordance with the provisions of G.S. 1A-1, Rule 4, or may be served by handing to and leaving a copy of such order with any person in charge of such place or residing therein, or by posting a copy thereof in a conspicuous place at or upon one or more of the principal doors or entrances to such place, or by such service under said ~~Rule 4, delivery and posting.~~ Rule 4. The officer serving such temporary restraining order shall forthwith enter upon the property and make and return into court an inventory of the personal property and contents situated in and used in conducting or maintaining such nuisance.

Any violation of such temporary restraining order is a contempt of court, and where such order is posted, mutilation or removal thereof, while the same remains in force, is a contempt of court, provided such posted order contains therein a notice to that effect."

SECTION 8. G.S. 19-3(a) reads as rewritten:

"(a) The action provided for in this Chapter ~~shall~~ shall, on application of either of the parties, be set down for trial at the first term of the court and shall have precedence over all other cases except crimes, election contests, or injunctions."

SECTION 9. G.S. 19-6 reads as rewritten:

"**§ 19-6. Civil penalty; forfeiture; accounting; lien as to expenses of abatement; invalidation of lease.**

Lewd matter is contraband, and there are no property rights therein. All personal property, including all money and other considerations, declared to be a nuisance under the provisions of G.S. 19-1.3 and other sections of this Article, are subject to forfeiture to the local government and are recoverable as damages in the county wherein such matter is sold, exhibited or otherwise used. Such property including moneys may be traced to and shall be recoverable from persons who, under G.S. 19-2.4, have knowledge of the nuisance at the time such moneys are received by them.

Upon judgment against the defendant or defendants in legal proceedings brought pursuant to this Article, an accounting shall be made by such defendant or defendants of all moneys received by them which have been declared to be a nuisance under this Article. An amount equal to the sum of all moneys estimated to have been taken in as gross income from such unlawful commercial activity shall be forfeited to the general funds of the city and county governments wherein such activity took place, to be shared equally, as a forfeiture of the fruits of an unlawful enterprise, and as partial restitution for damages done to the public welfare; provided, however, that no provision of this Article shall authorize the recovery of any moneys or gross income received from the sale of any book, magazine, or exhibition of any motion picture prior to the issuance of a preliminary injunction. Where the action is brought pursuant to this Article, special injury need not be proven, and the costs of abatement are a lien on both the real and personal property used in maintaining the nuisance. Costs of abatement include, but are not limited to, reasonable attorney's fees and court costs.

Upon the filing of the action, the plaintiff may file a notice of lis pendens in the official records of the county where the property is located.

If it is judicially found after an adversary hearing pursuant to this Article that a tenant or occupant of a building or tenement, under a lawful title, uses such place for the purposes of lewdness, assignation, prostitution, gambling, sale or possession of illegal alcoholic beverages or substances proscribed under the North Carolina Controlled Substances Act, or repeated acts which create and constitute a breach of the ~~peace,~~ peace, or repeated acts or omissions that violate a local ordinance regulating sexually oriented businesses, or such use makes void the lease or other title under which he holds, at the option of the owner, and, without any act of the owner, causes the right of possession to revert and vest in such owner.

The clear proceeds of civil penalties and forfeitures provided for in this section, except for penalties and properties that accrue to local governments instead of the State, shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 10. G.S. 19-6.1 reads as rewritten:

"**§ 19-6.1. Forfeiture of real property.**

In all actions where a preliminary injunction, permanent injunction, or an order of abatement is issued pursuant to this Article in which the nuisance consists of or includes at least two prior occurrences within five years of the manufacture, possession with intent to sell, or sale of controlled substances as defined by the North Carolina Controlled Substances Act, two prior occurrences of the possession of any controlled substance included within Schedule I or II of that Act, or two prior convictions within five years of violation of G.S. 14-72.7, the real property on which the nuisance exists or is maintained is subject to forfeiture in accordance with this section. In the case of the two prior convictions of G.S. 14-72.7, the convictions shall not arise out of the same transaction or occurrence.

If all of the owners of the property are defendants in the action, the plaintiff, other than a plaintiff who is a private citizen, may request forfeiture of the real property as part of the relief sought. If forfeiture is requested, and if jurisdiction over all defendant owners is established, upon judgment against the defendant or defendants, the court shall order forfeiture as follows:

(1) If the court finds by clear and convincing evidence that all the owners either (i) have participated in maintaining the nuisance on the property, or (ii) prior to the action had written notice from the plaintiff, or any governmental agent or entity authorized to bring an action pursuant to this Chapter, that the nuisance existed or was maintained on the property and have not made good faith efforts to stop the nuisance from occurring or recurring, the court shall order that the property be forfeited;

(2) If the court finds that one or more of the owners did not participate in maintaining the nuisance on the property or did not have written notice from the plaintiff prior to the action that the nuisance existed or was maintained on the property, the court shall not order forfeiture of the property immediately upon judgment. However, if after judgment and an order directing the defendants to abate the nuisance, the nuisance either continues, begins again, or otherwise recurs within five years of the order and the defendants have not made good faith efforts to abate the nuisance, the plaintiff may petition the court for forfeiture. Upon such petition, the defendant owner or owners shall be given notice and an opportunity to appear and be heard at a hearing to determine the continuation or recurrence of the nuisance. If, in this hearing (i) the plaintiff establishes by clear and convincing evidence that the nuisance, with the owner's or owners' knowledge, has either continued, begun again, or otherwise recurred, and (ii) the defendants fail to establish that they have made and are continuing to make good faith efforts to abate the nuisance, the court shall order that the property be forfeited.

For the purposes of this section, factors which may evidence good faith by the defendant to abate the nuisance include but are not limited to (i) cooperation with law enforcement authorities to abate the nuisance; (ii) lease restrictions prohibiting the illegal possession or sale of ~~narcotic drugs~~controlled substances and an action to evict a tenant for any violations of the lease provision; (iii) a criminal record check of prospective tenants; and (iv) reference checks of prior residency of prospective tenants.

Upon an order of forfeiture, title to the property shall vest in the school board of the county in which the property is located. If at the time of forfeiture the property is subject to a lien or security interest of a person not participating in the maintenance of the nuisance, the school

board shall either (i) pay an amount to that person satisfying the lien or security interest; or (ii) sell the property and satisfy the lien or security interest from the proceeds of the sale. If the property is not subject to any lien or security interest at the time of forfeiture, the school board may hold, maintain, lease, sell, or otherwise dispose of the property as it sees fit.

Upon the filing of the action, the plaintiff may file a notice of lis pendens in the official records of the county where the property is located. If the plaintiff files a notice of lis pendens, any person purchasing or obtaining an interest in the property thereafter shall be considered to have notice of the alleged nuisance, and shall forfeit his interest in the property upon a judgment of forfeiture in favor of the plaintiff.

If in the same action in which real property is forfeited the court finds that a tenant or occupant of the property participated in or maintained the nuisance, the lease or other title under which the tenant or occupant holds is void, and the right of possession vests in the new owner. Upon forfeiture, the rights of innocent tenants occupying separate units of the property who were not involved in the nuisance at the time the action was filed shall be in accordance with any relevant lease provisions in effect at the time or, in the absence of relevant lease provisions, in accordance with the law applying to other tenants or occupants of property that is sold, foreclosed upon, or otherwise obtained by new owners."

SECTION 11. This act becomes effective October 1, 2009, and applies to offenses committed and abatement actions commenced on or after that date.

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	May 19, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 9	No Texting While Driving.	Representative Pierce Representative Hall Representative Harrison
HB 616	Offense for Portable Toilets/Pumper Trucks.	Representative Allen
HB 800	Renunciation Amendments.	Representative Ross
HB 1272	Technical/Clarifying Changes/Juvenile Code.	Representative Goodwin Representative Cotham Representative Glazier

Senator Fletcher L. Hartsell, Jr., Chair

2009-2010

SENATE
JUDICIARY II

MINUTES

Senate Judiciary II Committee
Tuesday, May 19, 2009, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 9	No Texting While Driving.	Representative Pierce Representative Hall Representative Harrison
HB 616	Offense for Portable Toilets/Pumper Trucks.	Representative Allen
HB 800	Renunciation Amendments.	Representative Ross
HB 1272	Technical/Clarifying Changes/Juvenile Code.	Representative Goodwin Representative Cotham Representative Glazier

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE
Tuesday, May 19, 2009 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 10:00 AM on May 19, 2009, in Room 1124 of the Legislative Building with thirteen members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell introduced pages Amanda Chevalier, Katherine Britt, Amandalyn Webb, Justin Warren, Lindsey Rose, Paige Hopkins and Richard Styers and thanked them for their assistance.

HB 9 – (No Texting While Driving.) Representative Pierce explained the bill. Mr. Harry Kaplan, representing AAA Carolinas and Mr. Henry Jones, representing Auto Manufacturers spoke in support of the bill. Senator Hartsell answered questions from Senators Dorsett and Vaughan. Senator Apodaca moved for a favorable report with a referral to Appropriations. All voted and the motion carried.

HB 616 – (Offense for Portable Toilets/Pumper Trucks.) Representative Allen explained the bill. Senator Bingham moved for a favorable report. All voted and the motion carried.

HB 800 – (Renunciation Amendments.) Representative Ross explained the bill. This was a General Statutes bill. Senator Jones moved for a favorable report. All voted and the motion carried.

HB 1272 – (Technical/Clarifying Changes/Juvenile Code.) Representative Goodwin explained the bill. Senator Vaughan moved for a favorable report. All voted and the motion carried.

There being no further business, the meeting was adjourned at 10:20 am.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, May 19, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS #1) **9**	No Texting While Driving.	
	Sequential Referral:	None
	Recommended Referral:	Appropriations/Base Budget
H.B.(CS #2) **616**	Offense for Portable Toilets/Pumper Trucks.	
	Sequential Referral:	None
	Recommended Referral:	None
H.B.(CS #1) **800**	Renunciation Amendments.	
	Sequential Referral:	None
	Recommended Referral:	None
H.B. **1272**	Technical/Clarifying Changes/Juvenile Code.	
	Sequential Referral:	None
	Recommended Referral:	None

TOTAL REPORTED: 4

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — May 19, 2009
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Henry Jones	Attorney Raleigh
Lori Jones	Attorney, Raleigh
Joe McElroy	McElroy Consult
Doug Lassiter	NCSTA
Henry Lyle	MVC
Floyd M. Lewis	General Statutes Commission
P. Bly Hall	dito
[illegible] Powell	AOC
Amy McConkey	Smith Anderson
J Thomas Moore	Foundation - UNC
Emily Williams	The Policy Group

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cody Thomas	NC Assn of Realtors
Wendy Kelly	S2D Wicker
Jessi Hayes	NC HBA
Sheria Reid	IOG
Patrick Buffkin	NMRS
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety
Lisa Martin	NC Home Builders
Angie Stephenson	AG's office on behalf of NC DHHS/DSS
Kevin Kelly	NC DHHS DSS
Jeff Mixon	Civitas
Zach [illegible] Somebody	Civitas

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cassandra White	NCAOC
[signature]	~~DHHS~~
Shereeah Wilson	DHHS
Anthony Mason	NCACC
Gloria K. Mason	Perquimans Co. School Board

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 3

HOUSE BILL 9
Committee Substitute Favorable 4/2/09
Third Edition Engrossed 4/16/09

Short Title: No Texting While Driving. (Public)

Sponsors:

Referred to:

February 2, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE IT UNLAWFUL TO USE A MOBILE TELEPHONE FOR E-MAIL OR TEXT MESSAGING WHILE OPERATING A VEHICLE ON A PUBLIC STREET OR HIGHWAY OR PUBLIC VEHICULAR AREA.

The General Assembly of North Carolina enacts:

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

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

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

"**§ 20-137.4A. Unlawful use of mobile telephone for text messaging or electronic mail.**

(a) Offense. – It shall be unlawful for any person to operate a vehicle on a public street or highway or public vehicular area while using a mobile telephone to:

(1) Manually enter multiple letters or text in the device as a means of communicating with another person; or

(2) Read any electronic mail or text message transmitted to the device or stored within the device, provided that this prohibition shall not apply to any name or number stored in the device nor to any caller identification information.

(b) Exceptions. – The provisions of this section shall not apply to:

(1) The operator of a vehicle that is lawfully parked or stopped.

(2) Any of the following while in the performance of their official duties: a law enforcement officer; a member of a fire department; or the operator of a public or private ambulance.

(3) The use of factory-installed or aftermarket global positioning systems (GPS) or wireless communications devices used to transmit or receive data as part of a digital dispatch system.

(4) The use of voice operated technology.

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

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

SECTION 3. The Joint Legislative Transportation Oversight Committee shall identify and study the leading causes of driver inattention or distraction, the risks posed by driver inattention or distraction, and any methods that might be used to manage those driver distractions and promote highway safety. The Committee shall report its findings and recommendations, including any proposed legislation, to the General Assembly by April 15, 2010.

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

HOUSE BILL 9:
No Texting While Driving

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 18, 2009
Introduced by:	Reps. Pierce, Harrison, Hall	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	Third Edition		

SUMMARY: ***House Bill 9 would prohibit all drivers from using a mobile phone to read or send electronic mail or text messages, while operating a motor vehicle. An exception would apply for law enforcement officers, firefighters, and ambulance drivers in performance of their official duties. The bill would not apply to voice- operated technology, to GPS devices, or to devices that are part of a digital dispatch system such as OnStar.***

[As introduced, this bill was identical to S22, as introduced by Sen. Forrester and S96, as introduced by Sen. Bingham. A PCS for S22 was given a favorable report by Senate Judiciary II and re-referred to Senate Appropriations. This bill differs from S22 in that it makes a clarifying change to provide that violation does not constitute negligence per se or contributory negligence per se; and it would require the Legislative Transportation Oversight Committee to study and make recommendations to the General Assembly concerning driver distraction.]

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

"Mobile telephone" is a device used by subscribers and other users of wireless telephone service to access the service, and includes hand held and hands-free devices. "Additional technology" includes such things as cameras, electronic mail, music, the Internet, or games.

BILL ANALYSIS: House Bill 9 would make it unlawful for a person to use a mobile telephone to enter letters or text as a means of communicating with another person, while operating a motor vehicle. The bill would also make it unlawful for a driver to read an electronic mail or text message on a mobile telephone. The prohibition would apply to all drivers except for law enforcement officers, firefighters, and ambulance drivers in the performance of their official duties.

Section 1 of the bill amends the definition of "additional technology" as it applies to the statutes prohibiting the use of mobile telephones by drivers under 18 and by persons operating a school bus. This change would make it clear that electronic mail and text messaging would not be included as "additional technology" the use of which is punishable under those laws that apply only to drivers under 18 and to persons operating a school bus, and would therefore not be subject to the exclusions that apply to the use of mobile telephones.

Section 2 of the bill creates a new offense making it unlawful for any driver to operate a vehicle on a public street or highway or public vehicular area while using a mobile phone to create or read electronic mail or text messages. The offense would not include accessing caller ID information or any name or number stored in the mobile phone. Failure to comply would not constitute negligence per se or contributory negligence per se by the operator of the vehicle.

Exceptions:

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

- The operator of a lawfully parked or stopped vehicle.
- The use of GPS or digital dispatch systems such as OnStar.
- The use of voice operated technology.

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

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

Penalties Generally:

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

Section 3 of the bill would require the Joint Legislative Transportation Oversight Committee to identify and study the leading causes of driver inattention and distraction, along with any methods that might be used to manage those distractions and promote highway safety. The Committee would reports its findings and recommendations to the General Assembly by April 15, 2010.

EFFECTIVE DATE: This bill would become effective December 1, 2009, and apply to offenses committed on or after that date.

BACKGROUND:

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

Wendy Graf-Ray, Heather Fennell, Susan Sitze substantially contributed to this summary.

H9-SMRV-80(e3) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 3

HOUSE BILL 616
Committee Substitute Favorable 3/25/09
Committee Substitute #2 Favorable 4/22/09

Short Title: Offense for Portable Toilets/Pumper Trucks. (Public)

Sponsors:

Referred to:

March 17, 2009

A BILL TO BE ENTITLED

AN ACT TO CREATE THE OFFENSE OF LARCENY, DESTRUCTION, DEFACEMENT, OR VANDALISM OF PORTABLE TOILETS OR PUMPER TRUCKS.

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:

"**§ 14-86.2. Larceny, destruction, defacement, or vandalism of portable toilets or pumper trucks.**

Unless the conduct is covered under some other provision of law providing greater punishment, if any person steals, takes from its temporary location or from any person having the lawful custody thereof, or willfully destroys, defaces, or vandalizes a chemical or portable toilet as defined in G.S. 130A-290 or a pumper truck that is operated by a septage management firm that is permitted by the Department of Environment and Natural Resources under G.S. 130A-291.1, the person is guilty of a Class 1 misdemeanor."

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

HOUSE BILL 616:
Offense for Portable Toilets/Pumper Trucks

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 19, 2009
Introduced by:	Rep. Allen	**Prepared by:**	Jennifer McGinnis
Analysis of:	Third Edition		Committee Counsel

SUMMARY: House Bill 616 714 (Third Edition) would create the offense of larceny, destruction, defacement, or vandalism of portable toilets or pumper trucks.

[As introduced, this bill was identical to Senate Bill 714, as introduced by Sen. Berger of Franklin. SB 714 (First Edition) was given a favorable report in Senate Judiciary II on March 31, 2009. The bill is currently in Senate Appropriations/Base Budget.]

CURRENT LAW: GS 14-72 (Larceny of property; receiving stolen goods or possessing stolen goods) provides that the larceny of goods of the value of more than one thousand dollars ($1,000) is a Class H felony[1]. Larceny of property where the value of the property or goods is not more than one thousand dollars ($1,000), is a Class 1 misdemeanor.

GS 14-160 (Willful and wanton injury to personal property; punishments) provides that if any person: wantonly and willfully injures the personal property of another the person is guilty of a Class 2 misdemeanor[2], except where the damage caused is in an amount in excess of $200.00, in which case the person is guilty of a Class 1 misdemeanor[3].

BILL ANALYSIS: House Bill 714would make it a Class 1 misdemeanor[3] for any person to steal, take from its temporary location or from any person who has lawful custody, or willfully destroy, deface, or vandalize a chemical or portable toilet or a pumper truck that is operated by a septage management firm. This penalty would apply unless the conduct is covered under another provision of law providing greater punishment.

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

Jennifer Mundt, Legislative Analyst for the House Environment and Natural Resources Committee, substantially contributed to this summary.

H616-SMRI-44(e3) v1

[1] The presumptive range of minimum punishment for a Class H felony when there are no prior convictions is 5 to 6 months of community, intermediate, or active punishment.

[2] The range of punishment for a Class 2 misdemeanor when there are no prior convictions is 1 to 30 days of community punishment

[3] The range of punishment for a Class 1 misdemeanor when there are no prior convictions is 1 to 45 days of community punishment

HOUSE BILL 800*
Committee Substitute Favorable 4/14/09

Short Title: Renunciation Amendments. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW RELATING TO RENUNCIATIONS AND TO MAKE RELATED AMENDMENTS TO THE NORTH CAROLINA UNIFORM TRUST CODE AND THE LAW GOVERNING POWERS OF ATTORNEY AND ADMINISTRATION OF DECEDENTS' ESTATES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 31B-1 reads as rewritten:

"**§ 31B-1. Right to renounce succession.**

(a) A person who succeeds to a property interest as:

(1) ~~Heir, or~~ Heir;

(2) Next of ~~kin, or~~ kin;

(3) ~~Devisee, or~~ Devisee;

(4) ~~Legatee, or~~ Legatee;

(4a) Donee;

(5) Beneficiary of a life insurance policy who did not possess the incidents of ownership under the policy at the time of death of the ~~insured, or~~ insured;

(6) Person succeeding to a renounced ~~interest, or~~ interest;

(7) Beneficiary under a testamentary trust or under an inter vivos ~~trust, or~~ trust;

(8) Appointee under a power of appointment exercised by a testamentary instrument or a nontestamentary ~~instrument, or~~ instrument;

(9) Repealed by Session Laws 1989, c. 684, s. 2.

(9a) Surviving joint tenant, surviving tenant by the entireties, or surviving tenant of a tenancy with a right of ~~survivorship, or~~ survivorship;

(9b) Person entitled to share in a testator's estate under the provisions of ~~G.S. 31-5.5, or~~ G.S. 31-5.5;

(9c) Beneficiary under any other testamentary or nontestamentary instrument, including a beneficiary under:

a. Any qualified or nonqualified deferred compensation, employee benefit, retirement or death benefit, plan, fund, annuity, contract, policy, program or instrument, either funded or unfunded, which is established or maintained to provide retirement income or death benefits or results in, or is intended to result in, deferral of income;

b. An individual retirement account or individual retirement annuity; or

c. Any annuity, payable on ~~death,~~ death account, or other right to death benefits arising under ~~contract; or~~ contract;

(9d) ~~The duly~~ Duly authorized or appointed guardian of any of the persons listed in subdivisions (1) through (9c) of this subsection, but only with the prior or subsequent approval of the clerk of superior court, or if required, of the resident judge of the superior court, ~~of any of the above.~~ pursuant to a proceeding or action instituted in accordance with and subject to the requirements of G.S. 31B-1.2; or

(9e) Subject to G.S. 31B-1.1 and G.S. 31B-1.2, fiduciary, including a trustee of a charitable trust, an attorney-in-fact of any of the persons listed in subdivisions (1) through (9e) of this subsection if expressly authorized by the governing power of attorney, and a personal representative appointed under Chapter 28A of the General Statutes of any of the persons listed in subdivisions (1) through (9c) of this subsection;

~~(10) The personal representative appointed under Chapter 28A of any of the above,~~

~~or the attorney in fact of any of the above~~ may renounce at anytime, in whole or in ~~part~~ part, the right of succession to any property or interest therein, including a future interest, by filing a written instrument under the provisions of this Chapter. A renunciation may be of a fractional share or any limited interest or estate. The renunciation shall be deemed to include the entire interest of the person whose property or interest is being renounced unless otherwise specifically limited. A person may renounce any interest in or power over property, including a power of appointment, even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to renounce. ~~Provided, however,~~ Notwithstanding the foregoing, there shall be no right of partial renunciation if ~~the decedent or donee of the power expressly so provided in~~ the instrument creating the ~~interest.~~interest expressly so provides.

(b) This Chapter shall apply to all renunciations of present and future interests, whether qualified or nonqualified for federal and State inheritance, estate, and gift tax purposes, unless expressly provided otherwise in the instrument creating the interest.

(c) The instrument of renunciation shall (i) identify the transferor of the property or interest in the property or the creator of the power or the holder of the power, (ii) describe the property or interest renounced, ~~(ii)~~ (iii) declare the renunciation and extent thereof, ~~(iii)~~ and (iv) be signed and acknowledged by the person ~~authorized to renounce.~~ renouncing.

(d) A parent of a minor for whom no general guardian or guardian of the estate has been appointed may renounce, in whole or in part, an interest in or power over property (including a power of appointment) that would have passed to the minor as the result of that parent's renunciation. The parent may renounce the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to renounce."

SECTION 2. G.S. 31B-1A is recodified as G.S. 31B-1.1. G.S. 31B-1.1, as recodified by this section, reads as rewritten:

"**§ 31B-1.1. ~~Right to renounce fiduciary powers.~~ Right of fiduciary to renounce.**

(a) Except as otherwise provided in the testamentary or nontestamentary instrument, a fiduciary under a testamentary or nontestamentary instrument may renounce, in whole or in part, fiduciary rights, privileges, powers, and ~~immunities by executing and by delivering, filing, or recording a written renunciation pursuant to the provisions of G.S. 31B-2. A~~ immunities; however, a fiduciary may not renounce the ~~rights of beneficiaries~~ personal rights exercisable by a beneficiary alone, unless the instrument creating the fiduciary relationship authorizes such a renunciation. The instrument of renunciation shall (i) identify the creator of the rights, powers, privileges, or immunities, (ii) describe any right, power, privilege, or immunity renounced, (iii) declare the renunciation and the extent thereof, and (iv) be signed and acknowledged by the fiduciary authorized to renounce.

(b) ~~The instrument of renunciation shall (i) describe any fiduciary right, power, privilege, or immunity renounced, (ii) declare the renunciation and the extent thereof, and (iii) be signed and acknowledged by the fiduciary authorized to renounce.~~ Except as provided in subsection (c) of this section and except to the extent a statute of this State expressly restricts or limits a fiduciary's right to renounce, a fiduciary acting in a fiduciary capacity may renounce the right of succession to any property or interest therein as permitted by this Chapter, even if the testamentary or nontestamentary instrument governing the fiduciary restricts or limits the right to renounce the fiduciary's right of succession to the property or interest therein.

(c) An attorney-in-fact for a principal acting under subsection (a) or subsection (b) of this section may renounce only if expressly authorized by the governing power of attorney."

SECTION 3. Chapter 31B of the General Statutes is amended by adding a new section to read:

"**§ 31B-1.2. Right of fiduciary to institute a proceeding for review of renunciation.**

(a) Prior to renouncing, if a fiduciary so elects, the fiduciary may institute a proceeding by petition before the clerk of court for a determination as to whether a renunciation would be compatible with the fiduciary's duties. Commencement of the proceeding, jurisdiction, venue, parties, representation, and notice shall be governed by Chapter 36C of the General Statutes. In addition to any other notice requirements, notice of the proceeding shall be given to all persons entitled to delivery of a copy of an instrument of renunciation under G.S. 31B-2.1.

(b) After renouncing, if a fiduciary so elects, the fiduciary has a right to institute a declaratory judgment action pursuant to Article 26 of Chapter 1 of the General Statutes for a determination as to whether the renunciation is compatible with the fiduciary's duties. In addition to any other notice requirements, notice of the action shall be given to all persons entitled to delivery of a copy of an instrument of renunciation under G.S. 31B-2.1.

(c) A proceeding or action instituted under this section shall comply with all of the following:

(1) The petition or complaint shall state the basis for the fiduciary's allegation that the renunciation is compatible with the fiduciary's duties, considering among other things the intended purposes of the trust or other instrument and the impact of the renunciation on beneficiaries and potential beneficiaries. A petition or complaint filed by a trustee of a charitable trust shall contain a statement that a copy of the petition or complaint is being provided to the Attorney General.

(2) After considering among other things the intended purposes of the trust or other instrument and the impact of the renunciation on beneficiaries and potential beneficiaries, the court shall enter an order stating the court's determination as to whether the renunciation is compatible with the fiduciary's duties.

(d) The effectiveness of a renunciation is not affected by a determination under this section that the renunciation is not compatible with a fiduciary's duties."

SECTION 4. G.S. 31B-2 reads as rewritten:

"**§ 31B-2. ~~Time and place of filing renunciation.~~Filing and registering of renunciations; failure to file or register; spouse's interest.**

(a) To be a qualified disclaimer for federal and State inheritance, estate, and gift tax purposes, an instrument ~~renouncing a present interest~~ of renunciation shall be filed within the time period required under the applicable federal statute for a renunciation to be given effect as a disclaimer for federal estate and gift tax purposes. If there is no such federal statute the instrument shall be filed not later than nine months after the date the transfer of the renounced interest to the ~~renouncer~~ person whose property or interest is being renounced was complete for the purpose of such taxes.

(b) ~~An instrument renouncing a future interest shall be filed not later than six months after the event by which the taker of the property or interest is finally ascertained and his interest indefeasibly vested and he is entitled to possession even though such renunciation may not be recognized as a disclaimer for federal estate tax purposes.~~ When a renunciation of real property or an interest in real property is made within the time period required under subsection (a) of this section, the spouse of the person whose property or interest is being renounced is not required to join in the execution of the instrument of renunciation, and, as provided in G.S. 31B-3(a)(1), the spouse has no statutory dower, inchoate marital rights, elective share, or any other marital interest in the real property or real property interest renounced.

(c) The renunciation ~~shall be~~ is effective when filed with the clerk of court ~~of~~ (i) in the county in which court proceedings have been commenced for the administration of the estate of the deceased owner or deceased ~~donee~~ creator of the power ~~or, if they have not been commenced, in which they could be commenced. A copy of the renunciation shall be delivered in person or mailed by registered or certified mail to any personal representative, or other fiduciary of the decedent or donee of the power. If the property interest renounced includes any proceeds of a life insurance policy being renounced pursuant to G.S. 31B-1(a)(5) the person renouncing shall mail, by registered or certified mail, a copy of the renunciation to the insurance company issuing the policy. If the property or property interest renounced is created by nontestamentary instrument, a copy of the renunciation shall be delivered in person, or mailed by registered or certified mail, to the trustee or other person who has legal title to, or possession of, the property or property interest renounced.~~ or holder of the power; or (ii) if proceedings have not been commenced, then in a county in which they could be commenced; or (iii) in all other cases, in a county with a court that has jurisdiction to enforce the terms of the instrument creating the interest renounced. In those cases in which an estate proceeding has not been commenced, the renunciation shall be filed as an estate matter. In addition to the above requirements, a renunciation of real property, or an interest therein, shall be registered in accordance with the provisions of subsection (d) of this section.

(d) If real property or an interest therein is renounced, ~~a copy of~~ the instrument of renunciation shall also be ~~filed for recording in the office of the register of deeds of all counties wherein any part of the interest renounced is situated.~~ registered as provided in G.S. 47-18 or G.S. 47-20. The instrument of renunciation shall be indexed in the grantor's index under (i) the name of the ~~deceased owner~~ transferor or ~~donee~~ creator of the ~~power,~~ power or holder of the power, and (ii) the name of the ~~person renouncing.~~ person whose property or interest is being renounced. ~~The renunciation of an interest, or a part thereof, in real property shall not be effective to renounce such interest until a copy of the renunciation is filed for recording in the office of the register of deeds in the county wherein such interest or part thereof is situated. A spouse of a person renouncing real property or an interest in real property shall have no statutory dower, inchoate marital rights, or any other interest in the real property or real property interest renounced.~~ Failure to file or register the instrument of renunciation does not affect the effectiveness of the renunciation as between the person whose property or interest is being renounced and persons to whom the property interest or power passes by reason of the renunciation; however, record title to a renounced interest in real property does not pass to persons receiving the renounced interest by reason of the renunciation until the instrument of renunciation is registered as provided in G.S. 47-18 or G.S. 47-20.

(e) If an instrument transferring an interest in or right, privilege, power, or immunity over property subject to a renunciation is required or permitted by law to be filed or registered, the instrument of renunciation may be so filed or registered. Failure to file or register the instrument of renunciation does not affect the effectiveness of the renunciation as between the person whose property or interest is being renounced and persons to whom the property interest or power passes by reason of the renunciation."

SECTION 5. Chapter 31B of the General Statutes is amended by adding a new section to read:

"**§ 31B-2.1. Delivery to other persons of instrument of renunciation by the person renouncing.**

(a) In this section:

(1) "Beneficiary designation" means an instrument, other than an instrument creating a trust, naming the beneficiary of:

a. An annuity or insurance policy;

b. An account with a designation for payment on death;

c. A security registered in beneficiary form;

d. A pension, profitsharing, retirement, or other employment-related benefit plan;

e. An individual retirement account or retirement annuity; or

f. Any other nonprobate transfer at death.

(2) "Deliver" means to deliver in person or to send, properly addressed, by first-class mail, telephonic facsimile transmission equipment, electronic mail, or third-party commercial carrier, or by any method permitted by G.S. 1A-1, Rule 4.

(b) The failure to deliver a copy of an instrument of renunciation by a method permitted by G.S. 1A-1, Rule 4, or by a method that results in actual receipt tolls any statute of limitations with regard to any right of action for breach of fiduciary duty.

(c) If a fiduciary renounces an interest in property pursuant to G.S. 31B-1(a)(9e), a copy of the instrument of renunciation shall be delivered to each living person whose beneficial interest is affected by the renunciation and to any co-fiduciary who did not join in the renunciation.

(d) In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust, a copy of the instrument of renunciation must:

(1) Be delivered to the personal representative of the decedent's estate; or

(2) If no personal representative is then serving, be filed as an estate matter with a court having jurisdiction to appoint the personal representative.

(e) In the case of a beneficiary renouncing an interest in a testamentary trust, a copy of the instrument of renunciation must:

(1) Be delivered to the trustee then serving;

(2) If no trustee is then serving, be delivered to the personal representative of the decedent's estate; or

(3) If no personal representative or trustee is then serving, be filed as an estate matter with a court having jurisdiction to enforce the trust.

(f) In the case of a beneficiary renouncing an interest in an inter vivos trust, a copy of the instrument of renunciation must:

(1) Be delivered to the trustee then serving;

(2) Except as provided in subdivision (3) of this subsection, if no trustee is then serving, be filed as an estate matter with a court having jurisdiction to enforce the trust; or

(3) If the renunciation is made before the time the instrument creating the trust becomes irrevocable, be delivered to the settlor of the trust or the transferor of the interest.

(g) In the case of a beneficiary renouncing an interest created by a beneficiary designation made before the time the designation becomes irrevocable, a copy of the instrument of renunciation must be delivered to the person making the beneficiary designation.

(h) In the case of a beneficiary renouncing an interest created by a beneficiary designation made after the time the designation becomes irrevocable, a copy of the instrument of renunciation must be delivered to the person obligated to distribute the interest.

(i) In the case of a renunciation by a surviving holder of an interest in property subject to a right of survivorship, a copy of the instrument of renunciation must be delivered to the persons to whom the person renouncing reasonably believes the renounced interest passes, at their last addresses known to the person renouncing, and to the personal representative of the deceased joint holder, if any.

(j) In the case of a renunciation by a permissible appointee, or taker in default of exercise, of a power of appointment at anytime after the power was created, a copy of the instrument of renunciation must be delivered:

(1) To the holder of the power;

(2) To the fiduciary acting under the instrument that created the power or, if no fiduciary is then serving under the instrument that created the power, filed as an estate matter with a court having authority to appoint the fiduciary; and

(3) To any holder of legal title to the property subject to the power of appointment other than the fiduciary.

(k) In the case of a renunciation by an appointee of an exercised power of appointment, a copy of the instrument of renunciation must be delivered:

(1) To the holder of the power or the personal representative of the holder's estate;

(2) To the fiduciary under the instrument that created the power or, if no fiduciary is then serving under the instrument that created the power, filed as an estate matter with a court having authority to appoint the fiduciary; and

(3) To any holder of legal title to the property subject to the power of appointment other than the fiduciary.

(l) In the case of a renunciation of a power of appointment by the holder of the power, a copy of the instrument of renunciation must be delivered:

(1) To the fiduciary acting under the instrument that created the power or, if no fiduciary is then serving under the instrument that created the power, filed as an estate matter with a court having authority to appoint the fiduciary; and

(2) To any holder of legal title to the property subject to the power of appointment other than the fiduciary.

(m) In the case of a renunciation by a fiduciary of a right, privilege, power, or immunity relating to a trust or estate, a copy of the instrument of renunciation must be delivered as provided in subsection (c), (d), (e), or (f) of this section, as if the power renounced were an interest in property.

(n) In the case of a renunciation of a power by an agent, including an attorney-in-fact, a copy of the instrument of renunciation must be delivered to the principal or the principal's legal representative other than the agent.

(o) In the case of a renunciation by a trustee of a charitable trust, a copy of the instrument of renunciation must be delivered to the North Carolina Attorney General in addition to any other delivery required by this section.

(p) In the case of a renunciation by a donee, a copy of the instrument of renunciation must be delivered to the persons to whom the person renouncing reasonably believes the renounced interest passes, at their last addresses known to the person renouncing, and to the donor or the donor's legal representative other than the donee.

(q) The failure to deliver a copy of the instrument of renunciation as required in this section does not affect the validity of the renunciation for purposes of G.S. 31B-3 even though the renunciation may not be recognized as a disclaimer for federal estate tax purposes."

SECTION 6. G.S. 31B-3 reads as rewritten:

"**§ 31B-3. Effect of renunciation.**

(a) Unless the decedent, donee of a power of appointment, or creator of an interest under an inter vivos instrument has otherwise provided in the instrument creating the interest, the property or interest renounced devolves as follows:

(1) If the renunciation is filed within the time period described in G.S. 31B-2(a), the property or interest renounced devolves and any interest that takes effect in possession or enjoyment after the termination of the property or interest renounced takes effect as if the ~~renouncer~~ person whose property or interest is being renounced had predeceased the date the transfer of the renounced interest ~~to the renouncer~~ was complete for federal and State inheritance, estate, and gift tax purposes, or, in the case of the renunciation of a fiduciary right, power, privilege, or immunity, the property or interest subject to the power devolves as if the fiduciary right, power, privilege, or immunity never existed. Any such renunciation relates back for all purposes to the date the transfer of the renounced interest ~~to the renouncer~~ was complete for the purpose of those ~~taxes.~~ taxes, and the spouse of the person whose property or interest is being renounced has no elective share or other marital interest in the renounced property.

(2) If the renunciation is not filed within the time period described in G.S. 31B-2(a), the person whose property or interest is being renounced is deemed to have made a transfer of the property or interest and the property or interest devolves and any interest that takes effect in possession or enjoyment after the termination of the property or interest renounced takes effect as if the ~~renouncer~~ person whose property or interest is being renounced had died on the date the renunciation is filed, or, in the case of the renunciation of a fiduciary right, power, privilege, or immunity, the property or interest subject to the power devolves as if the fiduciary right, power, privilege, or immunity ceased to exist as of the date the renunciation is filed.

(3) Any future interest that takes effect in possession or enjoyment after the termination of the estate or interest renounced takes effect as if the ~~renouncer~~ person whose property or interest is being renounced had died on the date determined under subdivision (1) or (2) of this subsection, and upon the filing of the renunciation the persons in being as of the time the ~~renouncer~~ person whose property or interest is being renounced is deemed to have died will immediately become entitled to possession or enjoyment of any such future interest.

(b) In the event that the property or interest renounced was created by testamentary disposition, the devolution of the property or interest renounced shall be ~~governed by G.S. 31-42(a)~~ as provided in G.S. 31-42 notwithstanding that in fact the ~~renouncer~~ person whose property or interest is being renounced has not actually died before the testator.

(c) In the event that the decedent dies intestate, or the ownership or succession to property or to an interest is to be determined as though a decedent had died intestate, and the ~~renouncer~~ person whose property or interest is being renounced has living issue who would have been entitled to an interest in the property or interest if the ~~renouncer~~ person whose property or interest is being renounced had predeceased the decedent, then the property or interest renounced shall be distributed to such issue, per stirpes. If the ~~renouncer~~ person whose property or interest is being renounced does not have such issue, then the property or interest shall be distributed as though the ~~renouncer~~ person whose property or interest is being renounced had predeceased the decedent.

(d) In the event that the property or interest renounced was created by a revocable or irrevocable inter vivos trust, the devolution of the property or interest renounced shall be as

provided in G.S. 36C-6-605 notwithstanding that in fact the person whose property or interest is being renounced has not actually died before the event that would otherwise cause the property or interest renounced to pass to the person whose property or interest is being renounced.

(e) If a trustee files, within the time period described in G.S. 31B-2(a), a renunciation of an interest in property, the interest does not become trust property. If a trustee does not file a renunciation of an interest in property within the time period described in G.S. 31B-2(a), the interest passes to the person or persons who would have taken the interest as of the date of the renunciation if the trust had never existed.

(f) Except as provided in the instrument of renunciation, if a renunciation causes property to pass to a trust in which the person whose property or interest is being renounced holds a power of appointment, the person renouncing is deemed to have renounced the power of appointment with respect to assets passing into the trust by reason of the renunciation if the person renouncing is a person who holds a right to renounce the power of appointment.

(g) Unless otherwise provided in the instrument of renunciation, the interest in property being renounced by a surviving tenant by the entireties upon the death of the other tenant is deemed to be a one-half interest in the former entirety property, and title to that one-half interest passes as if the deceased tenant survived the tenant renouncing.

(h) Unless otherwise provided in the instrument of renunciation, the interest in property being renounced by a surviving joint tenant with right of survivorship is deemed to be the fractional interest of the deceased joint tenant to which the surviving joint tenant would have been entitled by right of survivorship, and title to that fractional interest passes as if the tenant renouncing predeceased the deceased joint tenant.

(i) **Reserved for future codification purposes.**

(j) **Reserved for future codification purposes.**

(k) A renunciation is binding upon the person whose property or interest is being renounced and all persons claiming through or under that person."

SECTION 7. G.S. 31B-4 reads as rewritten:

"**§ 31B-4. Waiver and bar.**

(a) The right to renounce property or an interest therein is barred by:

(1) An assignment, conveyance, encumbrance, pledge, or transfer of the property or interest, or a contract therefor by the person authorized to renounce,

(2) A written waiver of the right to renounce, or

(3) Repealed by Session Laws 1998-148, s. 4.

(4) A sale of the property or interest under judicial sale made before the renunciation is effected.

(b) ~~The renunciation or the written waiver of~~ An instrument waiving or barring the right to renounce is binding upon the ~~renouncer or~~ person waiving the right to renounce or the person barred from renouncing and all persons claiming through or under ~~him.~~ that person.

(c) A fiduciary's application for appointment or assumption of duties as fiduciary does not waive or bar the fiduciary's right to renounce a right, power, privilege, or immunity.

(d) No person shall be liable for distributing or disposing of property in reliance upon the terms of a renunciation that is invalid for the reason that the right of renunciation has been waived or barred, if the distribution or disposition is otherwise proper, and the person has no actual knowledge or record notice of the facts that constitute a waiver or bar to the right of renunciation.

(e) The right to renounce property or an interest in property pursuant to this Chapter is not barred by an acceptance of the property, interest, or benefit thereunder; provided, however, an acceptance of the property, interest, or benefit thereunder may preclude such renunciation

from being a qualified renunciation for federal and State inheritance, estate, and gift tax purposes.

(f) An instrument waiving or barring the right to renounce an interest in real property is not effective as to persons protected under G.S. 47-18 or G.S. 47-20 until either (i) registered as provided in those sections or (ii) registered pursuant to a judicial sale proceeding as described in subdivision (4) of subsection (a) of this section in which the person renouncing is a party. The instrument of waiver or bar shall be indexed in the grantor's index under (i) the name of the transferor of the property or interest in the property or creator of the power or holder of the power and (ii) the name of the person whose renunciation is waived or barred."

SECTION 8. Chapter 31B of the General Statutes is amended by adding a new section to read:

"**§ 31B-4.1. Tax qualified renunciation.**

If, as a result of a renunciation, the renounced property is treated pursuant to the provisions of Title 26 of the United States Code, as now or hereafter amended, or any successor statute thereto, and the regulations promulgated thereunder, as never having been transferred to the person whose property or interest is being renounced, then the renunciation is an effective renunciation, notwithstanding any other provision of this Chapter. This section does not preclude an action for breach of fiduciary duty."

SECTION 9. G.S. 31B-6 is repealed.

SECTION 10. G.S. 28A-13-3 reads as rewritten:

"**§ 28A-13-3. Powers of a personal representative or fiduciary.**

(a) Except as qualified by express limitations imposed in a will of the decedent or a court order, and subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative has the power to perform in a reasonable and prudent manner every act which a reasonable and prudent person would perform incident to the collection, preservation, liquidation or distribution of a decedent's estate so as to accomplish the desired result of settling and distributing the decedent's estate in a safe, orderly, accurate and expeditious manner as provided by law, including the powers specified in the following subdivisions:

...

~~(33) To renounce in accordance with the provisions of Chapter 31B of the General Statutes.~~

(a1) Except as qualified by express limitations imposed in a will of the decedent, and subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative shall have absolute discretion to make the election as to which items of the decedent's personal and household effects shall be excluded from the carry over basis provision of the federal income tax law and such election shall be conclusive and binding on all concerned.

(a2) Subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative has the power to renounce in accordance with the provisions of Chapter 31B of the General Statutes.

(b) Any question arising out of the powers conferred by subsections ~~(a) and (a1) above~~ (a), (a1), and (a2) of this section shall be determined in accordance with the provisions of Article 18 of this Chapter.

(c) Prior to the personal representative exercising possession, custody or control over real property of the estate he shall petition the clerk of court to obtain an order authorizing such possession, custody or control. The petition shall include:

(1) A description of the real property which is the subject of the petition;

(2) The names, ages, and addresses, if known, of the devisees and heirs of the decedent;

(3) A statement by the personal representative that he has determined that such possession, custody or control is in the best interest of the administration of the estate.

The devisees and heirs will be made parties to the proceeding by service of summons in the manner prescribed by law. If the clerk of court determines that it is in the best interest of the administration of the estate to authorize the personal representative to take possession, custody or control he shall grant an order authorizing that power. If a special proceeding has been instituted by the personal representative pursuant to G.S. 28A-15-1(c), the personal representative may petition for possession, custody, or control of any real property as a part of that proceeding and is not required to institute a separate special proceeding."

SECTION 11. G.S. 32A-1 reads as rewritten:

"**§ 32A-1. Statutory Short Form of General Power of Attorney.**

The use of the following form in the creation of a power of attorney is lawful, and, when used, it shall be construed in accordance with the provisions of this Chapter.

"NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE DEFINED IN CHAPTER 32A OF THE NORTH CAROLINA GENERAL STATUTES WHICH EXPRESSLY PERMITS THE USE OF ANY OTHER OR DIFFERENT FORM OF POWER OF ATTORNEY DESIRED BY THE PARTIES CONCERNED.

State of _____

County of _____

I _____, appoint _____ to be my attorney-in-fact, to act in my name in any way which I could act for myself, with respect to the following matters as each of them is defined in Chapter 32A of the North Carolina General Statutes. (DIRECTIONS: Initial the line opposite any one or more of the subdivisions as to which the principal desires to give the attorney-in-fact authority.)

(1) Real property transactions ..... _____

(2) Personal property transactions ..... _____

(3) Bond, share, stock, securities and commodity transactions ..... _____

(4) Banking transactions ..... _____

(5) Safe deposits ..... _____

(6) Business operating transactions ..... _____

(7) Insurance transactions ..... _____

(8) Estate transactions ..... _____

(9) Personal relationships and affairs ..... _____

(10) Social security and unemployment ..... _____

(11) Benefits from military service ..... _____

(12) Tax matters ..... _____

(13) Employment of agents ..... _____

(14) Gifts to charities, and to individuals other than the attorney-in-fact ..... _____

(15) Gifts to the named attorney-in-fact ..... _____

(16) Renunciation of an interest in or power over property to benefit persons other than the attorney-in-fact ..... _____

(17) Renunciation of an interest in or power over property to benefit persons including the attorney-in-fact ..... _____

(If power of substitution and revocation is to be given, add: 'I also give to such person full power to appoint another to act as my attorney-in-fact and full power to revoke such appointment.')

(If period of power of attorney is to be limited, add: 'This power terminates_____, _____')

(If power of attorney is to be a durable power of attorney under the provision of Article 2 of Chapter 32A and is to continue in effect after the incapacity or mental incompetence of the principal, add: 'This power of attorney shall not be affected by my subsequent incapacity or mental incompetence.')

(If power of attorney is to take effect only after the incapacity or mental incompetence of the principal, add: 'This power of attorney shall become effective after I become incapacitated or mentally incompetent.')

(If power of attorney is to be effective to terminate or direct the administration of a custodial trust created under the Uniform Custodial Trust Act, add: 'In the event of my subsequent incapacity or mental incompetence, the attorney-in-fact of this power of attorney shall have the power to terminate or to direct the administration of any custodial trust of which I am the beneficiary.')

(If power of attorney is to be effective to determine whether a beneficiary under the Uniform Custodial Trust Act is incapacitated or ceases to be incapacitated, add: 'The attorney-in-fact of this power of attorney shall have the power to determine whether I am incapacitated or whether my incapacity has ceased for the purposes of any custodial trust of which I am the beneficiary.')

Dated_____, _____ .

_____ (Seal)

Signature

STATE OF _____ COUNTY OF _____

On this _____ day of_____, _____, personally appeared before me, the said named _____ to me known and known to me to be the person described in and who executed the foregoing instrument and he (or she) acknowledged that he (or she) executed the same and being duly sworn by me, made oath that the statements in the foregoing instrument are true.

My Commission Expires _____.

_____

(Signature of Notary Public)

Notary Public (Official Seal)"

SECTION 12. G.S. 32A-2 is amended by adding two new subdivisions to read:

"(16) Renunciation of an interest in or power over property to benefit persons other than the attorney-in-fact. – To renounce, in accordance with Chapter 31B of the General Statutes, an interest in or power over property, including a power of appointment, to benefit persons other than the attorney-in-fact or the estate, creditors, or the creditors of the estate of the attorney-in-fact, or an individual to whom the attorney-in-fact owes a legal obligation of support.

(17) Renunciation of an interest in or power over property to benefit persons including the attorney-in-fact. – To renounce, in accordance with Chapter 31B of the General Statutes, an interest in or power over property, including a power of appointment, to benefit persons including the attorney-in-fact, or the estate, creditors, or the creditors of the estate of the attorney-in-fact, or an individual to whom the attorney-in-fact owes a legal obligation of support."

SECTION 13. The title of Article 2A of Chapter 32A of the General Statutes reads as rewritten:

"Article 2A.

Authority of Attorney-In-Fact to Make ~~Gifts.~~ Gifts and to Renounce."

SECTION 14. Article 2A of Chapter 32A of the General Statutes is amended by adding a new section to read:

"**§ 32A-14.2. Renunciation under power of attorney.**

(a) If any power of attorney authorizes an attorney-in-fact to do, execute, or perform any act that the principal might or could do or evidences the principal's intent to give the attorney-in-fact full power to handle the principal's affairs or deal with the principal's property, but does not expressly authorize the attorney-in-fact to renounce an interest in or power over property, the attorney-in-fact shall not have the power or authority to renounce on behalf of the principal pursuant to Chapter 31B of the General Statutes.

(b) Notwithstanding an express grant of general authority to renounce, an attorney-in-fact that is not an ancestor, spouse, or descendant of the principal may not renounce under a power of attorney to create in the attorney-in-fact or the estate, creditors, or the creditors of the estate of the attorney-in-fact, or in an individual to whom the attorney-in-fact owes a legal obligation of support, an interest in or power over the principal's property by reason of a renunciation unless the power of attorney expressly authorizes a renunciation that benefits the attorney-in-fact or the estate, creditors, or the creditors of the estate of the attorney-in-fact, or an individual to whom the attorney-in-fact owes a legal obligation of support."

SECTION 15. G.S. 36C-1-105(b) reads as rewritten:

"(b) The terms of a trust prevail over any provision of this Chapter except:

(1) The requirements for creating a ~~trust;~~ trust.

(2) The duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the ~~beneficiaries;~~ beneficiaries.

(3) The requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to ~~achieve;~~ achieve.

(4) The power of the court to modify or terminate a trust under G.S. 36C-4-410 through ~~G.S. 36C-4-416;~~ G.S. 36C-4-416.

(5) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Article 5 of this Chapter;

(6) The effect of an exculpatory term under ~~G.S. 36C-10-1008;~~ G.S. 36C-10-1008.

(7) The rights under G.S. 36C-10-1010 through G.S. 36C-10-1013 of a person other than a trustee or ~~beneficiary;~~ beneficiary.

(8) Periods of limitation for commencing a judicial ~~proceeding;~~ proceeding.

(9) The power of the court to take any action and exercise any jurisdiction as may be necessary in the interests of ~~justice;~~justice.

(10) The subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in G.S. 36C-2-203 and ~~G.S. 36C-2-204;~~ ~~and~~G.S. 36C-2-204.

(11) The requirement that the exercise of the powers described in G.S. 36C-6-602.1(a) shall not alter the designation of beneficiaries to receive property on the settlor's death under that settlor's existing estate plan.

(12) The power of a trustee to renounce an interest in or power over property under G.S. 36C-8-816(32)."

SECTION 16. G.S. 36C-8-816 reads as rewritten:

"**§ 36C-8-816. Specific powers of trustee.**

Without limiting the authority conferred by G.S. 36C-8-815, a trustee may:

...

(30) Request an order from the court for the sale of real or personal property under Article 29A of Chapter 1 of the General Statutes, or for the exchange, partition, or other disposition or change in the character of, or for the grant of options or other rights in or to, such ~~property; and~~ property;

(31) Distribute the assets of an inoperative trust consistent with the authority granted under ~~G.S. 28A-22-10.~~G.S. 28A-22-110; and

(32) Renounce, in accordance with Chapter 31B of the General Statutes, an interest in or power over property, including property that is or may be burdened with liability for violation of environmental law."

SECTION 17. G.S. 36C-8-816(13)c. is repealed.

SECTION 18. The Revisor of Statutes shall cause to be printed along with this act all explanatory comments of the drafters of this act as the Revisor deems appropriate.

SECTION 19. This act becomes effective October 1, 2009, and applies to renunciations and powers of attorney executed on or after that date.

HOUSE BILL 1272

Short Title:	Technical/Clarifying Changes/Juvenile Code.	(Public)
Sponsors:	Representatives Goodwin, Glazier, Cotham (Primary Sponsors); Dickson, Lucas, and Parmon.	
Referred to:	Juvenile Justice, if favorable, Judiciary I.	

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE JUVENILE CODE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-101(1)d. reads as rewritten:

"(1) Abused juveniles. – Any juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker:

...

d. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first-degree rape, as provided in G.S. 14-27.2; rape of a child by an adult offender, as provided in G.S. 14-27.2A; second degree rape as provided in G.S. 14-27.3; first-degree sexual offense, as provided in G.S. 14-27.4; sexual offense with a child by an adult offender, as provided in G.S. 14-27.4A; second degree sexual offense, as provided in G.S. 14-27.5; sexual act by a custodian, as provided in G.S. 14-27.7; crime against nature, as provided in G.S. 14-177; incest, as provided in G.S. 14-178; preparation of obscene photographs, slides, or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-190.18; and taking indecent liberties with the juvenile, as provided in G.S. 14-202.1.

...."

SECTION 2. G.S. 7B-1104 reads as rewritten:

"**§ 7B-1104. Petition or motion.**

The petition, or motion pursuant to G.S. 7B-1102, shall be verified by the petitioner or movant and shall be entitled "In Re (last name of juvenile), a minor juvenile", who shall be a party to the action, and shall set forth such of the following facts as are known; and with respect to the facts which are unknown the petitioner or movant shall so state:

(1) The name of the juvenile as it appears on the juvenile's birth certificate, the date and place of birth, and the county where the juvenile is presently residing.

(2) The name and address of the petitioner or movant and facts sufficient to identify the petitioner or movant as one authorized by G.S. 7B-1103 to file a petition or motion.

(3) The name and address of the parents of the juvenile. If the name or address of one or both parents is unknown to the petitioner or movant, the petitioner or movant shall set forth with particularity the petitioner's or movant's efforts to ascertain the identity or whereabouts of the parent or parents. The information may be contained in an affidavit attached to the petition or motion and incorporated therein by reference. A person whose actions resulted in a conviction under G.S. 14-27.2 or G.S. 14-27.3 and the conception of the juvenile need not be named in the petition.

(4) The name and address of any person who has been judicially appointed as guardian of the person of the juvenile.

(5) The name and address of any person or agency to whom custody of the juvenile has been given by a court of this or any other state; and a copy of the custody order shall be attached to the petition or motion.

(6) Facts that are sufficient to warrant a determination that one or more of the grounds for terminating parental rights exist.

(7) That the petition or motion has not been filed to circumvent the provisions of Article 2 of Chapter 50A of the General Statutes, the Uniform Child-Custody Jurisdiction and Enforcement Act."

SECTION 3. G.S. 7B-1106 reads as rewritten:

"**§ 7B-1106. Issuance of summons.**

(a) Except as provided in G.S. 7B-1105, upon the filing of the petition, the court shall cause a summons to be issued. The summons shall be directed to the following persons or agency, not otherwise a party petitioner, who shall be named as respondents:

(1) The parents of the ~~juvenile;~~ juvenile. However, a summons does not need to be directed to or served upon any parent who, under Chapter 48 of the General Statutes, has irrevocably relinquished the juvenile to a county department of social services or licensed child-placing agency or to any parent who has consented to the adoption of the juvenile by the petitioner.

(2) Any person who has been judicially appointed as guardian of the person of the ~~juvenile;~~juvenile.

(3) The custodian of the juvenile appointed by a court of competent ~~jurisdiction;~~jurisdiction.

(4) Any county department of social services or licensed child-placing agency to whom a juvenile has been released by one parent pursuant to Part 7 of Article 3 of Chapter 48 of the General Statutes or any county department of social services to whom placement responsibility for the child has been given by a court of competent ~~jurisdiction; and~~jurisdiction.

~~(5) The juvenile.~~

~~Provided, no summons need be directed to or served upon any parent who, under Chapter 48 of the General Statutes, has irrevocably relinquished the juvenile to a county department of social services or licensed child-placing agency nor to any parent who has consented to the adoption of the juvenile by the petitioner.~~ The summons shall notify the respondents to file a written answer within 30 days after service of the summons and petition. ~~Except that the summons and other pleadings or papers directed to the juvenile shall be served upon the juvenile's guardian ad litem if one has been appointed, service~~ Service of the summons shall be

completed as provided under the procedures established by G.S. 1A-1, Rule 4(j). But the parent of the juvenile shall not be deemed to be under a disability even though the parent is a minor.

(a1) If a guardian ad litem has been appointed for the juvenile pursuant to G.S. 7B-601 and has not been relieved of responsibility or if the court appoints a guardian ad litem for the juvenile after the petition is filed, a copy of all pleadings and other papers required to be served shall be served on the juvenile's guardian ad litem or attorney advocate pursuant to procedures established under G.S. 1A-1, Rule 5.

(b) The summons shall be issued for the purpose of terminating parental rights pursuant to the provisions of subsection (a) of this section and shall include:

(1) The name of the minor juvenile;

(2) Notice that a written answer to the petition must be filed with the clerk who signed the petition within 30 days after service of the summons and a copy of the petition, or the parent's rights may be terminated;

(3) Notice that if they are indigent, the parents are entitled to appointed counsel; the parents may contact the clerk immediately to request counsel;

(4) Notice that this is a new case. Any attorney appointed previously will not represent the parents in this proceeding unless ordered by the court;

(5) Notice that the date, time, and place of the hearing will be mailed by the clerk upon filing of the answer or 30 days from the date of service if no answer is filed; and

(6) Notice of the purpose of the hearing and notice that the parents may attend the termination hearing.

(c) If a county department of social services, not otherwise a party petitioner, is served with a petition alleging that the parental rights of the parent should be terminated pursuant to G.S. 7B-1111, the department shall file a written answer and shall be deemed a party to the proceeding."

SECTION 4. G.S. 7B-1106.1(a) reads as rewritten:

"**§ 7B-1106.1. Notice in pending child abuse, neglect, or dependency cases.**

(a) Upon the filing of a motion pursuant to G.S. 7B-1102, the movant shall prepare a notice directed to each of the following persons or agency, not otherwise a movant:

(1) The parents of the juvenile. However, notice does not need to be directed to or served upon any parent who, under Chapter 48 of the General Statutes, has irrevocably relinquished the juvenile to a county department of social services or licensed child-placing agency or to any parent who has consented to the adoption of the juvenile by the movant.

(2) Any person who has been judicially appointed as guardian of the person of the juvenile.

(3) The custodian of the juvenile appointed by a court of competent jurisdiction.

(4) Any county department of social services or licensed child-placing agency to whom a juvenile has been released by one parent pursuant to Part 7 of Article 3 of Chapter 48 of the General Statutes or any county department of social services to whom placement responsibility for the juvenile has been given by a court of competent jurisdiction.

(5) The juvenile's guardian ad ~~litem~~ litem or attorney advocate, if one has been appointed pursuant to G.S. 7B-601 and has not been relieved of responsibility.

~~(6) The juvenile, if the juvenile is 12 years of age or older at the time the motion is filed.~~

~~Provided, no notice need be directed to or served upon any parent who, under Chapter 48 of the General Statutes, has irrevocably relinquished the juvenile to a county department of social services or licensed child-placing agency nor to any parent who has consented to the adoption~~

~~of the juvenile by the movant.~~ The notice shall notify the person or agency to whom it is directed to file a written response within 30 days after service of the motion and notice. Service of the motion and notice shall be completed as provided under G.S. 7B-1102(b)."

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

HOUSE BILL 1272:
Technical/Clarifying Changes/Juvenile Code

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 19, 2009
Introduced by:	Representatives Goodwin, Glazier, Cotham	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 1272 makes technical and clarifying changes to the juvenile code.

BILL ANALYSIS:

Section 1 amends G.S. 7B-101(1)(d) to add G.S. 14-27.2A (rape of a child by an adult offender) and G.S. 14-27.4A (sexual offense with a child by an adult offender) to the list of offenses which, when committed upon a juvenile by a parent, guardian, custodian, or caretaker, make the juvenile an abused juvenile.

Section 2 amends G.S. 7B-1104 to clarify that the juvenile is a party to an action to terminate parental rights.

Sections 3 and 4 make clarifying changes to the procedure for issuance of summons in terminations of parental rights under G.S. 7B-1106 and the procedure for notice in pending abuse, neglect and dependency cases under 7B-1106.1.

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

Susan Sitze, counsel to House Juvenile Justice, substantially contributed to this summary.

H1272-SMSB-47(e1) v1

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	May 26, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 22	Enhance Youth Employment Protections.	Representative Bryant Representative Weiss Representative Goodwin Representative Luebke
HB 85	Increase Raffle Prize Limit.	Representative Sager Representative Burr
HB 440	The Nicolas Adkins School Bus Safety Act.	Representative Folwell Representative Cole Representative Love, Sr. Representative Mills
HB 686	Modernize Do Not Call Notice Procedures.	Representative Tolson Representative Howard Representative Dickson Representative Tucker
HB 960	Sanitary District Quick Take.	Representative Floyd Representative Dickson Representative Lucas Representative Glazier
HB 1377	Taxpayer Optimization Act.	Representative Folwell Representative Brown Representative McElraft Representative Moore

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II Committee
Tuesday, May 26, 2009, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 22	Enhance Youth Employment Protections.	Representative Bryant Representative Weiss Representative Goodwin Representative Luebke
HB 85	Increase Raffle Prize Limit.	Representative Sager Representative Burr
HB 440	The Nicolas Adkins School Bus Safety Act.	Representative Folwell Representative Cole Representative Love, Sr. Representative Mills
HB 686	Modernize Do Not Call Notice Procedures.	Representative Tolson Representative Howard Representative Dickson Representative Tucker
HB 960	Sanitary District Quick Take.	Representative Floyd Representative Dickson Representative Lucas Representative Glazier
HB 1377	Taxpayer Optimization Act.	Representative Folwell Representative Brown Representative McElraft Representative Moore

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE
Tuesday, May 26, 2009 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 10:00 AM on May 26, 2009, in Room 1124 of the Legislative Building with fourteen members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell introduced pages Erika Padezanin, Maura Phipps, Lauren Broadwell, Jean Turlington, Mark Kemp, Evan Bunch Wes Luck Hannah Meekins and Carolina Atkinson and thanked them for their assistance.

HB 22 – (Enhance Youth Employment Protections.) Senator Jones moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Representative Weiss explained the bill. Mr. John Hoomani, General Counsel for the North Carolina Department of Labor gave additional explanation. Mr. Tom Vitaglione of Child Fatality Task Force spoke on the bill. Mr. Hoomani and Representative Weiss answered questions from the Committee. Senator Atwater moved for a favorable report to the Proposed Committee Substitute, unfavorable to the original bill. All voted and the motion carried.

HB 960 – (Sanitary District Quick Take.) Representative Weiss explained the bill. Senator Bingham moved for a favorable report. After much discussion, Senator Hartsell noted that the bill would be heard again at the Thursday meeting. No vote was taken.

HB 85 – (Increase Raffle Prize Limit.) Representative Burr explained the bill and answered Senator Apodaca's question. Senator Apodaca moved for a favorable report. All voted and the motion carried.

HB 440 – (The Nicolas Adkins School Bus Safety Act.) Representative Folwell explained the bill. Senator Hartsell presented an amendment and it was accepted by Representative Folwell. Senator Atwater moved to adopt the amendment. All voted and the motion carried. Representative Folwell and Ms. Brenda Carter, Staff Attorney, answered questions from the Committee. Senator Jacumin moved for a favorable report as amended, unfavorable to the original bill, and rolled into a new Committee Substitute with a referral to Appropriations.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Friday, May 26, 5009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS #1) **85** Increase Raffle Prize Limit.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Wednesday, May 27, 2009

Senator HARTSELL, 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) **22** Enhance Youth Employment Protections.

Draft Number:	30401
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **440** The Nicolas Adkins School Bus Safety Act.

Draft Number:	70443
Sequential Referral:	None
Recommended Referral:	Appropriations/Base Budget
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 5/20/09

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tim Votaglione	CFTF
Lara Spagnuk	Rep Weiss
Renee Wimbish	Rep Folwell
Tony Tetterton	Fair Annexation Coalition
Mary Morgan	N.C. Community Foundation Raleigh, NC
Don Johnson	NCDMV / School Bus & Traffic Safety Section 1100 New Bern Ave.
Alicia	MWC
David Heinen	NC Center for Nonprofits
Jim Johnson	BSA
Lisa Martin	NC Home Builders
Jessi Hayes	

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cody Thomas	NC Assn of REALTORS
Christy Agner	Dept. of Admin
Art Britt	NCDOL
John Hamann	NCDOL
Katherine Joyce	NCASA
Emily Doyle	NCPAPA
Conor Brockett	ncsba
Alice Garland	NCEL
Derek Graham	DPI
[signature] Harrison	WCPSS
Steve Brewer	EMBARQ
Marty Bocock	" "

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Leslie Arnold	SOG - Daily Bulletin
Chris Hollis	K&L Gates
ANTHONY ALLEN	NCACC

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 3

HOUSE BILL 22
Committee Substitute Favorable 3/12/09
Committee Substitute #2 Favorable 3/18/09

Short Title: Enhance Youth Employment Protections. (Public)

Sponsors:

Referred to:

February 2, 2009

A BILL TO BE ENTITLED

AN ACT TO ENHANCE YOUTH EMPLOYMENT PROTECTIONS BY REQUIRING THE COMMISSIONER OF LABOR TO REPORT ON ENFORCEMENT ACTIVITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 2A of Chapter 95 of the General Statutes is amended by adding a new section to read:

"**§ 95-25.23C. Report on youth employment enforcement activities.**

(a) Findings. – The General Assembly finds that:

(1) There is an increasing need to protect the educational opportunities of youths under age 18 and to prohibit their employment in jobs and under conditions that are detrimental to their health and well-being.

(2) Although the statutory protections available for youths under age 18 who are employed in this State are comprehensive, those protections are rendered meaningless without effective enforcement.

(3) It is in the best interest of the State and its youngest workers to ensure that North Carolina employers are in full compliance with the youth employment laws and regulations enacted under the Wage and Hour Act.

(b) Intent. – Recognizing that the Department of Labor is the State agency charged with enforcing the Wage and Hour Act as it pertains to youth employment, the General Assembly intends to review the Department's education and enforcement activities on a regular basis in order to identify effective measures for enhancing youth employment protections in this State.

(c) By February 1, 2010, the Commissioner shall make a written report to the General Assembly, the Legislative Study Commission on Children and Youth, and the Fiscal Research Division of the General Assembly on the Department of Labor's investigative, inspection, and enforcement activities under the Wage and Hour Act pertaining to youth employment for the period commencing January 1, 2008, and ending December 31, 2008. The written report shall include at least all of the following:

(1) All activities the Department of Labor has sponsored or participated in for the purpose of educating employers about their responsibilities under the Wage and Hour Act.

(2) The total number of complaints received by the Department of Labor alleging youth employment violations under the Wage and Hour Act, or any regulations issued under the Wage and Hour Act, or both.

(3) The specific types of youth employment violations alleged and the ages of the youths referenced in the complaints received by the Department of Labor.

(4) The total number of investigations conducted by the Department of Labor concerning alleged youth employment violations, the length of the investigations, and the number of investigators assigned to conduct the investigations. For purposes of this subdivision, the Commissioner shall provide a separate analysis of (i) investigations initiated by the Department in response to a complaint, (ii) investigations initiated by the Department in the absence of a complaint, and (iii) alleged record-keeping violations pertaining to youth employment.

(5) The total number of administrative proceedings involving youth employment violations.

(6) The total number and identity of employers cited for youth employment violations and the industries or occupations that received the greatest and the least number of complaints alleging youth employment violations.

(7) The total number and dollar amount of civil penalties assessed pursuant to G.S. 95-25.23 and the total number and dollar amount of civil penalties actually collected pursuant to that section. For purposes of this subdivision, the Commissioner shall provide a detailed, itemized list of each civil penalty represented in the total number and dollar amounts reported pursuant to this subdivision and indicate whether each civil penalty is the result of a complaint.

(8) The total number and dollar amount of civil penalties assessed pursuant to G.S. 95-25.23A and the total number and dollar amount of civil penalties actually collected pursuant to that section. For purposes of this subdivision, the Commissioner shall provide a detailed, itemized list of each civil penalty represented in the total number and dollar amounts reported pursuant to this subdivision and indicate whether each civil penalty is the result of a complaint.

(9) An explanation of any obstacles that prevented the Department of Labor from enforcing any provision of the Wage and Hour Act as it pertains to youth employment, any recommended changes to the Wage and Hour Act to strengthen the Department of Labor's oversight and enforcement of youth employment laws and regulations in this State, and any other information related to the Department of Labor's enhanced enforcement of the State's youth employment laws and regulations.

(10) Recommendations about the funding needed by the Department to (i) eliminate any identified obstacles to enforcement of youth employment laws and regulations and (ii) effectively implement any recommended changes.

(d) Beginning February 1, 2011, and annually thereafter, the Commissioner shall submit a written report to the General Assembly, the Legislative Study Commission on Children and Youth, and the Fiscal Research Division of the General Assembly updating the information set forth in the report required by subsection (c) of this section. Each written report submitted pursuant to this subsection shall contain data and information about the calendar year preceding the date of the last written report submitted."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 22
Committee Substitute Favorable 3/12/09
Committee Substitute #2 Favorable 3/18/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H22-CSSB-43 [v.2]

5/22/2009 3:58:55 PM

Short Title: Enhance Youth Employment Protections. (Public)

Sponsors:

Referred to:

February 2, 2009

A BILL TO BE ENTITLED

AN ACT TO ENHANCE YOUTH EMPLOYMENT PROTECTIONS BY REQUIRING THE COMMISSIONER OF LABOR TO REPORT ON ENFORCEMENT ACTIVITIES.

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(a) Findings. – The General Assembly finds that:

(1) There is an increasing need to protect the educational opportunities of youths under age 18 and to prohibit their employment in jobs and under conditions that are detrimental to their health and well-being.

(2) Although the statutory protections available for youths under age 18 who are employed in this State are comprehensive, those protections are rendered meaningless without effective enforcement.

(3) It is in the best interest of the State and its youngest workers to ensure that North Carolina employers are in full compliance with the youth employment laws and regulations enacted under the Wage and Hour Act.

(b) Intent. – Recognizing that the Department of Labor is the State agency charged with enforcing the Wage and Hour Act as it pertains to youth employment, the General Assembly intends to review the Department's education and enforcement activities on a regular basis in order to identify effective measures for enhancing youth employment protections in this State.

(c) Report. – No later than February 1 of each year, the Commissioner shall submit a written report to the General Assembly, the Legislative Study Commission on Children and Youth, and the Fiscal Research Division of the General Assembly on the Department of Labor's investigative, inspection, and enforcement activities under the Wage and Hour Act pertaining to youth employment. Each report submitted pursuant to this subsection shall contain data and information about the calendar year preceding the date on which the last written report was submitted. The report shall include at least all of the following:

(1) All activities the Department of Labor has sponsored or participated in for the purpose of educating employers about their responsibilities under the Wage and Hour Act.

(2) The total number of complaints received by the Department of Labor alleging youth employment violations under the Wage and Hour Act, or any regulations issued under the Wage and Hour Act, or both.

(3) The specific types of youth employment violations alleged and the ages of the youths referenced in the complaints received by the Department of Labor.

(4) The total number of investigations conducted by the Department of Labor concerning alleged youth employment violations, the length of the investigations, and the number of investigators assigned to conduct the investigations. For purposes of this subdivision, the Commissioner shall provide a separate analysis of (i) investigations initiated by the Department in response to a complaint, (ii) investigations initiated by the Department in the absence of a complaint, and (iii) alleged record-keeping violations pertaining to youth employment.

(5) The total number of administrative proceedings involving youth employment violations.

(6) The total number and identity of employers cited for youth employment violations and the industries or occupations that received the greatest and the least number of complaints alleging youth employment violations.

(7) The total number and dollar amount of civil penalties assessed pursuant to G.S. 95-25.23 and the total number and dollar amount of civil penalties actually collected pursuant to that section. For purposes of this subdivision, the Commissioner shall provide a detailed, itemized list of each civil penalty represented in the total number and dollar amounts reported pursuant to this subdivision and indicate whether each civil penalty is the result of a complaint.

(8) The total number and dollar amount of civil penalties assessed pursuant to G.S. 95-25.23A and the total number and dollar amount of civil penalties actually collected pursuant to that section. For purposes of this subdivision, the Commissioner shall provide a detailed, itemized list of each civil penalty represented in the total number and dollar amounts reported pursuant to this subdivision and indicate whether each civil penalty is the result of a complaint.

(9) An explanation of any obstacles that prevented the Department of Labor from enforcing any provision of the Wage and Hour Act as it pertains to youth employment, any recommended changes to the Wage and Hour Act to strengthen the Department of Labor's oversight and enforcement of youth employment laws and regulations in this State, and any other information related to the Department of Labor's enhanced enforcement of the State's youth employment laws and regulations.

(10) Recommendations about the funding needed by the Department to (i) eliminate any identified obstacles to enforcement of youth employment laws and regulations and (ii) effectively implement any recommended changes.

SECTION 2. The first report required by G.S. 95-25.23C, as enacted by Section 1 of this act, is due no later than February 1, 2010 and shall cover investigative, inspection and enforcement activities under the Wage and Hour Act pertaining to youth employment for the period January 1, 2008 through December 31, 2008.

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

HOUSE BILL 22:
Enhance Youth Employment Protections

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 26, 2009
Introduced by:	Representatives Weiss, Goodwin, Luebke, Bryant	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	Third Edition		

SUMMARY: ***House Bill 22 would require the Commissioner of Labor to report to the General Assembly on enforcement activities undertaken by the Department of Labor regarding youth employment protections in North Carolina; provide that the General Assembly intends to review the Department of Labor's education activities; and provides that the Department of Labor must report on the activities it has sponsored or participated in for the purpose of educating employers about their responsibilities under the Wage and Hour Act.***

[As introduced, this bill was identical to S276, as introduced by Sen. Berger of Franklin, which is currently in Senate Commerce.]

CURRENT LAW: G.S. 95-5 requires the Commission of Labor (Commissioner) to file with the Governor (and the General Assembly in the years that it is in session) an annual report covering the activities of the Department of Labor (DOL) and any recommendations for statutory changes. According to G.S. 95-6, the report must also include statistical details on "all divisions of labor in the State".

BILL ANALYSIS: House Bill 22 would require the Commissioner to report to the General Assembly, the Legislative Study Commission on Children and Youth, and the Fiscal Research Division of the General Assembly on enforcement activities undertaken by the DOL regarding youth employment protections in the State. The bill would include the following findings by the General Assembly:

- That there is an increasing need to protect the educational opportunities of youths under 18 and prohibit their employment in jobs that hurt their health and well-being.
- Statutory protections are meaningless without effective enforcement.
- It is in the best interest of the State and its youngest workers to ensure that the State's employers are in compliance with the youth employment laws.

The Commissioner would be required to make a written report to the General Assembly, the Legislative Study Commission on Children and Youth, and the Fiscal Research Division by February 1, 2010 on the DOL's investigative, inspection, and enforcement activities under the State's Wage and Hour Act for youth employment for the period between January 1, 2008 and December 31, 2008. The report must include:

- All of the activities the DOL has sponsored or participated in for the purpose of educating employers about their responsibilities under the Wage and Hour Act.
- The total number of complaints received by DOL alleging youth employment violations under the Wage and Hour Act or any regulations or both.

  The specific types of youth employment violations alleged and the ages of the youths referenced in the complaints received by the DOL.

- The total number of investigations conducted by the DOL on alleged youth employment violations including the length of the investigations and the number of investigators assigned.
- The total number of administrative proceedings on youth employment violations.
- The total number and the identity of employers cited for youth employment violations and the industries/occupations that received the most and least number of complaints.
- The total number and dollar amount of the civil penalties assessed and collected for violations of youth employment.
- An explanation of any obstacles that prevented the DOL from enforcing any provisions concerning youth employment and any recommended statutory changes to strengthen the DOL's oversight and enforcement of youth employment laws and regulations.
- Recommendations about the funding needed by the DOL to eliminate identified obstacles that restrict the enforcement of youth employment laws and effectively implement any recommended changes.

Beginning February 1, 2011, and annually thereafter, the Commissioner would be required to submit a written report to the General Assembly, the Legislative Study Commission on Children and Youth, and the Fiscal Research Division updating the information required in the report due on February 1, 2010. The annual report must contain data and information about the calendar year preceding the date of the last written report submitted.

Drupti Chauhan, Counsel to House Judiciary II, substantially contributed to this summary.

HOUSE BILL 85
Committee Substitute Favorable 3/12/09

Short Title: Increase Raffle Prize Limit. (Public)

Sponsors:

Referred to:

February 9, 2009

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE LIMIT ON RAFFLE PRIZES AND TO AUTHORIZE THE RAFFLE OF REAL PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-309.15 reads as rewritten:

"**§ 14-309.15. Raffles.**

(a) It is lawful for any nonprofit organization or association, recognized by the Department of Revenue as tax-exempt pursuant to G.S. 105-130.11(a), or for any bona fide branch, chapter, or affiliate of such organization, and for any government entity within the State, to conduct raffles in accordance with this section. Any person who conducts a raffle in violation of any provision of this section shall be guilty of a Class 2 misdemeanor. Upon conviction that person shall not conduct a raffle for a period of one year. It is lawful to participate in a raffle conducted pursuant to this section. It shall not constitute a violation of State law to advertise a raffle conducted in accordance with this section. A raffle conducted pursuant to this section is not "gambling".

(b) For purposes of this section "raffle" means a game in which the prize is won by random drawing of the name or number of one or more persons purchasing chances.

(c) Raffles shall be limited to two per nonprofit organization per year.

(d) Except as provided in subsection (g) of this section, ~~The~~ the maximum cash prize that may be offered or paid for any one raffle is ~~fifty thousand dollars ($50,000)~~ one hundred twenty-five thousand dollars ($125,000) and if merchandise is used as a prize, and it is not redeemable for cash, the maximum fair market value of that prize may be ~~fifty thousand dollars ($50,000)~~one hundred twenty-five thousand dollars ($125,000). ~~No real property may be offered as a prize in a raffle.~~ The total cash prizes offered or paid by any nonprofit organization or association may not exceed ~~fifty thousand dollars ($50,000)~~ one hundred twenty-five thousand dollars ($125,000) in any calendar year. The total fair market value of all prizes offered by any nonprofit organization or association, either in cash or in merchandise that is not redeemable for cash, may not exceed ~~fifty thousand dollars ($50,000)~~one hundred twenty-five thousand dollars ($125,000) in any calendar year.

(e) Raffles shall not be conducted in conjunction with bingo.

(f) As used in this subsection, "net proceeds of a raffle" means the receipts less the cost of prizes awarded. No less than ninety percent (90%) of the net proceeds of a raffle shall be used by the nonprofit organization or association for charitable, religious, educational, civic, or other nonprofit purposes. None of the net proceeds of the raffle may be used to pay any person to conduct the raffle, or to rent a building where the tickets are received or sold or the drawing is conducted.

(g) Real property may be offered as a prize in a raffle. The maximum appraised value of real property that may be offered for any one raffle is five hundred thousand dollars ($500,000). The total appraised value of all real estate prizes offered by any nonprofit organization or association may not exceed five hundred thousand dollars ($500,000) in any calendar year."

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

HOUSE BILL 85:
Increase Raffle Prize Limit

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 26, 2009
Introduced by:	Reps. Burr, Sager	**Prepared by:**	Jennifer McGinnis
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 85 increases the maximum limit for cash and merchandise used as raffle prizes by nonprofit organizations from $50,000 to $125,000. The bill would also authorize the raffle of real property with an appraised value of up to $500,000. The bill clarifies that the authorization applies to branches, chapters and affiliates of such organizations.***

CURRENT LAW:

G.S. 14-309.15 authorizes nonprofit organizations and associations, recognized as such by the Department of Revenue, as well as government entities within the State, to conduct raffles in accordance with the restrictions contained in the statute. The law defines "raffle" as a game in which the prize is won by random drawing of the name or number of one or more persons purchasing chances.

The maximum amount that can be offered as a cash prize is $50,000. If merchandize is used as a prize, the maximum fair market value of the merchandise may be $50,000. A nonprofit is limited to two raffles per year. The total value of all prizes, whether in cash or merchandise, offered in a calendar year cannot exceed $50,000.

A nonprofit organization must use no less than 90% of the net proceeds of a raffle for charitable, religious, educational, civic or other nonprofit purposes and net proceeds may not be used to pay a person to conduct the raffle or to rent the space used for the raffle.

A person who violates the statute's provisions governing raffles is guilty of a Class 2 misdemeanor.[1] Upon conviction a person may not conduct a raffle for a period of one year.

BILL ANALYSIS: House Bill 85 would:

- Amend current law governing raffles to allow any bona fide branch, chapter or affiliate of a nonprofit organization to conduct raffles on the same basis as the parent organization.
- Increase the maximum amounts for cash prizes and for merchandise used as prizes in raffles from $50,000 to $125,000.
- Authorize the raffle of real property with an appraised value of up to $500,000.

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

BACKGROUND: The maximum limit for cash prizes was last changed in 2005. At that time the limit was increased from $10,000 to $50,000. The limit for merchandise used as a raffle prize has been set at $50,000 since 1997.

Karen Cochrane-Brown, Counsel to the House Committee on Commerce, Small Business, and Entrepreneurship, and Steven Rose, Counsel to House Judiciary III, substantially contributed to this summary.

H85-SMRI-46(e2) v2

[1] The range of punishment for a Class 2 misdemeanor when there are no prior convictions is 1 to 30 days of community punishment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 440
Committee Substitute Favorable 4/2/09

Short Title: The Nicolas Adkins School Bus Safety Act. (Public)

Sponsors:

Referred to:

March 9, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE USE OF AUTOMATED CAMERA OR VIDEO RECORDING SYSTEMS TO DETECT AND PROSECUTE INDIVIDUALS WHO PASS STOPPED SCHOOL BUSES, AS RECOMMENDED BY THE CHILD FATALITY TASK FORCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-217 is amended by adding a new subsection to read:

"(h) Automated camera and video recording systems may be used to detect and prosecute violations of this section. Any photograph or video recorded by a camera or video recording system shall, if consistent with the North Carolina Rules of Evidence, be admissible as evidence in any proceeding alleging a violation of subsection (a) of this section."

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 2nd

H. B. No. 440 DATE 5-26-09

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

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) Hartsell

1 moves to amend the bill on page 1, line 11-12
2 ( ) WHICH CHANGES THE TITLE
3 by inserting between those lines the following:
4 "(g) Any person who wilfully violates subsection
5 (a) of this section and strikes any person shall
6 be guilty of a Class I felony. Any person who
7 wilfully violates subsection (a) of this section and
strikes any person, ~~causing~~ resulting in the death of ~~the~~ a person,
9 shall be guilty of a Class H felony."
10
11
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19

SIGNED ~~_____~~

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 440:
The Nicolas Adkins School Bus Safety Act

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 22, 2009
Introduced by:	Reps. Folwell, Cole, Mills, Love	**Prepared by:**	Brenda J. Carter
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 440 would authorize the use of automated camera and video recording devices to detect and prosecute violations of the law prohibiting passing a stopped school bus, and would provide that photos or video from the device may be admissible as evidence consistent with the North Carolina Rules of Evidence.***

CURRENT LAW: Under G.S. 20-217, passing a stopped school bus is a Class 1 misdemeanor.[1] A person who willfully passes a stopped school bus, and who strikes someone, is guilty of a Class I felony.[2] Conviction of passing a stopped school bus also subjects the driver to five drivers license points [G.S. 20-16(c)], and four insurance points under the North Carolina Safe Driver Incentive Plan.

(The full text of G.S. 20-217 is printed on the reverse side of this memorandum.)

BILL ANALYSIS: House Bill 440 would authorize the use of automated camera and video recording systems to detect and prosecute drivers who violate the law by passing a stopped school bus. The bill provides that any photograph or video recorded by a camera or video recording system would, if consistent with the North Carolina Rules of Evidence, be admissible as evidence in any proceeding alleging that a driver violated the law by passing a stopped school bus displaying a stop sign.

EFFECTIVE DATE: The bill would become effective December 1, 2009, and apply to offenses committed on or after that date.

1-45 days community penalty, fine in the discretion of the court

Presumptive minimum:4-6 months community penalty, fine in the discretion of the court

Text of current G.S. 20-217:

§ 20-217. Motor vehicles to stop for properly marked and designated school buses in certain instances; evidence of identity of driver.

(a) When a school bus is displaying its mechanical stop signal or flashing red lights and the bus is stopped for the purpose of receiving or discharging passengers, the driver of any other vehicle that approaches the school bus from any direction on the same street, highway, or public vehicular area shall bring that other vehicle to a full stop and shall remain stopped. The driver of the other vehicle shall not proceed to move, pass, or attempt to pass the school bus until after the mechanical stop signal has been withdrawn, the flashing red stoplights have been turned off, and the bus has started to move.

(b) For the purpose of this section, a school bus includes a public school bus transporting children or school personnel, a public school bus transporting senior citizens under G.S. 115C-243, or a privately owned bus transporting children. This section applies only in the event the school bus bears upon the front and rear a plainly visible sign containing the words "school bus."

(c) Notwithstanding subsection (a) of this section, the driver of a vehicle traveling in the opposite direction from the school bus, upon any road, highway or city street that has been divided into two roadways, so constructed as to separate vehicular traffic between the two roadways by an intervening space (including a center lane for left turns if the roadway consists of at least four more lanes) or by a physical barrier, need not stop upon meeting and passing any school bus that has stopped in the roadway across the dividing space or physical barrier.

(d) It shall be unlawful for any school bus driver to stop and receive or discharge passengers or for any principal or superintendent of any school, routing a school bus, to authorize the driver of any school bus to stop and receive or discharge passengers upon any roadway described by subsection (c) of this section where passengers would be required to cross the roadway to reach their destination or to board the bus; provided, that passengers may be discharged or received at points where pedestrians and vehicular traffic are controlled by adequate stop-and-go traffic signals.

(e) Except as provided in subsection (g) of this section, any person violating this section shall be guilty of a Class 1 misdemeanor. A person who violates subsection (a) of this section shall not receive a prayer for judgment continued under any circumstances.

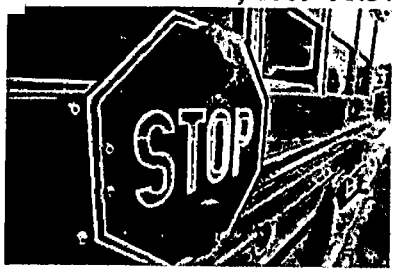
(f) Expired.

(g) Any person who willfully violates subsection (a) of this section and strikes any person shall be guilty of a Class I felony.

**Giles Perry, Counsel to the House Committee on Transportation, and Steven Rose, Counsel to the House Committee on Judiciary III, contributed to this summary.*

H440-SMRV-82(e2) v2

THE NEWS&OBSERVER
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Stop, we mean it

Republican state Rep. Dale Folwell of Forsyth County has long had an interest in highway safety issues, but a bill he's guiding through the General Assembly has a personal meaning.

It's a good bill that would allow counties to place cameras on school bus "Stop" arms that could photograph those who pass stopped school buses, a most serious moving violation. The pictures could be used in court. The legislature has toughened laws on this particular offense over several years, trying to prevent defendants from dodging punishment. Legislators, advised by the N.C. Child Fatality Task Force, now know that there are over 400,000 times a year when people pass stopped school buses. Only a relative few are convicted of that offense.

st Friday morning, Joseph Liptak was hurt (he is recovering and listed in good condition) by a pickup truck on nny Road in Cary, near Oak Grove Elementary School. The 12-year-old Carnage Middle School student was crossing the street to catch the school bus, which had its lights on and its stop arm extended. The truck's driver has been charged with failing to stop for a school bus.

The possibility of tragedy and near-tragedy with school bus stops of course is ever-present, but the risk goes up when it is raining, or early in the morning before it is fully light, both of which were true in connection with the Cary incident. It amounts to all the more reason to take every precaution that we can.

"You cannot legislate common sense and common courtesy," said Folwell, a soft-spoken three-term incumbent whose co-sponsor on the bill is Nelson Cole, a Rockingham County Democrat.

Folwell, however, believes that when it comes to protecting school children, the state needs all the tools it can muster. It simply defies logic that people would see a stopped school bus, knowing that children will be crossing the road to board it or to leave it, and drive on past. Yet it's an all-to-frequent occurrence. What often happens is that drivers get distracted and carelessly whiz on past -- not that that's any excuse.

The bill is named for Nicolas Adkins from Rockingham County, who was 16 when he was hit and killed by a driver who ignored a school bus "Stop" sign. Also undoubtedly on Folwell's mind is his own 7-year-old son, who was killed in 1999 when a driver ran past a school bus.

ddition to working on this bill, Folwell has consulted with the state Division of Motor Vehicles to include as of the license renewal sign test the school bus "Stop." DMV was quick to respond to his idea.

Folwell is right that one can't legislate common sense. But we do need common-sense legislators who are on the lookout for ways to enhance public safety.

School bus safety bill gets push

Monday, March 2
(updated 5:27 am)
By Mark Binker
Staff Writer
Credit: File photo / News & Record



RALEIGH - An accident that claimed the life of a Rockingham County student in January has given an extra push to legislation that lawmakers plan to file this week that would allow cameras to be placed on school bus stop arms.

Nicholas Adkins, 16, was hit and killed by a driver who ignored a school bus stop sign, which activates when students are boarding and getting off.

Rep. Dale Folwell, a Forsyth County Republican, and Rep. Nelson Cole, a Rockingham County Democrat, will introduce a bill today or Tuesday named in Adkins' honor that would further tighten North Carolina's laws on school bus stop signs.

Specifically, the Nicholas Adkins School Bus Safety Act would allow school districts to install cameras on their buses and allow pictures taken with those cameras to be used in court against those who ignore an activated sign.

"We want Nicholas' family and friends and community to know that he's not forgotten in terms of our focus on trying to prevent this from happening again," said Folwell, who lost his 7-year-old son when a driver ran past a school bus stop sign in 1999.

The bill is the fourth in recent years to crack down on such violators. Previous legislation has forbidden judges from giving lenient judgments to violators and increased the penalties associated with the crime.

This latest version came as a recommendation of the North Carolina Child Fatality Task Force, a group that advises the General Assembly on ways to prevent injuries to children of all ages.

"School buses are passed 400,000 times a year in North Carolina," said Tom Vitaglione, chairman of the task force. "The fact we're not losing more children is a miracle."

Despite recent changes to the law, prosecuting stop arm violators remains difficult and happens only in a small percentage of cases reported by school bus drivers.

Currently, the law is unclear on whether pictures taken by a school bus could be used in issuing citations. Vitaglione said the bill put forward by Folwell and Cole would clear up any confusion and clear the way for local school districts to equip their buses to catch violators.

The task force also is trying other ways to educate the public, including adding a school bus stop arm to the sign-recognition test drivers take when they renew their licenses.

In addition to the stop signs, Cole noted, school buses also have yellow and red blinking lights to alert drivers that kids are loading or unloading.

"I don't understand how they don't see the blinking yellow lights or the blinking red lights," Cole said. "It's beyond me."

Contact Mark Binker at (919) 832-5549 or mark.binker@news-record.com

FELONY OFFENSE CLASSIFICATION CRITERIA*

CLASS	CRITERIA
A	• Reserved for First Degree Murder
	[Reasonably tends to result or does result in]:
B	• Serious debilitating long-term personal injury
C	• Serious long-term personal injury • Serious long-term or widespread societal injury
D	• Serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling
E	• Serious personal injury
F	• Significant personal injury • Serious societal injury
G	• Serious property loss: Loss from the person or from the person's dwelling
H	• Serious property loss: Loss from any structure designed to house or secure any activity or property Loss occasioned by the taking or removing of property Loss occasioned by breach of trust, formal or informal • Personal injury • Significant societal injury
I	• Serious property loss: All other felonious property loss • Societal injury
M	• All other misdemeanors

* Personal injury includes both physical and mental injury.
Societal injury includes violations of public morality, judicial or government operations, and/or public order and welfare.

Note: The criteria were not used in the classification of the homicide offenses or drug offenses.

House Bill 440: The Nicolas Adkins School Bus Safety Act
Sponsors: Representatives Folwell, Cole, Mills, Love

The following individuals /organizations have endorsed House Bill 440:

1. **Child Fatality Task Force**

2. **North Carolina Association of Educators**

3. **North Carolina Association of School Administrators**

HOUSE BILL 686
Committee Substitute Favorable 4/1/09

Short Title: Modernize Do Not Call Notice Procedures. (Public)

Sponsors:

Referred to:

March 23, 2009

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE NOTICE REQUIREMENTS FOR PROTECTIONS FOR TELEPHONE SUBSCRIBERS WHO WISH TO STOP UNWANTED TELEPHONE SOLICITATIONS AND FOR CONSUMERS WHO ENTER INTO TELEMARKETING TRANSACTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 75-102(m) reads as rewritten:

"(m) The Attorney General, in consultation with the Public Staff of the Public Utilities Commission, shall draft the contents of a bill ~~insert~~ insert, bill message, or direct mail, including e-mail when affirmatively selected by the customer, that notifies consumers of the existence of the "Do Not Call" Registry and provides information to consumers on how to use it and the other provisions of this Article to object to receiving telephone solicitations. Local exchange companies shall distribute the ~~insert~~notification pursuant to G.S. 62-54."

SECTION 2. G.S. 62-54 reads as rewritten:

"**§ 62-54. Notification of opportunity to object to telephone solicitation.**

The Commission shall require each local exchange company and each competing local provider certified to do business in North Carolina to notify all telephone subscribers who subscribe to residential service from that company of the provisions of Article 4 of Chapter 75 of the General Statutes and of the federal laws and regulations allowing consumers to object to receiving telephone solicitations, by enclosing a bill ~~insert,~~insert or bill message, or by direct mail, including e-mail when affirmatively selected by the customer, drafted pursuant to G.S. 75-102(m), at least ~~annually, in at least one telephone bill mailed to every residential customer.~~ annually. The Commission shall also ensure that this information is printed in a clear, conspicuous manner in the consumer information pages of each telephone directory distributed to residential customers."

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

HOUSE BILL 960
Committee Substitute Favorable 5/5/09

Short Title: Sanitary District Quick Take. (Public)

Sponsors:

Referred to:

April 1, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW SANITARY DISTRICTS THE SAME POWER AS ALL OTHER UNITS OF LOCAL GOVERNMENT IN ACQUIRING PROPERTY BY CONDEMNATION FOR WATER SUPPLY AND DISTRIBUTION SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 40A-42(a)(1) reads as rewritten:

"(1) Standard Provision. – When a local public condemnor is acquiring property by condemnation for a purpose set out in G.S. 40A-3(b)(1), (4) or (7), or when a city is acquiring property for a purpose set out in G.S. 160A-311(1), (2), (3), (4), (6), or (7), or when a county is acquiring property for a purpose set out in G.S. 153A-274(1), (2) or (3), or when a local board of education or any combination of local boards of education is acquiring property for any purpose set forth in G.S. 115C-517, or when a condemnor is acquiring property by condemnation as authorized by ~~G.S. 40A-3(c)(8),~~ G.S. 40A-3(c)(1), (8), (9), (10), (12), or (13) title to the property and the right to immediate possession shall vest pursuant to this subsection. Unless an action for injunctive relief has been initiated, title to the property specified in the complaint, together with the right to immediate possession thereof, shall vest in the condemnor upon the filing of the complaint and the making of the deposit in accordance with G.S. 40A-41."

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

HOUSE BILL 960:
Sanitary District Quick Take

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 26, 2009
Introduced by:	Reps. Glazier, Dickson, Lucas, E. Floyd	**Prepared by:**	Jennifer McGinnis Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 960 would grant sanitary districts "quick-take" authority, i.e., allow these entities to acquire title and the right to immediate possession of condemned property upon the filing of a complaint containing a declaration of taking and deposit of estimated just compensation, unless the owner of the property to be condemned institutes an action for injunctive relief.***

CURRENT LAW: Chapter 40A of the General Statutes currently grants the power of eminent domain to sanitary districts and other local public condemnors.

The time at which a local public condemnor acquires title to and the right to immediate possession of a property is dependent upon the type of public condemnor and the purpose for which the property is condemned. Some local public condemnors exercising the power of eminent domain for certain purposes are provided "quick-take" authority, in which title to the property and the right to immediate possession vests in the condemnor immediately upon the filing of the complaint containing a declaration of taking and deposit of the estimated just compensation (unless the owner of the property to be condemned institutes an action for injunctive relief). Otherwise, title and the right to possession vests in the condemnor only upon (i) filing of an answer by the property owner requesting only a determination of just compensation (not challenging authority of the condemnor to take the property), (ii) failure of the property owner to file an answer within 120 days of service of the complaint containing a declaration of taking, or (iii) upon disbursement of the deposit of the estimated just compensation to the property owner.

BILL ANALYSIS: Sanitary districts currently have the power of eminent domain, but do not have "quick-take" authority. The bill would grant them "quick-take" authority that would allow the districts to acquire title to property and the right to immediate possession immediately upon the filing of a complaint and deposit, unless the owner of property to be condemned institutes an action for injunctive relief.

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

H960-SMRI-48(e2) v1

HOUSE BILL 1377
Second Edition Engrossed 5/14/09

Short Title:	Taxpayer Optimization Act.	(Public)
Sponsors:	Representatives Folwell, McElraft, Brown, Moore (Primary Sponsors); and Starnes.	
Referred to:	State Government/State Personnel, if favorable, Judiciary II.	

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE CERTAIN SALES OF STATE PROPERTY SUBJECT TO UPSET BIDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 146-27 reads as rewritten:

"**§ 146-27. The role of the Department of Administration in sales, leases, and rentals.**

(a) General. – Every sale, lease, rental, or gift of land owned by the State or by any State agency shall be made by the Department of Administration and approved by the Governor and Council of State. A lease or rental of land owned by the State may not exceed a period of 99 years. The Department of Administration may initiate proceedings for sales, leases, rentals, and gifts of land owned by the State or by any State agency.

(b) Large Disposition. – If a proposed disposition is a sale or gift of land with an appraised value of at least twenty-five thousand dollars ($25,000), the sale or gift shall not be made until after consultation with the Joint Legislative Commission on Governmental Operations.

(b1) Upset Bids. – If a proposed disposition of land or other real property with a value of at least twenty-five thousand dollars ($25,000) is a sale or other transfer to a private entity that operates or is established to operate for profit, the proposed disposition shall be subject to upset bids, unless other, non-monetary consideration associated with the transaction has been made public. If other consideration is offered such that upset bids are not required, notice of the sale and other consideration shall be posted and published in a manner similar to that provided in G.S. 1-339.17. The Department of Administration shall adopt a procedure for upset bids that is based on the upset bid procedure set forth in Part 2 of Article 29A of Chapter 1 of the General Statutes.

(c) Expired effective September 1, 2007."

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

Principal Clerk ____
Reading Clerk ____

Corrected Notice – HB 765 removed, HB 686, 960 and 1377 added

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	May 28, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 43	School Bd. Members/Failure to Discharge Duty.	Representative Martin Representative Cotham Representative Glazier Representative Fisher
HB 686	Modernize Do Not Call Notice Procedures.	Representative Tolson Representative Howard Representative Dickson Representative Tucker
HB 960	Sanitary District Quick Take.	Representative Floyd Representative Dickson Representative Lucas Representative Glazier
HB 1037	Permit Access to Capital Defendants.	Representative Blue Representative Ross Representative Harrison Representative Glazier
HB 1039	Guilty Plea Form Revisions.	Representative Ross Representative Glazier
HB 1168	Title Protection/Social Workers.	Representative England, M.D. Representative Dickson Representative Glazier

		Representative Wainwright
HB 1327	Schools Notified of Crim. Intell. Info.	Representative Justice
		Representative Folwell
		Representative Cleveland
		Representative Langdon, Jr.
HB 1377	Taxpayer Optimization Act.	Representative Folwell
		Representative Brown
		Representative McElraft
		Representative Moore

Senator Fletcher L. Hartsell, Jr., Chair

SENATE JUDICIARY II COMMITTEE
Thursday, May 28, 2009 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 10:00 AM on May 28, 2009, in Room 1124 of the Legislative Building with seventeen members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell introduced pages Reese Miller, Ben Smith, Maura Phipps and Erika Padezanin and thanked them for their assistance.

HB 960 – (Sanitary District Quick Take.) This bill was heard at the Tuesday, May 26, 2009 meeting but no vote was taken. Senator Hartsell explained the bill. Senator Rand spoke on the bill. Senators Hartsell, Rand and Representative Glazier answered questions from Senators Apodaca, Atwater and Forrester. Senator Vaughan moved for a favorable report. All voted and the motion carried.

HB 43 – (School Bd. Members/Failure to Discharge Duty.) Representative Glazier explained the bill and answered questions from Senators Goodall, Snow and Allran. Ms. Leanne Winner, Attorney, representing the North Carolina School Board Association, spoke on the bill. Senator Jacumin moved for a favorable report with a referral to Appropriations. All voted and the motion carried.

HB 686 – (Modernize Do Not Call Notice Procedures.) Representative Tucker explained the bill. Senator Allran moved to adopt the Proposed Committee Substitute for purposes of discussion. Mr. Jeff Hudson, Staff Attorney, gave additional explanation. Senator Dannelly moved for a favorable report to the Proposed Committee Substitute, unfavorable to the original bill. All voted and the motion carried.

HB 1037 – (Permit Access to Capital Defendants.) Representative Glazier explained the bill and answered questions from Senators Forrester, Allran and Atwater. Mr. Staples Hughes of the Office of the Appellate Defender spoke on the bill. Senator Goodall moved for a favorable report. All voted and the motion carried.

HB 1039 – (Guilty Plea Form Revisions.) Representative Glazier explained the bill and answered questions from Senators Queen, Berger, Vaughan and Jones. Senator Bingham moved for a favorable report. All voted and the motion carried.

HB 1168 – (Title Protection/Social Workers.) Representative Glazier explained the bill. Senator Atwater moved for a favorable report. All voted and the motion carried.

HB 1327 – (Schools Notified of Crim. Intell. Info.) Representative Folwell explained the bill. Senator Dannelly moved for a favorable report. All voted and the motion carried.

HB 1377 – (Taxpayer Optimization Act.) Representative Folwell explained the bill. Ms Christy Agner of the North Carolina Department of Administration and Mr. Tim Waltman of the State

Properties Office spoke on the bill. Senator Hartsell noted that no voted would be taken on the bill and asked Senator Bingham and Senator Queen to work with Representative Folwell on the bill.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Thursday, May 28, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE

H.B.	**43**	School Bd. Members/Failure to Discharge Duty.	
		Sequential Referral:	None
		Recommended Referral:	Appropriations/Base Budget
H.B.(CS #1)	**960**	Sanitary District Quick Take.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.	**1037**	Permit Access to Capital Defendants.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.(CS #1)	**1039**	Guilty Plea Form Revisions.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.(CS #2)	**1168**	Title Protection/Social Workers.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.(CS #2)	**1327**	Schools Notified of Crim. Intell. Info.	
		Sequential Referral:	None
		Recommended Referral:	None

TOTAL REPORTED: 6

Committee Clerk Comments:
HB43 – Sen. Hartsell
HB 960 – Sen. Rand
HB 1037 – Sen. Vaughan
HB 1039 – Sen. Vaughan
HB 1168 – Sen. Atwater
HB 1327 – Sen. Snow

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — May 28, 2009
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Heather Barrett	Hunton & Williams
Paige Fitzgerald	Rep. Folwell
Jessi Hayes	NC HBA
Cady Thomas	NC Assn of REALTORS
Rick Zechman	NCDSS
~~Katherine~~ W. Joyce	NCASA
Leslie Gerald	SOS - Daily Bulletin
Kim Brooks	NC Bar Assn.
Daniel Long	NCUC
Lemuel Hinton	NCUC
Conor Brockett	NCSBA
Brian Winslow	NLSM - UNC

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Anders	PFFPNC
Richard O'Brien	PFFPNC
Donald Barringer	Office of the Governor
Ann Maddock	Office of the Governor

HOUSE BILL 43

Short Title:	School Bd. Members/Failure to Discharge Duty.	(Public)
Sponsors:	Representatives Glazier, Martin, Cotham, Fisher (Primary Sponsors); K. Alexander, M. Alexander, E. Floyd, Harrison, Hughes, Lucas, and Tarleton.	
Referred to:	Rules, Calendar, and Operations of the House.	

February 4, 2009

A BILL TO BE ENTITLED

AN ACT MAKING IT UNLAWFUL FOR A SCHOOL BOARD MEMBER TO WILLFULLY FAIL TO DISCHARGE THE DUTIES OF THE OFFICE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-230 reads as rewritten:

"**§ 14-230. Willfully failing to discharge duties.**

If any clerk of any court of record, sheriff, magistrate, school board member, county commissioner, county surveyor, coroner, treasurer, or official of any of the State institutions, or of any county, city or town, shall willfully omit, neglect or refuse to discharge any of the duties of his office, for default whereof it is not elsewhere provided that he shall be indicted, he shall be guilty of a Class 1 misdemeanor. If it shall be proved that such officer, after his qualification, willfully and corruptly omitted, neglected or refused to discharge any of the duties of his office, or willfully and corruptly violated his oath of office according to the true intent and meaning thereof, such officer shall be guilty of misbehavior in office, and shall be punished by removal therefrom under the sentence of the court as a part of the punishment for the offense."

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

HOUSE BILL 43:
School Bd. Members/Failure to Discharge Duty

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 27, 2009
Introduced by:	Reps. Glazier, Martin, Cotham, Fisher	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 43 would make a school board member guilty of a Class 1 misdemeanor if the individual willfully fails to discharge the duties of that office.

CURRENT LAW: Under G.S. 14-230, certain public officials are guilty of a Class 1 misdemeanor if they willfully and corruptly omit, neglect, or refuse to discharge any of the duties of the offices they hold. The official must also be removed from office under the sentence of the court as part of the punishment for the offense. The listed officials that are currently covered by the statute are: clerk of any court of record, sheriff, magistrate, county commissioner, county surveyor, coroner, treasurer, and officials of any State institutions or of any county, city, or town. In addition, Article 6, Section 8 of the North Carolina Constitution states that "any person who has been adjudged guilty of treason or any other felony against this State or the United States, or any person who has been adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, or any person who has been adjudged guilty of corruption or malpractice in any office, or any person who has been removed by impeachment from any office, and who has not been restored to the rights of citizenship in the manner prescribed by law" is disqualified from holding elected office.

BILL ANALYSIS: House Bill 43 would add school board member to the list of public officials who would be guilty of a Class 1 misdemeanor for willfully and corruptly omitting, neglecting or refusing to discharge the duties of the offices they hold. The school board member would also have to be removed from office under the sentence of the court as part of the punishment for the offense.

The maximum punishment for a Class 1 misdemeanor is 120 days of active punishment.

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

BACKGROUND: In 2007, the General Assembly repealed G.S. 115C-39(a) which had provided a removal procedure for local school board members. The statute stated that if the State Board of Education (SBE) had sufficient evidence that a member of a local board of education was not capable of discharging or was not discharging the duties of the office or was guilty of immoral or disreputable conduct, the SBE had to notify the chairman of that local board of education. If the member in question was the chairman, then the SBE had to notify all of the other members of that local board of education. On receiving such a notice from the SBE, the local board of education had to hold a meeting to investigate the charges. If those charges were found to be true, then the office of that member was declared vacant.

Under G.S. 115C-105.39 and G.S. 115C-39(b), the SBE can still suspend any of the powers and duties of a local board of education that the SBE considers are necessary or appropriate to improve student performance. The SBE can perform all of these assigned duties and powers for a period of time specified by the SBE. If the SBE subsequently determines that it is necessary to change the governance of the local school administrative unit in order to improve student performance, the SBE can recommend this change to the General Assembly which must then consider future governance of the identified local school administrative unit.

H43-SMRC-37(e1) v3

Drupti Chauhan, Counsel to House Judiciary II, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 686
Committee Substitute Favorable 4/1/09

Short Title: Modernize Do Not Call Notice Procedures. (Public)

Sponsors:

Referred to:

March 23, 2009

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE NOTICE REQUIREMENTS FOR PROTECTIONS FOR TELEPHONE SUBSCRIBERS WHO WISH TO STOP UNWANTED TELEPHONE SOLICITATIONS AND FOR CONSUMERS WHO ENTER INTO TELEMARKETING TRANSACTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 75-102(m) reads as rewritten:

"(m) The Attorney General, in consultation with the Public Staff of the Public Utilities Commission, shall draft the contents of a bill ~~insert~~ insert, bill message, or direct mail, including e-mail when affirmatively selected by the customer, that notifies consumers of the existence of the "Do Not Call" Registry and provides information to consumers on how to use it and the other provisions of this Article to object to receiving telephone solicitations. Local exchange companies shall distribute the ~~insert~~notification pursuant to G.S. 62-54."

SECTION 2. G.S. 62-54 reads as rewritten:

"**§ 62-54. Notification of opportunity to object to telephone solicitation.**

The Commission shall require each local exchange company and each competing local provider certified to do business in North Carolina to notify all telephone subscribers who subscribe to residential service from that company of the provisions of Article 4 of Chapter 75 of the General Statutes and of the federal laws and regulations allowing consumers to object to receiving telephone solicitations, by enclosing a bill ~~insert,~~insert or bill message, or by direct mail, including e-mail when affirmatively selected by the customer, drafted pursuant to G.S. 75-102(m), at least ~~annually, in at least one telephone bill mailed to every residential customer.~~ annually. The Commission shall also ensure that this information is printed in a clear, conspicuous manner in the consumer information pages of each telephone directory distributed to residential customers."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 686
Committee Substitute Favorable 4/1/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H686-CSSB-42 [v.1]

5/22/2009 11:06:52 AM

Short Title: Modernize Do Not Call Notice Procedures. (Public)

Sponsors:

Referred to:

March 23, 2009

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE NOTICE REQUIREMENTS FOR PROTECTIONS FOR TELEPHONE SUBSCRIBERS WHO WISH TO STOP UNWANTED TELEPHONE SOLICITATIONS AND FOR CONSUMERS WHO ENTER INTO TELEMARKETING TRANSACTIONS.

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"**§ 62-54. Notification of opportunity to object to telephone solicitation.**

The Commission shall require each local exchange company and each competing local provider certified to do business in North Carolina to notify all telephone subscribers who subscribe to residential service from that company of the provisions of Article 4 of Chapter 75 of the General Statutes and of the federal laws and regulations allowing consumers to object to receiving telephone ~~solicitations, by enclosing a bill insert,~~solicitations. The notification shall be drafted pursuant to ~~G.S. 75-102(m), at least annually, in at least one telephone bill mailed to every residential customer.~~G.S. 75-102(m), shall be distributed at least annually, and shall be distributed by one of the following methods: bill insert or bill message, direct mail, or email when the subscriber has affirmatively selected email as a means of notification. The Commission shall also ensure that this information is printed in a clear, conspicuous manner in the consumer information pages of each telephone directory distributed to residential customers."

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

HOUSE BILL 960
Committee Substitute Favorable 5/5/09

Short Title: Sanitary District Quick Take. (Public)

Sponsors:

Referred to:

April 1, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW SANITARY DISTRICTS THE SAME POWER AS ALL OTHER UNITS OF LOCAL GOVERNMENT IN ACQUIRING PROPERTY BY CONDEMNATION FOR WATER SUPPLY AND DISTRIBUTION SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 40A-42(a)(1) reads as rewritten:

"(1) Standard Provision. – When a local public condemnor is acquiring property by condemnation for a purpose set out in G.S. 40A-3(b)(1), (4) or (7), or when a city is acquiring property for a purpose set out in G.S. 160A-311(1), (2), (3), (4), (6), or (7), or when a county is acquiring property for a purpose set out in G.S. 153A-274(1), (2) or (3), or when a local board of education or any combination of local boards of education is acquiring property for any purpose set forth in G.S. 115C-517, or when a condemnor is acquiring property by condemnation as authorized by ~~G.S. 40A-3(e)(8),~~ G.S. 40A-3(c)(1), (8), (9), (10), (12), or (13) title to the property and the right to immediate possession shall vest pursuant to this subsection. Unless an action for injunctive relief has been initiated, title to the property specified in the complaint, together with the right to immediate possession thereof, shall vest in the condemnor upon the filing of the complaint and the making of the deposit in accordance with G.S. 40A-41."

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

HOUSE BILL 1037

Short Title:	Permit Access to Capital Defendants.	(Public)
Sponsors:	Representatives Glazier, Ross, Blue, Harrison (Primary Sponsors); E. Floyd, Jackson, Lucas, Mackey, and Parmon.	
Referred to:	Judiciary II, if favorable, Ways and Means/Broadband Connectivity.	

April 6, 2009

A BILL TO BE ENTITLED

AN ACT TO PERMIT CAPITAL APPELLATE AND POSTCONVICTION COUNSEL REASONABLE ACCESS TO THEIR CLIENTS FOLLOWING DECISIONS BY THE COURTS WITH RESPECT TO THEIR CLIENTS' SENTENCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-451 is amended by adding a new subsection to read:

"(e1) When the Supreme Court of North Carolina files an opinion affirming or reversing the judgment of the trial court in a case in which the defendant was sentenced to death, or files an opinion or decision with regard to such a defendant's postconviction petition for relief from a sentence of death, or when any federal court files or issues an opinion or decision in such circumstances, the Department of Correction shall, on the day the opinion or decision is filed or issued, permit counsel for the defendant to visit the defendant at the institution at which the defendant is confined. The visit shall be permitted during regular business hours for not less than one hour, unless a visit outside regular business hours is agreed to by both the institution's administrator and counsel for the defendant. This section shall not be construed to abridge the adequate and reasonable opportunity for attorneys to consult with clients sentenced to death generally and shall not be construed to mandate an attorney visit during an emergency at the institution at which a defendant is confined."

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

HOUSE BILL 1037:
Permit Access to Capital Defendants

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 28, 2009
Introduced by:	Reps. Glazier, Ross, Blue, Harrison	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 1037 would require that counsel be permitted to visit an indigent defendant on the day an opinion by the North Carolina Supreme Court or federal court is filed in cases where the defendant has been sentenced to death.

CURRENT LAW: G.S. 7A-451 provides for services of counsel to indigent persons in certain actions and proceedings. G.S. 7A-451(b) provides that in a capital case in which a defendant is under a sentence of death, entitlement to counsel continues through review of any judgment or decree rendered on direct appeal by the Supreme Court of North Carolina pursuant to certiorari jurisdiction of the United States Supreme Court. G.S. 7A-451(c) provides that in any capital case, an indigent defendant under a sentence of death may apply for appointment of postconviction counsel.

BILL ANALYSIS: House Bill 1037 would require that when one of the following filings occurs in a case where the indigent defendant was sentenced to death, the defendant's counsel must be permitted by the Department of Corrections to visit the defendant on the day of the filing of any of the following:

- An opinion of the North Carolina Supreme Court affirming or reversing the trial court judgment sentencing defendant to death.
- An opinion or decision of the North Carolina Supreme Court with regard to defendant's postconviction petition for relief from a sentence of death.
- An opinion or decision by a federal court in such circumstances.

The visit must be permitted during regular business hours for not less than 1 hour, unless a visit outside regular business hours is agreed to by both the institution administrator and defendant's counsel.

The provision shall not be construed to limit the adequate and reasonable opportunity for attorneys to generally consult with clients sentenced to death, or to mandate an attorney visit during an emergency at an institution where a defendant is confined.

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

H1037-SMRV-87(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 1039
Committee Substitute Favorable 4/27/09

Short Title: Guilty Plea Form Revisions. (Public)

Sponsors:

Referred to:

April 6, 2009

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO REVISE THE "TRANSCRIPT OF PLEA" FORM PROVIDED TO A DEFENDANT WHO ENTERS A PLEA OF GUILTY OR NO CONTEST TO MORE CLEARLY ADDRESS THE RIGHT OF APPEAL LIMITATIONS AND SHORTER BIOLOGICAL EVIDENCE PRESERVATION TIME FRAME THAT MAY APPLY AS A RESULT OF THE PLEA.

The General Assembly of North Carolina enacts:

SECTION 1. The Administrative Office of the Courts shall revise the "Transcript of Plea" form that is provided to a defendant who enters a plea of guilty or no contest to a criminal offense so that the form more clearly informs the defendant that G.S. 15A-1444 imposes limitations on the right of appeal when a defendant pleads guilty or no contest to a criminal offense with which the defendant is charged, and that also assists a judge in determining whether the defendant's plea is a product of informed choice as required by G.S. 15A-1022(b). In revising the form, the Administrative Office of the Courts shall insert to the list of items that currently appear on the form a new item that reads as follows: "Do you understand that following a plea of guilty or no contest there are limitations on your right to appeal?".

SECTION 2. The Administrative Office of the Courts shall revise the "Transcript of Plea" form that is provided to a defendant who decides to enter a plea of guilty to a criminal offense so that the form more clearly informs the defendant that under G.S. 15A-268 there may be a shorter preservation period for biological evidence when a defendant pleads guilty to a criminal offense than if the defendant had been tried and convicted by a jury for the same offense, and that also assists a judge in determining whether a defendant's plea is a product of informed choice as required by G.S. 15A-1022(b). In revising the form, the Administrative Office of the Courts shall insert to the list of items that currently appear on the form a new item that reads as follows: "Do you understand that your plea of guilty may impact how long biological evidence related to your case (for example, blood, hair, skin tissue) will be preserved?".

SECTION 3. The Administrative Office of the Courts shall revise the form pursuant to this act by September 1, 2009, and the revised form shall be made available for pleas of guilty or no contest that are entered on or after October 1, 2009.

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

HOUSE BILL 1039:
Guilty Plea Form Revisions

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 28, 2009
Introduced by:	Representatives Glazier, Ross	**Prepared by:**	Jeff Hudson
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 1039 would direct the Administrative Office of the Courts to revise the "Transcript of Plea" form provided to a defendant who enters a plea of not guilty or no contest to clearly state the limitations on the right of appeal and the shorter time frame for the preservation of biological evidence that may apply as a result of the plea.***

CURRENT LAW:

Informed Choice as to a Plea of Guilty or No Contest

G.S. 15A-1022 provides that, except in limited situations, a superior court judge may not accept a plea of guilty or no contest from a defendant without first personally addressing the defendant and informing him or her of various rights including the right to plead not guilty and determining that the plea is a product of informed choice. The statute does not provide that the court must inform the defendant on the limitations of appeal or the preservation of biological evidence.

Right of Appeal Based on Plea

G.S. 15A-1444 provides that a defendant who has entered a plea of not guilty and who has been found guilty of a crime is entitled to an appeal as a matter of right. Rights to appeal are more limited if the defendant enters a plea of guilty or no contest.

- A defendant who has entered a plea of guilty or no contest to a felony may appeal as a matter of right on the issue of whether the sentence is supported by evidence introduced at the trial and sentencing hearing only if the minimum sentence of imprisonment does not fall within the presumptive range for the defendant's prior record or conviction level and class of offense.
- A defendant who enters a plea of guilty or no contest to a felony or misdemeanor in superior court may appeal as matter of right the issue of whether the sentence imposed: (i) resulted from a incorrect finding of the prior record level or prior conviction level; (ii) contains a sentence disposition not authorized for the class of offense or prior record or conviction level; or (iii) contains a term of imprisonment for a duration not authorized for the class of offense and prior record or conviction level.
- Under other circumstances, the defendant may file an appeal for review by writ of certiorari.

Time Frame for Preservation of Biological Evidence Based on Plea

G.S. 15A-268 provides the time frames during which biological evidence must be preserved.

- For convictions resulting in the death penalty, biological evidence must be preserved until the execution.

  For offenses that require sex offender registration, the biological evidence must be preserved for the period of incarceration and period of mandatory supervised release or probation.

- For convictions of violent felonies, biological evidence must be preserved for the period of incarceration but if the defendant was convicted on a plea of guilty, the evidence must be preserved for 3 years from the date of conviction.
- For any other felonies not covered for which the defendant's genetic profile may be included in the State DNA database, the biological evidence must be preserved for 7 yeas from conviction but if the defendant was convicted on a plea of guilty, the biological evidence must be preserved for 3 years form the date of the conviction.

BILL ANALYSIS:

Section 1: House Bill 1039 would direct the Administrative Office of the Courts (AOC) to revise the "Transcript of Plea" form (Form) provided to a defendant who enters a plea of not guilty or no contest to clearly state that G.S. 15A-1444 imposes limitations on the right of appeal when a defendant pleads guilty or no contest to a criminal offense with which the defendant is charged. The AOC must insert a new item that reads:

- "Do you understand that the following a plea of guilty or no contest, there are limitations on your right to appeal and has your lawyer explained these limitations to you?"

Section 2: House Bill 1039 would direct the AOC to revise the Form to clearly state that under G.S. 15A-268, there may be shorter preservation period for biological evidence when a defendant pleads guilty to a criminal offense than if the defendant had been tried and convicted by a jury for the same offense. The AOC must insert a new item that reads:

- "Do you understand that your plea of guilty may impact how long biological evidence related to your case (for example, blood, hair, skin tissue) will be preserved and has your lawyer explained these limitations to you?"

EFFECTIVE DATE: The AOC must revise the Form by September 1, 2009 and the revised from must be made available for pleas of guilty or no contest that are entered on or after October 1, 2009. The bill would become effective when it becomes law.

This summary was substantially contributed to by Ms. Drupti Chauhan and Mr. Tim Hovis, Staff Attorneys, Research Division

HOUSE BILL 1168

Committee Substitute Favorable 5/6/09
Committee Substitute #2 Favorable 5/12/09

Short Title: Title Protection/Social Workers. (Public)

Sponsors:

Referred to:

April 8, 2009

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH TITLE PROTECTION FOR SOCIAL WORKERS AND TO AUTHORIZE ANY GOVERNMENTAL EMPLOYEE WHOSE POSITION IS DERIVED FROM THE OFFICE OF STATE PERSONNEL SOCIAL WORK SERIES, HAS BEEN CERTIFIED TO BE SUBSTANTIALLY EQUIVALENT, OR WAS CREATED BY A COUNTY IN A HUMAN SERVICES AGENCY TO USE THE TITLE "SOCIAL WORKER."

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90B-3(8) reads as rewritten:

"The following definitions apply in this Chapter:

...

(8) Social Worker. – A person ~~engaging in the practice of social work who is not certified or licensed under this Chapter as a Certified Social Worker, Certified Master Social Worker, Licensed Clinical Social Worker, or Certified Social Work Manager.~~certified, licensed, or provisionally licensed by this Chapter or otherwise exempt under G.S. 90B-10."

SECTION 2. G.S. 90B-10 is amended by adding the following new subsection to read:

"(c) Notwithstanding the requirements of G.S. 90B-16, any individual who is employed by an agency of a local or State governmental entity, and who is in a position holding the title of 'Social Worker' or any variation of the name, and whose position title is derived from the Office of State Personnel Social Work Series may use the title 'Social Worker' or any variation of the title. This includes persons in such positions in counties whose classification and compensation systems have been certified as substantially equivalent by the State Personnel Commission and persons serving in such positions in Human Services agencies created by counties pursuant to G.S. 153A-77."

SECTION 3. Chapter 90B of the General Statutes is amended by adding the following new section to read:

"**§ 90B-16. Title protection.**

(a) Except as provided in G.S. 90B-10, an individual who (i) is not certified, licensed, or provisionally licensed by this Chapter as a social worker, (ii) does not hold a bachelor's or master's degree in social work from a college or university having a social work program accredited or admitted to candidacy for accreditation by the Council of Social Work Education, or (iii) has not received a doctorate in social work shall not use the title 'Social Worker' or any variation of the title.

(b) The Board is authorized to enforce title protection pursuant to this section in accordance with G.S. 90B-13.

(c) The Board shall adopt rules to implement this section."

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

HOUSE BILL 1168:
Title Protection/Social Workers

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 28, 2009
Introduced by:	Reps. Glazier, Dickson, England, Wainwright	**Prepared by:**	Jennifer McGinnis Committee Counsel
Analysis of:	Third Edition		

SUMMARY: House Bill 1168 amends the Social Worker Certification and Licensure Act to prohibit the unauthorized use of the title 'Social Worker' by individuals lacking the required academic credentials. The bill also creates an exemption from the prohibition for employees of local or State governmental entities.

CURRENT LAW:

Under current law, the NC Social Work Certification and Licensure Board issues certificates to "Certified Social Workers", Certified Master Social Workers", and "Certified Social Work Managers". The Board also licenses "Clinical Social Workers". The law provides that it is unlawful for a person who is not certified under the act to hold him or herself out to the public by any title that denotes that the person is certified. In addition, the law makes it unlawful for any person to engage in the practice of clinical social work without a license. The law, however, does not prohibit the practice of social work by a person who is not certified, except with regard to clinical social workers. The law further prevents any governmental entity from requiring certification under the act as a condition for obtaining or continuing employment.

BILL ANALYSIS:

House Bill 1168 amends the law to limit the use of the title "Social Worker" to those who meet one or more of the following standards:

- Must be certified or licensed or provisionally licensed under the act;
- Must hold a bachelor's or master's degree in social work from an accredited college or university; or
- Must have received a doctorate in social work.

The bill also creates an exemption from the title restriction for individuals employed by a local or State governmental agency and who are working in a position, the title of which is derived from the Office of State Personnel Social Work Series, that has been certified by the State Personnel Commission to be substantially equivalent, or that is employed in a Human Services agency created by a county.

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

Karen Cochrane-Brown, counsel to House JudiciaryII, substantially contributed to this summary.

H1168-SMRI-49(e3) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 3

HOUSE BILL 1327
Committee Substitute Favorable 5/13/09
Committee Substitute #2 Favorable 5/13/09

Short Title: Schools Notified of Crim. Intell. Info. (Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT AUTHORIZING LAW ENFORCEMENT AGENCIES TO DISSEMINATE AN ASSESSMENT OF CRIMINAL INTELLIGENCE INFORMATION TO A SCHOOL PRINCIPAL PURSUANT TO FEDERAL LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Article 13A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-50.27A. Dissemination of criminal intelligence information.**

A law enforcement agency may disseminate an assessment of criminal intelligence information to the principal of a school when necessary to avoid imminent danger to the life of a student or employee of the school or to the public school property pursuant to 28 C.F.R. § 23.20. The notification may be made in person or by telephone. As used in this subsection, the term "school" means any public or private school in the State under Chapter 115C of the General Statutes."

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

HOUSE BILL 1327:
Schools Notified of Crim. Intell. Info

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 27, 2009
Introduced by:	Reps. Folwell, Justice, Langdon, Cleveland	**Prepared by:**	Kory Goldsmith
Analysis of:	Third Edition		Committee Counsel

SUMMARY: ***HB 1327 would permit a law enforcement agency to disseminate an assessment of criminal intelligence information to the principal of a school when necessary to avoid imminent danger to the life of a student or employee of the school or to the public school property pursuant to 28 C.F.R. § 23.20. The provisions provide that the notification may be made in person or by telephone, and that schools in this section refer to both public and private schools.***

CURRENT LAW: 28 C.F.R. 23 provides the federal regulations for Criminal Intelligence Systems Operating policies. The guidelines regulate the sharing of certain criminal intelligence data funded with federal money to prevent potential threats to the privacy of individuals to whom the date relates. Criminal intelligence data includes but is not limited to criminal activities such as loan sharking, drug trafficking, trafficking in stolen property, gambling, extortion, smuggling, and bribery.

Under those regulations, 28 C.F.R. 30 provides that criminal intelligence information may be disseminated only when there is a need to know and right to know the information in the performance of a law enforcement activity. The criminal intelligence project may only disseminate the information to law enforcement authorizes who agree to follow required procedures in maintaining the information.

An exception is created however to provide that these restriction shall not limit dissemination of an assessment of criminal intelligence information to a government official or to any other individual when necessary to avoid imminent danger to life or property.

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

H1327-SMRC-36(e3) v1

House Bill 1327: Schools Notified of Crim. Intell. Info.

Sponsors: Representative Folwell, Justice, Langdon, and Cleveland

The following individuals /organizations have endorsed House Bill 1327:

1. **North Carolina Sheriffs' Association**

2. **North Carolina School Board Association**

3. **North Carolina Association of School Administrators**

HOUSE BILL 1377
Second Edition Engrossed 5/14/09

Short Title:	Taxpayer Optimization Act.	(Public)
Sponsors:	Representatives Folwell, McElraft, Brown, Moore (Primary Sponsors); and Starnes.	
Referred to:	State Government/State Personnel, if favorable, Judiciary II.	

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE CERTAIN SALES OF STATE PROPERTY SUBJECT TO UPSET BIDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 146-27 reads as rewritten:

"**§ 146-27. The role of the Department of Administration in sales, leases, and rentals.**

(a) General. – Every sale, lease, rental, or gift of land owned by the State or by any State agency shall be made by the Department of Administration and approved by the Governor and Council of State. A lease or rental of land owned by the State may not exceed a period of 99 years. The Department of Administration may initiate proceedings for sales, leases, rentals, and gifts of land owned by the State or by any State agency.

(b) Large Disposition. – If a proposed disposition is a sale or gift of land with an appraised value of at least twenty-five thousand dollars ($25,000), the sale or gift shall not be made until after consultation with the Joint Legislative Commission on Governmental Operations.

(b1) Upset Bids. – If a proposed disposition of land or other real property with a value of at least twenty-five thousand dollars ($25,000) is a sale or other transfer to a private entity that operates or is established to operate for profit, the proposed disposition shall be subject to upset bids, unless other, non-monetary consideration associated with the transaction has been made public. If other consideration is offered such that upset bids are not required, notice of the sale and other consideration shall be posted and published in a manner similar to that provided in G.S. 1-339.17. The Department of Administration shall adopt a procedure for upset bids that is based on the upset bid procedure set forth in Part 2 of Article 29A of Chapter 1 of the General Statutes.

(c) Expired effective September 1, 2007."

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

HOUSE BILL 1377:
Taxpayer Optimization Act

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	May 22, 2009
Introduced by:	Reps. Folwell, McElraft, Brown, Moore	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	Second Edition		

SUMMARY: House Bill 1377 would make a proposed sale of State-owned real property subject to upset bids if the real property has a value of at least $25,000 and the sale or transfer is being made to a for-profit private entity. The bill would direct the Department of Administration to adopt procedures for upset bids based on procedures currently used for judicial sales.

CURRENT LAW: Under G.S. 146-27, every sale or transfer of State-owned land is made by the Department of Administration and must be approved by the Governor and Council of State. If the land has an appraised value of at least $25,000, the sale or transfer cannot be made prior to consultation with the Joint Legislative Commission on Governmental Operations.

BILL ANALYSIS: House Bill 1377 would add a new provision to the law concerning the role of the Department of Administration in the sale of State property. The bill would make any proposed sale or transfer of State-owned real property subject to upset bids if all of the following apply:

- The property has a value of at least $25,000
- The property is being sold/transferred to a for-profit private entity
- No other non-monetary consideration associated with the transaction has been made public

If other consideration is offered such that upset bids are not required, notice of the sale and other consideration would have to be posted in the county where the property is located and published in the appropriate newspaper for at least two successive weeks.

The bill also would direct the Department of Administration to adopt a procedure for upset bids that is based on the procedure currently used for judicial sales of real property. Under G.S.1-339.25, an upset bid is *"an advanced, increased, or raised bid in a public sale by auction whereby a person offers to purchase real property theretofore sold for an amount exceeding the reported sale price or the last upset bid by a minimum of 5% thereof, but in any event with a minimum increase of $750."*

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

Karen Cochrane-Brown, counsel to House Judiciary II, contributed to this summary.

H1377-SMRV-83(e2) v1

House Bill 1377 Short Title: Sale of State Property Subject to Upset Bid

A Bill to Be Entitled An Act To Make Certain Sales of State Property Subject to Upset Bids (b1) Upset Bids. – If a proposed disposition of land with an appraised value of at least twenty five thousand dollars ($25,000) is a sale to a private entity that operates or is established to operate for profit, the proposed disposition shall be subject to upset bids.

Prepared by Department of Administration, State Property Office
Fiscal Note completed April 2009

Currently the State Property Office implements the sale of property based on the method that will produce the highest price for that specific property by bid or negotiation. Property may also be disposed of by exchange when it is determined to be in the best interest of the State. Disposition of state property is a public process whether negotiated or by bid. Pursuant to Article 2 146-3 real property is disposed of in the manner prescribed in NCAC 6B .0303 All sales of state land are subject to the approval of the Council of State and those properties with a value of $25,000 or greater include consultation with the Joint Legislative Commission on Governmental Operations.

Typically, the upset bid process works best for properties that are utilized at the intended highest and best use, all facts are known and the zoning cannot be changed. (i.e. a house on a residential lot, residential lot, some commercial buildings).

Selling property by the proposed legislation does not work in the best interest of the state because:

- Upset bid limits the pool of potential buyers and limits the ability of the State Property Office to market to a diverse range of buyers. Buyers are reluctant to purchase real estate through the upset bid process because it deviates from the normal method of submitting an offer to purchase.

- Upset Bid restricts the ability to sell at the potential highest and best use. The upset bid process does not work for commercial properties that are not at the current highest and best use. (i.e. vacant land that could be used for a shopping center) This type of sale is best handled by negotiated sale. These properties attain the highest prices by marketing the properties (advertising in local newspapers, signage, web site) and accepting offers with contingencies for re-zoning, environmental studies, and other studies that would assure the buyer that the property could be utilized for their intended use. The upset bid process must allow for a due diligence period. The upset bid process is an unconventional marketing practice for commercial/industrial real estate as it deviates from the normal/standard practice in the real estate industry.

- The proposed legislation eliminates some land exchanges. Agencies and Universities utilize this method to exchange property that is under utilized for property that will better serve the mission of the agency and the public. (i.e. A 2 acre fire tower site in a high growth area that has rendered the agency unable to respond to fire activity in a timely manner due to traffic congestion is exchanged to a private entity for a 5 acre property and the construction of a new County Forestry Headquarters facility).

- The proposed legislation eliminates the direct sale of uneconomic remnant property currently sold to adjoining property owners at the appraised value. (i.e. an isolated land locked parcel sold to a private entity that operates for profit)

- The proposed legislation will limit or eliminate potential buyers on large sales. Potential buyers would be required to place substantial sums of money at risk during the bidding process for due diligence and the required bid deposit. All bids must be accompanied by a certified or cashier's check for no less than five percent of the bid, payable to the "State of North Carolina" as required by NCAC 6B .0304.

- The proposed change would limit the state's ability to negotiate the most favorable terms for the state as is now allowed under the NC Administrative Code.

- Upset bid does not tap into the regional or national developer/investor market. Marketing property through the traditional private sector methods exposes the property to the regional and national developer/investor market and local commercial real estate brokers representing buyers. Negotiated sales encourage competition and result in higher prices for the State. (i.e. a physically obsolete office building in a highly desirable location).

- Limiting the marketing process to 'only' the upset bid process doesn't enhance the ability to achieve the most favorable sales terms nor highest sales price for the state.

Additional Information
"The bid procedure produced prices that may be hindered by breadth of market tapped" as stated in the report by CB Richard Ellis, the consultant that developed the "State-Owned Surplus Real Property System" as directed by the legislature.

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	June 2, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 266	Use of Deadly Force by LEO/Collect & Publish.	Representative Floyd
HB 473	Magistrate Can Carry Gun in Courthouse.	Representative Justus Representative Hurley Representative Sutton Representative Spear
HB 765	Revise Elective Share Statutes.	Representative Stam
HB 1109	State Fairgrounds Special Police/Mutual Aid.	Representative Hill
HB 1132	Renew Concealed Carry Permit/30 Day Limit.	Representative Gulley Representative Hilton
HB 1447	Crime Stoppers Tips Are Confidential.	Representative Wiley

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II Committee
Tuesday, June 2, 2009, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 266	Use of Deadly Force by LEO/Collect & Publish.	Representative Floyd
HB 473	Magistrate Can Carry Gun in Courthouse.	Representative Justus Representative Hurley Representative Sutton Representative Spear
HB 765	Revise Elective Share Statutes.	Representative Stam
HB 1109	State Fairgrounds Special Police/Mutual Aid.	Representative Hill
HB 1132	Renew Concealed Carry Permit/30 Day Limit.	Representative Gulley Representative Hilton
HB 1447	Crime Stoppers Tips Are Confidential.	Representative Wiley

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE
Tuesday, June 2, 2009 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 10:00 AM on June 2, 2009, in Room 1124 of the Legislative Building with seventeen members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell introduced pages Keyera Matthews, Natalie Caviness, Taylor Abboushi, Jonathan Wimbish, Whit Harvey, Brent Jenkins and McLennan Maxwell and thanked them for their assistance.

Senator Hartsell noted that HB 1447 would not be heard at today's meeting.

HB 765 – (Revise Elective Share Statutes.) Senator Apodaca moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Representative Stam explained the bill. Ms. Liz Arias, Attorney with Womble/Carlyle, representing the North Carolina Bar Association, gave additional explanation and answered questions from the Committee. Senator Vaughan presented a technical amendment and moved that it be adopted. All voted and the motion carried. No voted was taken on the bill. The bill will be heard again at the Thursday meeting.

HB 473 – (Magistrate Can Carry Gun in Courthouse.) Representative Hurley explained the bill. Senator Goodall presented an amendment. He then explained the amendment and moved that it be adopted. All voted and the motion carried. Senator Jones spoke on the bill. Senator Dannelly moved for a favorable report as amended and rolled into a new Proposed Committee Substitute. All voted and the motion carried.

HB 266 – (Use Deadly Force by LEO/Collect & Publish.) Representative Floyd explained the bill. Senator Dannelly moved for a favorable report. All voted and the motion carried.

HB 1109 – (State Fairgrounds Special Police/Mutual Aid.) Representative Hill explained the bill. Mr. Eddie Caldwell, representing the North Carolina Sheriffs' Association and Mr. David McLeod of the North Carolina Department of Agriculture and Consumer Services spoke on the bill. Senator Apodaca moved for a favorable report. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

CORRECTED REPORT

Tuesday, June 02, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS #1) **266** Use of Deadly Force by LEO/Collect & Publish.
Sequential Referral: None
Recommended Referral: None

H.B. **1109** State Fairgrounds Special Police/Mutual Aid.
Sequential Referral: None
Recommended Referral: None

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

H.B. **473** Magistrate Can Carry Gun in Courthouse.
Draft Number: 80454
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **686** Modernize Do Not Call Notice Procedures.
Draft Number: 30404
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 4

Committee Clerk Comments:
HB 266 – Sen. Jones will handle
HB 473 – Sen. Tillman will handle
HB 686 – Sen. Davis will handle
HB 1109 – Sen. Albertson will handle

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — June 2, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Leanne Winner	NCSBA
Dirk Taylor	NCAT
Staples Hughes	Appellate Defender
Steve Brewer	EMBARQ
Kay Paksoy	National Association of Social Workers, NC
JACK REGISTER	"
Laurie Hamer	DOC
Mildred Spearman	NCDOC
James B Drew	NC DOC
Christy Agner	DOA
Tim Walton	DOA

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Troy A. Williams	AGSI Consulting, LLC 100 Hay #407 Fay 28301
Jeff Rau	GRNC
Bob Youngblood	GNWC
LIZ ARIAS	Womble Carlyle
Tom Count	NCBA
Mark West	NCADC
Tamra Fisher	NCADC
Doug Hoell	NCEm / CCPS
David McLeod	NCMACS
Jeff Gramm	GRNC
Jan Clark	GRNC

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Debra DeCamillis	UNC. IOG
Joy Hicks	NCDA&CS
Ray Starling	"
Emily Sellinger	NCBA
Joe McClees	McClees Consulting
Anthony Rollitti	NRA
Wayne Yancy	Sen. Charlie Dannelly
Jeff Mixon	Civitas
Dennis Allen	North Carolina Rifle + Pistol Assoc.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 266
Committee Substitute Favorable 4/13/09

Short Title: Use of Deadly Force by LEO/Collect & Publish. (Public)

Sponsors:

Referred to:

February 24, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE DIVISION OF CRIMINAL STATISTICS TO COLLECT, MAINTAIN, AND PUBLISH STATISTICS ON THE USE OF DEADLY FORCE BY LAW ENFORCEMENT WHICH RESULTS IN DEATH.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-10.02. Collection of statistics on the use of deadly force by law enforcement officers.**

(a) In addition to the duties set forth in G.S. 114-10, the Division of Criminal Statistics shall collect, maintain, and annually publish the number of deaths, by law enforcement agency, resulting from the use of deadly force by law enforcement officers in the course and scope of their official duties.

(b) For purposes of this section, "law enforcement officer" means sworn law enforcement officers with the power of arrest, both State and local."

SECTION 2. This act becomes effective January 1, 2010, and applies to uses of deadly force resulting in death that occur on or after that date.

HOUSE BILL 266:
Use of Deadly Force by LEO/Collect & Publish

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 2, 2009
Introduced by:	Representative E. Floyd	**Prepared by:**	Jeff Hudson
Analysis of:	Second Edition		Committee Counsel

SUMMARY: House Bill 266 would direct the Division of Criminal Statistics in the Department of Justice to collect, maintain, and publish the number of deaths, by law enforcement agency, resulting from the use of deadly force by a law enforcement officer in the course and scope of the officer's official duties.

CURRENT LAW:

The Division of Criminal Statistics (Division) in the Department of Justice collects, correlates and maintains information related to criminal law and the criminal justice system, including:

- Crimes committed, arrests made, dispositions on preliminary hearings, prosecutions, convictions, acquittals, punishment, appeals, together with the age, race, and sex of the offender, the necessary data to make a trace regarding all firearms seized, forfeited, found, or otherwise coming into the possession of any State or local law enforcement agency of the State that are believed to have been used in the commission of a crime, and such other information concerning crime and criminals as may appear significant or helpful.
- Motor vehicle registration, drivers' licenses, wanted and missing persons, stolen property, warrants, stolen vehicles, firearms registration, sexual offender registration, drugs, drug users and parole and probation histories.

The Division is also responsible for the scientific study, analysis and comparison of the collected information and for reporting information to the Governor and the General Assembly biennially, or more often if required by the Governor. In addition to the information listed above, the Division is responsible for colleting, correlating, and maintaining information related to traffic law enforcement.

BILL ANALYSIS:

House Bill 266 would direct the Division to collect, maintain, and publish annually the number of deaths, by law enforcement agency, resulting from the use of deadly force by a law enforcement officer in the course and scope of the officer's official duties. For the purposes of the section, 'law enforcement officer' includes sworn law enforcement officers, both State and local, with the power of arrest.

EFFECTIVE DATE: This act would become effective January 1, 2010, and would apply to uses of deadly force resulting in death on or after that date.

Ben Popkin, counsel to House Judiciary III, substantially contributed to this summary.

H266-SMSB-59(e2) v1

HOUSE BILL 473

Short Title:	Magistrate Can Carry Gun in Courthouse.	(Public)
Sponsors:	Representatives Hurley, Justus, Spear, Sutton (Primary Sponsors); Avila, Barnhart, Blackwood, Blust, Brubaker, Burr, Burris-Floyd, Cleveland, Current, Dollar, Guice, Gulley, Holloway, Killian, McElraft, Neumann, Randleman, Setzer, Starnes, R. Warren, Wiley, and Wray.	
Referred to:	Judiciary III, if favorable, State Government/State Personnel.	

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 magistrate, district court ~~judge~~ 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 magistrate or judge is in the building to discharge his or her official duties and the magistrate or 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,

(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 II	**Date:**	June 2, 2009
Introduced by:	Representatives Hurley, Justus, Spear, Sutton	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	First Edition		

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 prohibits deadly weapons from being carried, openly or concealed, in various State buildings, including a building housing a court of the General Court of Justice. Violation is a Class 1 misdemeanor. One of the current exceptions to the statute is for district and superior court judges discharging official duties who carry a concealed handgun if they have a valid concealed handgun permit issued pursuant to Article 54B of Chapter 14 of the General Statutes.

BILL ANALYSIS: HB 473 would make the exception for judges applicable to magistrates.

EFFECTIVE DATE: House Bill 473 would become effective when it becomes law.

Steve Rose and Karen Cochrane-Brown, Staff Attorneys, substantially contributed to this summary.

H473-SMSB-60(e1) v1

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 473

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

H473-ASB-11 [v.2]

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

Date 6-2 ,2009

Senator _____

moves to amend the bill on page 1, lines 22 through 27,
by rewriting those lines to read:

"(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,

(4b1) 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,".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

HOUSE BILL 765
Committee Substitute Favorable 4/8/09

Short Title: Revise Elective Share Statutes. (Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO REVISE THE EXISTING ELECTIVE SHARE STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1A of Chapter 30 of the General Statutes reads as rewritten:

"Article 1A.

"Elective Share.

"§ 30-3.1. Right of elective share.

(a) Elective Share. – The surviving spouse of a decedent who dies domiciled in this State has a right to claim an "elective share", which means an amount equal to (i) the applicable share of the Total Net Assets, as defined in G.S. 30-3.2(4), less (ii) the value of Net Property Passing to Surviving Spouse, as defined in ~~G.S. 30-3.3(a).~~G.S. 30-3.2(2b). The applicable share of the Total Net Assets is as follows:

(1) If the decedent is not survived by any lineal descendants, one-half of the Total Net Assets.

(2) If the decedent is survived by one child, or lineal descendants of one deceased child, one-half of the Total Net Assets.

(3) If the decedent is survived by two or more children, or by one or more children and the lineal descendants of one or more deceased children, or by the lineal descendants of two or more deceased children, one-third of the Total Net Assets.

(b) Reduction of Applicable Share. – In those cases in which the surviving spouse is a second or successive spouse, and the decedent has one or more lineal descendants ~~surviving by a prior marriage~~ surviving who are not lineal descendants of the decedent's marriage to the surviving spouse but there are no lineal descendants surviving by the surviving spouse, the applicable share as determined in subsection (a) of this section shall be reduced by one-half.

~~(c) Death Taxes. – Death taxes shall be taken into account as a claim against the estate in determining Total Net Assets only to the extent that the assets received by the surviving spouse do not qualify for the federal estate tax marital deduction pursuant to section 2056 of the Code or similar provisions under the laws of any other applicable taxing jurisdiction. The amount of such claims shall equal the difference between the amount of such death taxes as finally determined and the amount such death taxes would have been if all assets received by the surviving spouse had qualified for the federal estate tax marital deduction pursuant to section 2056 of the Code and similar provisions under the laws of any other applicable taxing jurisdictions.~~

"§ 30-3.2. Definitions.

The following definitions apply in this Article:

(1) ~~"Code" means the~~ Code. – The Internal Revenue Code in effect at the time of the decedent's death.

(1a) Claims. – Includes liabilities of the decedent whether arising in contract, in tort, or otherwise, and liabilities of the decedent's estate which arise at or after the death of the decedent, including funeral and administrative expenses, except for:

a. A claim for equitable distribution of property pursuant to G.S. 50-20 awarded subsequent to the death of the decedent.

b. Death taxes, except for those death taxes attributable to Property Passing to the Surviving Spouse. "Death taxes attributable to Property Passing to the Surviving Spouse" equals the amount of decedent's death taxes as finally determined, less the amount such death taxes would have been if all Property Passing to the Surviving Spouse had qualified for the federal estate tax marital deduction pursuant to section 2056 of the Code or had qualified for a similar provision under the laws of another applicable taxing jurisdiction.

c. A claim founded on a promise or agreement of the decedent, to the extent such claim is not arm's length or is not supported by full or adequate consideration in money or money's worth.

(2) ~~"Death taxes" means any~~ Death taxes. – Any estate, inheritance, succession, and similar taxes imposed by any taxing authority, reduced by any applicable credits against those taxes.

(2a) General power of appointment. – Any power of appointment, including a power to designate the beneficiary of a beneficiary designation, exercisable by the decedent, regardless of the decedent's capacity to exercise such power, in favor of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate, except for (i) powers limited by an "ascertainable standard" as defined in G.S. 36C-1-103 and (ii) powers which are not exercisable by the decedent except in conjunction with a person who created the power or has a substantial interest in the property subject to the power and whose interest is adverse to the exercise of the power in favor of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate. In no event shall a power held by the decedent as attorney-in-fact under a power of attorney be considered a general power of appointment.

(2b) Net Property Passing to Surviving Spouse. – The Property Passing to Surviving Spouse reduced by (i) death taxes attributable to Property Passing to the Surviving Spouse, (ii) any expenses described in G.S. 30-3.4(h) that are a charge against or are apportioned to the surviving spouse with respect to property included in Property Passing to Surviving Spouse, and (iii) claims satisfied out of property included in Property Passing to the Surviving Spouse.

(2c) Lineal descendant. – Defined in G.S. 29-2.

(3) ~~"Nonadverse trustee" means:~~ Nonadverse trustee. – Any of the following:

a. Any person who does not possess a substantial beneficial interest in the trust that would be adversely affected by the exercise or nonexercise of the power that the individual trustee possesses respecting the trust;

b. Any person subject to a power of removal by the surviving spouse with or without cause; or

c. Any company authorized to engage in trust business under the laws of this State, or that otherwise meets the requirements to engage in trust business under the laws of this State.

(3a) Nonspousal assets. – All property included in total assets other than the property included in Property Passing to Surviving Spouse. The value of nonspousal assets shall be their net values used in determining Total Net Assets.

(3b) Presently exercisable general power of appointment. – A general power of appointment which is exercisable at the time in question. A testamentary general power of appointment is not presently exercisable.

(3c) Property Passing to Surviving Spouse. – The sum of the values, as valued pursuant to G.S. 30-3.3A, of the following:

a. Property (i) devised, outright or in trust, by the decedent to the surviving spouse or (ii) that passes, outright or in trust, to the surviving spouse by intestacy, beneficiary designation, the exercise or failure to exercise the decedent's testamentary general power of appointment or the decedent's testamentary limited power of appointment, operation of law, or otherwise by reason of the decedent's death, excluding any benefits under the federal social security system.

b. Any year's allowance awarded to the surviving spouse.

c. Property renounced by the surviving spouse.

d. The surviving spouse's interest in any life insurance proceeds on the life of the decedent.

e. Any interest in property, outright or in trust, transferred from the decedent to the surviving spouse during the lifetime of the decedent for which the surviving spouse signs a statement acknowledging such a gift. For purposes of this sub-subdivision, any gift to the surviving spouse by the decedent of the decedent's interest in any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with right of survivorship shall be deemed to be a gift of one-half of the entire interest in property so held by the decedent and the surviving spouse.

f. Property awarded to the surviving spouse, subsequent to the death of the decedent, pursuant to an equitable distribution claim under G.S. 50-20.

g. Property held in a spousal trust described in G.S. 30-3.3A(e)(1).

If property falls under more than one sub-subdivision of this subdivision, then the property shall be included only once, but under the sub-subdivision yielding the greatest value of the property.

(3d) Responsible person. – A person or entity other than the surviving spouse that received, held, or controlled property constituting nonspousal assets on the date used to determine the value of the property.

(3e) Responsible person's nonspousal assets. – The nonspousal assets received, held, or controlled by a responsible person.

(3f) Total assets. – The sum of the values, as determined pursuant to G.S. 30-3.3A, of the following:

a. The decedent's property that would pass by intestate succession if the decedent died without a will, other than wrongful death proceeds;

b. Property over which the decedent, immediately before death, held a presently exercisable general power of appointment, except for (i)

property held jointly with right of survivorship, which is includable in total assets only to the extent provided in sub-subdivision c. of this subdivision and (ii) life insurance, which is includable in Total Assets only to the extent provided in sub-subdivision d. of this subdivision. Includes, without limitation:

1. Property held in a trust that the decedent could revoke.
2. Property held in a trust to the extent that the decedent had an unrestricted power to withdraw the property.
3. Property held in a depository account owned by the decedent in a financial institution payable or transferable at decedent's death to a beneficiary designated by the decedent.
4. Securities owned by the decedent in an account or in certificated form that are payable or transferable at decedent's death to a beneficiary designated by the decedent.

c. Property held as tenants by the entirety or jointly with rights of survivorship as follows:

1. One-half of any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with rights of survivorship is included, without regard to who contributed the property.
2. Property held by the decedent and one or more other persons other than the surviving spouse as joint tenants with rights of survivorship is included to the following extent:
   I. All property attributable to the decedent's contribution.
   II. The decedent's pro rata share of property not attributable to the decedent's contribution, except to the extent of property attributable to contributions by a surviving joint tenant.

   The decedent is presumed to have contributed the jointly owned property unless contribution by another is proven by clear and convincing evidence.

d. Benefits payable by reason of the decedent's death under any policy, plan, contract, or other arrangement, either owned by the decedent or over which the decedent had a general power of appointment or had the power to designate the surviving spouse as beneficiary, including, without limitation:

1. Insurance on the life of the decedent.
2. Accidental death benefits.
3. Annuities.
4. Employee benefits or similar arrangements.
5. Individual retirement accounts.
6. Pension or profit-sharing plans.
7. Deferred compensation.
8. Any private or governmental retirement plan.

e. Property irrevocably transferred by the decedent to the extent the decedent retained the possession or enjoyment of, or the right to income from, the property for life or for any period not ascertainable without reference to the decedent's death or for any period which does not in fact end before the decedent's death, except:

1. Property transferred for full and adequate consideration.

2. Transfers to which the surviving spouse consented in writing by signing a deed, an income or gift tax return that reports the gift, or other writing.
3. Transfers which became irrevocable before the decedent's marriage to the surviving spouse.

The property included in total assets is that fraction of the transferred property to which the decedent retained the right.

f. Property transferred by the decedent to the extent the decedent created a power over the property or the income from the property, which, immediately prior to death, could be exercised by the decedent in conjunction with any other person, or which could be exercised by a person who does not have a substantial interest that would be adversely affected by the exercise or nonexercise of the power, for the benefit of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate, except:
1. Property transferred for full and adequate consideration.
2. Transfers to which the surviving spouse consented in writing by signing a deed, an income or gift tax return that reports the gift, or other writing.
3. Transfers which became irrevocable before the decedent's marriage to the surviving spouse.

The property included in total assets with respect to a power over property is that fraction of the property to which the power related.

g. Property transferred by the decedent to persons other than the surviving spouse if such transfer was made both during the one-year period immediately preceding the decedent's death and during the decedent's marriage to the surviving spouse, except:
1. Property transferred for full and adequate consideration.
2. Transfers to which the surviving spouse consented in writing by signing a deed, an income or gift tax return that reports such gift, or other writing.
3. That part of any property transferred to any one transferee that qualified for exclusion from gift tax under section 2503 of the Code.

For purposes of this sub-subdivision, the termination of a right or interest in, or power over, property that would have been included in the total assets under sub-subdivisions b., e., or f. if the right, interest, or power had not terminated until the decedent's death shall be deemed to be a transfer of such property. Termination occurs when, with respect to a right or interest in property, the decedent transfers or relinquishes the right or interest; with respect to a power over property, the power terminates by exercise or release, but not by lapse or default.

If property falls under more than one sub-subdivision of this subdivision, then the property shall be included only once, but under the sub-subdivision yielding the greatest value of the property.

(4) ~~"Total Net Assets" means, after the payment or provision for payment of the decedent's funeral expenses, year's allowances to persons other than to the surviving spouse, debts, claims other than an equitable distribution of property awarded to the surviving spouse pursuant to G.S. 50-20 subsequent~~

~~to the death of the decedent, and administration expenses, the sum of the following:~~

~~a. All property to which the decedent had legal and equitable title immediately prior to death;~~

~~b. All property received by the decedent's personal representative by reason of the decedent's death, other than wrongful death proceeds;~~

~~c. One half of the value of any property held by the decedent and the surviving spouse as tenants by the entirety, or as joint tenants with rights of survivorship;~~

~~d. The entire value of any interest in property held by the decedent and another person, other than the surviving spouse, as joint tenants with right of survivorship, except to the extent that contribution can be proven by clear and convincing evidence;~~

~~e. The value of any property which would be included in the taxable estate of the decedent pursuant to sections 2033, 2035, 2036, 2037, 2038, 2039, or 2040 of the Code.~~

~~f. Any gifts of property made by the decedent to donees other than the surviving spouse within six months of the decedent's death, excluding:~~

~~1. Any gifts within the annual exclusion provisions of section 2503 of the Code;~~

~~2. Any gifts to which the surviving spouse consented. A signing of a deed, or income or gift tax return reporting such gift shall be considered consent; and~~

~~3. Any gifts made prior to marriage;~~

~~g. Any proceeds of any individual retirement account, pension or profit sharing plan, or any private or governmental retirement plan or annuity of which the decedent controlled the designation of beneficiary, excluding any benefits under the federal social security system;~~

~~h. Any other Property Passing to Surviving Spouse under G.S. 30-3.3; and~~

~~i. In case of overlapping application of the same property under more than one provision, the property shall be included only once under the provision yielding the greatest value."~~

Total Net Assets. – The total assets reduced by year's allowances to persons other than the surviving spouse and claims.

"~~§ 30-3.3. Property passing to surviving spouse.~~

~~(a) Property Passing to Surviving Spouse. For purposes of this Article, "Property Passing to Surviving Spouse" means the sum of the following:~~

~~(1) One half of the value of any interest in property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with rights of survivorship;~~

~~(2) The value of any interest in property (outright or in trust, including any interest subject to a general power of appointment held by the surviving spouse, as defined in section 2041 of the Code) devised by the decedent to the surviving spouse, or which passes to the surviving spouse by intestacy, or by beneficiary designation, or by exercise of or in default of the exercise of the decedent's testamentary general or limited power of appointment, or by operation of law or otherwise by reason of the decedent's death, excluding any benefits under the federal social security system;~~

~~(3) Any year's allowance awarded to the surviving spouse;~~
~~(4) The value of any property renounced by the surviving spouse;~~
~~(5) The value of the surviving spouse's interest, outright or in trust, in any life insurance proceeds on the life of the decedent;~~
~~(6) The value of any interest in property, outright or in trust, transferred from the decedent to the surviving spouse during the lifetime of decedent for which (i) a gift tax return is timely filed reporting such gift, or (ii) the surviving spouse signs a statement acknowledging such a gift. For purposes of this subdivision, any gift to the surviving spouse by the decedent of the decedent's interest in any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with right of survivorship shall be valued at one-half of the entire value of that interest in property at the time the gift is made;~~
~~(7) Notwithstanding any other provision of law related to valuing a partial interest in property, the entire fair market value of any property held in trust for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime, if the terms of the trust meet the following requirements:~~
~~a. During the lifetime of the surviving spouse, the trust is controlled by one or more Nonadverse Trustees;~~
~~b. The trustee is required to distribute to or for the benefit of the surviving spouse either (i) the entire net income of the trust at least annually; or (ii) the income of the trust in such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse;~~
~~c. The trustee is required to distribute to or for the benefit of the surviving spouse out of the principal of the trust such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse; and~~
~~In exercising discretion, the trustee may be authorized or required to take into consideration all other income, assets, and other means of support as are available to the surviving spouse; and~~
~~(8) The net value of the marital estate awarded to the surviving spouse pursuant to G.S. 50-20 subsequent to the death of the decedent.~~

~~(b) Death Taxes. The value of Property Passing to Surviving Spouse shall be reduced by any death taxes that are a charge against or apportioned against the surviving spouse on property interests included in Property Passing to Surviving Spouse.~~

~~(c) No Duplication. In case of overlapping application of the same property under more than one provision, the property shall be included only once, under the provision yielding the greatest value.~~

"**§ 30-3.3A. Valuation of property.**

(a) Basic Principles. – Unless otherwise expressly stated to the contrary in this section, the value of property shall be that property's fair market value, taking into consideration any applicable discounts. The value shall be determined as of the date of death, except for (i) property transferred to persons other than the surviving spouse described in G.S. 30-3.2(3f)g. and (ii) property transferred to the surviving spouse described in G.S. 30-3.2(3c)e. that is not held in trust, that is not life insurance, and that is not held as tenants by the entirety or some other form of ownership that passes to the surviving spouse by reason of survivorship. The value of gift property described in clauses (i) and (ii) shall be determined as the value on the date of transfer; but if the donee proves to the satisfaction of the clerk that the value on the date of disposal of the asset prior to the decedent's death is less than on the original date of transfer

or that the value on the date of death is less than on the original date of transfer, then the lesser value shall be used.

(b) Certain Joint Property. – In valuing a partial interest in jointly owned property with rights of survivorship, there shall be no discount taken to reflect the decedent's partial interest including, but not limited to, discounts for lack of control, ownership of a fractional interest, or lack of marketability.

(c) Certain Powers of Appointment. – In valuing property over which the decedent held a presently exercisable general power of appointment, the value includes only the property subject to the power that passes at the decedent's death, whether by exercise, release, lapse, default, or otherwise.

(d) Certain Transfers With Retained Interests. – In valuing property transferred by the decedent with a retained right of possession or enjoyment or the right to income described in G.S. 30-3.2(3f)e., only the fraction of the property to which the decedent retained a right shall be included. In valuing property in which the decedent created a power as described in G.S. 30-3.2(3f)f., the value includes, with respect to a power, the value of the property subject to the power, and the amount included in the valuation with respect to a power over the income is the value of the property that produces or produced the income; provided, however, if the power is a power over both income and property and the foregoing produces different amounts, the amount included in the valuation is the greater amount.

(e) Partial or Contingent Interest Property. – The valuation of partial and contingent property interests, outright or in trust, which are limited to commence or terminate upon the death of one or more persons, upon the expiration of a period of time, or upon the occurrence of one or more contingencies, shall be determined by computations based upon the mortality and annuity tables set forth in G.S. 8-46 and G.S. 8-47, and by using a presumed rate of return of six percent (6%) of the value of the underlying property in which those interests are limited. However, in valuing partial and contingent interests passing to the surviving spouse, the following special rules apply:

(1) The value of the beneficial interest of a spouse shall be the entire fair market value of any property held in trust if the decedent was the settlor of the trust, if the trust is held for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime, and if the terms of the trust meet the following requirements:

a. During the lifetime of the surviving spouse, the trust is controlled by one or more nonadverse trustees.

b. The trustee shall distribute to or for the benefit of the surviving spouse either (i) the entire net income of the trust at least annually or (ii) the income of the trust in such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse.

c. The trustee shall distribute to or for the benefit of the surviving spouse out of the principal of the trust such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse.

d. In exercising discretion, the trustee may be authorized or required to take into consideration all other income assets and other means of support available to the surviving spouse.

(2) To the extent that the partial or contingent interest is dependent upon the occurrence of any contingency that is not subject to the control of the surviving spouse and that is not subject to valuation by reference to the mortality and annuity tables set forth in G.S. 8-46 and G.S. 8-47, the contingency will be conclusively presumed to result in the lowest possible

value passing to the surviving spouse. However, a life estate or income interest that will terminate upon the surviving spouse's death or remarriage will be valued without regard to the possibility of termination upon remarriage.

(3) To the extent that the valuation of a partial or contingent interest is dependent upon the life expectancy of the surviving spouse, that life expectancy shall be conclusively presumed to be no less than 10 years, regardless of the actual attained age of the surviving spouse at the decedent's death.

(f) Method for Determining Value. – Unless otherwise stated in this Article, the value of property shall be determined as follows:

(1) The value of property passing by intestacy described in G.S. 30-3.2(3f)a. and Property Passing to Surviving Spouse, other than property held in a trust, shall be established by the good faith agreement of the surviving spouse and the personal representative, unless either (i) the surviving spouse is the personal representative or (ii) the clerk determines that the personal representative may not be able to represent the estate adversely to the surviving spouse, in which cases the value of such property shall be determined pursuant to subdivision (4) of this subsection.

(2) The value of property constituting an interest in a trust shall be established by good faith agreement of the surviving spouse, the personal representative, and the trustee, unless either (i) the surviving spouse is both the personal representative and the trustee or (ii) the clerk determines that the trustee or the personal representative may not be able to represent the trust or the estate, respectively, adversely to the surviving spouse, in which cases the value of such property shall be determined pursuant to subdivision (4) of this subsection.

(3) The value of all other property shall be established by the good faith agreement of the surviving spouse, the personal representative, and the responsible person that received, held, or controlled such property on the date used to determine the value of such property for purposes of determining total assets, unless the clerk determines that valuation under subdivision (4) of this subsection is more appropriate.

(4) If the value of any property is not established by agreement as provided above, the parties may present evidence regarding value, which may include expert testimony, and the clerk may appoint one or more qualified and disinterested persons to help determine the value of such property. After hearing, the clerk shall make a finding of fact of the value of each asset.

"**§ 30-3.4. Procedure for determining the elective share.**

(a) Exercisable Only During Lifetime. – The right of the surviving spouse to file a claim for an elective share must be exercised during the lifetime of the surviving spouse, by the surviving spouse, by the surviving spouse's ~~agent under a~~ attorney-in-fact if the surviving spouse's power of ~~attorney,~~ attorney expressly authorizes the attorney-in-fact to do so or to generally engage in estate transactions, ~~or~~ or, with approval of court, by the guardian of the surviving spouse's ~~estate.~~ estate or general guardian. If a surviving spouse dies before the claim for an elective share has been settled, the surviving spouse's personal representative shall succeed to the surviving spouse's rights to an elective share.

(b) Time Limitations. – A claim for an elective share must be made within six months after the issuance of letters testamentary or letters of administration in connection with the will or intestate proceeding with respect to which the surviving spouse claims the elective share by (i) filing a petition with the clerk of superior court of the county in which the primary

administration of the decedent's estate lies, and (ii) mailing or delivering a copy of that petition to the personal representative of the decedent's estate. A surviving spouse's incapacity shall not toll the six-month period of limitations.

(c) Time for Hearing. – Unless waived by the personal representative and the surviving spouse, the clerk shall set the matter for hearing no earlier than two months and no later than six months after the filing of the petition. However, the clerk may extend the time of hearing as the clerk sees fit. The surviving spouse shall give notice of the hearing to the personal representative, and to any person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share.

~~(d) Preparation of Tax Form. – In every case in which a petition to determine an elective share has been filed, and within two months of the filing of the petition, the personal representative shall prepare and submit to the clerk a proposed Form 706, federal estate tax return, for the estate, regardless of whether that form is required to be filed with the Internal Revenue Service. The clerk may extend the time for submission of the proposed Form 706 as the clerk sees fit.~~

~~(e) Valuation. – The valuation of interests in property for purposes of G.S. 30-3.2 and G.S. 30-3.3 shall be determined as follows:~~

~~(1) Basic principles. – Each interest shall be valued at its fair market value, reduced by all liens, claims, or encumbrances against the interest. For interests passing at the decedent's death, valuation shall be as of the date of death, and for interests transferred during the decedent's lifetime, valuation shall be as of the date of transfer.~~

~~(2) Valuation of partial and contingent interests in property. – The valuation of interests in property, outright or in trust, which are limited to commence or terminate upon the death of one or more persons, upon the expiration of a period of time, or upon the occurrence of one or more contingencies, shall be determined by computations based upon the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, and upon the basis of six percent (6%) of the gross value of the underlying property in which those interests are limited. However, in valuing interests passing to the surviving spouse, the following special rules apply:~~

~~a. An interest described in G.S. 30-3.3(a)(7) that shall be valued as if the underlying property or interest passed outright to the surviving spouse unencumbered by any trust;~~

~~b. To the extent that the interest is dependent upon the occurrence of any contingency that is not subject to the control of the surviving spouse and that is not subject to valuation by reference to the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, the contingency will be conclusively presumed to result in the lowest possible value passing to the surviving spouse. However, a life estate or income interest that will terminate only upon the earlier of the surviving spouse's death or remarriage will be valued without regard to the possibility of termination upon remarriage; and~~

~~c. To the extent that the valuation of an interest is dependent upon the life expectancy of the surviving spouse, that life expectancy shall be conclusively presumed to be no less than 10 years, regardless of the actual attained age of the surviving spouse at the decedent's death.~~

~~(3) Determination of fair market value. – The fair market value of each asset comprising Total Net Assets shall be determined as follows:~~

~~a. Probate assets and assets passing to spouse. – The value of each probate asset and Property Passing to Surviving Spouse, other than~~

~~assets held in trust, shall be established by the good faith agreement of the surviving spouse and the personal representative, unless either (i) the surviving spouse is the personal representative, or (ii) the clerk determines that the personal representative may not be able to represent the estate adversely to the surviving spouse.~~

~~b. Trust assets. The value of each trust asset shall be established by good faith agreement of the surviving spouse and the trustee, unless either (i) the surviving spouse is the trustee, or (ii) the clerk determines that the trustee may not be able to represent the trust adversely to the surviving spouse.~~

~~c. Other assets. The value of any other asset shall be established by the good faith agreement of the surviving spouse and each person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share because of that person's interest in the asset, unless the clerk determines that valuation under sub-subdivision d. of this subdivision is more appropriate.~~

~~d. Use of disinterested persons. If the value of any asset is not established by agreement, the clerk shall appoint one or more qualified and disinterested persons to determine a value of each asset. That determination of the value of an asset shall be final for the exclusive purposes of this Article.~~

(d1) Mediation. – The clerk may order mediation as described in G.S. 7A-38.3B of any disputes in connection with an elective share proceeding.

(e1) Procedure. – An elective share proceeding shall be an estate matter and may be appealed pursuant to G.S. 1-301.3.

(e2) Information About Total Net Assets. – In order to assist the clerk in determining whether a surviving spouse is entitled to an elective share, and, if so, the amount thereof, the following provisions apply:

(1) Submission within two months. – In every case in which a petition to determine an elective share has been filed, within two months of the filing of the petition, the personal representative shall submit sufficient information about the total assets for the clerk to determine the elective share. To fulfill its obligation to provide information, the personal representative may prepare and submit to the clerk a proposed Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, for the estate, regardless of whether that form is required to be filed with the Internal Revenue Service. The clerk may extend the time for submission of the proposed Form 706 or other information as the clerk sees fit.

(2) Examination regarding assets. – If the personal representative, the surviving spouse, or a responsible person has reasonable grounds to believe that any person has a claim or has in its possession assets included in Total Net Assets, then the personal representative, surviving spouse, or responsible person may use the procedures set out in G.S. 28A-15-12 to cause the clerk to examine the person believed to have a claim or to possess assets included in Total Net Assets.

(f) Findings and Conclusions. – After notice and hearing, the clerk shall determine whether or not the surviving spouse is entitled to an elective share, and if so, the clerk shall then determine the elective share and shall order the personal representative to transfer that amount to the surviving spouse. The clerk's order shall recite specific findings of fact and conclusions of law in arriving at the decedent's Total Net Assets, Property Passing to Surviving Spouse, and the elective share.

~~(g) Appeals. – Any party in interest may appeal from the decision of the clerk to the superior court. If an appeal is taken from the decision of the clerk, that appeal shall have the effect of staying the judgment and order of the clerk until the cause is heard and determined by the superior court upon the appeal taken. Upon an appeal taken from the clerk to the superior court, the judge may review the findings of fact by the clerk and may find the facts or take other evidence, but the facts found by the judge shall be final and conclusive upon any appeal to the Appellate Division.~~

(h) Expenses. – The expenses (including attorneys' fees) reasonably incurred by the personal representative, other responsible persons, and the surviving spouse in connection with elective share proceedings shall be equitably apportioned by the clerk of court in the clerk's discretion among the personal representative, other responsible persons, and the surviving spouse. Each responsible person shall pay its apportioned expenses to the personal representative in cash.

"**§ 30-3.5. ~~Recovery of assets by personal representative.~~ Satisfaction of elective share.**

~~(a) Recovery of Assets. The personal representative is entitled to recover proportionately from all persons, other than the surviving spouse, receiving or in possession of any of the decedent's Total Net Assets a sufficient amount to enable the personal representative to pay the elective share. The apportionment shall be made in the proportion that the value of the interest of each person receiving or in possession of any of Total Net Assets bears to Total Net Assets, excluding any Property Passing to Surviving Spouse. The only persons subject to contribution to make up the elective share are (i) original recipients of property comprising the decedent's Total Net Assets, and subsequent gratuitous inter vivos donees or persons claiming by testate or intestate succession to the extent those persons have the property or its proceeds on or after the date of decedent's death, and (ii) a fiduciary, as to the property under the fiduciary's control at or after the time a fiduciary receives notice that a surviving spouse has claimed an elective share. A fiduciary shall not be considered to have notice until it receives notice at its address as shown in the decedent's estate papers in the clerk's office or, if there are no such papers or no such address is shown in those papers, at the fiduciary's residence or the office of its registered agent.~~

~~The personal representative may withhold from any property of the decedent in his possession, distributable to any person subject to apportionment, the amount of the elective share apportioned to such person. If the property in possession of the personal representative and distributable to any person subject to apportionment is insufficient to satisfy the proportionate amount of the elective share determined to be due from that person, the personal representative may recover the deficiency from that person. If the property is not in possession of the personal representative, the personal representative may recover from the person the amount of the elective share apportioned to that person in accordance with this Article. If the personal representative cannot reasonably collect from any person subject to apportionment the amount of the elective share apportioned to that person, the amount not reasonably recoverable shall, with the approval of the clerk, be apportioned among the other persons who are subject to apportionment. The apportionment shall be made in the proportion that the value of the interest of each remaining person bears to the total value of the interests of all remaining persons.~~

(a1) Apportionment. – The personal representative shall determine each responsible person's liability to the surviving spouse by multiplying the value of the elective share by a fraction, the numerator of which is the value of the responsible person's nonspousal assets and the denominator of which is the total value of all of the nonspousal assets included in Total Net Assets.

(a2) Recovery From Responsible Persons. – As a responsible person, the personal representative shall satisfy its liability for payment of the elective share out of the decedent's estate's nonspousal assets using first the nonspousal assets in the decedent's residuary estate. If the nonspousal assets in the residuary estate are not sufficient, the personal representative shall

reduce each other responsible person's share of the nonspousal assets proportionately based on the values used in determining the Total Net Assets. The personal representative shall recover from each other responsible person the responsible person's liability for the payment of the elective share. Each responsible person, including the decedent's personal representative, may elect to satisfy its liability in full by any of the following methods:

(1) Conveyance of that portion of the responsible person's nonspousal assets (or identical substitute assets), valued on the date of conveyance, sufficient to satisfy the responsible person's liability; or, if the value of the responsible person's nonspousal assets on the date of conveyance is less than the responsible person's liability, conveyance of all of the responsible person's nonspousal assets (or identical substitute assets).

(2) Payment of the liability in cash.

(3) Payment of the liability in other property upon written agreement of the surviving spouse at values agreed by the surviving spouse for purposes of determining the extent of the liability satisfied.

(4) Any combination of the payment methods set forth under subdivisions (2) through (4) of this subsection, provided that the total value of assets conveyed by the responsible person equals such responsible person's liability.

(a3) Inability or Refusal to Pay. – The personal representative shall be entitled to petition the clerk of court for an order requiring any responsible person to satisfy its liability. Upon refusal of a responsible person to obey such an order, the personal representative shall be entitled to a judgment against such responsible person in the amount of the liability and to any other remedies the clerk deems appropriate. Although the responsible person shall remain primarily liable for such responsible person's liability for the elective share, the following rules apply:

(1) If the responsible person makes a gratuitous transfer, whether inter vivos or by testate or intestate succession, of all or any part of the responsible person's nonspousal assets or the proceeds thereof after the decedent's death, then the gratuitous transferee shall be liable for the amount transferred, and the personal representative shall be entitled to recover that amount from the transferee as if the transferee were the responsible person.

(2) If the responsible person is a fiduciary and makes a distribution of all or any part of the responsible person's nonspousal assets or the proceeds thereof after the decedent's death, then the distributee shall be liable for the amount transferred, and the personal representative shall be entitled to recover that amount from the distributee as if the distributee were the responsible person.

If, after exhausting all other remedies in this section, the personal representative cannot reasonably recover a responsible person's liability, then, with the approval of the clerk, the defaulting responsible person's liability shall be apportioned on a pro rata basis among the responsible persons who have not defaulted. Each nondefaulting other responsible person shall be liable for the amount of the liability apportioned to it in the same manner and to the same extent as its original liability for the elective share; provided, that each responsible person's liability shall not exceed the responsible person's proportionate share of the value of the nonspousal assets based on the values used in determining Total Net Assets. Each nondefaulting other responsible person shall be entitled to a proportionate share of any judgment against or subsequent recovery of the liability from the defaulting responsible person.

(b) Standstill Order. – After the filing of the petition demanding an elective share, ~~either the personal representative or surviving spouse~~ the personal representative, surviving spouse, or any responsible person may request the clerk to issue an order that any ~~recipients~~ responsible person not dispose of ~~any~~ all or a portion of the decedent's Total Net Assets or the proceeds

thereof pending the ~~hearing.~~ payment of the elective share. The decision to issue such an order shall be in the discretion of the clerk. A person who violates the standstill order may be held in civil contempt of court pursuant to Article 5A of Chapter 2 of the General Statutes. The clerk shall enter an order terminating the standstill order upon the clerk's determination that the standstill order is no longer necessary or desirable.

~~(c) Satisfaction of Liability. A person receiving or in possession of any of the decedent's Total Net Assets may pay his proportionate elective share liability with respect to that property by any of the following methods:~~

~~(1) Conveyance of the property included in the decedent's Total Net Assets;~~

~~(2) Payment of the value of his liability in cash or, upon agreement of the surviving spouse, other property; or~~

~~(3) Partial conveyance and partial payment under subdivisions (1) and (2) of this subsection, provided the value conveyed and paid is equal to his liability.~~

~~(d) Expenses. The expenses reasonably incurred by the personal representative in connection with the appraisal or recovery of assets shall be apportioned as provided for the elective share under this Article. If the personal representative finds that it is inequitable to apportion the expenses because those expenses were incurred because of the fault of one or more persons subject to apportionment, the personal representative may direct other more equitable apportionment, with the approval of the clerk.~~

(e) Bond. – ~~If property held by the personal representative is distributed~~ If a responsible person distributes or disposes of nonspousal assets prior to final apportionment of the elective ~~share,~~ share and expenses, the personal representative may require the ~~distributee~~ responsible person or the transferee to provide a bond or other security for the ~~apportionment~~ responsible person's liability for payment of the elective share and apportioned expenses in the form and amount prescribed by the personal representative, with the approval of the clerk.

"§ 30-3.6. Waiver of rights.

(a) The right of a surviving spouse to claim an elective share may be waived, wholly or partially, before or after marriage, with or without consideration, by a written waiver signed by the surviving ~~spouse.~~ spouse, by the surviving spouse's attorney-in-fact if the surviving spouse's power of attorney expressly authorizes the attorney-in-fact to do so or to generally engage in estate transactions, or, with approval of court, by the guardian of the surviving spouse's estate or general guardian.

(b) A waiver is not enforceable if the surviving spouse proves that:

(1) The waiver was not executed voluntarily; or

(2) The surviving spouse or the surviving spouse's representative making the waiver was not provided a fair and reasonable disclosure of the property and financial obligations of the decedent, unless the surviving spouse waived, in writing, the right to that disclosure.

(c) A written waiver that would have been effective to waive a spouse's right to dissent in estates of decedents dying on or before December 31, 2000, under Article 1 of Chapter 30 of the General Statutes is effective to waive that spouse's right of elective share under this Article for estates of decedents dying on or after January 1, 2001."

SECTION 2. This act is effective when it becomes law and applies to decedents dying on or after October 1, 2009.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 765
Committee Substitute Favorable 4/8/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H765-CSRC-29 [v.2]

6/1/2009 7:22:49 PM

Short Title: Revise Elective Share Statutes. (Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO REVISE THE EXISTING ELECTIVE SHARE STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1A of Chapter 30 of the General Statutes reads as rewritten:

"Article 1A.

"Elective Share.

"**§ 30-3.1. Right of elective share.**

(a) Elective Share. – The surviving spouse of a decedent who dies domiciled in this State has a right to claim an "elective share", which means an amount equal to (i) the applicable share of the Total Net Assets, as defined in G.S. 30-3.2(4), less (ii) the value of Net Property Passing to Surviving Spouse, as defined in ~~G.S. 30-3.3(a).~~G.S. 30-3.2(2c). The applicable share of the Total Net Assets is as follows:

(1) If the decedent is not survived by any lineal descendants, one-half of the Total Net Assets.

(2) If the decedent is survived by one child, or lineal descendants of one deceased child, one-half of the Total Net Assets.

(3) If the decedent is survived by two or more children, or by one or more children and the lineal descendants of one or more deceased children, or by the lineal descendants of two or more deceased children, one-third of the Total Net Assets.

(b) Reduction of Applicable Share. – In those cases in which the surviving spouse is a second or successive spouse, and the decedent has one or more lineal descendants ~~surviving by a prior marriage~~ surviving who are not lineal descendants of the decedent's marriage to the surviving spouse but there are no lineal descendants surviving by the surviving spouse, the applicable share as determined in subsection (a) of this section shall be reduced by one-half.

~~(c) Death Taxes. Death taxes shall be taken into account as a claim against the estate in determining Total Net Assets only to the extent that the assets received by the surviving spouse do not qualify for the federal estate tax marital deduction pursuant to section 2056 of the Code or similar provisions under the laws of any other applicable taxing jurisdiction. The amount of such claims shall equal the difference between the amount of such death taxes as finally determined and the amount such death taxes would have been if all assets received by the surviving spouse had qualified for the federal estate tax marital deduction pursuant to~~

~~section 2056 of the Code and similar provisions under the laws of any other applicable taxing jurisdictions.~~

"**§ 30-3.2. Definitions.**

The following definitions apply in this Article:

(1) ~~"Code" means the~~ Code. – The Internal Revenue Code in effect at the time of the decedent's death.

(1a) Claims. – Includes liabilities of the decedent whether arising in contract, in tort, or otherwise, and liabilities of the decedent's estate which arise at or after the death of the decedent, including funeral and administrative expenses, except for:

a. A claim for equitable distribution of property pursuant to G.S. 50-20 awarded subsequent to the death of the decedent.

b. Death taxes, except for those death taxes attributable to Property Passing to the Surviving Spouse. "Death taxes attributable to Property Passing to the Surviving Spouse" equals the amount of decedent's death taxes as finally determined, less the amount such death taxes would have been if all Property Passing to the Surviving Spouse had qualified for the federal estate tax marital deduction pursuant to section 2056 of the Code or had qualified for a similar provision under the laws of another applicable taxing jurisdiction.

c. A claim founded on a promise or agreement of the decedent, to the extent such claim is not arm's length or is not supported by full or adequate consideration in money or money's worth.

d. Expenses apportioned by the clerk of court under G.S. 30-3.4(h).

(2) ~~"Death taxes" means any~~ Death taxes. – Any estate, inheritance, succession, and similar taxes imposed by any taxing authority, reduced by any applicable credits against those taxes.

(2a) General power of appointment. – Any power of appointment, including a power to designate the beneficiary of a beneficiary designation, exercisable by the decedent, regardless of the decedent's capacity to exercise such power, in favor of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate, except for (i) powers limited by an "ascertainable standard" as defined in G.S. 36C-1-103 and (ii) powers which are not exercisable by the decedent except in conjunction with a person who created the power or has a substantial interest in the property subject to the power and whose interest is adverse to the exercise of the power in favor of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate. In no event shall a power held by the decedent as attorney-in-fact under a power of attorney be considered a general power of appointment.

(2b) Lineal descendant. – Defined in G.S. 29-2.

(2c) Net Property Passing to Surviving Spouse. – The property passing to surviving spouse reduced by (i) death taxes attributable to property passing to surviving spouse, and (ii) claims payable out of, charge against or otherwise properly allocated to property passing to surviving spouse.

(3) ~~"Nonadverse trustee" means:~~ Nonadverse trustee. – Any of the following:

a. Any person who does not possess a substantial beneficial interest in the trust that would be adversely affected by the exercise or nonexercise of the power that the individual trustee possesses respecting the trust;

b. Any person subject to a power of removal by the surviving spouse with or without cause; or

c. Any company authorized to engage in trust business under the laws of this State, or that otherwise meets the requirements to engage in trust business under the laws of this State.

(3a) Nonspousal assets. – All property included in total assets other than the property included in Property Passing to Surviving Spouse.

(3b) Presently exercisable general power of appointment. – A general power of appointment which is exercisable at the time in question. A testamentary general power of appointment is not presently exercisable.

(3c) Property Passing to Surviving Spouse. – The sum of the values, as valued pursuant to G.S. 30-3.3A, of the following:

a. Property (i) devised, outright or in trust, by the decedent to the surviving spouse or (ii) that passes, outright or in trust, to the surviving spouse by intestacy, beneficiary designation, the exercise or failure to exercise the decedent's testamentary general power of appointment or the decedent's testamentary limited power of appointment, operation of law, or otherwise by reason of the decedent's death, excluding any benefits under the federal social security system.

b. Any year's allowance awarded to the surviving spouse.

c. Property renounced by the surviving spouse.

d. The surviving spouse's interest in any life insurance proceeds on the life of the decedent.

e. Any interest in property, outright or in trust, transferred from the decedent to the surviving spouse during the lifetime of the decedent for which the surviving spouse signs a statement acknowledging such a gift. For purposes of this sub-subdivision, any gift to the surviving spouse by the decedent of the decedent's interest in any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with right of survivorship shall be deemed to be a gift of one-half of the entire interest in property so held by the decedent and the surviving spouse.

f. Property awarded to the surviving spouse, subsequent to the death of the decedent, pursuant to an equitable distribution claim under G.S. 50-20.

g. Property held in a spousal trust described in G.S. 30-3.3A(e)(1).

If property falls under more than one sub-subdivision of this subdivision, then the property shall be included only once, but under the sub-subdivision yielding the greatest value of the property.

(3d) Responsible person. – A person or entity other than the surviving spouse that received, held, or controlled property constituting nonspousal assets on the date used to determine the value of the property. The personal representative is the responsible person for nonspousal assets that pass under the decedent's will or by intestate succession.

(3e) Responsible person's nonspousal assets. – The nonspousal assets received, held, or controlled by a responsible person.

(3f) Total assets. – The sum of the values, as determined pursuant to G.S. 30-3.3A, of the following:

a. The decedent's property that would pass by intestate succession if the decedent died without a will, other than wrongful death proceeds;

b. Property over which the decedent, immediately before death, held a presently exercisable general power of appointment, except for (i) property held jointly with right of survivorship, which is includable in total assets only to the extent provided in sub-subdivision c. of this subdivision and (ii) life insurance, which is includable in Total Assets only to the extent provided in sub-subdivision d. of this subdivision. Includes, without limitation:
   1. Property held in a trust that the decedent could revoke.
   2. Property held in a trust to the extent that the decedent had an unrestricted power to withdraw the property.
   3. Property held in a depository account owned by the decedent in a financial institution payable or transferable at decedent's death to a beneficiary designated by the decedent.
   4. Securities owned by the decedent in an account or in certificated form that are payable or transferable at decedent's death to a beneficiary designated by the decedent.

c. Property held as tenants by the entirety or jointly with rights of survivorship as follows:
   1. One-half of any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with rights of survivorship is included, without regard to who contributed the property.
   2. Property held by the decedent and one or more other persons other than the surviving spouse as joint tenants with rights of survivorship is included to the following extent:
      I. All property attributable to the decedent's contribution.
      II. The decedent's pro rata share of property not attributable to the decedent's contribution, except to the extent of property attributable to contributions by a surviving joint tenant.

      The decedent is presumed to have contributed the jointly owned property unless contribution by another is proven by clear and convincing evidence.

d. Benefits payable by reason of the decedent's death under any policy, plan, contract, or other arrangement, either owned by the decedent or over which the decedent had a general power of appointment or had the power to designate the surviving spouse as beneficiary, including, without limitation:
   1. Insurance on the life of the decedent.
   2. Accidental death benefits.
   3. Annuities.
   4. Employee benefits or similar arrangements.
   5. Individual retirement accounts.
   6. Pension or profit-sharing plans.
   7. Deferred compensation.
   8. Any private or governmental retirement plan.

e. Property irrevocably transferred by the decedent to the extent the decedent retained the possession or enjoyment of, or the right to income from, the property for life or for any period not ascertainable

without reference to the decedent's death or for any period which does not in fact end before the decedent's death, except:

1. Property transferred for full and adequate consideration.
2. Transfers to which the surviving spouse consented in writing by signing a deed, an income or gift tax return that reports the gift, or other writing.
3. Transfers which became irrevocable before the decedent's marriage to the surviving spouse.

The property included in total assets is that fraction of the transferred property to which the decedent retained the right.

f. Property transferred by the decedent to the extent the decedent created a power over the property or the income from the property, which, immediately prior to death, could be exercised by the decedent in conjunction with any other person, or which could be exercised by a person who does not have a substantial interest that would be adversely affected by the exercise or nonexercise of the power, for the benefit of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate, except:

1. Property transferred for full and adequate consideration.
2. Transfers to which the surviving spouse consented in writing by signing a deed, an income or gift tax return that reports the gift, or other writing.
3. Transfers which became irrevocable before the decedent's marriage to the surviving spouse.

The property included in total assets with respect to a power over property is that fraction of the property to which the power related.

g. Property transferred by the decedent to persons other than the surviving spouse if such transfer was made both during the one-year period immediately preceding the decedent's death and during the decedent's marriage to the surviving spouse, except:

1. Property transferred for full and adequate consideration.
2. Transfers to which the surviving spouse consented in writing by signing a deed, an income or gift tax return that reports such gift, or other writing.
3. That part of any property transferred to any one transferee that qualified for exclusion from gift tax under section 2503 of the Code.

For purposes of this sub-subdivision, the termination of a right or interest in, or power over, property that would have been included in the total assets under sub-subdivisions b., e., or f. if the right, interest, or power had not terminated until the decedent's death shall be deemed to be a transfer of such property. Termination occurs when, with respect to a right or interest in property, the decedent transfers or relinquishes the right or interest; with respect to a power over property, the power terminates by exercise or release, but not by lapse or default.

If property falls under more than one sub-subdivision of this subdivision, then the property shall be included only once, but under the sub-subdivision yielding the greatest value of the property.

(4) ~~"Total Net Assets" means, after the payment or provision for payment of the decedent's funeral expenses, year's allowances to persons other than to the~~

~~surviving spouse, debts, claims other than an equitable distribution of property awarded to the surviving spouse pursuant to G.S. 50-20 subsequent to the death of the decedent, and administration expenses, the sum of the following:~~

~~a. All property to which the decedent had legal and equitable title immediately prior to death;~~

~~b. All property received by the decedent's personal representative by reason of the decedent's death, other than wrongful death proceeds;~~

~~c. One-half of the value of any property held by the decedent and the surviving spouse as tenants by the entirety, or as joint tenants with rights of survivorship:~~

~~d. The entire value of any interest in property held by the decedent and another person, other than the surviving spouse, as joint tenants with right of survivorship, except to the extent that contribution can be proven by clear and convincing evidence;~~

~~e. The value of any property which would be included in the taxable estate of the decedent pursuant to sections 2033, 2035, 2036, 2037, 2038, 2039, or 2040 of the Code.~~

~~f. Any gifts of property made by the decedent to donees other than the surviving spouse within six months of the decedent's death, excluding:~~

~~1. Any gifts within the annual exclusion provisions of section 2503 of the Code;~~

~~2. Any gifts to which the surviving spouse consented. A signing of a deed, or income or gift tax return reporting such gift shall be considered consent; and~~

~~3. Any gifts made prior to marriage;~~

~~g. Any proceeds of any individual retirement account, pension or profit sharing plan, or any private or governmental retirement plan or annuity of which the decedent controlled the designation of beneficiary, excluding any benefits under the federal social security system;~~

~~h. Any other Property Passing to Surviving Spouse under G.S. 30-3.3; and~~

~~i. In case of overlapping application of the same property under more than one provision, the property shall be included only once under the provision yielding the greatest value."~~

Total Net Assets. – The total assets reduced by year's allowances to persons other than the surviving spouse and claims.

"~~§ 30-3.3. Property passing to surviving spouse.~~

~~(a) Property Passing to Surviving Spouse. – For purposes of this Article, "Property Passing to Surviving Spouse" means the sum of the following:~~

~~(1) One-half of the value of any interest in property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with rights of survivorship;~~

~~(2) The value of any interest in property (outright or in trust, including any interest subject to a general power of appointment held by the surviving spouse, as defined in section 2041 of the Code) devised by the decedent to the surviving spouse, or which passes to the surviving spouse by intestacy, or by beneficiary designation, or by exercise of or in default of the exercise of the decedent's testamentary general or limited power of appointment, or~~

~~by operation of law or otherwise by reason of the decedent's death, excluding any benefits under the federal social security system;~~

~~(3) Any year's allowance awarded to the surviving spouse;~~

~~(4) The value of any property renounced by the surviving spouse;~~

~~(5) The value of the surviving spouse's interest, outright or in trust, in any life insurance proceeds on the life of the decedent;~~

~~(6) The value of any interest in property, outright or in trust, transferred from the decedent to the surviving spouse during the lifetime of decedent for which (i) a gift tax return is timely filed reporting such gift, or (ii) the surviving spouse signs a statement acknowledging such a gift. For purposes of this subdivision, any gift to the surviving spouse by the decedent of the decedent's interest in any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with right of survivorship shall be valued at one-half of the entire value of that interest in property at the time the gift is made;~~

~~(7) Notwithstanding any other provision of law related to valuing a partial interest in property, the entire fair market value of any property held in trust for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime, if the terms of the trust meet the following requirements:~~

~~a. During the lifetime of the surviving spouse, the trust is controlled by one or more Nonadverse Trustees;~~

~~b. The trustee is required to distribute to or for the benefit of the surviving spouse either (i) the entire net income of the trust at least annually; or (ii) the income of the trust in such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse;~~

~~c. The trustee is required to distribute to or for the benefit of the surviving spouse out of the principal of the trust such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse; and~~

~~In exercising discretion, the trustee may be authorized or required to take into consideration all other income, assets, and other means of support as are available to the surviving spouse; and~~

~~(8) The net value of the marital estate awarded to the surviving spouse pursuant to G.S. 50-20 subsequent to the death of the decedent.~~

~~(b) Death Taxes. The value of Property Passing to Surviving Spouse shall be reduced by any death taxes that are a charge against or apportioned against the surviving spouse on property interests included in Property Passing to Surviving Spouse.~~

~~(c) No Duplication. In case of overlapping application of the same property under more than one provision, the property shall be included only once, under the provision yielding the greatest value.~~

"**§ 30-3.3A. Valuation of property.**

(a) Basic Principles. – Unless otherwise expressly stated to the contrary in this section, the value of property shall be that property's fair market value, taking into consideration any applicable discounts. The value shall be determined as of the date of death, except for (i) property transferred to persons other than the surviving spouse described in G.S. 30-3.2(3f)g. and (ii) property transferred to the surviving spouse described in G.S. 30-3.2(3c)e. that is not held in trust, that is not life insurance, and that is not held as tenants by the entirety or some other form of ownership that passes to the surviving spouse by reason of survivorship. The value of gift property described in clauses (i) and (ii) shall be determined as the value on the date of transfer; but if the donee proves to the satisfaction of the clerk that the value on the date

of disposal of the asset prior to the decedent's death is less than on the original date of transfer or that the value on the date of death is less than on the original date of transfer, then the lesser value shall be used.

(b) Certain Joint Property. – In valuing a partial interest in jointly owned property with rights of survivorship, there shall be no discount taken to reflect the decedent's partial interest including, but not limited to, discounts for lack of control, ownership of a fractional interest, or lack of marketability.

(c) Certain Powers of Appointment. – In valuing property over which the decedent held a presently exercisable general power of appointment, the value includes only the property subject to the power that passes at the decedent's death, whether by exercise, release, lapse, default, or otherwise.

(d) Certain Transfers With Retained Interests. - In valuing property transferred by the decedent with a retained right of possession or enjoyment or the right to income described in G.S. 30-3.2(3f)e., only the fraction of the property to which the decedent retained a right shall be included. In valuing property in which the decedent created a power as described in G.S. 30-3.2(3f)f., the value includes, with respect to a power, the value of the property subject to the power, and the amount included in the valuation with respect to a power over the income is the value of the property that produces or produced the income; provided, however, if the power is a power over both income and property and the foregoing produces different amounts, the amount included in the valuation is the greater amount.

(e) Partial or Contingent Interest Property. – The valuation of partial and contingent property interests, outright or in trust, which are limited to commence or terminate upon the death of one or more persons, upon the expiration of a period of time, or upon the occurrence of one or more contingencies, shall be determined by computations based upon the mortality and annuity tables set forth in G.S. 8-46 and G.S. 8-47, and by using a presumed rate of return of six percent (6%) of the value of the underlying property in which those interests are limited. However, in valuing partial and contingent interests passing to the surviving spouse, the following special rules apply:

(1) The value of the beneficial interest of a spouse shall be the entire fair market value of any property held in trust if the decedent was the settlor of the trust, if the trust is held for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime, and if the terms of the trust meet the following requirements:

a. During the lifetime of the surviving spouse, the trust is controlled by one or more nonadverse trustees.

b. The trustee shall distribute to or for the benefit of the surviving spouse either (i) the entire net income of the trust at least annually or (ii) the income of the trust in such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse.

c. The trustee shall distribute to or for the benefit of the surviving spouse out of the principal of the trust such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse.

d. In exercising discretion, the trustee may be authorized or required to take into consideration all other income assets and other means of support available to the surviving spouse.

(2) To the extent that the partial or contingent interest is dependent upon the occurrence of any contingency that is not subject to the control of the surviving spouse and that is not subject to valuation by reference to the mortality and annuity tables set forth in G.S. 8-46 and G.S. 8-47, the

contingency will be conclusively presumed to result in the lowest possible value passing to the surviving spouse. However, a life estate or income interest that will terminate upon the surviving spouse's death or remarriage will be valued without regard to the possibility of termination upon remarriage.

(3) To the extent that the valuation of a partial or contingent interest is dependent upon the life expectancy of the surviving spouse, that life expectancy shall be conclusively presumed to be no less than 10 years, regardless of the actual attained age of the surviving spouse at the decedent's death.

(f) Method for Determining Value. – Unless otherwise stated in this Article, the value of property shall be determined as follows:

(1) The value of property passing by intestacy described in G.S. 30-3.2(3f)a. and Property Passing to Surviving Spouse, other than property held in a trust, shall be established by the good faith agreement of the surviving spouse and the personal representative, unless either (i) the surviving spouse is the personal representative or (ii) the clerk determines that the personal representative may not be able to represent the estate adversely to the surviving spouse, in which cases the value of such property shall be determined pursuant to subdivision (4) of this subsection.

(2) The value of property constituting an interest in a trust shall be established by good faith agreement of the surviving spouse, the personal representative, and the trustee, unless either (i) the surviving spouse is both the personal representative and the trustee or (ii) the clerk determines that the trustee or the personal representative may not be able to represent the trust or the estate, respectively, adversely to the surviving spouse, in which cases the value of such property shall be determined pursuant to subdivision (4) of this subsection.

(3) The value of all other property shall be established by the good faith agreement of the surviving spouse, the personal representative, and the responsible person that received, held, or controlled such property on the date used to determine the value of such property for purposes of determining total assets, unless the clerk determines that valuation under subdivision (4) of this subsection is more appropriate.

(4) If the value of any property is not established by agreement as provided above, the parties may present evidence regarding value, which may include expert testimony, and the clerk may appoint one or more qualified and disinterested persons to help determine the value of such property. After hearing, the clerk shall make a finding of fact of the value of each asset.

"**§ 30-3.4. Procedure for determining the elective share.**

(a) Exercisable Only During Lifetime. – The right of the surviving spouse to file a claim for an elective share must be exercised during the lifetime of the surviving spouse, by the surviving spouse, by the surviving spouse's ~~agent under a~~ attorney-in-fact if the surviving spouse's power of ~~attorney,~~ attorney expressly authorizes the attorney-in-fact to do so or to generally engage in estate transactions, ~~or~~ or, with approval of court, by the guardian of the surviving spouse's ~~estate.~~ estate or general guardian. If a surviving spouse dies before the claim for an elective share has been settled, the surviving spouse's personal representative shall succeed to the surviving spouse's rights to an elective share.

(b) Time Limitations. – A claim for an elective share must be made within six months after the issuance of letters testamentary or letters of administration in connection with the will or intestate proceeding with respect to which the surviving spouse claims the elective share by

(i) filing a petition with the clerk of superior court of the county in which the primary administration of the decedent's estate lies, and (ii) mailing or delivering a copy of that petition to the personal representative of the decedent's estate. A surviving spouse's incapacity shall not toll the six-month period of limitations.

(c) Time for Hearing. – Unless waived by the personal representative and the surviving spouse, the clerk shall set the matter for hearing no earlier than two months and no later than six months after the filing of the petition. However, the clerk may extend the time of hearing as the clerk sees fit. The surviving spouse shall give notice of the hearing to the personal representative, and to any person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share.

~~(d) Preparation of Tax Form. – In every case in which a petition to determine an elective share has been filed, and within two months of the filing of the petition, the personal representative shall prepare and submit to the clerk a proposed Form 706, federal estate tax return, for the estate, regardless of whether that form is required to be filed with the Internal Revenue Service. The clerk may extend the time for submission of the proposed Form 706 as the clerk sees fit.~~

~~(e) Valuation. – The valuation of interests in property for purposes of G.S. 30-3.2 and G.S. 30-3.3 shall be determined as follows:~~

~~(1) Basic principles. – Each interest shall be valued at its fair market value, reduced by all liens, claims, or encumbrances against the interest. For interests passing at the decedent's death, valuation shall be as of the date of death, and for interests transferred during the decedent's lifetime, valuation shall be as of the date of transfer.~~

~~(2) Valuation of partial and contingent interests in property. – The valuation of interests in property, outright or in trust, which are limited to commence or terminate upon the death of one or more persons, upon the expiration of a period of time, or upon the occurrence of one or more contingencies, shall be determined by computations based upon the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, and upon the basis of six percent (6%) of the gross value of the underlying property in which those interests are limited. However, in valuing interests passing to the surviving spouse, the following special rules apply:~~

~~a. An interest described in G.S. 30-3.3(a)(7) that shall be valued as if the underlying property or interest passed outright to the surviving spouse unencumbered by any trust;~~

~~b. To the extent that the interest is dependent upon the occurrence of any contingency that is not subject to the control of the surviving spouse and that is not subject to valuation by reference to the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, the contingency will be conclusively presumed to result in the lowest possible value passing to the surviving spouse. However, a life estate or income interest that will terminate only upon the earlier of the surviving spouse's death or remarriage will be valued without regard to the possibility of termination upon remarriage; and~~

~~c. To the extent that the valuation of an interest is dependent upon the life expectancy of the surviving spouse, that life expectancy shall be conclusively presumed to be no less than 10 years, regardless of the actual attained age of the surviving spouse at the decedent's death.~~

~~(3) Determination of fair market value. – The fair market value of each asset comprising Total Net Assets shall be determined as follows:~~

~~a. Probate assets and assets passing to spouse. The value of each probate asset and Property Passing to Surviving Spouse, other than assets held in trust, shall be established by the good faith agreement of the surviving spouse and the personal representative, unless either (i) the surviving spouse is the personal representative, or (ii) the clerk determines that the personal representative may not be able to represent the estate adversely to the surviving spouse.~~

~~b. Trust assets. The value of each trust asset shall be established by good faith agreement of the surviving spouse and the trustee, unless either (i) the surviving spouse is the trustee, or (ii) the clerk determines that the trustee may not be able to represent the trust adversely to the surviving spouse.~~

~~c. Other assets. The value of any other asset shall be established by the good faith agreement of the surviving spouse and each person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share because of that person's interest in the asset, unless the clerk determines that valuation under sub-subdivision d. of this subdivision is more appropriate.~~

~~d. Use of disinterested persons. If the value of any asset is not established by agreement, the clerk shall appoint one or more qualified and disinterested persons to determine a value of each asset. That determination of the value of an asset shall be final for the exclusive purposes of this Article.~~

(d1) Mediation. – The clerk may order mediation as described in G.S. 7A-38.3B of any disputes in connection with an elective share proceeding.

(e1) Procedure. – An elective share proceeding shall be an estate matter and may be appealed pursuant to G.S. 1-301.3.

(e2) Information About Total Net Assets. – In order to assist the clerk in determining whether a surviving spouse is entitled to an elective share, and, if so, the amount thereof, the following provisions apply:

(1) Submission within two months. – In every case in which a petition to determine an elective share has been filed, within two months of the filing of the petition, the personal representative shall submit sufficient information about the total assets for the clerk to determine the elective share. To fulfill its obligation to provide information, the personal representative may prepare and submit to the clerk a proposed Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, for the estate, regardless of whether that form is required to be filed with the Internal Revenue Service. The clerk may extend the time for submission of the proposed Form 706 or other information as the clerk sees fit.

(2) Examination regarding assets. – If the personal representative, the surviving spouse, or a responsible person has reasonable grounds to believe that any person has a claim or has in its possession assets included in Total Net Assets, then the personal representative, surviving spouse, or responsible person may use the procedures set out in G.S. 28A-15-12 to cause the clerk to examine the person believed to have a claim or to possess assets included in Total Net Assets.

(f) Findings and Conclusions. – After notice and hearing, the clerk shall determine whether or not the surviving spouse is entitled to an elective share, and if so, the clerk shall then determine the elective share and shall order the personal representative to transfer that amount to the surviving spouse. The clerk's order shall recite specific findings of fact and

conclusions of law in arriving at the decedent's Total Net Assets, Property Passing to Surviving Spouse, and the elective share.

~~(g) Appeals. Any party in interest may appeal from the decision of the clerk to the superior court. If an appeal is taken from the decision of the clerk, that appeal shall have the effect of staying the judgment and order of the clerk until the cause is heard and determined by the superior court upon the appeal taken. Upon an appeal taken from the clerk to the superior court, the judge may review the findings of fact by the clerk and may find the facts or take other evidence, but the facts found by the judge shall be final and conclusive upon any appeal to the Appellate Division.~~

(h) Expenses. – The expenses (including attorneys' fees) reasonably incurred by the personal representative, other responsible persons, and the surviving spouse in connection with elective share proceedings shall be equitably apportioned by the clerk of court in the clerk's discretion among the personal representative, other responsible persons, and the surviving spouse.

"§ 30-3.5. ~~Recovery of assets by personal representative.~~ **Satisfaction of elective share.**

~~(a) Recovery of Assets. The personal representative is entitled to recover proportionately from all persons, other than the surviving spouse, receiving or in possession of any of the decedent's Total Net Assets a sufficient amount to enable the personal representative to pay the elective share. The apportionment shall be made in the proportion that the value of the interest of each person receiving or in possession of any of Total Net Assets bears to Total Net Assets, excluding any Property Passing to Surviving Spouse. The only persons subject to contribution to make up the elective share are (i) original recipients of property comprising the decedent's Total Net Assets, and subsequent gratuitous inter vivos donees or persons claiming by testate or intestate succession to the extent those persons have the property or its proceeds on or after the date of decedent's death, and (ii) a fiduciary, as to the property under the fiduciary's control at or after the time a fiduciary receives notice that a surviving spouse has claimed an elective share. A fiduciary shall not be considered to have notice until it receives notice at its address as shown in the decedent's estate papers in the clerk's office or, if there are no such papers or no such address is shown in those papers, at the fiduciary's residence or the office of its registered agent.~~

~~The personal representative may withhold from any property of the decedent in his possession, distributable to any person subject to apportionment, the amount of the elective share apportioned to such person. If the property in possession of the personal representative and distributable to any person subject to apportionment is insufficient to satisfy the proportionate amount of the elective share determined to be due from that person, the personal representative may recover the deficiency from that person. If the property is not in possession of the personal representative, the personal representative may recover from the person the amount of the elective share apportioned to that person in accordance with this Article. If the personal representative cannot reasonably collect from any person subject to apportionment the amount of the elective share apportioned to that person, the amount not reasonably recoverable shall, with the approval of the clerk, be apportioned among the other persons who are subject to apportionment. The apportionment shall be made in the proportion that the value of the interest of each remaining person bears to the total value of the interests of all remaining persons.~~

(a1) Apportionment. – The personal representative shall apportion the liability to the surviving spouse for the amount of the elective share among all responsible persons as follows:

(1) The net value of each nonspousal asset shall be determined by calculating the value of the nonspousal asset under G.S. 30-3.3.1 and reducing such value by that portion of the claims (including year's allowances to persons other than the surviving spouse) payable out of, charged against or otherwise properly allocable to the nonspousal asset.

(2) Using the net value of each nonspousal asset as determined under subdivision (1) of this subsection, the personal representative shall determine each responsible person's liability to the surviving spouse by multiplying the amount of the elective share by a fraction, the numerator of which is the net value of the responsible person's nonspousal assets and the denominator of which is the net value of all of the nonspousal assets.

(a2) Recovery From Responsible Persons. – In recovering assets from Responsible Persons, the following rules apply:

(1) To the extent the personal representative is a responsible person, the personal representative shall satisfy its liability to the surviving spouse out of its nonspousal assets according to the following order of priority:

a. The personal representative shall satisfy its liability out of the net value of the nonspousal assets passing by intestate succession by allocating the liability proportionately among each intestate heir based on the fraction of the net value of the nonspousal assets passing by intestate succession that each intestate heir is entitled to receive.

b. If the net value of the nonspousal assets passing by intestate succession is not sufficient to satisfy the personal representative's liability in full, the personal representative shall satisfy its remaining liability out of the net value of the nonspousal assets passing as part of the decedent's residuary estate by allocating the liability proportionately among each beneficiary of the decedent's residuary estate based on the fraction of the net value of the nonspousal assets passing as part of the decedent's residuary estate that each residuary beneficiary is entitled to receive.

c. If the net value of the nonspousal assets in the residuary estate is not sufficient to satisfy the personal representative's liability in full, the personal representative shall satisfy its remaining liability by allocating the remaining liability proportionately among each other beneficiary of the decedent's will based on the fraction of the net value of the remaining nonspousal assets each other beneficiary is entitled to receive.

(2) The personal representative shall recover from each other responsible person the responsible person's liability to the surviving spouse.

(3) Each responsible person, including the personal representative in its capacity as a responsible person, may elect to satisfy its liability in full by any of the following methods:

a. Conveyance of that portion of the responsible person's nonspousal assets (or identical substitute assets), valued on the date of conveyance, sufficient to satisfy the responsible person's liability; or, if the value of the responsible person's nonspousal assets on the date of conveyance is less than the responsible person's liability, conveyance of all of the responsible person's nonspousal assets (or identical substitute assets).

b. Payment of the liability in cash.

c. Payment of the liability in other property upon written agreement of the surviving spouse at values agreed by the surviving spouse for purposes of determining the extent of the liability satisfied.

d. Any combination of the payment methods set forth under sub-subsubdivisions b. through d. of this subsection, provided that the

total value of assets conveyed by the responsible person equals such responsible person's liability.

(a3) Inability or Refusal to Pay. – The personal representative shall be entitled to petition the clerk of court for an order requiring any responsible person to satisfy its liability. Upon refusal of a responsible person to obey such an order, the personal representative shall be entitled to a judgment against such responsible person in the amount of the liability and to any other remedies the clerk deems appropriate. Although the responsible person shall remain primarily liable for such responsible person's liability for the elective share, the following rules apply:

(1) If the responsible person makes a gratuitous transfer, whether inter vivos or by testate or intestate succession, of all or any part of the responsible person's nonspousal assets or the proceeds thereof after the decedent's death, then the gratuitous transferee shall be liable for the amount transferred, and the personal representative shall be entitled to recover that amount from the transferee as if the transferee were the responsible person.

(2) If the responsible person is a fiduciary and makes a distribution of all or any part of the responsible person's nonspousal assets or the proceeds thereof after the decedent's death, then the distributee shall be liable for the amount transferred, and the personal representative shall be entitled to recover that amount from the distributee as if the distributee were the responsible person.

If, after exhausting all other remedies in this section, the personal representative cannot reasonably recover a responsible person's liability, then, with the approval of the clerk, the defaulting responsible person's liability shall be apportioned on a pro rata basis among the responsible persons who have not defaulted. Each nondefaulting other responsible person shall be liable for the amount of the liability apportioned to it in the same manner and to the same extent as its original liability for the elective share; provided, that each responsible person's liability shall not exceed the responsible person's proportionate share of the value of the nonspousal assets based on the values used in determining Total Net Assets. Each nondefaulting other responsible person shall be entitled to a proportionate share of any judgment against or subsequent recovery of the liability from the defaulting responsible person.

(b) Standstill Order. – After the filing of the petition demanding an elective share, ~~either the personal representative or surviving spouse~~ the personal representative, surviving spouse, or any responsible person may request the clerk to issue an order that any ~~recipients~~ responsible person not dispose of ~~any~~ all or a portion of the decedent's Total Net Assets or the proceeds thereof pending the ~~hearing.~~ payment of the elective share. The decision to issue such an order shall be in the discretion of the clerk. A person who violates the standstill order may be held in civil contempt of court pursuant to Article 5A of Chapter 2 of the General Statutes. The clerk shall enter an order terminating the standstill order upon the clerk's determination that the standstill order is no longer necessary or desirable.

~~(c) Satisfaction of Liability. – A person receiving or in possession of any of the decedent's Total Net Assets may pay his proportionate elective share liability with respect to that property by any of the following methods:~~

~~(1) Conveyance of the property included in the decedent's Total Net Assets;~~

~~(2) Payment of the value of his liability in cash or, upon agreement of the surviving spouse, other property; or~~

~~(3) Partial conveyance and partial payment under subdivisions (1) and (2) of this subsection, provided the value conveyed and paid is equal to his liability.~~

~~(d) Expenses. – The expenses reasonably incurred by the personal representative in connection with the appraisal or recovery of assets shall be apportioned as provided for the elective share under this Article. If the personal representative finds that it is inequitable to apportion the expenses because those expenses were incurred because of the fault of one or~~

~~more persons subject to apportionment, the personal representative may direct other more equitable apportionment, with the approval of the clerk.~~

(e) Bond. – ~~If property held by the personal representative is distributed~~ If a responsible person distributes or disposes of nonspousal assets prior to final apportionment of the elective ~~share,~~ share and expenses, the personal representative may require the ~~distributee~~ responsible person or the transferee to provide a bond or other security for the ~~apportionment~~ responsible person's liability for payment of the elective share and apportioned expenses in the form and amount prescribed by the personal representative, with the approval of the clerk.

"**§ 30-3.6. Waiver of rights.**

(a) The right of a surviving spouse to claim an elective share may be waived, wholly or partially, before or after marriage, with or without consideration, by a written waiver signed by the surviving ~~spouse.~~ spouse, by the surviving spouse's attorney-in-fact if the surviving spouse's power of attorney expressly authorizes the attorney-in-fact to do so or to generally engage in estate transactions, or, with approval of court, by the guardian of the surviving spouse's estate or general guardian.

(b) A waiver is not enforceable if the surviving spouse proves that:

(1) The waiver was not executed voluntarily; or

(2) The surviving spouse or the surviving spouse's representative making the waiver was not provided a fair and reasonable disclosure of the property and financial obligations of the decedent, unless the surviving spouse waived, in writing, the right to that disclosure.

(c) A written waiver that would have been effective to waive a spouse's right to dissent in estates of decedents dying on or before December 31, 2000, under Article 1 of Chapter 30 of the General Statutes is effective to waive that spouse's right of elective share under this Article for estates of decedents dying on or after January 1, 2001."

SECTION 2. This act is effective when it becomes law and applies to decedents dying on or after October 1, 2009.

HOUSE BILL 765:
Revise Elective Share Statutes

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 1, 2009
Introduced by:	Rep. Stam	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	PCS to Second Edition H765-CSRC-29		

SUMMARY: The Proposed Committee Substitute for House Bill 765 rewrites Article 1A of Chapter 30 of the General Statutes governing a surviving spouse's elective share.

The bill is a recommendation of the Estate Planning Section of the North Carolina State Bar.

BACKGROUND: Under North Carolina law, a surviving spouse is entitled to a minimum share of their deceased spouse's estate regardless of the provisions, if any, of the deceased spouse's will. The minimum share is one-half of the surviving spouse's net assets if the decedent is survived by no lineal descendants or no more than one lineal descendants and one-third of the assets if decedent is survived by two or more children. The purpose of the elective share is to prevent a spouse from disinheriting a surviving spouse.

BILL ANALYSIS: The Proposed Committee Substitute makes changes to each section of Article 1A. An overview of the changes to each section is set out below.

G.S. 30-3.1. Right to Elective Share

Subsection (b) is changed to allow for the consideration of lineal descendants whether or not those descendants are the children of a prior marriage.

In addition to technical changes, subsection (c) governing the treatment and computation of death taxes is deleted. This language is now included in the definition section in the new definition of claims.

G.S. 30-3.2. Definitions

This section was changed to include computational language or calculations where appropriate, leaving primarily procedural language in the other sections.

New definitions include:

- "Claims" -- The current definition of "total net assets" (p.6, line 38) provides for the payment of funeral expenses, debts and other claims. The new definition of claims clarifies what is considered a claim against a decedent's estate and exempts from claims the following: (1) a claim for equitable distribution awarded subsequent to the decedent's death; (2) death taxes; and (3) claims not supported by adequate consideration, all of which are exempted under current law.
- "General Power of Appointment" -- This term is referenced in the new definition of "total assets" (p.3, line 48). The purpose of the new definition, coupled with the definition of total assets, is to include in total assets that property or interest over which the decedent retains control by a general power of appointment.
- "Net Property Passing to Surviving Spouse" – This term is added to include in the definitions the calculation under existing language as intended in the current G.S. 30-3.3 which is repealed by the bill (page 6, line 40).

- "Nonspousal Assets" – This term is used in new language in G.S. 30-3.5 (p. 12, line 44). The personal representative may recover non-spousal assets from a responsible person if the property is part of the decedent's total net assets.
- "Property Passing to the Surviving Spouse" – This definition is added and is substantially the same as language currently in G.S. 30-3.3 which is repealed by the bill. Again, the language is primarily used to compute the elective share and, as such, is being placed in the definitions.
- "Responsible person" and "Responsible Person's Non-spousal Assets" – These terms are used in new language in G.S. 30-3.5. Non-spousal assets may be recovered from responsible persons if the property is a part of the decedent's total net assets.
- "Total Assets" – This term is added and the definition is primarily based on language originally found in the definition of "Total Net Assets" included in a decedent's estate (p. 5, line 47) which is deleted by the bill. Again, the language is primarily a calculation or computation to determine the elective share. The language is expanded from the original language to provide clarification and divides property into the following categories:

    1. Property that would pass by intestate succession. (sub-subdivision a)
    2. Property over which the decedent held a general power of appointment including property held in revocable trusts, or a trust in which the decedent had the power to withdraw property, bank accounts, and stocks. (sub-subdivision b)
    3. Property held by joint tenancy. (sub-subdivision c)
    4. Beneficiary property including life insurance (not specified under current law), death benefits, annuities, IRAs, pensions, and retirement plans. (sub-subdivision d)
    5. Irrevocable transfers to the extent the decedent retained possession or enjoyment or income from the property. (sub-subdivision e)
    6. Property transferred with and to the extent of a power that could be exercised by the decedent with someone else. (sub-subdivision f)
    7. Gifts made one year preceding death (currently 6 months) (sub-subdivision g)

    For 5, 6, and 7 above, property transferred for full and adequate consideration or with the written consent of the surviving spouse are not include in total assets. **In addition, for 5 and 6 above, transfers which are irrevocable and made before the decedent's marriage to the surviving spouse are not included. This language is new.** Also, for 7 above, gifts that qualify for exclusion from gift tax ($13,000 or less) are not included.
- "Total Net Assets" – This definition is new and is based on total assets less funeral expenses, administration expenses, and claims.

G.S. 30-3.3. Property passing to surviving spouse.

This section is repealed. Provisions governing property passing to surviving spouse are now included in the definition in G.S. 30-3.2(3c) (p. 3, line 11).

G.S. 30-3.3A Valuation of Property. (new section added)

The valuation of property is currently addressed in G.S. 30-3.4(e) (p. 10, line 16) which is repealed by the bill.

Subsection (a) is based on the current language and provides that the value of the property shall be the fair market value at the time of death except for: (1) gifts made to person other than the surviving spouse and (2) gifts made to the surviving spouse that is not held in trust, not life insurance, or other form of ownership that passes to the surviving spouse on the decedent's death. For these transfers, the value is determined as of the date of transfer, unless the property is disposed of and the donee proves that the value prior to death is less than the value on the date of transfer.

Other provisions include the following:

- For joint property with right of survivorship, there shall be no discount taken to reflect the decedent's partial interest (subsection (b)).
- For property subject to power of appointment, value shall be only for the property subject to the power (subsection (c)).
- For transfers with a sole or shared retained right of possession or enjoyment, values shall be only for the property subject to the power (subsection (d)).
- For partial or contingent property interests commencing or terminating on the death of one or more persons, value is based on the statutory mortality and annuity tables. (subsection (e)). Special rules under the current law for contingent interests passing to the surviving spouse are included in this subsection. (repealed under current law on p. 7, line 16).

Subsection (f) provides that the method for determining fair market value can be by good faith agreement of, as applicable: (1) the surviving spouse and the personal representative for property passing by intestacy; (2) in the case of a trust, the personal representative, surviving spouse, and trustee; (3) the personal representative, surviving spouse, and the responsible person, for property held by a responsible person. If an agreement cannot be reached, the parties may present evidence to the clerk who shall determine the fair market value. This language is based on language deleted from the current G.S. 30-3.4(e)(3) (p. 10, line 17).

Subsection (f) adds new language requiring the clerk to make findings of fact from which the parties may appeal to the superior court.

G.S. 30-3.4. Procedure for determining the elective share

Subsection (a) adds language to (1) require a power of attorney to specifically authorize the attorney-in-fact to exercise the right to file for an elective share or to engage in estate transactions and (2) to require a general guardian or guardian of the estate to obtain court approval before filing for an elective share.

Subsection (d) requiring the preparation of a tax return within two months of filing a petition for elective share is repealed. This language is deleted because some estates or property within the estate aren't taxable. Under new language set out in subsection (e2)(1) of this section, the personal representative **may** file a return to assist the clerk in determining whether the spouse is entitled to an elective share.

Subsection (e) governing valuation is deleted in light of new language included in G.S. 30-3.3 discussed above.

Subsection (d1) is new and adds language authorizing the clerk to order mediation of disputes in connection with elective share claims.

Subsection (e1) is new and adds language authorizing appeal of an elective share claim as an estate matter under G.S.1-301.3. Under G.S. 1-301.3, a superior court judge may only consider whether the

findings of fact are supported by the evidence, whether the conclusions of law are supported by the findings of fact, and whether the order is consistent with the conclusions of law and applicable law.

Subsection (f1) is new and requires parties to submit sufficient information to the clerk to allow a determination of total assets of the decedent's estate.

Subsection (g) concerning appeals is deleted and is no longer needed in light of the new subsection (e1). Unlike the new language in subsection (e1), this section authorizes the superior court to review findings of fact by the clerk and find facts or take other evidence.

Subsection (h) is new and allows the apportionment of expenses by the clerk as currently provided in G.S. 30-3.5(d) which is deleted.

G.S. 30-3.5 Satisfaction of elective share. (new heading, was Recovery of assets by personal representative.)

Subsection (a) of this section is deleted and rewritten in new subsections (a1), (a2), and (a3). The revisions discussed below are intended to be clarifying only.

As is the current law, subsection (a1) provides that the personal representative apportions each responsible person's liability to the surviving spouse by multiplying the value of the elective share by a fraction comprised of the value of the responsible person's nonspousal assets over the total value of the all nonspousal assets.

Subsection (a2) provides that the personal representative must pay the elective share using first the non-spousal assets in the decedent's residuary estate. If these are insufficient, each responsible person's share is reduced proportionately. The responsible person may satisfy its liability by any of the following methods: (1) conveying back that portion of non-spousal assets valued on the date of conveyance or, if the value is less than the party's liability, the conveyance of **all** the non-spousal assets (There is no liability out of personal assets, only non-spousal assets.); (2) payment in cash; (3) payment in other property upon written agreement; or (4) any combination of the above.

Subsection (a3) provides that the personal representative may petition the court for the recovery from the responsible person. A responsible person is primarily liable for the elective share, but if the person made a gratuitous transfer or, if the person is a fiduciary and made a distribution of the non-spousal assets upon the decedent's death, then the transferee or distributee is liable for the amount transferred.

If the personal representative cannot recover from a responsible person, then the responsible person's liability may be apportioned among the remaining responsible persons. The non-defaulting responsible person or persons are then entitled to recover from the defaulting responsible person. A responsible person's liability may not exceed their proportionate share of the non-spousal assets. (Again, there is no liability out of personal assets, only non-spousal assets.)

Subsection (b) adds new language providing that a responsible person violating a standstill order prohibiting disposal of a decedent's total net assets may be held in civil contempt.

Subsection (c) is repealed. These provisions are included in the new subsection (a2).

Subsection (d) is repealed. The clerk may apportion expenses as provided in the new G.S. 30-3.4(h) discussed above.

Subsection (e) adds new language to the provision requiring a responsible person or transferee to post a bond to clarify that the bond is to secure payment not just of the elective share, but also of any apportioned expenses.

G.S. 30-3.6 Waiver of rights.

Language is added requiring a power of attorney to specifically authorize the attorney-in-fact to waive the right to claim an elective share or to engage in estate transactions and also requires a general guardian or guardian of the estate to obtain court approval before doing so. (As noted earlier in this summary, similar language was also added in G.S. 30-3.4(a) governing the petitioning for an elective share.)

EFFECTIVE DATE: The Proposed Committee Substitute for House Bill 765 is effective when it becomes law and applies to decedents dying on or after October 1, 2009.

Tim Hovis, counsel to House Judiciary I, substantially contributed to this summary.

H765-SMRC-38(CSRC-29) v1

H

HOUSE BILL 1109

Short Title:	State Fairgrounds Special Police/Mutual Aid.	(Public)
Sponsors:	Representatives Hill; and Lucas.	
Referred to:	Agriculture, if favorable, Judiciary III.	

April 7, 2009

A BILL TO BE ENTITLED

AN ACT TO ENABLE COMPANY POLICE AGENCIES OF THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES TO ENTER INTO MUTUAL AID AGREEMENTS WITH OTHER LAW ENFORCEMENT AGENCIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-288(d) reads as rewritten:

"(d) For purposes of this section, the following shall be considered the equivalent of a municipal police department:

(1) Campus law-enforcement agencies established pursuant to G.S. 115D-21.1(a) or ~~G.S. 116-40.5(a); and~~G.S. 116-40.5(a).

(2) Colleges or universities which are licensed, or exempted from licensure, by G.S. 116-15 and which employ company police officers commissioned by the Attorney General pursuant to Chapter 74E or Chapter 74G of the General ~~Statutes; and~~Statutes.

(3) Law enforcement agencies operated or eligible to be operated by a municipality pursuant to ~~G.S. 63-53(2); and~~G.S. 63-53(2).

(4) Butner Public Safety.

(5) A Company Police agency of the Department of Agriculture and Consumer Services commissioned by the Attorney General pursuant to Chapter 74E of the General Statutes."

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

HOUSE BILL 1109:
State Fairgrounds Special Police/Mutual Aid

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 2, 2009
Introduced by:	Rep. Hill	**Prepared by:**	Jennifer McGinnis
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***This act adds a company police agency of the Department of Agriculture and Consumer Services as an equivalent to a municipal police department for the purposes of entering into mutual aid agreements. This act is effective when it becomes law.***

CURRENT LAW: The head of a law enforcement agency is authorized by statute to provide assistance to another law enforcement agency if requested to do so in writing by the head of the requesting agency. The statute provides the guidelines and applicable regulations when there is an aid agreement, including grant of jurisdiction, operational control, and all other rights, privileges and immunities. All pay, and other personnel and administrative matters, remain with the lending agency for officers that are assisting the requesting agency.

BILL ANALYSIS: The act adds Company Police of the Department of Agriculture and Consumer Services as the equivalent of a municipal law enforcement agency; consequently, the head of the Company Police would be authorized to enter into agreements with other municipal agencies, or agencies that have also been given that status.

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

Hal Pell, Counsel to House Agriculture Committee, and Steven Rose, counsel to House Judiciary III, substantially contributed to this summary.

H1109-SMRI-54(e1) v1

HOUSE BILL 1132

Short Title:	Renew Concealed Carry Permit/30 Day Limit.	(Public)
Sponsors:	Representatives Hilton, Gulley (Primary Sponsors); Avila, Blackwood, Braxton, Brown, Cleveland, Current, Frye, Gillespie, Guice, Holloway, Justus, Langdon, Lucas, Neumann, Setzer, Starnes, Steen, West, and Wray.	
Referred to:	Judiciary I, if favorable, Finance.	

April 7, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT A PERSON MUST APPLY TO RENEW A CONCEALED HANDGUN PERMIT WITHIN THE THIRTY-DAY PERIOD PRIOR TO THE EXPIRATION DATE OF THE PERMIT, TO PROVIDE THAT A SHERIFF SHALL ISSUE OR DENY AN APPLICATION TO RENEW A CONCEALED HANDGUN PERMIT WITHIN THIRTY DAYS OF RECEIPT OF THE COMPLETED RENEWAL APPLICATION, AND TO PROVIDE THAT THE PERMIT OF A PERSON WHO COMPLIES WITH THE RENEWAL REQUIREMENTS REMAINS VALID BEYOND THE EXPIRATION DATE OF THE PERMIT UNTIL THE PERSON IS EITHER GRANTED OR DENIED A RENEWAL PERMIT BY THE SHERIFF.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-415.16 reads as rewritten:

"**§ 14-415.16. Renewal of permit.**

(a) The holder of a permit shall apply to renew the permit ~~at least 30 days~~ within the 30-day period prior to its expiration date by filing with the sheriff of the county in which the person resides a renewal form provided by the sheriff's office, a notarized affidavit stating that the permittee remains qualified under the criteria provided in this Article, a newly administered full set of the permittee's fingerprints, and a renewal fee.

(b) Upon receipt of the completed renewal application, including the permittee's fingerprints, and the appropriate payment of fees, the sheriff shall determine if the permittee remains qualified to hold a permit in accordance with the provisions of G.S. 14-415.12. The permittee's criminal history shall be updated, and the sheriff may waive the requirement of taking another firearms safety and training course. If the permittee applies for a renewal of the permit within 30 days of its expiration date and if the permittee remains qualified to have a permit under G.S. 14-415.12, the sheriff shall renew the ~~permit.~~permit within 30 days upon receipt of the completed renewal application. If the thirtieth day is a Saturday, Sunday, or State or federal holiday, then the period extends to the next business day. The permit of a permittee who complies with this section shall remain valid beyond the expiration date of the permit until the permittee either receives a renewal permit or is denied a renewal permit by the sheriff.

(c) No fingerprints shall be required for a renewal permit if the applicant's fingerprints were submitted to the State Bureau of Investigation after June 30, 2001, on the Automated Fingerprint Information System (AFIS) as prescribed by the State Bureau of Investigation."

SECTION 2. This act is effective when it becomes law and applies to permit renewal applications submitted on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1132
PROPOSED SENATE COMMITTEE SUBSTITUTE H1132-CSRV-44 [v.3]

6/1/2009 5:58:45 PM

Short Title: Renew Concealed Carry Permit/30 Day Limit. (Public)

Sponsors:

Referred to:

April 7, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT A PERSON MUST APPLY TO RENEW A CONCEALED HANDGUN PERMIT WITHIN THE THIRTY-DAY PERIOD PRIOR TO THE EXPIRATION DATE OF THE PERMIT, TO PROVIDE THAT IF A RENEWAL APPLICANT REMAINS ELIGIBLE FOR A CONCEALED HANDGUN PERMIT THE SHERIFF MUST RENEW THE PERMIT WITHIN THIRTY DAYS OF RECEIPT OF THE COMPLETED RENEWAL APPLICATION, TO PROVIDE THAT THE PERMIT OF A PERSON WHO COMPLIES WITH THE RENEWAL REQUIREMENTS REMAINS VALID BEYOND THE EXPIRATION DATE OF THE PERMIT UNTIL THE PERSON IS EITHER GRANTED OR DENIED A RENEWAL PERMIT BY THE SHERIFF, AND TO PROVIDE THAT A FORMER SWORN LAW ENFORCEMENT OFFICER WHO HAS FIFTEEN OR MORE AGGREGATE YEARS OF PART-TIME OR AUXILIARY LAW ENFORCEMENT SERVICE MAY BE EXEMPT FROM THE FIREARMS SAFETY AND TRAINING COURSE REQUIREMENT FOR A CONCEALED HANDGUN PERMIT IF HE OR SHE WAS A QUALIFIED SWORN LAW ENFORCEMENT OFFICER IMMEDIATELY BEFORE RETIRING AND HAS BEEN RETIRED AS A SWORN LAW ENFORCEMENT OFFICER TWO YEARS OR LESS FROM THE DATE OF THE PERMIT APPLICATION..

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-415.16 reads as rewritten:

"**§ 14-415.16. Renewal of permit.**

(a) The holder of a permit shall apply to renew the permit ~~at least 30 days~~ within the 30-day period prior to its expiration date by filing with the sheriff of the county in which the person resides a renewal form provided by the sheriff's office, a notarized affidavit stating that the permittee remains qualified under the criteria provided in this Article, a newly administered full set of the permittee's fingerprints, and a renewal fee.

(b) Upon receipt of the completed renewal application, including the permittee's fingerprints, and the appropriate payment of fees, the sheriff shall determine if the permittee remains qualified to hold a permit in accordance with the provisions of G.S. 14-415.12. The permittee's criminal history shall be updated, and the sheriff may waive the requirement of taking another firearms safety and training course. If the permittee applies for a renewal of the permit within 30 days of its expiration date and if the permittee remains qualified to have a permit under G.S. 14-415.12, the sheriff shall renew the ~~permit.~~ permit within 30 days after receipt of the completed renewal application. If the thirtieth day is a Saturday, Sunday, or State

or federal holiday, then the period extends to the next business day. The permit of a permittee who complies with this section shall remain valid beyond the expiration date of the permit until the permittee either receives a renewal permit or is denied a renewal permit by the sheriff.

(c) No fingerprints shall be required for a renewal permit if the applicant's fingerprints were submitted to the State Bureau of Investigation after June 30, 2001, on the Automated Fingerprint Information System (AFIS) as prescribed by the State Bureau of Investigation."

SECTION 2. G.S. 14-415.10(4) reads as rewritten:

"(4) Qualified former sworn law enforcement officer. – An individual who retired from service as a law enforcement officer with a local, State, campus police, or company police agency in North Carolina, other than for reasons of mental disability, who has been retired as a sworn law enforcement officer two years or less from the date of the permit application, and who satisfies all of the following:

a. Immediately before retirement, the individual was a qualified law enforcement officer with a local, State, or company police agency in North Carolina.

b. The individual has a nonforfeitable right to benefits under the retirement plan of the local, State, or company police agency as a law enforcement ~~officer~~officer; or has 20 or more aggregate years of law enforcement service and has retired from a company police agency that does not have a retirement ~~plan~~plan; or has 15 or more aggregate years of part-time or auxiliary law enforcement service.

c. The individual is not prohibited by State or federal law from receiving a firearm."

SECTION 3. This act is effective when it becomes law and applies to permit applications and renewal applications submitted on or after that date.

HOUSE BILL 1132:
Renew Concealed Carry Permit/30 Day Limit

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 1, 2009
Introduced by:	Reps. Hilton, Gulley	**Prepared by:**	Brenda J. Carter
Analysis of:	PCS to First Edition H1132-CSRV-44		Committee Counsel

SUMMARY: ***This proposed committee substitute for House Bill 1132 would make it clear that an application for renewal of a concealed carry permit must be submitted within the 30 days prior to expiration of the permit. It would also require a sheriff to act on a renewal application within 30 days after receipt of the completed application, and would extend the validity of a concealed carry permit if it reaches its expiration date and the permittee has not received a renewal permit or been denied a renewal permit by the sheriff. The proposed committee substitute adds a provision that would exempt qualified former sworn law enforcement officers who have 15 or more aggregate years of part-time or auxiliary law enforcement service from the requirement to complete a firearms safety and training course prior to obtaining a concealed carry permit, provided other requirements are met.***

CURRENT LAW: A concealed carry permit holder must apply to the sheriff in his or her county of residence for renewal of a permit at least 30 days prior to its expiration. If the permit holder applies for renewal within 30 days of its expiration date, and the permittee remains qualified, then the sheriff must renew the permit.

To qualify for the issuance of a concealed carry permit, an applicant must successfully complete an approved firearms safety and training course which involves the actual firing of handguns and instruction in the laws of this State governing the carrying of a concealed handgun and the use of deadly force. Under G.S. 14-415.12A(a), a person who is a "qualified sworn law enforcement officer" or a "qualified former sworn law enforcement officer" is deemed to have satisfied the firearms safety and training course requirement.

BILL ANALYSIS: House Bill 1132 would:

- Clarify that the holder of a concealed carry permit must submit a renewal application ***within*** the 30 days prior to expiration of the permit.
- Require that a sheriff renew the permit of a qualified applicant within 30 days after receiving the completed renewal application. If the 30th day falls on a Saturday, Sunday, State holiday, or federal holiday, the period would be extended to the next business day.
- Provide that if the applicant for permit renewal meets the statutory requirements, the permit would remain valid until the permittee either receives a renewal permit or is denied a renewal permit by the sheriff.
- Amend the definition of a "qualified former sworn law enforcement officer" that would be exempt from the requirement to complete a firearms safety and training course prior to obtaining a concealed carry permit. The exemption would include a person who has retired from service as a law enforcement officer in North Carolina not more than 2 years prior to the date of the application, and who meets all of the following requirements:
    - Was, immediately before retirement, a qualified law enforcement officer with a local, State, or company police agency in this State.
    - Has 15 or more aggregate years of part-time or auxiliary law enforcement service.
    - Is not prohibited by State or federal law from receiving a firearm.

EFFECTIVE DATE: The act would be effective when it becomes law, and apply to permit and renewal applications submitted on or after that date.

H1132-SMRV-88(CSRV-44) v1

HOUSE BILL 1447
Committee Substitute Favorable 5/7/09
Third Edition Engrossed 5/13/09

Short Title: Crime Stoppers Tips Are Confidential. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE IDENTITY OF AN INDIVIDUAL WHO PROVIDES A TIP FOR AN UNSOLVED CASE THROUGH CRIME STOPPERS OR SIMILAR ORGANIZATIONS IS NOT A PUBLIC RECORD, TO PROVIDE THAT THE COMMUNICATION RECEIVED BY A CRIME STOPPERS ORGANIZATION IS NOT SUBJECT TO DISCOVERY OR ADMISSIBLE IN A COURT PROCEEDING, AND TO PROVIDE THAT A LAW ENFORCEMENT AGENCY HAS A DUTY TO MAINTAIN THE CONFIDENTIALITY OF A CRIME STOPPERS TIP.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 15A of the General Statutes is amended by adding a new Article to read:

"Article 47.

"Local Crime Stoppers Programs.

"**§ 15A-850. Local Crime Stoppers organizations; confidentiality.**

(a) Definition. – As used in this section, a "Crime Stoppers" organization or other similarly named organization means a private, nonprofit North Carolina corporation governed by a civilian volunteer board of directors that is operated on a local or statewide level that (i) offers anonymity to persons providing information to the organization, (ii) accepts and expends donations for cash rewards to persons who report to the organization information about alleged criminal activity and that the organization forwards to the appropriate law enforcement agency, and (iii) is established as a cooperative alliance among the news media, the community, and law enforcement officials.

(b) Prohibitions on Use of Crime Stoppers Tips.

(1) Evidence of a communication, and any information contained within a communication, from an anonymous source to a Crime Stoppers organization shall not be:

a. Relied upon, or considered by, a judicial official in determining whether probable cause exists to issue either an arrest or search warrant.

b. Admissible or subject to discovery in any court proceeding.

(2) Crime Stoppers tips may only be used to assist a law enforcement agency in directing its investigation of alleged criminal activity.

(c) Identity of Crime Stoppers Informant Is Not Public Record; Duty of Law Enforcement Agency to Maintain Confidentiality. – The identity of any individual providing information about a crime or criminal activity to a Crime Stoppers organization under a

promise of anonymity is not a public record as defined by G.S. 132-1 and shall not be disclosed. A law enforcement agency receiving information concerning alleged criminal activity from a Crime Stoppers organization shall maintain confidentiality pursuant to this section and pursuant to G.S. 132-1.4(h)."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1447
Committee Substitute Favorable 5/7/09
Third Edition Engrossed 5/13/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1447-CSRC-30 [v.1]

6/1/2009 9:10:14 PM

Short Title: Crime Stoppers Tips Are Confidential. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT COMMUNICATIONS RECEIVED BY A CRIME STOPPERS ORGANIZATION ARE NOT SUBJECT TO DISCOVERY OR ADMISSIBLE IN A COURT PROCEEDING AND TO PROVIDE THAT A PUBLIC LAW ENFORCEMENT AGENCY HAS A DUTY TO MAINTAIN THE CONFIDENTIALITY OF A CRIME STOPPERS TIP.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 15A of the General Statutes is amended by adding a new Article to read:

"Article 47.

"Local Crime Stoppers Programs.

"**§ 15A-850. Local Crime Stoppers organizations; use of information; confidentiality.**

(a) As used in this section, a "Crime Stoppers" organization or other similarly named organization means a nonprofit corporation organized under Chapter 55A of the North Carolina General Statutes that is operated on a local or statewide level that (i) offers anonymity to persons providing information to the organization, (ii) accepts and expends donations for cash rewards to persons who report to the organization information about alleged criminal activity and that the organization forwards to the appropriate public law enforcement agency, and (iii) is established as a cooperative alliance among the news media, the community, and public law enforcement officials.

(b) Evidence of a communication, and any information contained within a communication, from an anonymous source to a Crime Stoppers organization shall not be:

(1) Relied upon or considered by a judicial official in determining whether probable cause exists to issue either an arrest or search warrant.

(2) Admissible or subject to discovery in any court proceeding.

(c) Crime Stoppers tips may only be used to assist a public law enforcement agency in directing its investigation of alleged criminal activity. G.S. 132-1.4(h) applies to information received by a public law enforcement agency from a Crime Stoppers organization."

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

HOUSE BILL 1447:
Crime Stoppers Tips Are Confidential

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 1, 2009
Introduced by:	Rep. Wiley	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	PCS to Third Edition H1447-CSRC-30		

SUMMARY: ***House Bill 1447 would ensure confidentiality for individuals who provide tips to Crime Stoppers organizations in the following ways:***

- ***Provides a statutory definition for "Crime Stoppers" organization.***
- ***Provides that evidence of the communication and any information contained in the tip from an anonymous Crime Stoppers' tip may not be relied upon by a court official for the purposes of determining probable cause or issuing a warrant and is not subject to discovery or admissible in a court proceeding.***
- ***Provides that public law enforcement agencies are not required to disclose information received from a Crime Stoppers organization.***

CURRENT LAW: There is currently no statute in North Carolina that provides confidentiality for individuals who provide tips to Crime Stopper organizations under a promise of anonymity. G.S. 132-1.4 excludes records of criminal investigation conducted by law enforcement agencies from the definition of a "public record". G.S. 132-1.4(h) provides that information that is not required to be disclosed under Chapter 15A (Criminal Procedure) or that is reasonably likely to identify a confidential informant does not need to be disclosed by a public law enforcement agency.

BILL ANALYSIS: House Bill 1447 would provide confidentiality for individuals providing tips to Crime Stoppers organizations.

Definition of "Crime Stoppers" organization. The bill defines "Crime Stoppers" organization as a nonprofit corporation organized under Chapter 55A of the General Statues and operated on a local or statewide level that:

- Offers anonymity to those providing tips
- Takes donations to provide cash rewards to those providing tips, which the organization forwards to law enforcement
- Is established as a cooperative alliance between the media, the community, and law enforcement

Confidentiality of the tip. The bill would provide that any evidence of a communication or any information contained in a communication between a person submitting a report on an alleged criminal act to a Crime Stoppers organization and the person receiving the report is not subject to discovery or admissible in any court proceeding and may not be used by a court official as the basis for finding probably cause or issuing a warrant.

Use by Law enforcement and confidentiality. The bill would limit the use of Crime Stoppers information by law enforcement to assist in the directing of a criminal investigation. It also provides that information that is not required to be disclosed under Chapter 15A (Criminal Procedure) or that is

reasonably likely to identify a confidential informant does not have to be disclosed by a public law enforcement agency.

EFFECTIVE DATE: The act would become effective December 1, 2009.

BACKGROUND: The purpose of Crime Stopper organizations is to provide an identity-protected means of reporting information regarding a crime that rewards citizens whose tips result in an arrest. When a person provides information they are given a coded number to protect their identity.

North Carolina Crime Stoppers organizations have increasingly been dealing with defense attorneys who attempt to gain access to tips and tip sheets through the discovery process. Under G.S. 15A-908, upon written motion of a party and a finding of good cause, a court is authorized to order that discovery be denied, restricted, or deferred. However, getting these protective orders requires each of the 93 programs to file motions in their various jurisdictions for protective orders in order to maintain their promise of anonymity.

**Wendy Graf Ray, Staff Attorney to House Judiciary III and Susan Sitze, Staff Attorney to House Ways and Means/Broadband Connectivity, contributed substantially to this summary.*

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

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	June 4, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 807	Public Safety Registration.	Senator Jones
HB 1132	Renew Concealed Carry Permit/30 Day Limit.	Representative Gulley Representative Hilton
HB 1377	Taxpayer Optimization Act.	Representative Folwell Representative Brown Representative McElraft Representative Moore
HB 1447	Crime Stoppers Tips Are Confidential.	Representative Wiley

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II Committee
Thursday, June 4, 2009, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 807	Public Safety Registration.	Senator Jones
HB 1132	Renew Concealed Carry Permit/30 Day Limit.	Representative Gulley Representative Hilton
HB 1377	Taxpayer Optimization Act.	Representative Folwell Representative Brown Representative McElraft Representative Moore
HB 1447	Crime Stoppers Tips Are Confidential.	Representative Wiley

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE
Thursday, June 4, 2009 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 10:00 AM on June 4, 2009, in Room 1124 of the Legislative Building with sixteen members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell introduced pages Keyera Matthews, McLennan Maxwell, Sara-Anne Averett, David McCandless, and Adam Ezell and thanked them for their assistance.

Senator Hartsell noted that HB 1447 would not be heard today.

SB 807 – (Public Safety Registration.) Senator Forrester moved to adopt the Proposed Committee Substitute for purposes of discussion. Senator Jones explained the bill. Ms. Jennifer McGinnis, Staff Attorney, gave additional explanation. Ms. Mindy Stinner, Executive Director & Co-Founder of the Conservators' Center and Mr. Johnny Tillett, representing the Animal Protection Institute, spoke in favor of the bill. Senator Jones and Ms. McGinnis answered questions from Senators Forrester, Jacumin, Boseman and Goodall. Senator Dannelly moved for a favorable report to the Proposed Committee Substitute, unfavorable to the original bill with a referral to Finance. All voted and the motion carried.

HB 1132 – (Renew Concealed Carry Permit/30Day Limit.) Senator Apodaca moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Representative Hilton explained the bill. Senator Jacumin presented an amendment and moved that it be adopted. Representative Hilton accepted the amendment. All voted and the motion carried. Representative Hilton, Ms. Brenda Carter, Staff Attorney, and Mr. Andy Roulette, representing the NRA answered questions from the Committee. Senator Allran moved for a favorable report to the Proposed Committee Substitute as amended and rolled into a new Committee Substitute. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Monday, June 08, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

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

S.B. **807** Public Safety Registration.

Draft Number:	55425
Sequential Referral:	None
Recommended Referral:	Finance
Long Title Amended:	No

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

H.B. **1132** Renew Concealed Carry Permit/30 Day Limit.

Draft Number:	10995
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

June 4, 2009
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	MWC
Jeff Gramm	GRNC
Anthony Romlitti	NRA
Joe McClees	McClees Consult
Douglas Evans	FCF, NCALCS, CCI
Mindy Stinner	Conservatives' Center, FCF
Christy Agnew	DOA
Tim Walton	DOA
Paige Fitzgerald	Rep. Folwell

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Christine Wunsche	SOG - Daily Bulletin
Elizabeth Biser	DENR
Alexandra Embry	DENR
MARVIN WATERS	ECPS
Wayne Yancey	Sen. Charlie Dannelly
Donald Ragavage	PFFPNC
Richard O'Brien	PFFPNC
Dennis Allen	North Carolina Rifle + Pistol Assoc

SENATE BILL 807

Short Title:	Public Safety Registration.	(Public)
Sponsors:	Senator Jones.	
Referred to:	Judiciary II.	

March 25, 2009

A BILL TO BE ENTITLED

AN ACT PROVIDING FOR THE PROTECTION OF THE PUBLIC AGAINST THE HEALTH AND SAFETY RISKS THAT CERTAIN CHARACTERISTICALLY WILD ANIMALS POSE TO THE COMMUNITY.

The General Assembly of North Carolina enacts:

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

"**Chapter 19B.**

"**Characteristically Wild Animals.**

"**§ 19B-1. Definitions.**

The following terms as used in this Chapter mean:

(1) "Animal control authority" means the agency designated by the city or county to administer ordinances regulating, restricting, or prohibiting the possession of characteristically wild animals. The animal control agency may be a municipal or county animal control agency, county sheriff, or other designated agency.

(2) "Characteristically wild animal" means one of the following types of animals of the Order Carnivora, and any hybrids of these animals, unless otherwise specified:

a. Family Felidae – only lions, tigers, and leopards.

b. Family Ursidae – all bears that are not native to this State.

(3) "Person" means any individual, partnership, corporation, organization, trade or professional association, firm, limited liability company, joint venture, association, trust, estate, or any other legal entity, and any employee, agent, or representative of the entity.

(4) "Possessor" means any person who owns, possesses, keeps, harbors, brings into the State, acts as a custodian of, or has custody or control of, a characteristically wild animal.

(5) "Wildlife sanctuary" means a nonprofit organization that cares for animals defined as characteristically wild animals and within whose facilities:

a. No activity that is not inherent to the animal's nature, natural conduct, or the animal in its natural habitat is conducted;

b. No commercial activity involving an animal occurs including, but not limited to, the sale of or trade in animals, animal parts, animal by-products, or animal offspring, or the sale of photographic opportunities involving an animal, or the use of an animal for any type of entertainment purpose;

c. No unescorted public visitations or direct contact occurs between the public and an animal; and

d. No breeding of animals occurs.

"**§ 19B-2. Exemptions.**

(a) The provisions of this Chapter do not apply to:

(1) Institutions accredited by the American Zoo and Aquarium Association (AZA).

(2) Duly incorporated nonprofit animal protection organizations, such as humane societies and shelters, housing a characteristically wild animal at the written request of the animal control authority or acting under the authority of this Chapter.

(3) Federal or State wildlife enforcement officers acting under the scope of their authority.

(4) Animal control or law enforcement agencies or officers acting under the authority of this act.

(5) Veterinary hospitals, clinics, veterinarians, and persons employed at such facilities under the direction of a veterinarian who are actively treating a characteristically wild animal in their professional capacity as a veterinarian or employee of such facility.

(6) Any wildlife sanctuary as defined in G.S. 19B-1(e).

(7) A university, college, laboratory, or other research facility holding a Class R registration under the Animal Welfare Act, 7 U.S.D.A. Section 2131.

(8) Circuses, defined as incorporated, Class C licensees under the Animal Welfare Act, 7 U.S.D.A. Section 2131, as amended, that are temporarily in this State, and that offer performances by live animals, clowns, and acrobats for public entertainment. Circuses do not include persons, whether or not Class C licensees, who present any listed animal to the public as part of a carnival or for the purpose of (i) exhibition; or (ii) entertainment that includes wrestling, a photography opportunity with a patron, or an activity in which any listed animal and a patron are in close contact with each other.

(9) Any person who possesses a valid United States Department of Agriculture Class A, B, or C license and is in compliance with the United States Department of Agriculture Animal Welfare Act regulations and standards on January 1, 2010, may acquire new characteristically wild animals after that date in order to maintain the inventory of characteristically wild animals possessed on that date, and must:

a. Register with the animal control authority as required by G.S. 19B-4(1) of this Chapter.

b. Maintain a liability insurance policy with an insurer authorized or approved to write such insurance in this State that covers claims for injury or damage to persons or property.

c. Not allow photo opportunities or direct contact between animals and members of the public and the owner's family and friends, except that the owner's family and friends may be allowed direct contact with animals that are under the age of six months. "Direct contact" means any situation in which an individual may potentially touch or otherwise come into physical contact with a characteristically wild animal.

If a characteristically wild animal dies of neglect or cruelty, is seized pursuant to G.S. 19B-5, or if the person is involved in illegal activities, the possessor shall no longer be permitted to continue to replace any animal in

order to maintain the operating inventory of characteristically wild animals possessed on January 1, 2010.

(10) A person who does not reside in this State and is traveling through this State with listed species if the transit time is not more than 72 hours and the animal is at all times maintained within a confinement sufficient to prevent the animal from escaping.

(11) Indigenous species already regulated by the North Carolina Wildlife Resources Commission.

"**§ 19B-3. Keeping of characteristically wild animals; conditions under which grandfathered animals may be kept.**

(a) Except as otherwise provided in this Chapter, it is unlawful for a person to import into, possess, keep, purchase, have custody or control of, breed, or sell within this State, by any means, a characteristically wild animal, including transactions conducted via the Internet.

(b) A person in legal possession of a characteristically wild animal prior to January 1, 2010, and who is the legal possessor of the animal, may keep possession of the animal for the remainder of the animal's life, subject to the following conditions:

(1) Within 90 days of January 1, 2010, the possessor of a characteristically wild animal shall register with the animal control authority for the county in which the animal is located. The registration shall include the person's name, address, telephone number, a complete inventory of each characteristically wild animal that the person possesses, a photograph or microchip number for each animal possessed, and the payment to the county of a onetime fee of one hundred dollars ($100.00) per animal to cover the costs of enforcement of this Chapter.

(2) The possessor shall prepare and submit to the county at the time of payment of the fee required by subdivision (1) of this section a contingency plan to protect first responders by providing for the quick and safe recapture of the characteristically wild animal in the event of an escape.

(3) The possessor shall maintain veterinary records, acquisition papers for the animal, if available, or other documents or records that establish that the person possessed the animal prior to January 1, 2010.

(4) The possessor shall present paperwork described in subdivision (3) of this subsection to an animal control or law enforcement authority upon request.

(5) The possessor shall comply with the basic standards for housing exotic animals and protecting the public under the federal Animal Welfare Act as amended, 7 U.S.C. §§ 2131, et seq., and the regulations adopted pursuant to that act, and shall allow the animal control authority access to the animal's housing in order to ensure that the animal is properly cared for.

(6) A legally possessed characteristically wild animal shall not be traded or replaced by a person who does not have an exemption as established in G.S. 19B-2.

(7) The possessor shall notify the animal control authority, the local sheriff's department, and police department, if applicable, immediately upon discovery that the animal has escaped. The possessor of the animal shall be liable for any and all costs associated with the escape, capture, and disposition of a permitted animal.

(8) A possessor of a characteristically wild animal shall notify local law enforcement and local fire departments about the types and numbers of characteristically wild animals the possessor has.

(9) The possessor shall comply with any and all applicable federal, State, or local law, rule, regulation, ordinance, permit, or other permission. Failure to

comply with any such law, rule, regulation, ordinance, permit, or other permission constitutes a violation of this Chapter.

A person in legal possession of a characteristically wild animal prior to January 1, 2010, who is the legal possessor of the animal, and who complies with the provisions of this Chapter during the animal's life, may replace the animal upon its death with an animal of the same species, so long as the animal's death was not the result of neglect or cruelty.

"**§ 19B-4. Confiscation of characteristically wild animals.**

(a) An animal control authority or other person authorized to enforce the provisions of this Chapter may immediately confiscate a characteristically wild animal if:

(1) The animal control authority or other person designated under this Chapter has probable cause to believe that the animal was acquired after January 1, 2010;

(2) The animal poses a public safety or health risk;

(3) The animal is in poor health and condition as a result of the possessor; or

(4) The animal is being held in contravention of this Chapter.

(b) A characteristically wild animal that is confiscated under this section may be returned to the possessor only if the animal control authority or law enforcement officer establishes that the possessor had possession of the animal prior to January 1, 2010, and the return does not pose a public safety or health risk.

(c) The animal control or other persons authorized to enforce this Chapter under G.S. 19B-6 shall serve notice upon the possessor in person or by regular and certified mail, return receipt requested, notifying the possessor of the confiscation, that the possessor is responsible for payment of reasonable costs for caring and providing for the animal during the confiscation and that the possessor must meet the requirements of subsection (b) of this section in order for the animal to be returned to the possessor.

(d) If a characteristically wild animal that is confiscated under this section is not returned to the possessor, the animal control or other persons designated under this Chapter may release the animal to a facility such as a wildlife sanctuary or a facility exempted pursuant to G.S. 19B-2.

(e) If a characteristically wild animal escapes or is released and poses an immediate threat to public safety, the animal control authority or other persons designated under this Chapter may exercise judgment in attempting to recapture the animal or in killing the animal.

"**§ 19B-5. City or county ordinances.**

A city or county may adopt an ordinance governing characteristically wild animals that is more restrictive than this Chapter. However, nothing in this Chapter requires a city or county to adopt an ordinance to be in compliance with this Chapter.

"**§ 19B-6. Enforcement of Chapter.**

(a) The animal control authority and its staff and agents, local law enforcement agents, and county sheriffs are authorized and empowered to enforce the provisions of this Chapter.

(b) The possessor of a characteristically wild animal shall, at all reasonable times, allow the animal control authority or other persons designated by this Chapter to enter the premises where the animal is being kept to ensure compliance with this Chapter.

"**§ 19B-7. Penalties.**

A person who violates this Chapter is liable for a civil penalty to be determined by the court.

"**§ 19B-8. Severability.**

If any part of this Chapter is determined to be unconstitutional or unenforceable, it shall not affect the constitutionality or enforceability of any other part."

SECTION 2. This act becomes effective January 1, 2010, and applies to acts committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 807
PROPOSED COMMITTEE SUBSTITUTE S807-CSRIf-20 [v.6]

6/3/2009 5:03:38 PM

Short Title: Public Safety Registration. (Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT PROVIDING FOR THE PROTECTION OF THE PUBLIC AGAINST THE HEALTH AND SAFETY RISKS THAT CERTAIN CHARACTERISTICALLY WILD ANIMALS POSE TO THE COMMUNITY.

The General Assembly of North Carolina enacts:

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

"**Chapter 19B.**

"**Characteristically Wild Animals.**

"**§ 19B-1. Definitions.**

The following terms as used in this Chapter mean:

(1) "Animal control authority" means the agency designated by the city or county to administer ordinances regulating, restricting, or prohibiting the possession of characteristically wild animals. The animal control agency may be a municipal or county animal control agency, county sheriff, or other designated agency.

(2) "Characteristically wild animal" means one of the following types of animals of the Order Carnivora, and any hybrids of these animals, unless otherwise specified:

a. Family Felidae – only lions, tigers, and leopards.

b. Family Ursidae – all bears that are not native to this State.

(3) "Person" means any individual, partnership, corporation, organization, trade or professional association, firm, limited liability company, joint venture, association, trust, estate, or any other legal entity, and any employee, agent, or representative of the entity.

(4) "Possessor" means any person who owns, possesses, keeps, harbors, brings into the State, acts as a custodian of, or has custody or control of, a characteristically wild animal.

(5) "Wildlife sanctuary" means a nonprofit organization that cares for animals defined as characteristically wild animals and within whose facilities none of the following activities occur:

a. Activity that is not inherent to the animal's nature, natural conduct, or the animal in its natural habitat is conducted.

b. Commercial activity involving an animal occurs including, but not limited to, the sale of or trade in animals, animal parts, animal

by-products, or animal offspring, or the sale of photographic opportunities involving an animal, or the use of an animal for any type of entertainment purpose.

c. Unescorted public visitations or direct contact occurs between the public and an animal.

d. Breeding of animals.

"**§ 19B-2. Exemptions.**

(a) The provisions of this Chapter do not apply to:

(1) Institutions accredited by the American Zoo and Aquarium Association (AZA).

(2) Duly incorporated nonprofit animal protection organizations, such as humane societies and shelters, housing a characteristically wild animal at the written request of the animal control authority or acting under the authority of this Chapter.

(3) Federal or State wildlife enforcement officers acting under the scope of their authority.

(4) Animal control or law enforcement agencies or officers acting under the authority of this act.

(5) Veterinary hospitals, clinics, veterinarians, and persons employed at such facilities under the direction of a veterinarian who are actively treating a characteristically wild animal in their professional capacity as a veterinarian or employee of such facility.

(6) Any wildlife sanctuary as defined in G.S. 19B-1(5).

(7) A university, college, laboratory, or other research facility holding a Class R registration under the Animal Welfare Act, 7 U.S.C. §§ 2131, et seq., as amended.

(8) Circuses that are incorporated and hold a Class C license under the Animal Welfare Act, 7 U.S.C. §§ 2131, et seq., as amended, that are temporarily in this State, and that offer performances by live animals, clowns, and acrobats for public entertainment. Circuses do not include persons, whether or not Class C licensees, who present any regulated animal to the public as part of a carnival or for the purpose of (i) exhibition; or (ii) entertainment that includes wrestling, a photography opportunity with a patron, or an activity in which any regulated animal and a patron are in close contact with each other.

(9) Any person who possesses a valid United States Department of Agriculture Class A, B, or C license and is in compliance with the United States Department of Agriculture Animal Welfare Act regulations and standards on January 1, 2010, may acquire new characteristically wild animals after that date, and must do all of the following:

a. Register with the animal control authority as required by G.S. 19B-3(b)(1) and G.S. 19B-3(c) of this Chapter, as applicable.

b. Maintain a liability insurance policy in an amount not less than two hundred fifty thousand dollars ($250,000) with an insurer authorized or approved to write such insurance in this State that covers claims for injury or damage to persons or property.

c. Not allow photo opportunities or direct contact between characteristically wild animals and members of the public or the possessor's family and friends with animals that are over the age of six months. "Direct contact" means any situation in which an individual may potentially touch or otherwise come into physical contact with a characteristically wild animal.

If a characteristically wild animal possessed pursuant to this subdivision dies of neglect or cruelty, is confiscated and not returned to the possessor pursuant to G.S. 19B-4, or if the possessor is involved in illegal activities, the possessor shall no longer be permitted to acquire new characteristically wild animals.

(10) A person who does not reside in this State and is traveling through this State with a regulated species if the transit time is not more than 72 hours and the animal is at all times maintained within a confinement sufficient to prevent the animal from escaping.

(11) Indigenous species already regulated by the North Carolina Wildlife Resources Commission.

"**§ 19B-3. Keeping of characteristically wild animals; conditions under which grandfathered animals may be kept.**

(a) Except as otherwise provided in this Chapter, it is unlawful for a person to import into, possess, keep, purchase, have custody or control of, breed, or sell within this State, by any means, a characteristically wild animal, including transactions conducted via the Internet.

(b) A person in legal possession of a characteristically wild animal prior to January 1, 2010, and who is the legal possessor of the animal, may keep possession of the animal for the remainder of the animal's life, subject to all of the following conditions:

(1) On or before January 1, 2010, the possessor of a characteristically wild animal shall register with the animal control authority for the city or county in which the animal is located. The registration shall include the person's name, address, telephone number, a complete inventory of each characteristically wild animal that the person possesses, a photograph or microchip number for each animal, the address for the site at which each animal is located, and the payment to the animal control authority of a one-time fee of one hundred dollars ($100.00) per site at which a characteristically wild animal is to be located and ten dollars ($10.00) per characteristically wild animal located at that site to cover the costs of enforcement of this Chapter. A possessor shall have a continuing obligation to promptly notify the animal control authority with jurisdiction of any material changes to the information required for registration.

(2) The possessor shall prepare and submit to the animal control authority at the time of payment of the fee required by subdivision (1) of this subsection a contingency plan to protect first responders by providing for the quick and safe recapture of the characteristically wild animal in the event of an escape.

(3) The possessor shall maintain veterinary records, acquisition papers for the animal, if available, or other documents or records that establish that the person possessed the animal prior to January 1, 2010.

(4) The possessor shall present paperwork described in subdivision (3) of this subsection to an animal control or law enforcement authority upon request.

(5) The possessor shall comply with the basic standards for housing exotic animals and protecting the public under the federal Animal Welfare Act, 7 U.S.C. §§ 2131, et seq., as amended, and the regulations adopted pursuant to that act, and shall allow the animal control authority access to the animal's housing in order to ensure that the animal is properly cared for.

(6) Except as provided in subsection (c) of this section, a legally possessed characteristically wild animal shall not be traded or replaced by a person who does not have an exemption as established in G.S. 19B-2.

(7) The possessor shall notify the animal control authority, the local sheriff's department, and police department, if applicable, immediately upon

discovery that the characteristically wild animal has escaped. The possessor of the animal shall be liable for any and all costs associated with the escape, capture, and disposition of a registered animal.

(8) A possessor of a characteristically wild animal shall notify local law enforcement and local fire departments about the types and numbers of characteristically wild animals the possessor has.

(9) The possessor shall comply with any and all applicable federal, State, or local law, rule, regulation, ordinance, permit, or other permission. Failure to comply with any such law, rule, regulation, ordinance, permit, or other permission constitutes a violation of this Chapter.

(c) A person in legal possession of a characteristically wild animal prior to January 1, 2010 pursuant to this section, and who complies with the provisions of this Chapter during the animal's life, may replace the animal upon its death with an animal of the same species, so long as the animal's death was not the result of neglect or cruelty. A person replacing an animal pursuant to this subsection shall: (i) register the animal in the manner set forth in subdivision (1) of subsection (a) of this section; (ii) maintain veterinary records, acquisition papers for the animal, if available, or other documents or records that establish the person is in legal possession of the animal, and present the paperwork to an animal control or law enforcement authority upon request; and (iii) otherwise comply with the requirements of this section.

"**§ 19B-4. Confiscation of characteristically wild animals.**

(a) An animal control authority or other person authorized to enforce the provisions of this Chapter may immediately confiscate a characteristically wild animal under any of the following circumstances:

(1) The animal control authority or other person designated under this Chapter has probable cause to believe that the animal was acquired or is being held in contravention of this Chapter.

(2) The animal poses a public safety or health risk.

(3) The animal is in poor health and condition as a result of the action or inaction of the possessor.

(b) A characteristically wild animal that is confiscated under this section may be returned to the possessor only if the animal control authority or law enforcement officer establishes that the possessor had legal possession of the animal pursuant to G.S. 19B-2 or G.S. 19B-3, the return does not pose a public safety or health risk, or the animal is determined not to be in poor health and condition as a result of the action or inaction of the possessor.

(c) The animal control authority or other persons authorized to enforce this Chapter under G.S. 19B-6 shall serve notice upon the possessor in person or by regular and certified mail, return receipt requested, notifying the possessor of the confiscation, that the possessor is responsible for payment of reasonable costs for caring and providing for the animal during the confiscation and that the possessor must meet the requirements of subsection (b) of this section in order for the animal to be returned to the possessor.

(d) If a characteristically wild animal that is confiscated under this section is not returned to the possessor, the animal control authority or other persons designated under this Chapter may release the animal to a facility such as a wildlife sanctuary or a facility exempted pursuant to G.S. 19B-2.

(e) If a characteristically wild animal escapes or is released and poses an immediate threat to public safety, the animal control authority or other persons designated under this Chapter may exercise judgment in attempting to recapture the animal or in killing the animal.

"**§ 19B-5. City or county ordinances.**

A city or county may adopt an ordinance governing characteristically wild animals that is more restrictive than this Chapter. However, nothing in this Chapter requires a city or county to adopt an ordinance to be in compliance with this Chapter.

"**§ 19B-6. Enforcement of Chapter.**

(a) The animal control authority and its staff and agents, local law enforcement agents, and county sheriffs are authorized and empowered to enforce the provisions of this Chapter.

(b) The possessor of a characteristically wild animal shall, at all reasonable times, allow the animal control authority or other persons designated by this Chapter to enter the premises where the animal is being kept to ensure compliance with this Chapter.

"**§ 19B-7. Penalties.**

A person who violates this Chapter is liable for a civil penalty to be determined by the court.

"**§ 19B-8. Severability.**

If any part of this Chapter is determined to be unconstitutional or unenforceable, it shall not affect the constitutionality or enforceability of any other part."

SECTION 2. This act becomes effective January 1, 2010, and applies to acts committed on or after that date.

SENATE BILL 807: Public Safety Registration

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 4, 2009
Introduced by:	Sen. Jones	**Prepared by:**	Jennifer McGinnis
Analysis of:	PCS to First Edition S807-CSRIf-20 [v.6]		Committee Counsel

SUMMARY: ***The proposed committee substitute (PCS) for Senate Bill 807 would make it unlawful for a person to import into, possess, keep, purchase, have custody or control of, breed, or sell within this State, a characteristically wild animal (regulated animals), except in certain circumstances. A person violating the provisions of the PCS would be liable for a civil penalty to be determined by a court. The PCS also authorizes animal control authorities and other law enforcement personnel to confiscate a regulated animal kept in contravention of the provisions of the act.***

The provisions of the PCS would become effective January 1, 2010, and would apply to acts occurring on or after that date.

BILL ANALYSIS: The PCS would create a new Chapter 19B of the General Statutes that would –

- Make it unlawful for a person to import into, possess, keep, purchase, have custody or control of, breed, or sell within this State a regulated wild animal, except in certain circumstances.
  - Regulated animals: Lions, tigers, leopards, and all bears that are not native to the State.
  - Exemptions to the prohibition include: Institutions accredited by the American Zoo and Aquarium Association; certain nonprofit animal protection organizations housing a regulated animal at the written request of the animal control authority; federal or State wildlife enforcement officers; animal control or law enforcement agencies or officers; licensed veterinary hospitals or clinics; wildlife sanctuaries; universities, colleges, laboratories, or other research facilities licensed under federal law; circuses licensed under federal law that are temporarily in the State, a non-resident of the State in the State with a regulated animal for not more than 72 hours; and indigenous species regulated by the Wildlife Resources Commission. United States Department of Agriculture Class A, B, or C licensees would also be exempt provided that they: (i) register regulated animals with the appropriate animal control authority, (ii) maintain a liability insurance policy of not less that $250,000; and (iii) prohibit direct contact between regulated animals and the public and family members with animals over the age of six months.
  - Grandfathered possession of characteristically wild animals, under certain circumstances: A person in legal possession of a regulated animal prior to January 1, 2010 may keep possession of the animal for the remainder of the animal's life, subject to the following conditions: (1) timely registration of the animal with the animal control authority and payment of a one-time fee of $100 per site where regulated animals are kept and $10 per regulated animal at the site; (2) preparation and submittal of a contingency plan to protect first responders if a regulated animal escapes; (3) maintenance of certain records to be presented to animal control or law enforcement authorities upon request; (4) compliance with basic standards for housing exotic animals provided under federal law; (5) immediate notification of animal control or law enforcement authorities upon discovery

that the animal has escaped; (6) the animal must not be traded or replaced; (7) notification to local law enforcement and fire departments of the types and numbers of regulated animals kept; and (8) compliance with any applicable federal, State, or local laws, rules, regulations, ordinances, permits, or other permissions. A person in legal possession of a regulated animal and who is in compliance with these provisions during the animal's life may replace the animal upon its death, provided that the animal's death was not the result of neglect or cruelty.

- Confiscation of characteristically wild animals by authorities: An animal control or law enforcement authority may confiscate an animal if: (1) it has probable cause to believe that the animal was acquired or held in contravention of Chapter 19B; (2) the animal poses a public safety or health risk; or (3) the animal is in poor health and condition as a result of the owner's actions or inaction.

  This section includes procedures for notice of the confiscation; return of the animal based on certain findings, and if not returned then procedures for placement or euthanasia; and discretion of authorities to act in response to release or escape of a regulated animal.

- Penalties: A person violating the provisions of the PCS would be liable for a civil penalty to be determined by a court.

EFFECTIVE DATE: The provisions of the PCS would become effective January 1, 2010, and would apply to acts occurring on or after that date.

S807-SMRI-56(CSRIf-20) v1

HOUSE BILL 1132

Short Title:	Renew Concealed Carry Permit/30 Day Limit.	(Public)
Sponsors:	Representatives Hilton, Gulley (Primary Sponsors); Avila, Blackwood, Braxton, Brown, Cleveland, Current, Frye, Gillespie, Guice, Holloway, Justus, Langdon, Lucas, Neumann, Setzer, Starnes, Steen, West, and Wray.	
Referred to:	Judiciary I, if favorable, Finance.	

April 7, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT A PERSON MUST APPLY TO RENEW A CONCEALED HANDGUN PERMIT WITHIN THE THIRTY-DAY PERIOD PRIOR TO THE EXPIRATION DATE OF THE PERMIT, TO PROVIDE THAT A SHERIFF SHALL ISSUE OR DENY AN APPLICATION TO RENEW A CONCEALED HANDGUN PERMIT WITHIN THIRTY DAYS OF RECEIPT OF THE COMPLETED RENEWAL APPLICATION, AND TO PROVIDE THAT THE PERMIT OF A PERSON WHO COMPLIES WITH THE RENEWAL REQUIREMENTS REMAINS VALID BEYOND THE EXPIRATION DATE OF THE PERMIT UNTIL THE PERSON IS EITHER GRANTED OR DENIED A RENEWAL PERMIT BY THE SHERIFF.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-415.16 reads as rewritten:

"**§ 14-415.16. Renewal of permit.**

(a) The holder of a permit shall apply to renew the permit ~~at least 30 days~~ within the 30-day period prior to its expiration date by filing with the sheriff of the county in which the person resides a renewal form provided by the sheriff's office, a notarized affidavit stating that the permittee remains qualified under the criteria provided in this Article, a newly administered full set of the permittee's fingerprints, and a renewal fee.

(b) Upon receipt of the completed renewal application, including the permittee's fingerprints, and the appropriate payment of fees, the sheriff shall determine if the permittee remains qualified to hold a permit in accordance with the provisions of G.S. 14-415.12. The permittee's criminal history shall be updated, and the sheriff may waive the requirement of taking another firearms safety and training course. If the permittee applies for a renewal of the permit within 30 days of its expiration date and if the permittee remains qualified to have a permit under G.S. 14-415.12, the sheriff shall renew the ~~permit.~~permit within 30 days upon receipt of the completed renewal application. If the thirtieth day is a Saturday, Sunday, or State or federal holiday, then the period extends to the next business day. The permit of a permittee who complies with this section shall remain valid beyond the expiration date of the permit until the permittee either receives a renewal permit or is denied a renewal permit by the sheriff.

(c) No fingerprints shall be required for a renewal permit if the applicant's fingerprints were submitted to the State Bureau of Investigation after June 30, 2001, on the Automated Fingerprint Information System (AFIS) as prescribed by the State Bureau of Investigation."

SECTION 2. This act is effective when it becomes law and applies to permit renewal applications submitted on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1132
PROPOSED SENATE COMMITTEE SUBSTITUTE H1132-CSRV-44 [v.3]

6/1/2009 5:58:45 PM

Short Title: Renew Concealed Carry Permit/30 Day Limit. (Public)

Sponsors:

Referred to:

April 7, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT A PERSON MUST APPLY TO RENEW A CONCEALED HANDGUN PERMIT WITHIN THE THIRTY-DAY PERIOD PRIOR TO THE EXPIRATION DATE OF THE PERMIT, TO PROVIDE THAT IF A RENEWAL APPLICANT REMAINS ELIGIBLE FOR A CONCEALED HANDGUN PERMIT THE SHERIFF MUST RENEW THE PERMIT WITHIN THIRTY DAYS OF RECEIPT OF THE COMPLETED RENEWAL APPLICATION, TO PROVIDE THAT THE PERMIT OF A PERSON WHO COMPLIES WITH THE RENEWAL REQUIREMENTS REMAINS VALID BEYOND THE EXPIRATION DATE OF THE PERMIT UNTIL THE PERSON IS EITHER GRANTED OR DENIED A RENEWAL PERMIT BY THE SHERIFF, AND TO PROVIDE THAT A FORMER SWORN LAW ENFORCEMENT OFFICER WHO HAS FIFTEEN OR MORE AGGREGATE YEARS OF PART-TIME OR AUXILIARY LAW ENFORCEMENT SERVICE MAY BE EXEMPT FROM THE FIREARMS SAFETY AND TRAINING COURSE REQUIREMENT FOR A CONCEALED HANDGUN PERMIT IF HE OR SHE WAS A QUALIFIED SWORN LAW ENFORCEMENT OFFICER IMMEDIATELY BEFORE RETIRING AND HAS BEEN RETIRED AS A SWORN LAW ENFORCEMENT OFFICER TWO YEARS OR LESS FROM THE DATE OF THE PERMIT APPLICATION..

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-415.16 reads as rewritten:

"**§ 14-415.16. Renewal of permit.**

(a) The holder of a permit shall apply to renew the permit ~~at least 30 days~~ within the 30-day period prior to its expiration date by filing with the sheriff of the county in which the person resides a renewal form provided by the sheriff's office, a notarized affidavit stating that the permittee remains qualified under the criteria provided in this Article, a newly administered full set of the permittee's fingerprints, and a renewal fee.

(b) Upon receipt of the completed renewal application, including the permittee's fingerprints, and the appropriate payment of fees, the sheriff shall determine if the permittee remains qualified to hold a permit in accordance with the provisions of G.S. 14-415.12. The permittee's criminal history shall be updated, and the sheriff may waive the requirement of taking another firearms safety and training course. If the permittee applies for a renewal of the permit within 30 days of its expiration date and if the permittee remains qualified to have a permit under G.S. 14-415.12, the sheriff shall renew the ~~permit.~~permit within 30 days after receipt of the completed renewal application. If the thirtieth day is a Saturday, Sunday, or State

or federal holiday, then the period extends to the next business day. The permit of a permittee who complies with this section shall remain valid beyond the expiration date of the permit until the permittee either receives a renewal permit or is denied a renewal permit by the sheriff.

(c) No fingerprints shall be required for a renewal permit if the applicant's fingerprints were submitted to the State Bureau of Investigation after June 30, 2001, on the Automated Fingerprint Information System (AFIS) as prescribed by the State Bureau of Investigation."

SECTION 2. G.S. 14-415.10(4) reads as rewritten:

"(4) Qualified former sworn law enforcement officer. – An individual who retired from service as a law enforcement officer with a local, State, campus police, or company police agency in North Carolina, other than for reasons of mental disability, who has been retired as a sworn law enforcement officer two years or less from the date of the permit application, and who satisfies all of the following:

a. Immediately before retirement, the individual was a qualified law enforcement officer with a local, State, or company police agency in North Carolina.

b. The individual has a nonforfeitable right to benefits under the retirement plan of the local, State, or company police agency as a law enforcement ~~officer~~ officer; or has 20 or more aggregate years of law enforcement service and has retired from a company police agency that does not have a retirement ~~plan.~~ plan; or has 15 or more aggregate years of part-time or auxiliary law enforcement service.

c. The individual is not prohibited by State or federal law from receiving a firearm."

SECTION 3. This act is effective when it becomes law and applies to permit applications and renewal applications submitted on or after that date.

HOUSE BILL 1132:
Renew Concealed Carry Permit/30 Day Limit

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 1, 2009
Introduced by:	Reps. Hilton, Gulley	**Prepared by:**	Brenda J. Carter
Analysis of:	PCS to First Edition H1132-CSRV-44		Committee Counsel

SUMMARY: ***This proposed committee substitute for House Bill 1132 would make it clear that an application for renewal of a concealed carry permit must be submitted within the 30 days prior to expiration of the permit. It would also require a sheriff to act on a renewal application within 30 days after receipt of the completed application, and would extend the validity of a concealed carry permit if it reaches its expiration date and the permittee has not received a renewal permit or been denied a renewal permit by the sheriff. The proposed committee substitute adds a provision that would exempt qualified former sworn law enforcement officers who have 15 or more aggregate years of part-time or auxiliary law enforcement service from the requirement to complete a firearms safety and training course prior to obtaining a concealed carry permit, provided other requirements are met.***

CURRENT LAW: A concealed carry permit holder must apply to the sheriff in his or her county of residence for renewal of a permit at least 30 days prior to its expiration. If the permit holder applies for renewal within 30 days of its expiration date, and the permittee remains qualified, then the sheriff must renew the permit.

To qualify for the issuance of a concealed carry permit, an applicant must successfully complete an approved firearms safety and training course which involves the actual firing of handguns and instruction in the laws of this State governing the carrying of a concealed handgun and the use of deadly force. Under G.S. 14-415.12A(a), a person who is a "qualified sworn law enforcement officer" or a "qualified former sworn law enforcement officer" is deemed to have satisfied the firearms safety and training course requirement.

BILL ANALYSIS: House Bill 1132 would:

- Clarify that the holder of a concealed carry permit must submit a renewal application ***within*** the 30 days prior to expiration of the permit.
- Require that a sheriff renew the permit of a qualified applicant within 30 days after receiving the completed renewal application. If the 30th day falls on a Saturday, Sunday, State holiday, or federal holiday, the period would be extended to the next business day.
- Provide that if the applicant for permit renewal meets the statutory requirements, the permit would remain valid until the permittee either receives a renewal permit or is denied a renewal permit by the sheriff.
- Amend the definition of a "qualified former sworn law enforcement officer" that would be exempt from the requirement to complete a firearms safety and training course prior to obtaining a concealed carry permit. The exemption would include a person who has retired from service as a law enforcement officer in North Carolina not more than 2 years prior to the date of the application, and who meets all of the following requirements:
    - Was, immediately before retirement, a qualified law enforcement officer with a local, State, or company police agency in this State.
    - Has 15 or more aggregate years of part-time or auxiliary law enforcement service.
    - Is not prohibited by State or federal law from receiving a firearm.

EFFECTIVE DATE: The act would be effective when it becomes law, and apply to permit and renewal applications submitted on or after that date.

H1132-SMRV-88(CSRV-44) v1

HOUSE BILL 1377
Second Edition Engrossed 5/14/09

Short Title:	Taxpayer Optimization Act.	(Public)
Sponsors:	Representatives Folwell, McElraft, Brown, Moore (Primary Sponsors); and Starnes.	
Referred to:	State Government/State Personnel, if favorable, Judiciary II.	

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE CERTAIN SALES OF STATE PROPERTY SUBJECT TO UPSET BIDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 146-27 reads as rewritten:

"**§ 146-27. The role of the Department of Administration in sales, leases, and rentals.**

(a) General. – Every sale, lease, rental, or gift of land owned by the State or by any State agency shall be made by the Department of Administration and approved by the Governor and Council of State. A lease or rental of land owned by the State may not exceed a period of 99 years. The Department of Administration may initiate proceedings for sales, leases, rentals, and gifts of land owned by the State or by any State agency.

(b) Large Disposition. – If a proposed disposition is a sale or gift of land with an appraised value of at least twenty-five thousand dollars ($25,000), the sale or gift shall not be made until after consultation with the Joint Legislative Commission on Governmental Operations.

(b1) Upset Bids. – If a proposed disposition of land or other real property with a value of at least twenty-five thousand dollars ($25,000) is a sale or other transfer to a private entity that operates or is established to operate for profit, the proposed disposition shall be subject to upset bids, unless other, non-monetary consideration associated with the transaction has been made public. If other consideration is offered such that upset bids are not required, notice of the sale and other consideration shall be posted and published in a manner similar to that provided in G.S. 1-339.17. The Department of Administration shall adopt a procedure for upset bids that is based on the upset bid procedure set forth in Part 2 of Article 29A of Chapter 1 of the General Statutes.

(c) Expired effective September 1, 2007."

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

HOUSE BILL 1447
Committee Substitute Favorable 5/7/09
Third Edition Engrossed 5/13/09

Short Title: Crime Stoppers Tips Are Confidential. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE IDENTITY OF AN INDIVIDUAL WHO PROVIDES A TIP FOR AN UNSOLVED CASE THROUGH CRIME STOPPERS OR SIMILAR ORGANIZATIONS IS NOT A PUBLIC RECORD, TO PROVIDE THAT THE COMMUNICATION RECEIVED BY A CRIME STOPPERS ORGANIZATION IS NOT SUBJECT TO DISCOVERY OR ADMISSIBLE IN A COURT PROCEEDING, AND TO PROVIDE THAT A LAW ENFORCEMENT AGENCY HAS A DUTY TO MAINTAIN THE CONFIDENTIALITY OF A CRIME STOPPERS TIP.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 15A of the General Statutes is amended by adding a new Article to read:

"Article 47.

"Local Crime Stoppers Programs.

"**§ 15A-850. Local Crime Stoppers organizations; confidentiality.**

(a) Definition. – As used in this section, a "Crime Stoppers" organization or other similarly named organization means a private, nonprofit North Carolina corporation governed by a civilian volunteer board of directors that is operated on a local or statewide level that (i) offers anonymity to persons providing information to the organization, (ii) accepts and expends donations for cash rewards to persons who report to the organization information about alleged criminal activity and that the organization forwards to the appropriate law enforcement agency, and (iii) is established as a cooperative alliance among the news media, the community, and law enforcement officials.

(b) Prohibitions on Use of Crime Stoppers Tips.

(1) Evidence of a communication, and any information contained within a communication, from an anonymous source to a Crime Stoppers organization shall not be:

a. Relied upon, or considered by, a judicial official in determining whether probable cause exists to issue either an arrest or search warrant.

b. Admissible or subject to discovery in any court proceeding.

(2) Crime Stoppers tips may only be used to assist a law enforcement agency in directing its investigation of alleged criminal activity.

(c) Identity of Crime Stoppers Informant Is Not Public Record; Duty of Law Enforcement Agency to Maintain Confidentiality. – The identity of any individual providing information about a crime or criminal activity to a Crime Stoppers organization under a

promise of anonymity is not a public record as defined by G.S. 132-1 and shall not be disclosed. A law enforcement agency receiving information concerning alleged criminal activity from a Crime Stoppers organization shall maintain confidentiality pursuant to this section and pursuant to G.S. 132-1.4(h)."

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

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	June 9, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 559	Certain Notarial Acts Validated.	Representative Warren
HB 722	Paraphernalia Control Act.	Representative Hilton Representative Frye
HB 765	Revise Elective Share Statutes.	Representative Stam
HB 1261	Protect Our Kids/Cyber Bullying Misdemeanor.	Representative Parmon Representative Mackey
HB 1377	Taxpayer Optimization Act.	Representative Folwell Representative Brown Representative McElraft Representative Moore

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II Committee
Tuesday, June 9, 2009, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 559	Certain Notarial Acts Validated.	Representative Warren
HB 722	Paraphernalia Control Act.	Representative Hilton Representative Frye
HB 765	Revise Elective Share Statutes.	Representative Stam
HB 1261	Protect Our Kids/Cyber Bullying Misdemeanor.	Representative Parmon Representative Mackey
HB 1377	Taxpayer Optimization Act.	Representative Folwell Representative Brown Representative McElraft Representative Moore

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE
Tuesday, June 9, 2009 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 10:00 AM on June 9, 2009, in Room 1124 of the Legislative Building with seventeen members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell introduced pages Katelyn Mitchell, Katie Davidson, McCaul Nelson, Lacy McAlister, Austin White, J. O. Galyon, BJ Williams and Nelson Moore and thanked them for their assistance.

Senator Hartsell noted that HB 1377 would not be heard at the meeting today.

HB 722 – (Paraphernalia Control Act.) Representative Hilton explained the bill. Mr. Andy Ellen, representing the North Carolina Retail Merchants Association, and Ms. Octavia Raines of Southeast Raleigh spoke on the bill. After much discussion, Senator Bingham moved for a favorable report. All voted and the motion carried.

HB 559 – (Certain Notarial Acts Validated.) Ms. Jennifer McGinnis, Staff Attorney, explained the bill and answered questions from Committee members. Senator Jacumin moved for a favorable report. All voted and the motion carried.

HB 1261 – (Protect Our Kids/Cyber Bullying Misdemeanor.) Senator Jones moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Representative Mackey explained the bill. Ms. Sarah Preston, representing the ACLU, spoke on the bill. Senator Berger presented and explained an amendment that was accepted by Representative Mackey. After much discussion, Senator Hartsell appointed a sub-committee to work with Representative Mackey on the bill. Members of the sub-committee are Senators Berger, Goodall, Allran and Queen with Senator Vaughan as Chair.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, June 09, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE

H.B.	**559**	Certain Notarial Acts Validated.	
		Sequential Referral:	None
		Recommended Referral:	None
H.B.(CS #2)	**722**	Paraphernalia Control Act.	
		Sequential Referral:	None
		Recommended Referral:	None

TOTAL REPORTED: 2

Committee Clerk Comments:

Senator Hartsell will handle HB 559
Senator Snow will handle HB 722

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — June 9, 2009
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Brittany Farrell	NCFPC
Sarah Preston	ACLU-NC
Michael Gordon	ACLU-NC
Tamara Lavery	Farmers
Kim Crawford	NCBA
Liz Arias	Wimble Carlyle
Ashley Vroom	NCASA
Jim Blackburn	County Commissioners Association

HOUSE BILL 559

Short Title:	Certain Notarial Acts Validated.	(Public)
Sponsors:	Representative E. Warren.	
Referred to:	Judiciary II.	

March 12, 2009

A BILL TO BE ENTITLED

AN ACT TO VALIDATE CERTAIN NOTARIAL ACTS WHERE A RECOMMISSIONED NOTARY FAILED TO TAKE THE OATH OF OFFICE AGAIN.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 10B of the General Statutes is amended by adding a new section to read:

"**§ 10B-71. Certain notarial acts validated when recommissioned notary failed to again take oath.**

Any acknowledgment taken and any instrument notarized by a person who after recommissioning failed to again take the oath as a notary public is hereby validated. The acknowledgment and instrument shall have the same legal effect as if the person qualified as a notary public at the time the person performed the act. This section shall apply to notarial acts performed on or after May 15, 2004, and before March 10, 2009."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 4

HOUSE BILL 722

Committee Substitute Favorable 4/9/09
Committee Substitute #2 Favorable 5/7/09
Fourth Edition Engrossed 5/11/09

Short Title: Paraphernalia Control Act. (Public)

Sponsors:

Referred to:

March 23, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE REGULATION OF CERTAIN DEVICES THAT MAY BE USED AS DRUG PARAPHERNALIA.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"Article 5F.

"Control of Potential Drug Paraphernalia Products.

"**§ 90-113.80. Title.**

This Article shall be known and may be cited as the "Drug Paraphernalia Control Act of 2009."

"**§ 90-113.81. Definitions.**

For the purposes of this Article:

(a) "Glass tube" means an object which meets all of the following requirements:

(1) A hollow glass cylinder, either open or closed at either end.

(2) No less than two or more than seven inches in length.

(3) No less than one-eighth inch or more than three-fourths inch in diameter.

(4) May be used to facilitate, or intended or designed to facilitate, violations of the Controlled Substances Act, including, but not limited to, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, and concealing controlled substances and injecting, ingesting, inhaling, or otherwise introducing controlled substances into the human body.

(5) Sold individually, or in connection with another object such as a novelty holder, flower vase, or pen. The foregoing descriptions are intended to be illustrative and not exclusive.

(b) "Retailer" means an individual or entity that is the general owner of an establishment where glass tubes are available for sale.

(c) "Splitter" means a ring-shaped device that does both of the following:

(1) Allows the insertion of a wrapped tobacco product, such as a cigar, so that it can be pulled through the device.

(2) Cuts or slices the wrapping of the tobacco product along the product's length as it is drawn through the device.

"**§ 90-113.82. Glass tubes or splitters; restrictions on sales.**

(a) Glass tubes or splitters shall not be offered for retail sale by self-service, but shall be stored and sold from behind a counter where the general public cannot access them without the assistance of a retailer's agent or employee.

(b) The retailer shall require any member of the public to whom it transfers a glass tube or splitter, with or without consideration, to do all of the following:

(1) Present identification that includes a photograph that is an accurate depiction of the person and that also includes the person's name and current address.

(2) Enter his or her name and current address on a record that the retailer shall maintain solely for the purposes of this section.

(3) Sign his or her name, verifying by signature the glass tube or splitter will not be used as drug paraphernalia in violation of the criminal laws of the State of North Carolina.

(c) The retailer shall maintain the record described in subsection (b) of this section for a period of two years from the date of each transaction, after which it may be destroyed.

(d) The record shall be readily available within 48 hours of the time of the transaction for inspection by an authorized official of a federal, State, or local law enforcement agency.

(e) The retailer shall train its agents and employees on the requirements of this section.

"**§ 90-113.83. Penalties.**

(a) A retailer, or an employee of the retailer, who willfully and knowingly violates any one of the subsections of G.S. 90-113.82 shall be guilty of a Class 2 misdemeanor.

(b) Any person who knowingly makes a false statement or representation in fulfilling the requirements in G.S. 90-113.82(b) shall be guilty of a Class 1 misdemeanor.

"**§ 90-113.84. Immunity.**

(a) A retailer, or an employee of the retailer, who, reasonably and in good faith, (i) reports to any law enforcement agency any alleged criminal activity related to the sale or purchase of glass tubes or splitters or (ii) refuses to sell a glass tube or splitter to a person reasonably believed to be purchasing it for use as drug paraphernalia is immune from civil liability for that conduct, except in cases of willful misconduct."

SECTION 2. G.S. 95-241(a)(1) reads as rewritten:

"**§ 95-241. Discrimination prohibited.**

(a) No person shall discriminate or take any retaliatory action against an employee because the employee in good faith does or threatens to do any of the following:

(1) File a claim or complaint, initiate any inquiry, investigation, inspection, proceeding or other action, or testify or provide information to any person with respect to any of the following:

a. Chapter 97 of the General Statutes.

b. Article 2A or Article 16 of this Chapter.

c. Article 2A of Chapter 74 of the General Statutes.

d. G.S. 95-28.1.

e. Article 16 of Chapter 127A of the General Statutes.

f. G.S. 95-28.1A.

g. Article 52 of Chapter 143 of the General Statutes.

h. Article 5F of Chapter 90 of the General Statutes."

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

HOUSE BILL 722:
Paraphernalia Control Act

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 9, 2009
Introduced by:	Reps. Hilton, Frye	**Prepared by:**	Jennifer McGinnis Committee Counsel
Analysis of:	Fourth Edition		

SUMMARY: ***This act would regulate the sale of certain items that could be used as drug paraphernalia. It would become effective December 1, 2009, and apply to offenses committed on or after that date.***

CURRENT LAW: Article 5B of Chapter 90 (G.S. 90-113.20 et seq) is the North Carolina Drug Paraphernalia Act. As used in the Article, "drug paraphernalia" includes objects used for ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the body. Examples in the statute include: "metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes... miniature cocaine spoons and cocaine vials...." In determining whether an object is drug paraphernalia, the following may be considered:

- Advertising concerning its use.
- The manner in which it is displayed for sale.
- Whether the owner (or anyone in control of the product) is a legitimate supplier of like or related items to the community, such as a seller of tobacco products.
- Possible legitimate uses of the object in the community.
- Expert testimony concerning its use.
- The intent of the owner (or person in control of the object) to deliver it to persons whom he knows, or reasonably should know, intend to use the object to facilitate violations of the Controlled Substances Act.

Unlawful use of, or possession with intent to use, drug paraphernalia is a Class 1 misdemeanor.

BILL ANALYSIS: The PCS would create a new Article 5F to Chapter 90 of the General Statutes to be entitled "Control of Potential Drug Paraphernalia Products."

- ***Items regulated***: The act would regulate the sale of two items by a retailer: glass tubes and splitters (both items are defined in the act).
- ***Requirements of sale:***
  - The items must be kept "behind the counter" so that store employees would only be able to access the items upon customer request.
  - In order to acquire either item, a purchaser would be required to present photo identification, with name and address, which would be entered into a log or recorded. The customer must sign for the item, verifying that the item would not be used as drug paraphernalia. The record must be available to law enforcement personnel within 48 hours of the transaction time, and also must be kept for two years. The retailer must train its employees on the requirements of the act.

- ***Penalty provisions***:
  - A retailer or employee who willfully and knowingly violates the sales provisions of the act would be guilty of a Class 2 misdemeanor[1].
  - A person who knowingly makes a false statement or representation in providing the required information to the retailer is guilty of a Class 1 misdemeanor[2].
- ***Immunity provisions***:
  - A retailer, or employee who reasonably and in good faith: (i) reports alleged criminal activity related to the sale of glass tubes or splitters, or (ii) refuses to sell either item because of a reasonable belief that it will be used as paraphernalia, is immune from civil liability, except if there is willful misconduct.
  - The act would include the Article in the State labor law provision that provides that no person shall discriminate or take any retaliatory action against an employee because the employee in good faith does or threatens to do any of the following: file a claim or complaint, initiate any inquiry, investigation, inspection, proceeding or other action, or testify or provide information to any person in connection with the Article.

EFFECTIVE DATE: The act would become effective December 1, 2009, and apply to offenses committed on or after that date.

Susan Sitze, Committee Counsel to House Ways and Means/Broadband Connectivity, and Hal Pell, Committee Counsel to House Judiciary I, substantially contributed to this summary.

H722-SMRI-59(e4) v2

[1] The range of punishment for a Class 2 misdemeanor when there are no prior convictions is 1 to 30 days of community punishment

[2] The range of punishment for a Class 1 misdemeanor when there are no prior convictions is 1 to 45 days of community punishment

HOUSE BILL 765
Committee Substitute Favorable 4/8/09

Short Title: Revise Elective Share Statutes. (Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO REVISE THE EXISTING ELECTIVE SHARE STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1A of Chapter 30 of the General Statutes reads as rewritten:

"Article 1A.

"Elective Share.

"§ 30-3.1. Right of elective share.

(a) Elective Share. – The surviving spouse of a decedent who dies domiciled in this State has a right to claim an "elective share", which means an amount equal to (i) the applicable share of the Total Net Assets, as defined in G.S. 30-3.2(4), less (ii) the value of Net Property Passing to Surviving Spouse, as defined in ~~G.S. 30-3.3(a).~~G.S. 30-3.2(2b). The applicable share of the Total Net Assets is as follows:

(1) If the decedent is not survived by any lineal descendants, one-half of the Total Net Assets.

(2) If the decedent is survived by one child, or lineal descendants of one deceased child, one-half of the Total Net Assets.

(3) If the decedent is survived by two or more children, or by one or more children and the lineal descendants of one or more deceased children, or by the lineal descendants of two or more deceased children, one-third of the Total Net Assets.

(b) Reduction of Applicable Share. – In those cases in which the surviving spouse is a second or successive spouse, and the decedent has one or more lineal descendants ~~surviving by a prior marriage~~ surviving who are not lineal descendants of the decedent's marriage to the surviving spouse but there are no lineal descendants surviving by the surviving spouse, the applicable share as determined in subsection (a) of this section shall be reduced by one-half.

~~(c) Death Taxes. Death taxes shall be taken into account as a claim against the estate in determining Total Net Assets only to the extent that the assets received by the surviving spouse do not qualify for the federal estate tax marital deduction pursuant to section 2056 of the Code or similar provisions under the laws of any other applicable taxing jurisdiction. The amount of such claims shall equal the difference between the amount of such death taxes as finally determined and the amount such death taxes would have been if all assets received by the surviving spouse had qualified for the federal estate tax marital deduction pursuant to section 2056 of the Code and similar provisions under the laws of any other applicable taxing jurisdictions.~~

"§ 30-3.2. Definitions.

The following definitions apply in this Article:

(1) ~~"Code" means the~~ Code. – The Internal Revenue Code in effect at the time of the decedent's death.

(1a) Claims. – Includes liabilities of the decedent whether arising in contract, in tort, or otherwise, and liabilities of the decedent's estate which arise at or after the death of the decedent, including funeral and administrative expenses, except for:

a. A claim for equitable distribution of property pursuant to G.S. 50-20 awarded subsequent to the death of the decedent.

b. Death taxes, except for those death taxes attributable to Property Passing to the Surviving Spouse. "Death taxes attributable to Property Passing to the Surviving Spouse" equals the amount of decedent's death taxes as finally determined, less the amount such death taxes would have been if all Property Passing to the Surviving Spouse had qualified for the federal estate tax marital deduction pursuant to section 2056 of the Code or had qualified for a similar provision under the laws of another applicable taxing jurisdiction.

c. A claim founded on a promise or agreement of the decedent, to the extent such claim is not arm's length or is not supported by full or adequate consideration in money or money's worth.

(2) ~~"Death taxes" means any~~ Death taxes. – Any estate, inheritance, succession, and similar taxes imposed by any taxing authority, reduced by any applicable credits against those taxes.

(2a) General power of appointment. – Any power of appointment, including a power to designate the beneficiary of a beneficiary designation, exercisable by the decedent, regardless of the decedent's capacity to exercise such power, in favor of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate, except for (i) powers limited by an "ascertainable standard" as defined in G.S. 36C-1-103 and (ii) powers which are not exercisable by the decedent except in conjunction with a person who created the power or has a substantial interest in the property subject to the power and whose interest is adverse to the exercise of the power in favor of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate. In no event shall a power held by the decedent as attorney-in-fact under a power of attorney be considered a general power of appointment.

(2b) Net Property Passing to Surviving Spouse. – The Property Passing to Surviving Spouse reduced by (i) death taxes attributable to Property Passing to the Surviving Spouse, (ii) any expenses described in G.S. 30-3.4(h) that are a charge against or are apportioned to the surviving spouse with respect to property included in Property Passing to Surviving Spouse, and (iii) claims satisfied out of property included in Property Passing to the Surviving Spouse.

(2c) Lineal descendant. – Defined in G.S. 29-2.

(3) ~~"Nonadverse trustee" means:~~ Nonadverse trustee. – Any of the following:

a. Any person who does not possess a substantial beneficial interest in the trust that would be adversely affected by the exercise or nonexercise of the power that the individual trustee possesses respecting the trust;

b. Any person subject to a power of removal by the surviving spouse with or without cause; or

c. Any company authorized to engage in trust business under the laws of this State, or that otherwise meets the requirements to engage in trust business under the laws of this State.

(3a) Nonspousal assets. – All property included in total assets other than the property included in Property Passing to Surviving Spouse. The value of nonspousal assets shall be their net values used in determining Total Net Assets.

(3b) Presently exercisable general power of appointment. – A general power of appointment which is exercisable at the time in question. A testamentary general power of appointment is not presently exercisable.

(3c) Property Passing to Surviving Spouse. – The sum of the values, as valued pursuant to G.S. 30-3.3A, of the following:

a. Property (i) devised, outright or in trust, by the decedent to the surviving spouse or (ii) that passes, outright or in trust, to the surviving spouse by intestacy, beneficiary designation, the exercise or failure to exercise the decedent's testamentary general power of appointment or the decedent's testamentary limited power of appointment, operation of law, or otherwise by reason of the decedent's death, excluding any benefits under the federal social security system.

b. Any year's allowance awarded to the surviving spouse.

c. Property renounced by the surviving spouse.

d. The surviving spouse's interest in any life insurance proceeds on the life of the decedent.

e. Any interest in property, outright or in trust, transferred from the decedent to the surviving spouse during the lifetime of the decedent for which the surviving spouse signs a statement acknowledging such a gift. For purposes of this sub-subdivision, any gift to the surviving spouse by the decedent of the decedent's interest in any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with right of survivorship shall be deemed to be a gift of one-half of the entire interest in property so held by the decedent and the surviving spouse.

f. Property awarded to the surviving spouse, subsequent to the death of the decedent, pursuant to an equitable distribution claim under G.S. 50-20.

g. Property held in a spousal trust described in G.S. 30-3.3A(e)(1).

If property falls under more than one sub-subdivision of this subdivision, then the property shall be included only once, but under the sub-subdivision yielding the greatest value of the property.

(3d) Responsible person. – A person or entity other than the surviving spouse that received, held, or controlled property constituting nonspousal assets on the date used to determine the value of the property.

(3e) Responsible person's nonspousal assets. – The nonspousal assets received, held, or controlled by a responsible person.

(3f) Total assets. – The sum of the values, as determined pursuant to G.S. 30-3.3A, of the following:

a. The decedent's property that would pass by intestate succession if the decedent died without a will, other than wrongful death proceeds;

b. Property over which the decedent, immediately before death, held a presently exercisable general power of appointment, except for (i)

property held jointly with right of survivorship, which is includable in total assets only to the extent provided in sub-subdivision c. of this subdivision and (ii) life insurance, which is includable in Total Assets only to the extent provided in sub-subdivision d. of this subdivision. Includes, without limitation:

1. Property held in a trust that the decedent could revoke.
2. Property held in a trust to the extent that the decedent had an unrestricted power to withdraw the property.
3. Property held in a depository account owned by the decedent in a financial institution payable or transferable at decedent's death to a beneficiary designated by the decedent.
4. Securities owned by the decedent in an account or in certificated form that are payable or transferable at decedent's death to a beneficiary designated by the decedent.

c. Property held as tenants by the entirety or jointly with rights of survivorship as follows:

1. One-half of any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with rights of survivorship is included, without regard to who contributed the property.
2. Property held by the decedent and one or more other persons other than the surviving spouse as joint tenants with rights of survivorship is included to the following extent:
   I. All property attributable to the decedent's contribution.
   II. The decedent's pro rata share of property not attributable to the decedent's contribution, except to the extent of property attributable to contributions by a surviving joint tenant.

   The decedent is presumed to have contributed the jointly owned property unless contribution by another is proven by clear and convincing evidence.

d. Benefits payable by reason of the decedent's death under any policy, plan, contract, or other arrangement, either owned by the decedent or over which the decedent had a general power of appointment or had the power to designate the surviving spouse as beneficiary, including, without limitation:

1. Insurance on the life of the decedent.
2. Accidental death benefits.
3. Annuities.
4. Employee benefits or similar arrangements.
5. Individual retirement accounts.
6. Pension or profit-sharing plans.
7. Deferred compensation.
8. Any private or governmental retirement plan.

e. Property irrevocably transferred by the decedent to the extent the decedent retained the possession or enjoyment of, or the right to income from, the property for life or for any period not ascertainable without reference to the decedent's death or for any period which does not in fact end before the decedent's death, except:

1. Property transferred for full and adequate consideration.

2. Transfers to which the surviving spouse consented in writing by signing a deed, an income or gift tax return that reports the gift, or other writing.
3. Transfers which became irrevocable before the decedent's marriage to the surviving spouse.

The property included in total assets is that fraction of the transferred property to which the decedent retained the right.

f. Property transferred by the decedent to the extent the decedent created a power over the property or the income from the property, which, immediately prior to death, could be exercised by the decedent in conjunction with any other person, or which could be exercised by a person who does not have a substantial interest that would be adversely affected by the exercise or nonexercise of the power, for the benefit of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate, except:
1. Property transferred for full and adequate consideration.
2. Transfers to which the surviving spouse consented in writing by signing a deed, an income or gift tax return that reports the gift, or other writing.
3. Transfers which became irrevocable before the decedent's marriage to the surviving spouse.

The property included in total assets with respect to a power over property is that fraction of the property to which the power related.

g. Property transferred by the decedent to persons other than the surviving spouse if such transfer was made both during the one-year period immediately preceding the decedent's death and during the decedent's marriage to the surviving spouse, except:
1. Property transferred for full and adequate consideration.
2. Transfers to which the surviving spouse consented in writing by signing a deed, an income or gift tax return that reports such gift, or other writing.
3. That part of any property transferred to any one transferee that qualified for exclusion from gift tax under section 2503 of the Code.

For purposes of this sub-subdivision, the termination of a right or interest in, or power over, property that would have been included in the total assets under sub-subdivisions b., e., or f. if the right, interest, or power had not terminated until the decedent's death shall be deemed to be a transfer of such property. Termination occurs when, with respect to a right or interest in property, the decedent transfers or relinquishes the right or interest; with respect to a power over property, the power terminates by exercise or release, but not by lapse or default.

If property falls under more than one sub-subdivision of this subdivision, then the property shall be included only once, but under the sub-subdivision yielding the greatest value of the property.

(4) ~~"Total Net Assets" means, after the payment or provision for payment of the decedent's funeral expenses, year's allowances to persons other than to the surviving spouse, debts, claims other than an equitable distribution of property awarded to the surviving spouse pursuant to G.S. 50-20 subsequent~~

~~to the death of the decedent, and administration expenses, the sum of the following:~~

~~a. All property to which the decedent had legal and equitable title immediately prior to death;~~

~~b. All property received by the decedent's personal representative by reason of the decedent's death, other than wrongful death proceeds;~~

~~c. One half of the value of any property held by the decedent and the surviving spouse as tenants by the entirety, or as joint tenants with rights of survivorship;~~

~~d. The entire value of any interest in property held by the decedent and another person, other than the surviving spouse, as joint tenants with right of survivorship, except to the extent that contribution can be proven by clear and convincing evidence;~~

~~e. The value of any property which would be included in the taxable estate of the decedent pursuant to sections 2033, 2035, 2036, 2037, 2038, 2039, or 2040 of the Code.~~

~~f. Any gifts of property made by the decedent to donees other than the surviving spouse within six months of the decedent's death, excluding:~~

~~1. Any gifts within the annual exclusion provisions of section 2503 of the Code;~~

~~2. Any gifts to which the surviving spouse consented. A signing of a deed, or income or gift tax return reporting such gift shall be considered consent; and~~

~~3. Any gifts made prior to marriage;~~

~~g. Any proceeds of any individual retirement account, pension or profit sharing plan, or any private or governmental retirement plan or annuity of which the decedent controlled the designation of beneficiary, excluding any benefits under the federal social security system;~~

~~h. Any other Property Passing to Surviving Spouse under G.S. 30-3.3; and~~

~~i. In case of overlapping application of the same property under more than one provision, the property shall be included only once under the provision yielding the greatest value."~~

Total Net Assets. – The total assets reduced by year's allowances to persons other than the surviving spouse and claims.

"~~§ 30-3.3. Property passing to surviving spouse.~~

~~(a) Property Passing to Surviving Spouse. For purposes of this Article, "Property Passing to Surviving Spouse" means the sum of the following:~~

~~(1) One half of the value of any interest in property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with rights of survivorship;~~

~~(2) The value of any interest in property (outright or in trust, including any interest subject to a general power of appointment held by the surviving spouse, as defined in section 2041 of the Code) devised by the decedent to the surviving spouse, or which passes to the surviving spouse by intestacy, or by beneficiary designation, or by exercise of or in default of the exercise of the decedent's testamentary general or limited power of appointment, or by operation of law or otherwise by reason of the decedent's death, excluding any benefits under the federal social security system;~~

~~(3) Any year's allowance awarded to the surviving spouse;~~
~~(4) The value of any property renounced by the surviving spouse;~~
~~(5) The value of the surviving spouse's interest, outright or in trust, in any life insurance proceeds on the life of the decedent;~~
~~(6) The value of any interest in property, outright or in trust, transferred from the decedent to the surviving spouse during the lifetime of decedent for which (i) a gift tax return is timely filed reporting such gift, or (ii) the surviving spouse signs a statement acknowledging such a gift. For purposes of this subdivision, any gift to the surviving spouse by the decedent of the decedent's interest in any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with right of survivorship shall be valued at one-half of the entire value of that interest in property at the time the gift is made;~~
~~(7) Notwithstanding any other provision of law related to valuing a partial interest in property, the entire fair market value of any property held in trust for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime, if the terms of the trust meet the following requirements:~~
~~a. During the lifetime of the surviving spouse, the trust is controlled by one or more Nonadverse Trustees;~~
~~b. The trustee is required to distribute to or for the benefit of the surviving spouse either (i) the entire net income of the trust at least annually; or (ii) the income of the trust in such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse;~~
~~c. The trustee is required to distribute to or for the benefit of the surviving spouse out of the principal of the trust such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse; and~~
~~In exercising discretion, the trustee may be authorized or required to take into consideration all other income, assets, and other means of support as are available to the surviving spouse; and~~
~~(8) The net value of the marital estate awarded to the surviving spouse pursuant to G.S. 50-20 subsequent to the death of the decedent.~~

~~(b) Death Taxes. The value of Property Passing to Surviving Spouse shall be reduced by any death taxes that are a charge against or apportioned against the surviving spouse on property interests included in Property Passing to Surviving Spouse.~~

~~(c) No Duplication. In case of overlapping application of the same property under more than one provision, the property shall be included only once, under the provision yielding the greatest value.~~

"**§ 30-3.3A. Valuation of property.**

(a) Basic Principles. – Unless otherwise expressly stated to the contrary in this section, the value of property shall be that property's fair market value, taking into consideration any applicable discounts. The value shall be determined as of the date of death, except for (i) property transferred to persons other than the surviving spouse described in G.S. 30-3.2(3f)g. and (ii) property transferred to the surviving spouse described in G.S. 30-3.2(3c)e. that is not held in trust, that is not life insurance, and that is not held as tenants by the entirety or some other form of ownership that passes to the surviving spouse by reason of survivorship. The value of gift property described in clauses (i) and (ii) shall be determined as the value on the date of transfer; but if the donee proves to the satisfaction of the clerk that the value on the date of disposal of the asset prior to the decedent's death is less than on the original date of transfer

or that the value on the date of death is less than on the original date of transfer, then the lesser value shall be used.

(b) Certain Joint Property. – In valuing a partial interest in jointly owned property with rights of survivorship, there shall be no discount taken to reflect the decedent's partial interest including, but not limited to, discounts for lack of control, ownership of a fractional interest, or lack of marketability.

(c) Certain Powers of Appointment. – In valuing property over which the decedent held a presently exercisable general power of appointment, the value includes only the property subject to the power that passes at the decedent's death, whether by exercise, release, lapse, default, or otherwise.

(d) Certain Transfers With Retained Interests. – In valuing property transferred by the decedent with a retained right of possession or enjoyment or the right to income described in G.S. 30-3.2(3f)e., only the fraction of the property to which the decedent retained a right shall be included. In valuing property in which the decedent created a power as described in G.S. 30-3.2(3f)f., the value includes, with respect to a power, the value of the property subject to the power, and the amount included in the valuation with respect to a power over the income is the value of the property that produces or produced the income; provided, however, if the power is a power over both income and property and the foregoing produces different amounts, the amount included in the valuation is the greater amount.

(e) Partial or Contingent Interest Property. – The valuation of partial and contingent property interests, outright or in trust, which are limited to commence or terminate upon the death of one or more persons, upon the expiration of a period of time, or upon the occurrence of one or more contingencies, shall be determined by computations based upon the mortality and annuity tables set forth in G.S. 8-46 and G.S. 8-47, and by using a presumed rate of return of six percent (6%) of the value of the underlying property in which those interests are limited. However, in valuing partial and contingent interests passing to the surviving spouse, the following special rules apply:

(1) The value of the beneficial interest of a spouse shall be the entire fair market value of any property held in trust if the decedent was the settlor of the trust, if the trust is held for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime, and if the terms of the trust meet the following requirements:

a. During the lifetime of the surviving spouse, the trust is controlled by one or more nonadverse trustees.

b. The trustee shall distribute to or for the benefit of the surviving spouse either (i) the entire net income of the trust at least annually or (ii) the income of the trust in such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse.

c. The trustee shall distribute to or for the benefit of the surviving spouse out of the principal of the trust such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse.

d. In exercising discretion, the trustee may be authorized or required to take into consideration all other income assets and other means of support available to the surviving spouse.

(2) To the extent that the partial or contingent interest is dependent upon the occurrence of any contingency that is not subject to the control of the surviving spouse and that is not subject to valuation by reference to the mortality and annuity tables set forth in G.S. 8-46 and G.S. 8-47, the contingency will be conclusively presumed to result in the lowest possible

value passing to the surviving spouse. However, a life estate or income interest that will terminate upon the surviving spouse's death or remarriage will be valued without regard to the possibility of termination upon remarriage.

(3) To the extent that the valuation of a partial or contingent interest is dependent upon the life expectancy of the surviving spouse, that life expectancy shall be conclusively presumed to be no less than 10 years, regardless of the actual attained age of the surviving spouse at the decedent's death.

(f) Method for Determining Value. – Unless otherwise stated in this Article, the value of property shall be determined as follows:

(1) The value of property passing by intestacy described in G.S. 30-3.2(3f)a. and Property Passing to Surviving Spouse, other than property held in a trust, shall be established by the good faith agreement of the surviving spouse and the personal representative, unless either (i) the surviving spouse is the personal representative or (ii) the clerk determines that the personal representative may not be able to represent the estate adversely to the surviving spouse, in which cases the value of such property shall be determined pursuant to subdivision (4) of this subsection.

(2) The value of property constituting an interest in a trust shall be established by good faith agreement of the surviving spouse, the personal representative, and the trustee, unless either (i) the surviving spouse is both the personal representative and the trustee or (ii) the clerk determines that the trustee or the personal representative may not be able to represent the trust or the estate, respectively, adversely to the surviving spouse, in which cases the value of such property shall be determined pursuant to subdivision (4) of this subsection.

(3) The value of all other property shall be established by the good faith agreement of the surviving spouse, the personal representative, and the responsible person that received, held, or controlled such property on the date used to determine the value of such property for purposes of determining total assets, unless the clerk determines that valuation under subdivision (4) of this subsection is more appropriate.

(4) If the value of any property is not established by agreement as provided above, the parties may present evidence regarding value, which may include expert testimony, and the clerk may appoint one or more qualified and disinterested persons to help determine the value of such property. After hearing, the clerk shall make a finding of fact of the value of each asset.

"**§ 30-3.4. Procedure for determining the elective share.**

(a) Exercisable Only During Lifetime. – The right of the surviving spouse to file a claim for an elective share must be exercised during the lifetime of the surviving spouse, by the surviving spouse, by the surviving spouse's ~~agent under a~~ attorney-in-fact if the surviving spouse's power of ~~attorney,~~ attorney expressly authorizes the attorney-in-fact to do so or to generally engage in estate transactions, ~~or~~ or, with approval of court, by the guardian of the surviving spouse's ~~estate.~~ estate or general guardian. If a surviving spouse dies before the claim for an elective share has been settled, the surviving spouse's personal representative shall succeed to the surviving spouse's rights to an elective share.

(b) Time Limitations. – A claim for an elective share must be made within six months after the issuance of letters testamentary or letters of administration in connection with the will or intestate proceeding with respect to which the surviving spouse claims the elective share by (i) filing a petition with the clerk of superior court of the county in which the primary

administration of the decedent's estate lies, and (ii) mailing or delivering a copy of that petition to the personal representative of the decedent's estate. A surviving spouse's incapacity shall not toll the six-month period of limitations.

(c) Time for Hearing. – Unless waived by the personal representative and the surviving spouse, the clerk shall set the matter for hearing no earlier than two months and no later than six months after the filing of the petition. However, the clerk may extend the time of hearing as the clerk sees fit. The surviving spouse shall give notice of the hearing to the personal representative, and to any person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share.

~~(d) Preparation of Tax Form. – In every case in which a petition to determine an elective share has been filed, and within two months of the filing of the petition, the personal representative shall prepare and submit to the clerk a proposed Form 706, federal estate tax return, for the estate, regardless of whether that form is required to be filed with the Internal Revenue Service. The clerk may extend the time for submission of the proposed Form 706 as the clerk sees fit.~~

~~(e) Valuation. – The valuation of interests in property for purposes of G.S. 30-3.2 and G.S. 30-3.3 shall be determined as follows:~~

~~(1) Basic principles. – Each interest shall be valued at its fair market value, reduced by all liens, claims, or encumbrances against the interest. For interests passing at the decedent's death, valuation shall be as of the date of death, and for interests transferred during the decedent's lifetime, valuation shall be as of the date of transfer.~~

~~(2) Valuation of partial and contingent interests in property. – The valuation of interests in property, outright or in trust, which are limited to commence or terminate upon the death of one or more persons, upon the expiration of a period of time, or upon the occurrence of one or more contingencies, shall be determined by computations based upon the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, and upon the basis of six percent (6%) of the gross value of the underlying property in which those interests are limited. However, in valuing interests passing to the surviving spouse, the following special rules apply:~~

~~a. An interest described in G.S. 30-3.3(a)(7) that shall be valued as if the underlying property or interest passed outright to the surviving spouse unencumbered by any trust;~~

~~b. To the extent that the interest is dependent upon the occurrence of any contingency that is not subject to the control of the surviving spouse and that is not subject to valuation by reference to the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, the contingency will be conclusively presumed to result in the lowest possible value passing to the surviving spouse. However, a life estate or income interest that will terminate only upon the earlier of the surviving spouse's death or remarriage will be valued without regard to the possibility of termination upon remarriage; and~~

~~c. To the extent that the valuation of an interest is dependent upon the life expectancy of the surviving spouse, that life expectancy shall be conclusively presumed to be no less than 10 years, regardless of the actual attained age of the surviving spouse at the decedent's death.~~

~~(3) Determination of fair market value. – The fair market value of each asset comprising Total Net Assets shall be determined as follows:~~

~~a. Probate assets and assets passing to spouse. – The value of each probate asset and Property Passing to Surviving Spouse, other than~~

~~assets held in trust, shall be established by the good faith agreement of the surviving spouse and the personal representative, unless either (i) the surviving spouse is the personal representative, or (ii) the clerk determines that the personal representative may not be able to represent the estate adversely to the surviving spouse.~~

~~b. Trust assets. – The value of each trust asset shall be established by good faith agreement of the surviving spouse and the trustee, unless either (i) the surviving spouse is the trustee, or (ii) the clerk determines that the trustee may not be able to represent the trust adversely to the surviving spouse.~~

~~c. Other assets. – The value of any other asset shall be established by the good faith agreement of the surviving spouse and each person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share because of that person's interest in the asset, unless the clerk determines that valuation under sub-subdivision d. of this subdivision is more appropriate.~~

~~d. Use of disinterested persons. – If the value of any asset is not established by agreement, the clerk shall appoint one or more qualified and disinterested persons to determine a value of each asset. That determination of the value of an asset shall be final for the exclusive purposes of this Article.~~

(d1) Mediation. – The clerk may order mediation as described in G.S. 7A-38.3B of any disputes in connection with an elective share proceeding.

(e1) Procedure. – An elective share proceeding shall be an estate matter and may be appealed pursuant to G.S. 1-301.3.

(e2) Information About Total Net Assets. – In order to assist the clerk in determining whether a surviving spouse is entitled to an elective share, and, if so, the amount thereof, the following provisions apply:

(1) Submission within two months. – In every case in which a petition to determine an elective share has been filed, within two months of the filing of the petition, the personal representative shall submit sufficient information about the total assets for the clerk to determine the elective share. To fulfill its obligation to provide information, the personal representative may prepare and submit to the clerk a proposed Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, for the estate, regardless of whether that form is required to be filed with the Internal Revenue Service. The clerk may extend the time for submission of the proposed Form 706 or other information as the clerk sees fit.

(2) Examination regarding assets. – If the personal representative, the surviving spouse, or a responsible person has reasonable grounds to believe that any person has a claim or has in its possession assets included in Total Net Assets, then the personal representative, surviving spouse, or responsible person may use the procedures set out in G.S. 28A-15-12 to cause the clerk to examine the person believed to have a claim or to possess assets included in Total Net Assets.

(f) Findings and Conclusions. – After notice and hearing, the clerk shall determine whether or not the surviving spouse is entitled to an elective share, and if so, the clerk shall then determine the elective share and shall order the personal representative to transfer that amount to the surviving spouse. The clerk's order shall recite specific findings of fact and conclusions of law in arriving at the decedent's Total Net Assets, Property Passing to Surviving Spouse, and the elective share.

~~(g) Appeals. — Any party in interest may appeal from the decision of the clerk to the superior court. If an appeal is taken from the decision of the clerk, that appeal shall have the effect of staying the judgment and order of the clerk until the cause is heard and determined by the superior court upon the appeal taken. Upon an appeal taken from the clerk to the superior court, the judge may review the findings of fact by the clerk and may find the facts or take other evidence, but the facts found by the judge shall be final and conclusive upon any appeal to the Appellate Division.~~

(h) Expenses. – The expenses (including attorneys' fees) reasonably incurred by the personal representative, other responsible persons, and the surviving spouse in connection with elective share proceedings shall be equitably apportioned by the clerk of court in the clerk's discretion among the personal representative, other responsible persons, and the surviving spouse. Each responsible person shall pay its apportioned expenses to the personal representative in cash.

"**§ 30-3.5. ~~Recovery of assets by personal representative.~~ Satisfaction of elective share.**

~~(a) Recovery of Assets. — The personal representative is entitled to recover proportionately from all persons, other than the surviving spouse, receiving or in possession of any of the decedent's Total Net Assets a sufficient amount to enable the personal representative to pay the elective share. The apportionment shall be made in the proportion that the value of the interest of each person receiving or in possession of any of Total Net Assets bears to Total Net Assets, excluding any Property Passing to Surviving Spouse. The only persons subject to contribution to make up the elective share are (i) original recipients of property comprising the decedent's Total Net Assets, and subsequent gratuitous inter vivos donees or persons claiming by testate or intestate succession to the extent those persons have the property or its proceeds on or after the date of decedent's death, and (ii) a fiduciary, as to the property under the fiduciary's control at or after the time a fiduciary receives notice that a surviving spouse has claimed an elective share. A fiduciary shall not be considered to have notice until it receives notice at its address as shown in the decedent's estate papers in the clerk's office or, if there are no such papers or no such address is shown in those papers, at the fiduciary's residence or the office of its registered agent.~~

~~The personal representative may withhold from any property of the decedent in his possession, distributable to any person subject to apportionment, the amount of the elective share apportioned to such person. If the property in possession of the personal representative and distributable to any person subject to apportionment is insufficient to satisfy the proportionate amount of the elective share determined to be due from that person, the personal representative may recover the deficiency from that person. If the property is not in possession of the personal representative, the personal representative may recover from the person the amount of the elective share apportioned to that person in accordance with this Article. If the personal representative cannot reasonably collect from any person subject to apportionment the amount of the elective share apportioned to that person, the amount not reasonably recoverable shall, with the approval of the clerk, be apportioned among the other persons who are subject to apportionment. The apportionment shall be made in the proportion that the value of the interest of each remaining person bears to the total value of the interests of all remaining persons.~~

(a1) Apportionment. – The personal representative shall determine each responsible person's liability to the surviving spouse by multiplying the value of the elective share by a fraction, the numerator of which is the value of the responsible person's nonspousal assets and the denominator of which is the total value of all of the nonspousal assets included in Total Net Assets.

(a2) Recovery From Responsible Persons. – As a responsible person, the personal representative shall satisfy its liability for payment of the elective share out of the decedent's estate's nonspousal assets using first the nonspousal assets in the decedent's residuary estate. If the nonspousal assets in the residuary estate are not sufficient, the personal representative shall

reduce each other responsible person's share of the nonspousal assets proportionately based on the values used in determining the Total Net Assets. The personal representative shall recover from each other responsible person the responsible person's liability for the payment of the elective share. Each responsible person, including the decedent's personal representative, may elect to satisfy its liability in full by any of the following methods:

(1) Conveyance of that portion of the responsible person's nonspousal assets (or identical substitute assets), valued on the date of conveyance, sufficient to satisfy the responsible person's liability; or, if the value of the responsible person's nonspousal assets on the date of conveyance is less than the responsible person's liability, conveyance of all of the responsible person's nonspousal assets (or identical substitute assets).

(2) Payment of the liability in cash.

(3) Payment of the liability in other property upon written agreement of the surviving spouse at values agreed by the surviving spouse for purposes of determining the extent of the liability satisfied.

(4) Any combination of the payment methods set forth under subdivisions (2) through (4) of this subsection, provided that the total value of assets conveyed by the responsible person equals such responsible person's liability.

(a3) Inability or Refusal to Pay. – The personal representative shall be entitled to petition the clerk of court for an order requiring any responsible person to satisfy its liability. Upon refusal of a responsible person to obey such an order, the personal representative shall be entitled to a judgment against such responsible person in the amount of the liability and to any other remedies the clerk deems appropriate. Although the responsible person shall remain primarily liable for such responsible person's liability for the elective share, the following rules apply:

(1) If the responsible person makes a gratuitous transfer, whether inter vivos or by testate or intestate succession, of all or any part of the responsible person's nonspousal assets or the proceeds thereof after the decedent's death, then the gratuitous transferee shall be liable for the amount transferred, and the personal representative shall be entitled to recover that amount from the transferee as if the transferee were the responsible person.

(2) If the responsible person is a fiduciary and makes a distribution of all or any part of the responsible person's nonspousal assets or the proceeds thereof after the decedent's death, then the distributee shall be liable for the amount transferred, and the personal representative shall be entitled to recover that amount from the distributee as if the distributee were the responsible person.

If, after exhausting all other remedies in this section, the personal representative cannot reasonably recover a responsible person's liability, then, with the approval of the clerk, the defaulting responsible person's liability shall be apportioned on a pro rata basis among the responsible persons who have not defaulted. Each nondefaulting other responsible person shall be liable for the amount of the liability apportioned to it in the same manner and to the same extent as its original liability for the elective share; provided, that each responsible person's liability shall not exceed the responsible person's proportionate share of the value of the nonspousal assets based on the values used in determining Total Net Assets. Each nondefaulting other responsible person shall be entitled to a proportionate share of any judgment against or subsequent recovery of the liability from the defaulting responsible person.

(b) Standstill Order. – After the filing of the petition demanding an elective share, ~~either the personal representative or surviving spouse~~ the personal representative, surviving spouse, or any responsible person may request the clerk to issue an order that any ~~recipients~~ responsible person not dispose of ~~any~~ all or a portion of the decedent's Total Net Assets or the proceeds

thereof pending the ~~hearing.~~ payment of the elective share. The decision to issue such an order shall be in the discretion of the clerk. A person who violates the standstill order may be held in civil contempt of court pursuant to Article 5A of Chapter 2 of the General Statutes. The clerk shall enter an order terminating the standstill order upon the clerk's determination that the standstill order is no longer necessary or desirable.

~~(c) Satisfaction of Liability. – A person receiving or in possession of any of the decedent's Total Net Assets may pay his proportionate elective share liability with respect to that property by any of the following methods:~~

~~(1) Conveyance of the property included in the decedent's Total Net Assets;~~

~~(2) Payment of the value of his liability in cash or, upon agreement of the surviving spouse, other property; or~~

~~(3) Partial conveyance and partial payment under subdivisions (1) and (2) of this subsection, provided the value conveyed and paid is equal to his liability.~~

~~(d) Expenses. – The expenses reasonably incurred by the personal representative in connection with the appraisal or recovery of assets shall be apportioned as provided for the elective share under this Article. If the personal representative finds that it is inequitable to apportion the expenses because those expenses were incurred because of the fault of one or more persons subject to apportionment, the personal representative may direct other more equitable apportionment, with the approval of the clerk.~~

(e) Bond. – ~~If property held by the personal representative is distributed~~ If a responsible person distributes or disposes of nonspousal assets prior to final apportionment of the elective ~~share,~~ share and expenses, the personal representative may require the ~~distributee~~ responsible person or the transferee to provide a bond or other security for the ~~apportionment~~ responsible person's liability for payment of the elective share and apportioned expenses in the form and amount prescribed by the personal representative, with the approval of the clerk.

"§ 30-3.6. Waiver of rights.

(a) The right of a surviving spouse to claim an elective share may be waived, wholly or partially, before or after marriage, with or without consideration, by a written waiver signed by the surviving ~~spouse.~~ spouse, by the surviving spouse's attorney-in-fact if the surviving spouse's power of attorney expressly authorizes the attorney-in-fact to do so or to generally engage in estate transactions, or, with approval of court, by the guardian of the surviving spouse's estate or general guardian.

(b) A waiver is not enforceable if the surviving spouse proves that:

(1) The waiver was not executed voluntarily; or

(2) The surviving spouse or the surviving spouse's representative making the waiver was not provided a fair and reasonable disclosure of the property and financial obligations of the decedent, unless the surviving spouse waived, in writing, the right to that disclosure.

(c) A written waiver that would have been effective to waive a spouse's right to dissent in estates of decedents dying on or before December 31, 2000, under Article 1 of Chapter 30 of the General Statutes is effective to waive that spouse's right of elective share under this Article for estates of decedents dying on or after January 1, 2001."

SECTION 2. This act is effective when it becomes law and applies to decedents dying on or after October 1, 2009.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 765
Committee Substitute Favorable 4/8/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H765-PCS80458-RC-32

Short Title: Revise Elective Share Statutes. (Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO REVISE THE EXISTING ELECTIVE SHARE STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1A of Chapter 30 of the General Statutes reads as rewritten:

"Article 1A.

"Elective Share.

"**§ 30-3.1. Right of elective share.**

(a) Elective Share. – The surviving spouse of a decedent who dies domiciled in this State has a right to claim an "elective share", which means an amount equal to (i) the applicable share of the Total Net Assets, as defined in G.S. 30-3.2(4), less (ii) the value of Net Property Passing to Surviving Spouse, as defined in ~~G.S. 30-3.3(a).~~G.S. 30-3.2(2c). The applicable share of the Total Net Assets is as follows:

(1) If the decedent is not survived by any lineal descendants, one-half of the Total Net Assets.

(2) If the decedent is survived by one child, or lineal descendants of one deceased child, one-half of the Total Net Assets.

(3) If the decedent is survived by two or more children, or by one or more children and the lineal descendants of one or more deceased children, or by the lineal descendants of two or more deceased children, one-third of the Total Net Assets.

(b) Reduction of Applicable Share. – In those cases in which the surviving spouse is a second or successive spouse, and the decedent has one or more lineal descendants ~~surviving by a prior marriage~~ surviving who are not lineal descendants of the decedent's marriage to the surviving spouse but there are no lineal descendants surviving by the surviving spouse, the applicable share as determined in subsection (a) of this section shall be reduced by one-half.

~~(c) Death Taxes. Death taxes shall be taken into account as a claim against the estate in determining Total Net Assets only to the extent that the assets received by the surviving spouse do not qualify for the federal estate tax marital deduction pursuant to section 2056 of the Code or similar provisions under the laws of any other applicable taxing jurisdiction. The amount of such claims shall equal the difference between the amount of such death taxes as finally determined and the amount such death taxes would have been if all assets received by the surviving spouse had qualified for the federal estate tax marital deduction pursuant to~~

~~section 2056 of the Code and similar provisions under the laws of any other applicable taxing jurisdictions.~~

"§ 30-3.2. Definitions.

The following definitions apply in this Article:

(1) ~~"Code" means the~~ Code. – The Internal Revenue Code in effect at the time of the decedent's death.

(1a) Claims. – Includes liabilities of the decedent, whether arising in contract, in tort, or otherwise, and liabilities of the decedent's estate that arise at or after the death of the decedent, including funeral and administrative expenses, except for:

a. A claim for equitable distribution of property pursuant to G.S. 50-20 awarded subsequent to the death of the decedent.

b. Death taxes, except for those death taxes attributable to Property Passing to the Surviving Spouse. "Death taxes attributable to Property Passing to the Surviving Spouse" equals the amount of decedent's death taxes as finally determined, less the amount such death taxes would have been if all Property Passing to the Surviving Spouse had qualified for the federal estate tax marital deduction pursuant to section 2056 of the Code or had qualified for a similar provision under the laws of another applicable taxing jurisdiction.

c. A claim founded on a promise or agreement of the decedent, to the extent such claim is not arm's length or is not supported by full or adequate consideration in money or money's worth.

d. Expenses apportioned by the clerk of court under G.S. 30-3.4(h).

(2) ~~"Death taxes" means any~~ Death taxes. – Any estate, inheritance, succession, and similar taxes imposed by any taxing authority, reduced by any applicable credits against those taxes.

(2a) General power of appointment. – Any power of appointment, including a power to designate the beneficiary of a beneficiary designation, exercisable by the decedent, regardless of the decedent's capacity to exercise such power, in favor of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate, except for (i) powers limited by an "ascertainable standard" as defined in G.S. 36C-1-103 and (ii) powers which are not exercisable by the decedent except in conjunction with a person who created the power or has a substantial interest in the property subject to the power and whose interest is adverse to the exercise of the power in favor of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate. In no event shall a power held by the decedent as attorney-in-fact under a power of attorney be considered a general power of appointment.

(2b) Lineal descendant. – Defined in G.S. 29-2.

(2c) Net Property Passing to Surviving Spouse. – The Property Passing to Surviving Spouse reduced by (i) death taxes attributable to property passing to surviving spouse, and (ii) claims payable out of, charged against or otherwise properly allocated to Property Passing to Surviving Spouse.

(3) ~~"Nonadverse trustee" means:~~ Nonadverse trustee. – Any of the following:

a. Any person who does not possess a substantial beneficial interest in the trust that would be adversely affected by the exercise or nonexercise of the power that the individual trustee possesses respecting the trust;

b. Any person subject to a power of removal by the surviving spouse with or without cause; or

c. Any company authorized to engage in trust business under the laws of this State, or that otherwise meets the requirements to engage in trust business under the laws of this State.

(3a) Nonspousal assets. – All property included in total assets other than the property included in Property Passing to Surviving Spouse.

(3b) Presently exercisable general power of appointment. – A general power of appointment which is exercisable at the time in question. A testamentary general power of appointment is not presently exercisable.

(3c) Property Passing to Surviving Spouse. – The sum of the values, as valued pursuant to G.S. 30-3.3A, of the following:

a. Property (i) devised, outright or in trust, by the decedent to the surviving spouse or (ii) that passes, outright or in trust, to the surviving spouse by intestacy, beneficiary designation, the exercise or failure to exercise the decedent's testamentary general power of appointment or the decedent's testamentary limited power of appointment, operation of law, or otherwise by reason of the decedent's death, excluding any benefits under the federal social security system.

b. Any year's allowance awarded to the surviving spouse.

c. Property renounced by the surviving spouse.

d. The surviving spouse's interest in any life insurance proceeds on the life of the decedent.

e. Any interest in property, outright or in trust, transferred from the decedent to the surviving spouse during the lifetime of the decedent for which the surviving spouse signs a statement acknowledging such a gift. For purposes of this sub-subdivision, any gift to the surviving spouse by the decedent of the decedent's interest in any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with right of survivorship shall be deemed to be a gift of one-half of the entire interest in property so held by the decedent and the surviving spouse.

f. Property awarded to the surviving spouse, subsequent to the death of the decedent, pursuant to an equitable distribution claim under G.S. 50-20.

g. Property held in a spousal trust described in G.S. 30-3.3A(e)(1).

If property falls under more than one sub-subdivision of this subdivision, then the property shall be included only once, but under the sub-subdivision yielding the greatest value of the property.

(3d) Responsible person. – A person or entity other than the surviving spouse that received, held, or controlled property constituting nonspousal assets on the date used to determine the value of the property. The personal representative is the responsible person for nonspousal assets that pass under the decedent's will or by intestate succession.

(3e) Responsible person's nonspousal assets. – The nonspousal assets received, held, or controlled by a responsible person.

(3f) Total assets. – The sum of the values, as determined pursuant to G.S. 30-3.3A, of the following:

a. The decedent's property that would pass by intestate succession if the decedent died without a will, other than wrongful death proceeds;

b. Property over which the decedent, immediately before death, held a presently exercisable general power of appointment, except for (i) property held jointly with right of survivorship, which is includable in total assets only to the extent provided in sub-subdivision c. of this subdivision and (ii) life insurance, which is includable in Total Assets only to the extent provided in sub-subdivision d. of this subdivision. Includes, without limitation:
   1. Property held in a trust that the decedent could revoke.
   2. Property held in a trust to the extent that the decedent had an unrestricted power to withdraw the property.
   3. Property held in a depository account owned by the decedent in a financial institution payable or transferable at decedent's death to a beneficiary designated by the decedent.
   4. Securities owned by the decedent in an account or in certificated form that are payable or transferable at decedent's death to a beneficiary designated by the decedent.

c. Property held as tenants by the entirety or jointly with right of survivorship as follows:
   1. One-half of any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with right of survivorship is included, without regard to who contributed the property.
   2. Property held by the decedent and one or more other persons other than the surviving spouse as joint tenants with right of survivorship is included to the following extent:
      I. All property attributable to the decedent's contribution.
      II. The decedent's pro rata share of property not attributable to the decedent's contribution, except to the extent of property attributable to contributions by a surviving joint tenant.

      The decedent is presumed to have contributed the jointly owned property unless contribution by another is proven by clear and convincing evidence.

d. Benefits payable by reason of the decedent's death under any policy, plan, contract, or other arrangement, either owned by the decedent or over which the decedent had a general power of appointment or had the power to designate the surviving spouse as beneficiary, including, without limitation:
   1. Insurance on the life of the decedent.
   2. Accidental death benefits.
   3. Annuities.
   4. Employee benefits or similar arrangements.
   5. Individual retirement accounts.
   6. Pension or profit sharing plans.
   7. Deferred compensation.
   8. Any private or governmental retirement plan.

e. Property irrevocably transferred by the decedent to the extent the decedent retained the possession or enjoyment of, or the right to income from, the property for life or for any period not ascertainable

without reference to the decedent's death or for any period that does not in fact end before the decedent's death, except:

1. Property transferred for full and adequate consideration.
2. Transfers to that the surviving spouse consented in writing by signing a deed, an income or gift tax return that reports the gift, or other writing.
3. Transfers that became irrevocable before the decedent's marriage to the surviving spouse.

The property included in total assets is that fraction of the transferred property to which the decedent retained the right.

f. Property transferred by the decedent to the extent the decedent created a power over the property or the income from the property, which, immediately prior to death, could be exercised by the decedent in conjunction with any other person, or which could be exercised by a person who does not have a substantial interest that would be adversely affected by the exercise or nonexercise of the power, for the benefit of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate, except:

1. Property transferred for full and adequate consideration.
2. Transfers to which the surviving spouse consented in writing by signing a deed, an income or gift tax return that reports the gift, or other writing.
3. Transfers which became irrevocable before the decedent's marriage to the surviving spouse.

The property included in total assets with respect to a power over property is that fraction of the property to which the power related.

g. Property transferred by the decedent to persons other than the surviving spouse if such transfer was made both during the one-year period immediately preceding the decedent's death and during the decedent's marriage to the surviving spouse, except:

1. Property transferred for full and adequate consideration.
2. Transfers to which the surviving spouse consented in writing by signing a deed, an income or gift tax return that reports such gift, or other writing.
3. That part of any property transferred to any one transferee that qualified for exclusion from gift tax under section 2503 of the Code.

For purposes of this sub-subdivision, the termination of a right or interest in, or power over, property that would have been included in the total assets under sub-subdivisions b., e., or f. of this subdivision if the right, interest, or power had not terminated until the decedent's death shall be deemed to be a transfer of such property. Termination occurs when, with respect to a right or interest in property, the decedent transfers or relinquishes the right or interest; with respect to a power over property, the power terminates by exercise or release, but not by lapse or default.

If property falls under more than one sub-subdivision of this subdivision, then the property shall be included only once, but under the sub-subdivision yielding the greatest value of the property.

(4) ~~"Total Net Assets" means, after the payment or provision for payment of the decedent's funeral expenses, year's allowances to persons other than to the~~

~~surviving spouse, debts, claims other than an equitable distribution of property awarded to the surviving spouse pursuant to G.S. 50-20 subsequent to the death of the decedent, and administration expenses, the sum of the following:~~

~~a. All property to which the decedent had legal and equitable title immediately prior to death;~~

~~b. All property received by the decedent's personal representative by reason of the decedent's death, other than wrongful death proceeds;~~

~~c. One-half of the value of any property held by the decedent and the surviving spouse as tenants by the entirety, or as joint tenants with rights of survivorship;~~

~~d. The entire value of any interest in property held by the decedent and another person, other than the surviving spouse, as joint tenants with right of survivorship, except to the extent that contribution can be proven by clear and convincing evidence;~~

~~e. The value of any property which would be included in the taxable estate of the decedent pursuant to sections 2033, 2035, 2036, 2037, 2038, 2039, or 2040 of the Code.~~

~~f. Any gifts of property made by the decedent to donees other than the surviving spouse within six months of the decedent's death, excluding:~~

~~1. Any gifts within the annual exclusion provisions of section 2503 of the Code;~~

~~2. Any gifts to which the surviving spouse consented. A signing of a deed, or income or gift tax return reporting such gift shall be considered consent; and~~

~~3. Any gifts made prior to marriage;~~

~~g. Any proceeds of any individual retirement account, pension or profit-sharing plan, or any private or governmental retirement plan or annuity of which the decedent controlled the designation of beneficiary, excluding any benefits under the federal social security system;~~

~~h. Any other Property Passing to Surviving Spouse under G.S. 30-3.3; and~~

~~i. In case of overlapping application of the same property under more than one provision, the property shall be included only once under the provision yielding the greatest value."~~

Total Net Assets. – The total assets reduced by year's allowances to persons other than the surviving spouse and claims.

~~"§ 30-3.3. Property passing to surviving spouse.~~

~~(a) Property Passing to Surviving Spouse. – For purposes of this Article, "Property Passing to Surviving Spouse" means the sum of the following:~~

~~(1) One-half of the value of any interest in property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with rights of survivorship;~~

~~(2) The value of any interest in property (outright or in trust, including any interest subject to a general power of appointment held by the surviving spouse, as defined in section 2041 of the Code) devised by the decedent to the surviving spouse, or which passes to the surviving spouse by intestacy, or by beneficiary designation, or by exercise of or in default of the exercise of the decedent's testamentary general or limited power of appointment, or~~

~~by operation of law or otherwise by reason of the decedent's death, excluding any benefits under the federal social security system;~~

~~(3) Any year's allowance awarded to the surviving spouse;~~

~~(4) The value of any property renounced by the surviving spouse;~~

~~(5) The value of the surviving spouse's interest, outright or in trust, in any life insurance proceeds on the life of the decedent;~~

~~(6) The value of any interest in property, outright or in trust, transferred from the decedent to the surviving spouse during the lifetime of decedent for which (i) a gift tax return is timely filed reporting such gift, or (ii) the surviving spouse signs a statement acknowledging such a gift. For purposes of this subdivision, any gift to the surviving spouse by the decedent of the decedent's interest in any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with right of survivorship shall be valued at one-half of the entire value of that interest in property at the time the gift is made;~~

~~(7) Notwithstanding any other provision of law related to valuing a partial interest in property, the entire fair market value of any property held in trust for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime, if the terms of the trust meet the following requirements:~~

~~a. During the lifetime of the surviving spouse, the trust is controlled by one or more Nonadverse Trustees;~~

~~b. The trustee is required to distribute to or for the benefit of the surviving spouse either (i) the entire net income of the trust at least annually; or (ii) the income of the trust in such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse;~~

~~c. The trustee is required to distribute to or for the benefit of the surviving spouse out of the principal of the trust such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse; and~~

~~In exercising discretion, the trustee may be authorized or required to take into consideration all other income, assets, and other means of support as are available to the surviving spouse; and~~

~~(8) The net value of the marital estate awarded to the surviving spouse pursuant to G.S. 50-20 subsequent to the death of the decedent.~~

~~(b) Death Taxes. The value of Property Passing to Surviving Spouse shall be reduced by any death taxes that are a charge against or apportioned against the surviving spouse on property interests included in Property Passing to Surviving Spouse.~~

~~(c) No Duplication. In case of overlapping application of the same property under more than one provision, the property shall be included only once, under the provision yielding the greatest value.~~

"**§ 30-3.3A. Valuation of property.**

(a) Basic Principles. – Unless otherwise expressly stated to the contrary in this section, the value of property shall be that property's fair market value, taking into consideration any applicable discounts. The value shall be determined as of the date of death, except for (i) property transferred to persons other than the surviving spouse described in G.S. 30-3.2(3f)g. and (ii) property transferred to the surviving spouse described in G.S. 30-3.2(3c)e. that is not held in trust, that is not life insurance, and that is not held as tenants by the entirety or some other form of ownership that passes to the surviving spouse by reason of survivorship. The value of gift property described in clauses (i) and (ii) shall be determined as the value on the date of transfer; but if the donee proves to the satisfaction of the clerk that the value on the date

of disposal of the asset prior to the decedent's death is less than on the original date of transfer or that the value on the date of death is less than on the original date of transfer, then the lesser value shall be used.

(b) Certain Joint Property. – In valuing a partial interest in jointly owned property with right of survivorship, there shall be no discount taken to reflect the decedent's partial interest including, but not limited to, discounts for lack of control, ownership of a fractional interest, or lack of marketability.

(c) Certain Powers of Appointment. – In valuing property over which the decedent held a presently exercisable general power of appointment, the value includes only the property subject to the power that passes at the decedent's death, whether by exercise, release, lapse, default, or otherwise.

(d) Certain Transfers With Retained Interests. – In valuing property transferred by the decedent with a retained right of possession or enjoyment or the right to income described in G.S. 30-3.2(3f)e., only the fraction of the property to which the decedent retained a right shall be included. In valuing property in which the decedent created a power as described in G.S. 30-3.2(3f)f., the value includes, with respect to a power, the value of the property subject to the power, and the amount included in the valuation with respect to a power over the income is the value of the property that produces or produced the income; provided, however, if the power is a power over both income and property and the foregoing produces different amounts, the amount included in the valuation is the greater amount.

(e) Partial or Contingent Interest Property. – The valuation of partial and contingent property interests, outright or in trust, which are limited to commence or terminate upon the death of one or more persons, upon the expiration of a period of time, or upon the occurrence of one or more contingencies, shall be determined by computations based upon the mortality and annuity tables set forth in G.S. 8-46 and G.S. 8-47, and by using a presumed rate of return of six percent (6%) of the value of the underlying property in which those interests are limited. However, in valuing partial and contingent interests passing to the surviving spouse, the following special rules apply:

(1) The value of the beneficial interest of a spouse shall be the entire fair market value of any property held in trust if the decedent was the settlor of the trust, if the trust is held for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime, and if the terms of the trust meet the following requirements:

a. During the lifetime of the surviving spouse, the trust is controlled by one or more nonadverse trustees.

b. The trustee shall distribute to or for the benefit of the surviving spouse either (i) the entire net income of the trust at least annually or (ii) the income of the trust in such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse.

c. The trustee shall distribute to or for the benefit of the surviving spouse out of the principal of the trust such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse.

d. In exercising discretion, the trustee may be authorized or required to take into consideration all other income assets and other means of support available to the surviving spouse.

(2) To the extent that the partial or contingent interest is dependent upon the occurrence of any contingency that is not subject to the control of the surviving spouse and that is not subject to valuation by reference to the mortality and annuity tables set forth in G.S. 8-46 and G.S. 8-47, the

contingency will be conclusively presumed to result in the lowest possible value passing to the surviving spouse. However, a life estate or income interest that will terminate upon the surviving spouse's death or remarriage will be valued without regard to the possibility of termination upon remarriage.

(3) To the extent that the valuation of a partial or contingent interest is dependent upon the life expectancy of the surviving spouse, that life expectancy shall be conclusively presumed to be no less than 10 years, regardless of the actual attained age of the surviving spouse at the decedent's death.

(f) Method for Determining Value. – Unless otherwise stated in this Article, the value of property shall be determined as follows:

(1) The value of property passing by intestacy described in G.S. 30-3.2(3f)a. and Property Passing to Surviving Spouse, other than property held in a trust, shall be established by the good-faith agreement of the surviving spouse and the personal representative, unless either (i) the surviving spouse is the personal representative or (ii) the clerk determines that the personal representative may not be able to represent the estate adversely to the surviving spouse, in which cases the value of such property shall be determined pursuant to subdivision (4) of this subsection.

(2) The value of property constituting an interest in a trust shall be established by good-faith agreement of the surviving spouse, the personal representative, and the trustee, unless either (i) the surviving spouse is both the personal representative and the trustee or (ii) the clerk determines that the trustee or the personal representative may not be able to represent the trust or the estate, respectively, adversely to the surviving spouse, in which cases the value of such property shall be determined pursuant to subdivision (4) of this subsection.

(3) The value of all other property shall be established by the good-faith agreement of the surviving spouse, the personal representative, and the responsible person that received, held, or controlled such property on the date used to determine the value of such property for purposes of determining total assets, unless the clerk determines that valuation under subdivision (4) of this subsection is more appropriate.

(4) If the value of any property is not established by agreement as provided above, the parties may present evidence regarding value, which may include expert testimony, and the clerk may appoint one or more qualified and disinterested persons to help determine the value of such property. After hearing, the clerk shall make a finding of fact of the value of each asset.

"§ 30-3.4. Procedure for determining the elective share.

(a) Exercisable Only During Lifetime. – The right of the surviving spouse to file a claim for an elective share must be exercised during the lifetime of the surviving spouse, by the surviving spouse, by the surviving spouse's ~~agent under a~~ attorney-in-fact if the surviving spouse's power of ~~attorney,~~ attorney expressly authorizes the attorney-in-fact to do so or to generally engage in estate transactions, ~~or~~ or, with approval of court, by the guardian of the surviving spouse's ~~estate.~~ estate or general guardian. If a surviving spouse dies before the claim for an elective share has been settled, the surviving spouse's personal representative shall succeed to the surviving spouse's rights to an elective share.

(b) Time Limitations. – A claim for an elective share must be made within six months after the issuance of letters testamentary or letters of administration in connection with the will or intestate proceeding with respect to which the surviving spouse claims the elective share by

(i) filing a petition with the clerk of superior court of the county in which the primary administration of the decedent's estate lies, and (ii) mailing or delivering a copy of that petition to the personal representative of the decedent's estate. A surviving spouse's incapacity shall not toll the six-month period of limitations.

(c) Time for Hearing. – Unless waived by the personal representative and the surviving spouse, the clerk shall set the matter for hearing no earlier than two months and no later than six months after the filing of the petition. However, the clerk may extend the time of hearing as the clerk sees fit. The surviving spouse shall give notice of the hearing to the personal representative, and to any person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share.

~~(d) Preparation of Tax Form. – In every case in which a petition to determine an elective share has been filed, and within two months of the filing of the petition, the personal representative shall prepare and submit to the clerk a proposed Form 706, federal estate tax return, for the estate, regardless of whether that form is required to be filed with the Internal Revenue Service. The clerk may extend the time for submission of the proposed Form 706 as the clerk sees fit.~~

~~(e) Valuation. – The valuation of interests in property for purposes of G.S. 30-3.2 and G.S. 30-3.3 shall be determined as follows:~~

~~(1) Basic principles. – Each interest shall be valued at its fair market value, reduced by all liens, claims, or encumbrances against the interest. For interests passing at the decedent's death, valuation shall be as of the date of death, and for interests transferred during the decedent's lifetime, valuation shall be as of the date of transfer.~~

~~(2) Valuation of partial and contingent interests in property. – The valuation of interests in property, outright or in trust, which are limited to commence or terminate upon the death of one or more persons, upon the expiration of a period of time, or upon the occurrence of one or more contingencies, shall be determined by computations based upon the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, and upon the basis of six percent (6%) of the gross value of the underlying property in which those interests are limited. However, in valuing interests passing to the surviving spouse, the following special rules apply:~~

~~a. An interest described in G.S. 30-3.3(a)(7) that shall be valued as if the underlying property or interest passed outright to the surviving spouse unencumbered by any trust;~~

~~b. To the extent that the interest is dependent upon the occurrence of any contingency that is not subject to the control of the surviving spouse and that is not subject to valuation by reference to the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, the contingency will be conclusively presumed to result in the lowest possible value passing to the surviving spouse. However, a life estate or income interest that will terminate only upon the earlier of the surviving spouse's death or remarriage will be valued without regard to the possibility of termination upon remarriage; and~~

~~c. To the extent that the valuation of an interest is dependent upon the life expectancy of the surviving spouse, that life expectancy shall be conclusively presumed to be no less than 10 years, regardless of the actual attained age of the surviving spouse at the decedent's death.~~

~~(3) Determination of fair market value. – The fair market value of each asset comprising Total Net Assets shall be determined as follows:~~

~~a. Probate assets and assets passing to spouse. The value of each probate asset and Property Passing to Surviving Spouse, other than assets held in trust, shall be established by the good faith agreement of the surviving spouse and the personal representative, unless either (i) the surviving spouse is the personal representative, or (ii) the clerk determines that the personal representative may not be able to represent the estate adversely to the surviving spouse.~~

~~b. Trust assets. The value of each trust asset shall be established by good faith agreement of the surviving spouse and the trustee, unless either (i) the surviving spouse is the trustee, or (ii) the clerk determines that the trustee may not be able to represent the trust adversely to the surviving spouse.~~

~~c. Other assets. The value of any other asset shall be established by the good faith agreement of the surviving spouse and each person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share because of that person's interest in the asset, unless the clerk determines that valuation under sub-subdivision d. of this subdivision is more appropriate.~~

~~d. Use of disinterested persons. If the value of any asset is not established by agreement, the clerk shall appoint one or more qualified and disinterested persons to determine a value of each asset. That determination of the value of an asset shall be final for the exclusive purposes of this Article.~~

(d1) Mediation. – The clerk may order mediation as described in G.S. 7A-38.3B of any disputes in connection with an elective share proceeding.

(e1) Procedure. – An elective share proceeding shall be an estate matter and may be appealed pursuant to G.S. 1-301.3.

(e2) Information About Total Net Assets. – In order to assist the clerk in determining whether a surviving spouse is entitled to an elective share, and, if so, the amount thereof, the following provisions apply:

(1) Submission within two months. – In every case in which a petition to determine an elective share has been filed, within two months of the filing of the petition, the personal representative shall submit sufficient information about the total assets for the clerk to determine the elective share. To fulfill its obligation to provide information, the personal representative may prepare and submit to the clerk a proposed Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, for the estate, regardless of whether that form is required to be filed with the Internal Revenue Service. The clerk may extend the time for submission of the proposed Form 706 or other information as the clerk sees fit.

(2) Examination regarding assets. – If the personal representative, the surviving spouse, or a responsible person has reasonable grounds to believe that any person has a claim or has in its possession assets included in Total Net Assets, then the personal representative, surviving spouse, or responsible person may use the procedures set out in G.S. 28A-15-12 to cause the clerk to examine the person believed to have a claim or to possess assets included in Total Net Assets.

(f) Findings and Conclusions. – After notice and hearing, the clerk shall determine whether or not the surviving spouse is entitled to an elective share, and if so, the clerk shall then determine the elective share and shall order the personal representative to transfer that amount to the surviving spouse. The clerk's order shall recite specific findings of fact and

conclusions of law in arriving at the decedent's Total Net Assets, Property Passing to Surviving Spouse, and the elective share.

~~(g) Appeals. – Any party in interest may appeal from the decision of the clerk to the superior court. If an appeal is taken from the decision of the clerk, that appeal shall have the effect of staying the judgment and order of the clerk until the cause is heard and determined by the superior court upon the appeal taken. Upon an appeal taken from the clerk to the superior court, the judge may review the findings of fact by the clerk and may find the facts or take other evidence, but the facts found by the judge shall be final and conclusive upon any appeal to the Appellate Division.~~

(h) Expenses. – The expenses (including attorneys' fees) reasonably incurred by the personal representative, other responsible persons, and the surviving spouse in connection with elective share proceedings shall be equitably apportioned by the clerk of court in the clerk's discretion among the personal representative, other responsible persons, and the surviving spouse.

"**§ 30-3.5. ~~Recovery of assets by personal representative.~~ Satisfaction of elective share.**

~~(a) Recovery of Assets. – The personal representative is entitled to recover proportionately from all persons, other than the surviving spouse, receiving or in possession of any of the decedent's Total Net Assets a sufficient amount to enable the personal representative to pay the elective share. The apportionment shall be made in the proportion that the value of the interest of each person receiving or in possession of any of Total Net Assets bears to Total Net Assets, excluding any Property Passing to Surviving Spouse. The only persons subject to contribution to make up the elective share are (i) original recipients of property comprising the decedent's Total Net Assets, and subsequent gratuitous inter vivos donees or persons claiming by testate or intestate succession to the extent those persons have the property or its proceeds on or after the date of decedent's death, and (ii) a fiduciary, as to the property under the fiduciary's control at or after the time a fiduciary receives notice that a surviving spouse has claimed an elective share. A fiduciary shall not be considered to have notice until it receives notice at its address as shown in the decedent's estate papers in the clerk's office or, if there are no such papers or no such address is shown in those papers, at the fiduciary's residence or the office of its registered agent.~~

~~The personal representative may withhold from any property of the decedent in his possession, distributable to any person subject to apportionment, the amount of the elective share apportioned to such person. If the property in possession of the personal representative and distributable to any person subject to apportionment is insufficient to satisfy the proportionate amount of the elective share determined to be due from that person, the personal representative may recover the deficiency from that person. If the property is not in possession of the personal representative, the personal representative may recover from the person the amount of the elective share apportioned to that person in accordance with this Article. If the personal representative cannot reasonably collect from any person subject to apportionment the amount of the elective share apportioned to that person, the amount not reasonably recoverable shall, with the approval of the clerk, be apportioned among the other persons who are subject to apportionment. The apportionment shall be made in the proportion that the value of the interest of each remaining person bears to the total value of the interests of all remaining persons.~~

(a1) Apportionment. – The personal representative shall apportion the liability to the surviving spouse for the amount of the elective share among all responsible persons as follows:

(1) The net value of each nonspousal asset shall be determined by calculating the value of the nonspousal asset under G.S. 30-3.3A and reducing such value by that portion of the claims (including year's allowances to persons other than the surviving spouse) payable out of, charged against, or otherwise properly allocable to the nonspousal asset.

(2) Using the net value of each nonspousal asset as determined under subdivision (1) of this subsection, the personal representative shall determine each responsible person's liability to the surviving spouse by multiplying the amount of the elective share by a fraction, the numerator of which is the net value of the responsible person's nonspousal assets and the denominator of which is the net value of all of the nonspousal assets.

(a2) Recovery From Responsible Persons. – In recovering assets from responsible persons, the following rules apply:

(1) To the extent the personal representative is a responsible person, the personal representative shall satisfy its liability to the surviving spouse out of its nonspousal assets according to the following order of priority:

a. The personal representative shall satisfy its liability out of the net value of the nonspousal assets passing by intestate succession by allocating the liability proportionately among each intestate heir based on the fraction of the net value of the nonspousal assets passing by intestate succession that each intestate heir is entitled to receive.

b. If the net value of the nonspousal assets passing by intestate succession is not sufficient to satisfy the personal representative's liability in full, the personal representative shall satisfy its remaining liability out of the net value of the nonspousal assets passing as part of the decedent's residuary estate by allocating the liability proportionately among each beneficiary of the decedent's residuary estate based on the fraction of the net value of the nonspousal assets passing as part of the decedent's residuary estate that each residuary beneficiary is entitled to receive.

c. If the net value of the nonspousal assets in the residuary estate is not sufficient to satisfy the personal representative's liability in full, the personal representative shall satisfy its remaining liability by allocating the remaining liability proportionately among each other beneficiary of the decedent's will based on the fraction of the net value of the remaining nonspousal assets each other beneficiary is entitled to receive.

(2) The personal representative shall recover from each other responsible person the responsible person's liability to the surviving spouse.

(3) Each responsible person, including the personal representative in its capacity as a responsible person, may elect to satisfy its liability in full by any of the following methods:

a. Conveyance of that portion of the responsible person's nonspousal assets (or identical substitute assets), valued on the date of conveyance, sufficient to satisfy the responsible person's liability; or, if the value of the responsible person's nonspousal assets on the date of conveyance is less than the responsible person's liability, conveyance of all of the responsible person's nonspousal assets (or identical substitute assets).

b. Payment of the liability in cash.

c. Payment of the liability in other property upon written agreement of the surviving spouse at values agreed by the surviving spouse for purposes of determining the extent of the liability satisfied.

d. Any combination of the payment methods set forth under sub-subdivision a. through d. of this subdivision, provided that the

total value of assets conveyed by the responsible person equals such responsible person's liability.

(a3) Inability or Refusal to Pay. – The personal representative shall be entitled to petition the clerk of court for an order requiring any responsible person to satisfy its liability. Upon refusal of a responsible person to obey such an order, the personal representative shall be entitled to a judgment against such responsible person in the amount of the liability and to any other remedies the clerk deems appropriate. Although the responsible person shall remain primarily liable for such responsible person's liability for the elective share, the following rules apply:

(1) If the responsible person makes a gratuitous transfer, whether inter vivos or by testate or intestate succession, of all or any part of the responsible person's nonspousal assets or the proceeds thereof after the decedent's death, then the gratuitous transferee shall be liable for the amount transferred, and the personal representative shall be entitled to recover that amount from the transferee as if the transferee were the responsible person.

(2) If the responsible person is a fiduciary and makes a distribution of all or any part of the responsible person's nonspousal assets or the proceeds thereof after the decedent's death, then the distributee shall be liable for the amount transferred, and the personal representative shall be entitled to recover that amount from the distributee as if the distributee were the responsible person.

If, after exhausting all other remedies in this section, the personal representative cannot reasonably recover a responsible person's liability, then, with the approval of the clerk, the defaulting responsible person's liability shall be apportioned on a pro rata basis among the responsible persons who have not defaulted. Each nondefaulting other responsible person shall be liable for the amount of the liability apportioned to it in the same manner and to the same extent as its original liability for the elective share; provided, that each responsible person's liability shall not exceed the responsible person's proportionate share of the value of the nonspousal assets based on the values used in determining Total Net Assets. Each nondefaulting other responsible person shall be entitled to a proportionate share of any judgment against or subsequent recovery of the liability from the defaulting responsible person.

(b) Standstill Order. – After the filing of the petition demanding an elective share, ~~either the personal representative or surviving spouse~~ the personal representative, surviving spouse, or any responsible person may request the clerk to issue an order that any ~~recipients~~ responsible person not dispose of ~~any~~ all or a portion of the decedent's Total Net Assets or the proceeds thereof pending the ~~hearing.~~ payment of the elective share. The decision to issue such an order shall be in the discretion of the clerk. A person who violates the standstill order may be held in civil contempt of court pursuant to Article 5A of Chapter 2 of the General Statutes. The clerk shall enter an order terminating the standstill order upon the clerk's determination that the standstill order is no longer necessary or desirable.

~~(c) Satisfaction of Liability. A person receiving or in possession of any of the decedent's Total Net Assets may pay his proportionate elective share liability with respect to that property by any of the following methods:~~

~~(1) Conveyance of the property included in the decedent's Total Net Assets;~~

~~(2) Payment of the value of his liability in cash or, upon agreement of the surviving spouse, other property; or~~

~~(3) Partial conveyance and partial payment under subdivisions (1) and (2) of this subsection, provided the value conveyed and paid is equal to his liability.~~

~~(d) Expenses. The expenses reasonably incurred by the personal representative in connection with the appraisal or recovery of assets shall be apportioned as provided for the elective share under this Article. If the personal representative finds that it is inequitable to apportion the expenses because those expenses were incurred because of the fault of one or~~

~~more persons subject to apportionment, the personal representative may direct other more equitable apportionment, with the approval of the clerk.~~

(e) Bond. – ~~If property held by the personal representative is distributed~~ If a responsible person distributes or disposes of nonspousal assets prior to final apportionment of the elective ~~share,~~ share and expenses, the personal representative may require the ~~distributee~~ responsible person or the transferee to provide a bond or other security for the ~~apportionment~~ responsible person's liability for payment of the elective share and apportioned expenses in the form and amount prescribed by the personal representative, with the approval of the clerk.

"**§ 30-3.6. Waiver of rights.**

(a) The right of a surviving spouse to claim an elective share may be waived, wholly or partially, before or after marriage, with or without consideration, by a written waiver signed by the surviving ~~spouse.~~ spouse, by the surviving spouse's attorney-in-fact if the surviving spouse's power of attorney expressly authorizes the attorney-in-fact to do so or to generally engage in estate transactions, or, with approval of court, by the guardian of the surviving spouse's estate or general guardian.

(b) A waiver is not enforceable if the surviving spouse proves that:

(1) The waiver was not executed voluntarily; or

(2) The surviving spouse or the surviving spouse's representative making the waiver was not provided a fair and reasonable disclosure of the property and financial obligations of the decedent, unless the surviving spouse waived, in writing, the right to that disclosure.

(c) A written waiver that would have been effective to waive a spouse's right to dissent in estates of decedents dying on or before December 31, 2000, under Article 1 of Chapter 30 of the General Statutes is effective to waive that spouse's right of elective share under this Article for estates of decedents dying on or after January 1, 2001."

SECTION 2. This act is effective when it becomes law and applies to decedents dying on or after October 1, 2009.

HOUSE BILL 765:
Revise Elective Share Statutes

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 8, 2009
Introduced by:	Rep. Stam	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	PCS to Second Edition H765-PCS80458		

SUMMARY: The Proposed Committee Substitute for House Bill 765 rewrites Article 1A of Chapter 30 of the General Statutes governing a surviving spouse's elective share.

The bill is a recommendation of the Estate Planning Section of the North Carolina State Bar.

BACKGROUND: Under North Carolina law, a surviving spouse is entitled to a minimum share of their deceased spouse's estate regardless of the provisions, if any, of the deceased spouse's will. The minimum share is one-half of the surviving spouse's net assets if the decedent is survived by no lineal descendants or no more than one lineal descendants and one-third of the assets if decedent is survived by two or more children. The purpose of the elective share is to prevent a spouse from disinheriting a surviving spouse.

BILL ANALYSIS: The Proposed Committee Substitute makes changes to each section of Article 1A. An overview of the changes to each section is set out below.

G.S. 30-3.1. Right to Elective Share

Subsection (b) is changed to allow for the consideration of lineal descendants whether or not those descendants are the children of a prior marriage.

In addition to technical changes, subsection (c) governing the treatment and computation of death taxes is deleted. This language is now included in the definition section in the new definition of claims.

G.S. 30-3.2. Definitions

This section was changed to include computational language or calculations where appropriate, leaving primarily procedural language in the other sections.

New definitions include:

- "Claims" -- The current definition of "total net assets" (p.6, line 38) provides for the payment of funeral expenses, debts and other claims. The new definition of claims clarifies what is considered a claim against a decedent's estate and exempts from claims the following: (1) a claim for equitable distribution awarded subsequent to the decedent's death; (2) death taxes; and (3) claims not supported by adequate consideration, all of which are exempted under current law.
- "General Power of Appointment" -- This term is referenced in the new definition of "total assets" (p.3, line 48). The purpose of the new definition, coupled with the definition of total assets, is to include in total assets that property or interest over which the decedent retains control by a general power of appointment.
- "Net Property Passing to Surviving Spouse" – This term is added to include in the definitions the calculation under existing language as intended in the current G.S. 30-3.3 which is repealed by the bill (page 6, line 40).

- "Nonspousal Assets" – This term is used in new language in G.S. 30-3.5 (p. 12, line 44). The personal representative may recover non-spousal assets from a responsible person if the property is part of the decedent's total net assets.
- "Property Passing to the Surviving Spouse" – This definition is added and is substantially the same as language currently in G.S. 30-3.3 which is repealed by the bill. Again, the language is primarily used to compute the elective share and, as such, is being placed in the definitions.
- "Responsible person" and "Responsible Person's Non-spousal Assets" – These terms are used in new language in G.S. 30-3.5. Non-spousal assets may be recovered from responsible persons if the property is a part of the decedent's total net assets.
- "Total Assets" – This term is added and the definition is primarily based on language originally found in the definition of "Total Net Assets" included in a decedent's estate (p. 5, line 47) which is deleted by the bill. Again, the language is primarily a calculation or computation to determine the elective share. The language is expanded from the original language to provide clarification and divides property into the following categories:
    1. Property that would pass by intestate succession. (sub-subdivision a)
    2. Property over which the decedent held a general power of appointment including property held in revocable trusts, or a trust in which the decedent had the power to withdraw property, bank accounts, and stocks. (sub-subdivision b)
    3. Property held by joint tenancy. (sub-subdivision c)
    4. Beneficiary property including life insurance (not specified under current law), death benefits, annuities, IRAs, pensions, and retirement plans. (sub-subdivision d)
    5. Irrevocable transfers to the extent the decedent retained possession or enjoyment or income from the property. (sub-subdivision e)
    6. Property transferred with and to the extent of a power that could be exercised by the decedent with someone else. (sub-subdivision f)
    7. Gifts made one year preceding death (currently 6 months) (sub-subdivision g)

  For 5, 6, and 7 above, property transferred for full and adequate consideration or with the written consent of the surviving spouse are not include in total assets. **In addition, for 5 and 6 above, transfers which are irrevocable and made before the decedent's marriage to the surviving spouse are not included. This language is new.** Also, for 7 above, gifts that qualify for exclusion from gift tax ($13,000 or less) are not included.
- "Total Net Assets" – This definition is new and is based on total assets less funeral expenses, administration expenses, and claims.

G.S. 30-3.3. Property passing to surviving spouse.

This section is repealed. Provisions governing property passing to surviving spouse are now included in the definition in G.S. 30-3.2(3c) (p. 3, line 11).

G.S. 30-3.3A Valuation of Property. (new section added)

The valuation of property is currently addressed in G.S. 30-3.4(e) (p. 10, line 16) which is repealed by the bill.

Subsection (a) is based on the current language and provides that the value of the property shall be the fair market value at the time of death except for: (1) gifts made to person other than the surviving spouse and (2) gifts made to the surviving spouse that is not held in trust, not life insurance, or other form of ownership that passes to the surviving spouse on the decedent's death. For these transfers, the value is determined as of the date of transfer, unless the property is disposed of and the donee proves that the value prior to death is less than the value on the date of transfer.

Other provisions include the following:

- For joint property with right of survivorship, there shall be no discount taken to reflect the decedent's partial interest (subsection (b)).
- For property subject to power of appointment, value shall be only for the property subject to the power (subsection (c)).
- For transfers with a sole or shared retained right of possession or enjoyment, values shall be only for the property subject to the power (subsection (d)).
- For partial or contingent property interests commencing or terminating on the death of one or more persons, value is based on the statutory mortality and annuity tables. (subsection (e)). Special rules under the current law for contingent interests passing to the surviving spouse are included in this subsection. (repealed under current law on p. 7, line 16).

Subsection (f) provides that the method for determining fair market value can be by good faith agreement of, as applicable: (1) the surviving spouse and the personal representative for property passing by intestacy; (2) in the case of a trust, the personal representative, surviving spouse, and trustee; (3) the personal representative, surviving spouse, and the responsible person, for property held by a responsible person. If an agreement cannot be reached, the parties may present evidence to the clerk who shall determine the fair market value. This language is based on language deleted from the current G.S. 30-3.4(e)(3) (p. 10, line 17).

Subsection (f) adds new language requiring the clerk to make findings of fact from which the parties may appeal to the superior court.

G.S. 30-3.4. Procedure for determining the elective share

Subsection (a) adds language to (1) require a power of attorney to specifically authorize the attorney-in-fact to exercise the right to file for an elective share or to engage in estate transactions and (2) to require a general guardian or guardian of the estate to obtain court approval before filing for an elective share.

Subsection (d) requiring the preparation of a tax return within two months of filing a petition for elective share is repealed. This language is deleted because some estates or property within the estate aren't taxable. Under new language set out in subsection (e2)(1) of this section, the personal representative **may** file a return to assist the clerk in determining whether the spouse is entitled to an elective share.

Subsection (e) governing valuation is deleted in light of new language included in G.S. 30-3.3 discussed above.

Subsection (d1) is new and adds language authorizing the clerk to order mediation of disputes in connection with elective share claims.

Subsection (e1) is new and adds language authorizing appeal of an elective share claim as an estate matter under G.S.1-301.3. Under G.S. 1-301.3, a superior court judge may only consider whether the

findings of fact are supported by the evidence, whether the conclusions of law are supported by the findings of fact, and whether the order is consistent with the conclusions of law and applicable law.

Subsection (f1) is new and requires parties to submit sufficient information to the clerk to allow a determination of total assets of the decedent's estate.

Subsection (g) concerning appeals is deleted and is no longer needed in light of the new subsection (e1). Unlike the new language in subsection (e1), this section authorizes the superior court to review findings of fact by the clerk and find facts or take other evidence.

Subsection (h) is new and allows the apportionment of expenses by the clerk as currently provided in G.S. 30-3.5(d) which is deleted.

G.S. 30-3.5 Satisfaction of elective share. (new heading, was Recovery of assets by personal representative.)

Subsection (a) of this section is deleted and rewritten in new subsections (a1), (a2), and (a3). The revisions discussed below are intended to be clarifying only.

As is the current law, subsection (a1) provides that the personal representative apportions each responsible person's liability to the surviving spouse by multiplying the value of the elective share by a fraction comprised of the value of the responsible person's nonspousal assets over the total value of the all nonspousal assets.

Subsection (a2) provides that the personal representative must pay the elective share using first the non-spousal assets in the decedent's residuary estate. If these are insufficient, each responsible person's share is reduced proportionately. The responsible person may satisfy its liability by any of the following methods: (1) conveying back that portion of non-spousal assets valued on the date of conveyance or, if the value is less than the party's liability, the conveyance of **all** the non-spousal assets (There is no liability out of personal assets, only non-spousal assets.); (2) payment in cash; (3) payment in other property upon written agreement; or (4) any combination of the above.

Subsection (a3) provides that the personal representative may petition the court for the recovery from the responsible person. A responsible person is primarily liable for the elective share, but if the person made a gratuitous transfer or, if the person is a fiduciary and made a distribution of the non-spousal assets upon the decedent's death, then the transferee or distributee is liable for the amount transferred.

If the personal representative cannot recover from a responsible person, then the responsible person's liability may be apportioned among the remaining responsible persons. The non-defaulting responsible person or persons are then entitled to recover from the defaulting responsible person. A responsible person's liability may not exceed their proportionate share of the non-spousal assets. (Again, there is no liability out of personal assets, only non-spousal assets.)

Subsection (b) adds new language providing that a responsible person violating a standstill order prohibiting disposal of a decedent's total net assets may be held in civil contempt.

Subsection (c) is repealed. These provisions are included in the new subsection (a2).

Subsection (d) is repealed. The clerk may apportion expenses as provided in the new G.S. 30-3.4(h) discussed above.

Subsection (e) adds new language to the provision requiring a responsible person or transferee to post a bond to clarify that the bond is to secure payment not just of the elective share, but also of any apportioned expenses.

G.S. 30-3.6 Waiver of rights.

Language is added requiring a power of attorney to specifically authorize the attorney-in-fact to waive the right to claim an elective share or to engage in estate transactions and also requires a general guardian or guardian of the estate to obtain court approval before doing so. (As noted earlier in this summary, similar language was also added in G.S. 30-3.4(a) governing the petitioning for an elective share.)

EFFECTIVE DATE: The Proposed Committee Substitute for House Bill 765 is effective when it becomes law and applies to decedents dying on or after October 1, 2009.

Tim Hovis, counsel to House Judiciary I, substantially contributed to this summary.

H765-SMRC-46(CSRC-32) v1

H 1

HOUSE BILL 1261

Short Title:	Protect Our Kids/Cyber Bullying Misdemeanor.	(Public)
Sponsors:	Representatives Mackey, Parmon (Primary Sponsors); K. Alexander, Cotham, Fisher, Harrison, Lucas, Mobley, Pierce, Wainwright, Womble, and Wray.	
Referred to:	Science and Technology, if favorable, Judiciary III.	

April 9, 2009

A BILL TO BE ENTITLED

AN ACT PROTECTING CHILDREN OF THIS STATE BY MAKING CYBER BULLYING A CRIMINAL OFFENSE PUNISHABLE AS A CLASS 1 MISDEMEANOR.

The General Assembly of North Carolina enacts:

SECTION 1. Article 60 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-458.1. Cyber bullying; penalty.**

(a) Except as otherwise made unlawful by this Article, it shall be unlawful for any person to use a computer or computer network to do any of the following:

(1) Falsify one's identity in an Internet chat room, an electronic mail message, or an instant message with the intent to intimidate or torment a minor.

(2) Follow a minor online or into an Internet chat room with the intent to intimidate or torment a minor.

(3) Build a fake profile, a Web site, or pose as a minor in an Internet chat room, an electronic mail message, or an instant message with the intent to intimidate or torment a minor.

(4) Plant any statement, whether true or false, tending to provoke or that actually provokes, any third party to stalk or harass a minor.

(5) Post a real or doctored image of a minor on the Internet with the intent to embarrass, intimidate, or torment the minor or the minor's parent or guardian.

(6) Post or encourage others to post on the Internet private, personal, or sexual information pertaining to a minor with the intent to intimidate or torment the minor.

(7) Access, alter, or erase any computer network, computer data, computer program, or computer software, including breaking into a password protected account or stealing or otherwise accessing passwords, with the intent to embarrass, intimidate, or torment a minor or the minor's parent or guardian.

(8) Copy and disseminate, or cause to be made an unauthorized copy of any data pertaining to a minor for the purpose of intimidating or tormenting that minor (in any form, including, but not limited to, any printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network).

(9) Use a computer system to repeatedly communicate insults to, or about, a minor with the intent to intimidate or torment the minor or the minor's parent or guardian.

(10) Sign a minor up for a pornographic Internet site.

(11) Sign a minor up for electronic mailing lists, or to receive junk electronic messages and instant messages, without authorization, resulting in either (i) costs to the minor or to the minor's parent or guardian or (ii) intimidation or torment of the minor.

(b) Any person who violates this section shall be guilty of cyber bullying, which offense shall be punishable as a Class 1 misdemeanor."

SECTION 2. G.S. 14-453 is amended by adding new subdivisions to read:

"(7b) 'Internet chat room' means a computer service allowing two or more users to communicate with each other in real time.

(7c) 'Profile' means a configuration of user data required by a computer so that the user may access programs or services and have the desired functionality on that computer."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1261
PROPOSED SENATE COMMITTEE SUBSTITUTE H1261-CSRV-48 [v.1]

6/8/2009 6:12:39 PM

Short Title: Protect Our Kids/Cyber Bullying Misdemeanor. (Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT PROTECTING CHILDREN OF THIS STATE BY MAKING CYBER BULLYING A CRIMINAL OFFENSE PUNISHABLE AS A CLASS 1 MISDEMEANOR.

The General Assembly of North Carolina enacts:

SECTION 1. Article 60 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-458.1. Cyber bullying; penalty.**

(a) Except as otherwise made unlawful by this Article, it shall be unlawful for any person to use a computer or computer network to do any of the following with the intent to intimidate or torment a minor:

(1) Falsify one's identity in an Internet chat room, an electronic mail message, or an instant message.

(2) Follow a minor online or into an Internet chat room.

(3) Build a fake profile or Web site, or pose as a minor in an Internet chat room, an electronic mail message, or an instant message.

(4) Post or encourage others to post on the Internet private, personal, or sexual information pertaining to a minor.

(5) Copy and disseminate, or cause to be made an unauthorized copy of any data pertaining to a minor (in any form, including, but not limited to, any printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network).

(b) Except as otherwise made unlawful by this Article, it shall be unlawful for any person to use a computer or computer network to do any of the following

(1) Plant any statement, whether true or false, tending to provoke or that actually provokes, any third party to stalk or harass a minor.

(2) Post a real or doctored image of a minor on the Internet with the intent to embarrass, intimidate, or torment the minor or the minor's parent or guardian.

(3) Access, alter, or erase any computer network, computer data, computer program, or computer software, including breaking into a password protected account or stealing or otherwise accessing passwords, with the intent to embarrass, intimidate, or torment a minor or the minor's parent or guardian.

(4) Repeatedly communicate insults to, or about, a minor with the intent to intimidate or torment the minor or the minor's parent or guardian.

(5) Sign up or register a minor for a pornographic Internet site.

(6) Sign up or register a minor for electronic mailing lists, or to receive junk electronic messages and instant messages, without authorization, resulting in either (i) costs to the minor or to the minor's parent or guardian or (ii) intimidation or torment of the minor.

(c) Any person who violates this section shall be guilty of cyber bullying, which offense shall be punishable as a Class 1 misdemeanor."

SECTION 2. G.S. 14-453 is amended by adding new subdivisions to read:

"(7b) 'Internet chat room' means a computer service allowing two or more users to communicate with each other in real time.

(7c) 'Profile' means a configuration of user data required by a computer so that the user may access programs or services and have the desired functionality on that computer."

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

HOUSE BILL 1261:
Protect Our Kids/Cyber Bullying Misdemeanor

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 8, 2009
Introduced by:	Reps. Mackey, Parmon	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	PCS to First Edition H1261-CSRV-48		

SUMMARY: House Bill 1261 would create and define the criminal offense of cyber bullying, making it punishable as a Class 1 misdemeanor. This PCS makes some technical changes.

CURRENT LAW: The offense of Cyberstalking is a Class 2 misdemeanor under G.S. 14-196.3, it is currently unlawful to do any of the following:

- use any words or language in electronic communication threatening to inflict bodily harm to any person, or to extort money or anything of value from another person
- electronically communicate with another repeatedly, for the purpose of abusing, annoying, threatening, harassing, or embarrassing any person
- electronically communicate to another and knowingly make any false statement concerning death, injury, illness, disfigurement, indecent conduct, or criminal conduct of the person electronically mailed or of any member of the person's family or household with the intent to abuse, annoy, threaten, terrify, harass, or embarrass.

BILL ANALYSIS: House Bill 1261 would enact a new provision in Article 60 of Chapter 14 of the General Statutes (Computer Related Crime) creating the offense of cyber bullying and making it a Class 1 misdemeanor to use a computer or computer network to commit any of the following acts, when done for the purpose of intimidating or tormenting a minor, or with the intent to embarrass, intimidate, or torment the minor or the minor's parent or guardian:

- falsify one's identity in a chat room, electronic mail message, or instant message
- follow a minor online or into a chat room
- build a fake profile or a Website, or pose as a minor in an Internet chat room, an electronic mail message, or an instant message
- post a real or doctored image of a minor on the Internet
- post or encourage others to post on the Internet private, personal, or sexual information pertaining to a minor
- access, alter, or erase any computer network, computer data, computer program, or computer software, including breaking into a password protected account or stealing or otherwise accessing passwords
- repeatedly communicate insults to, or about, a minor
- copy and disseminate, or cause to be made an unauthorized copy of any data pertaining to a minor

The following acts would be unlawful, but would not require the same showing of purpose or intent:

- planting any statement that actually provokes or would tend to provoke any third party to stalk or harass a minor
- signing up or registering a minor for a pornographic Internet site
- signing up or registering for electronic mailing lists or to receive junk electronic messages and instant messages without authorization, resulting in either costs to the minor or to the minor's parent or guardian or intimidation or torment of the minor.

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

H1261-SMRV-94(CSRV-48) v1

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

8

EDITION No. _____

H. B. No. 1261-CSRV-4B DATE 6-9-09

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

COMMITTEE SUBSTITUTE _____

Rep.)
) Berger
Sen.)

1 moves to amend the bill on page 1, line 28 & 33

2 ( ) WHICH CHANGES THE TITLE

3 by deleting the word "embarrass,"

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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 1377
Second Edition Engrossed 5/14/09

Short Title:	Taxpayer Optimization Act.	(Public)
Sponsors:	Representatives Folwell, McElraft, Brown, Moore (Primary Sponsors); and Starnes.	
Referred to:	State Government/State Personnel, if favorable, Judiciary II.	

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE CERTAIN SALES OF STATE PROPERTY SUBJECT TO UPSET BIDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 146-27 reads as rewritten:

"**§ 146-27. The role of the Department of Administration in sales, leases, and rentals.**

(a) General. – Every sale, lease, rental, or gift of land owned by the State or by any State agency shall be made by the Department of Administration and approved by the Governor and Council of State. A lease or rental of land owned by the State may not exceed a period of 99 years. The Department of Administration may initiate proceedings for sales, leases, rentals, and gifts of land owned by the State or by any State agency.

(b) Large Disposition. – If a proposed disposition is a sale or gift of land with an appraised value of at least twenty-five thousand dollars ($25,000), the sale or gift shall not be made until after consultation with the Joint Legislative Commission on Governmental Operations.

(b1) Upset Bids. – If a proposed disposition of land or other real property with a value of at least twenty-five thousand dollars ($25,000) is a sale or other transfer to a private entity that operates or is established to operate for profit, the proposed disposition shall be subject to upset bids, unless other, non-monetary consideration associated with the transaction has been made public. If other consideration is offered such that upset bids are not required, notice of the sale and other consideration shall be posted and published in a manner similar to that provided in G.S. 1-339.17. The Department of Administration shall adopt a procedure for upset bids that is based on the upset bid procedure set forth in Part 2 of Article 29A of Chapter 1 of the General Statutes.

(c) Expired effective September 1, 2007."

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

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	June 11, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 312	Increase Spousal Year's Allowance/Conform Lng.	Representative McLawhorn Representative Hurley Representative Randleman Representative Spear
HB 615	Business Trusts.	Representative Martin
HB 794	Substitution of Trustees.	Representative Martin Representative Hall
HB 799	Unequal Shares/ Joint Tenancy Survivorship.	Representative Rhyne, Jr.
HB 1368	Amend Future Advances Statutes.	Representative Blue Representative Love, Sr. Representative Stam Representative Moore
HB 1390	Wills/Bequests to Drafting Attorney.	Representative Mobley Representative Faison Representative Hall Representative Mackey

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II Committee
Thursday, June 11, 2009, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 312	Increase Spousal Year's Allowance/Conform Lng.	Representative McLawhorn Representative Hurley Representative Randleman Representative Spear
HB 615	Business Trusts.	Representative Martin
HB 794	Substitution of Trustees.	Representative Martin Representative Hall
HB 799	Unequal Shares/ Joint Tenancy Survivorship.	Representative Rhyne, Jr.
HB 1368	Amend Future Advances Statutes.	Representative Blue Representative Love, Sr. Representative Stam
HB 1390	Wills/Bequests to Drafting Attorney.	Representative Moore Representative Mobley Representative Faison Representative Hall Representative Mackey

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE
Thursday, June 11, 2009 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 10:00 AM on June 11, 2009, in Room 1124 of the Legislative Building with fifteen members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell introduced pages Lacy McAlister, Katie Davidson, Austin White, Caroline Bodager, McCaul Nelson, Katherine Boliek, Susie Benson, Aaron Pellot, Bobby Davis and J D. Galyon III, and thanked them for their assistance.

HB 312 – (Increase Spousal Year's Allowance/Conform Lng.) Representative Hurley explained the bill. Senator Dannelly moved for a favorable report. All voted and the motion carried.

HB 615 – (Business Trusts.) Representative Martin explained the bill. Questions from Senators Bingham, Dorsett and Jones were answered by Ms. Katherine Wilkerson, Attorney with Lynch & Eatman, Mr. Jeff Hudson, Staff Attorney, and Representative Martin. Senator Jacumin moved for a favorable report. All voted and the motion carried.

HB 794 – (Substitution of Trustees) Representative Martin explained the bill. Senator East moved for a favorable report. All voted and the motion carried.

HB 799 – (Unequal Shares/Joint Tenancy Survivorship) Senator Jones moved to adopt the Proposed Committee Substitute for purposes of discussion. Representative Rhyne explained the bill. Ms. Katherine Wilkerson, Attorney, answered Senator Goodall's question. Senator Vaughan moved for a favorable report of the Proposed Committee Substitute, unfavorable to the original bill. All voted and the motion carried.

HB 1368 – (Amend Future Advances Statutes.) Mr. Jim Creekman of First Citizens Bank explained the bill and answered questions from Senators Boseman and Bingham. Senator Bingham moved for a favorable report. All voted and the motion carried.

HB 1390 – (Wills/Bequests to Drafting Attorney.) Representative Mackey explained the bill. Questions from Senators Bingham, Jones, Allran, Swindell and Berger were answered by Representative Mackey, and Ms. Kim Crouch of the North Carolina Bar Association. Senator Dannelly moved for a favorable report. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Thursday, June 11, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS #1) **312**	Increase Spousal Year's Allowance/Conform Lng.	
	Sequential Referral:	None
	Recommended Referral:	None
H.B.(CS #2) **615**	Business Trusts.	
	Sequential Referral:	None
	Recommended Referral:	None
H.B.(CS #1) **794**	Substitution of Trustees.	
	Sequential Referral:	None
	Recommended Referral:	None
H.B.(CS #1) **1368**	Amend Future Advances Statutes.	
	Sequential Referral:	None
	Recommended Referral:	None
H.B.(CS #1) **1390**	Wills/Bequests to Drafting Attorney.	
	Sequential Referral:	None
	Recommended Referral:	None

TOTAL REPORTED: 5

Committee Clerk Comments:

HB 312 – Sen. Tillman
HB 615 – Sen. Hartsell
HB 794 – Sen. Hartsell
HB 1368 – Sen. Hartsell
HB 1390 – Sen. D. Berger

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Monday, June 15, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **799** Unequal Shares/ Joint Tenancy Survivorship.

Draft Number:	50734
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

Senator Hartsell will handle this bill.

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 6-11-09

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
ANTHONY RUDD	NCACC
DAVE THOMAS	Campaign for Liberty - Lenoir NC
Elizabeth Thomas	Campaign For Liberty Lenoir NC
Mary Auston	Campaign For Liberty Lenoir NC
Josh Austin	Campaign for Liberty Caldwell Co, Lenoir NC
Kristina Love	Campaign for Liberty, Young Republicans Mecklenburg Co. NC
Adam Love	campaign for Liberty, Young Republicans Mecklenburg County
Christen Murphy	Campaign for Liberty Caldwell County, NC
Deborah Murphy	Campaign for liberty Caldwell County
Gloria Lloyd	Campaign for Liberty Orange County, NC
Donna Shaver	[redacted] Union County Young Republicans

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II 6-11-09

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dennis Peterson	Campaign for Liberty Mecklenburg
Anthony Burman	Union County Concerned citizen
David Williams	Campaign for Liberty Wake County
Edward Jacobs	Chairman Precinct 17-04
Kim Breed	NCBA
Daniel Baum	K&L Gates
Christy Agner	DOA
Tim Walton	DOA
Heather Barrett	Hunton & Williams
Lauren Maley	NC Credit Union League
Debra DeCamillis	UNC. IOG

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
J Powell	AOC
Alex Marc Fridges	FCC
Paul Stoll	NCBA
J E Cleckman	FCC
Katherine Walker	NCBA
Curtis Gilyard Lancey	Staff

HOUSE BILL 312
Committee Substitute Favorable 4/6/09

Short Title: Increase Spousal Year's Allowance/Conform Lng. (Public)

Sponsors:

Referred to:

February 26, 2009

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE AMOUNT OF THE YEAR'S ALLOWANCE FOR A SURVIVING SPOUSE AND TO MAKE CONFORMING CHANGES TO RELATED PROVISIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 30-15 reads as rewritten:

"**§ 30-15. When spouse entitled to allowance.**

Every surviving spouse of an intestate or of a testator, whether or not he or she has petitioned for an elective share, shall, unless ~~he~~ the surviving spouse has forfeited his or her right thereto, as provided by law, be entitled, out of the personal property of the deceased spouse, to an allowance of the value of ~~ten~~ twenty thousand dollars ~~($10,000)~~ ($20,000) for ~~his~~the surviving spouse's support for one year after the death of the deceased spouse. Such allowance shall be exempt from any lien, by judgment or execution, acquired against the property of the deceased spouse, and shall, in cases of testacy, be charged against the share of the surviving spouse."

SECTION 2. G.S. 30-26 reads as rewritten:

"**§ 30-26. When above allowance is in full.**

If the estate of a deceased be insolvent, or if his or her personal estate does not exceed ~~ten~~ twenty thousand dollars ~~($10,000),~~ ($20,000), the allowances for the year's support of the surviving spouse and the children shall not, in any case, exceed the value prescribed in G.S. 30-15 and G.S. 30-17; and the allowances made to them as above prescribed shall preclude them from any further allowances."

SECTION 3. G.S. 30-29 reads as rewritten:

"**§ 30-29. What complaint must show.**

In the complaint the plaintiff shall set forth, besides the facts entitling plaintiff to a year's support and the value of the support claimed, the further facts that the estate of the decedent is not insolvent, and that the personal estate of which he or she died possessed exceeded ~~ten~~ twenty thousand dollars ~~($10,000),~~ ($20,000), and also whether or not an allowance has been made to plaintiff and the nature and value thereof."

SECTION 4. This act becomes effective January 1, 2010, and applies to estates of individuals dying on or after that date.

HOUSE BILL 312:
Increase Spousal Year's Allowance/Conform Lng

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 11, 2009
Introduced by:	Reps. Hurley, Spear, Randleman, McLawhorn	**Prepared by:**	Jennifer McGinnis
Analysis of:	Second Edition		Committee Counsel

SUMMARY: HB 312 would increase the year's allowance for a surviving spouse from $10,000 to $20,000 and make conforming changes to other statutes.

CURRENT LAW: All states have some statutory provision for the support and maintenance of a decedent's spouse and minor children during the administration of the estate. North Carolina calls these payments for support and maintenance the "year's allowance." The payments are made from the decedent's personal property and are superior to claims of creditors.

G.S. 30-15 provides for a $10,000 allowance for a one-year period for every surviving spouse from the personal property of a deceased spouse, unless otherwise forfeited by law. If the decedent dies intestate, the allowance is in addition to the spouse's intestate share. If the decedent left a will, the allowance is charged against the share of the spouse given under the will.

G.S. 30-26 provides that if a deceased spouse is insolvent or the personal estate does not exceed $10,000, the year's allowance to the surviving spouse and children shall not exceed the statutory limits, and further allowances shall not be made.

G.S. 30-29 provides that, for a surviving spouse who applies to superior court for support, the complaint must set forth the following: facts entitling plaintiff to a year's support, the value of the support claimed, that the deceased's estate was not insolvent, that the personal estate exceeded $10,000 and whether or not an allowance has been made to the plaintiff and the nature and value thereof.

BILL ANALYSIS: HB 312 would increase the allowance for the surviving spouse from the personal property of a deceased spouse from $10,000 to $20,000, and would make conforming changes in other statutes which reference the amount of the spousal share.

EFFECTIVE DATE: HB 312 would become effective January 1, 2010 and apply to estates of individuals dying or after that date.

BACKGROUND: The current spousal share limit of $10,000 was established in 1995 in S.L. 1995-262.

Kara McCraw, counsel to House Judiciary II, and Trina Griffin, counsel to House Finance, substantially contributed to this summary.

H312-SMRI-62(e2) v1

HOUSE BILL 615
Committee Substitute Favorable 5/5/09
Committee Substitute #2 Favorable 5/11/09

Short Title: Business Trusts. (Public)

Sponsors:

Referred to:

March 17, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING BUSINESS TRUSTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 39-44 reads as rewritten:

"**§ 39-44. Definition.**

The term "business trust" whenever used or referred to in this Article shall mean any unincorporated association, including ~~but not limited to~~an Illinois land trust, a Delaware statutory trust, or a Massachusetts business trust, engaged in any business or trade under a written instrument or declaration of trust under which the beneficial interest therein is divided into shares represented by certificates or shares of beneficial interest."

SECTION 2. G.S. 39-46 reads as rewritten:

"**§ 39-46. Title vested; conveyance; probate.**

(a) Where real estate has been or may be hereafter conveyed to a business trust in its trust name or in the names of its trustees in their capacity as trustees of such business trust, the said title shall vest in said business trust, and the said real estate and interests therein may be conveyed, encumbered or otherwise disposed of by said business trust in its trust name by an instrument signed by at least one of its trustees, its president, a vice-president or other duly authorized officer, ~~and attested or countersigned by its secretary, assistant secretary or such other officer as is the custodian of its common seal, not acting in dual capacity, with its official seal affixed,~~ the said conveyance to be proven and probated in the same manner as provided by law for conveyances by corporations. Any conveyance, encumbrance or other disposition thus made by any such business trust shall convey good and sufficient title to said real estate and interests therein in accordance with the provisions of said conveyance; provided, however, that with respect to any such conveyance, encumbrance or other disposition effected after June 28, 1977, there must be recorded in the county where the land lies a memorandum of the written instrument or declaration of trust referred to in G.S. 39-44. As a minimum such memorandum shall set forth the name, date and place of filing, if any, of such written instrument or declaration of trust, and the place where the written instrument or declaration of trust, and all amendments thereto, is kept and may be examined upon reasonable notice, which place need not be a public office. Such memorandum may include designation of trustees and duly authorized officers and the authority granted to them with regard to real estate matters, pursuant to subsection (b) of this section.

(b) Any business trust may convey or encumber an interest in real property that is transferable by either (i) an instrument duly executed by either an officer of the business trust other than one of its trustees, its president, a vice president, or other authorized agent identified in the recorded memorandum, or (ii) a declaration of trust described in subsection (a) of this

section, if the conveyance has attached to it a signed resolution adopted by the board of trustees, as certified by an officer authorized to make such certifications of the business trust, authorizing the officer to execute, sign, seal, and deliver deeds, conveyances, or other instruments. This section is deemed to have been complied with if a resolution required by this subsection is recorded separately in the office of the register of deeds in the county where the land lies. Such a resolution shall be applicable to all instruments executed subsequently to the recording of the resolution and pursuant to its authority.

Notwithstanding the foregoing, this section does not require a signed resolution adopted by the board of directors, as certified by an officer authorized to make such certifications, to be attached to an instrument or separately recorded in the case of an instrument duly executed by one of its trustees, its president, or a vice president of the business trust. All deeds, conveyances, or other instruments so executed shall, if otherwise sufficient, be valid and shall have the effect to pass the title to the real or personal property described in the instrument. Notwithstanding anything to the contrary in the trust agreement, and absent any provision otherwise in the recorded memorandum or declaration of trust required under subsection (a) of this section, when it appears on the face of an instrument registered in the office of the register of deeds that the instrument was signed in the ordinary course of business on behalf of a business trust by at least one of its trustees, its president, a vice president, or an assistant vice president, such an instrument shall be as valid with respect to the rights of innocent third parties for value without notice of a defect or breach of fiduciary duty as if executed pursuant to authorization from the board of trustees, unless the instrument reveals on its face a breach of fiduciary obligation. The provisions of this subsection shall not apply to parties who had actual knowledge of lack of authority or of a breach of fiduciary obligation.

(c) Nothing in this section shall be deemed to exclude the power of any representatives of a business trust to bind the business trust pursuant to express, implied, inherent, or apparent authority, ratification, estoppel, or otherwise.

(d) Nothing in this section shall relieve trustees or officers of a business trust from liability to the business trust or from any other liability that they may have incurred from any violation of their actual authority."

SECTION 3. This act becomes effective October 1, 2009, and applies to all instruments recorded on or after that date.

HOUSE BILL 615: Business Trusts

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 11, 2009
Introduced by:	Representative Martin	**Prepared by:**	Jeff Hudson
Analysis of:	Third Edition		Committee Counsel

SUMMARY: ***House Bill 615 would specifically identify Illinois land trusts and Delaware statutory trusts in the definition of "business trusts". It would also amend the law governing the conveyance of an interest in real property by a business trust.***

CURRENT LAW: Business trusts are governed by Article 8 of Chapter 39 of the General Statutes. A business trust is an unincorporated business organization that operates under a declaration of trust or other written instrument. Generally, under a business trust arrangement, property is conveyed to trustees who hold title to and manage the property for the beneficiaries. The beneficial interest is usually represented by transferable shares.[1] A classic example of a business trust is a real estate investment trust (REIT). A Massachusetts business trust is one common form of business trust and is already specifically recognized in the statutory definition of "business trust".

According to Black's, an Illinois land trust is "a land ownership arrangement by which a trustee holds both legal and equitable title to land while the beneficiary retains the power to direct the trustee, manage the property, and draw income from the trust."

A Delaware statutory trust is a business trust created pursuant to Delaware statutes, 12 Del. C. §3801, et seq.

G.S. 39-46 governs the conveyance of real property by a business trust. An interest in real property may be conveyed, encumbered, or otherwise disposed of in the business trust's name by an instrument signed by at least one of the trustees, its president or vice president, or other authorized officer and attested or countersigned by another officer and sealed. Dispositions made in this matter pass good and sufficient title to the property if a memorandum of the declaration of trust is recorded in the county in which the land is located.

BILL ANALYSIS:

Section 1 would amend the definition of "business trust" to specifically identify Indiana land trusts and Delaware statutory trusts as "business trusts".

Section 2 would amend G.S. 39-46 in several respects:

- It would delete the requirement that an instrument conveying real property held by the business trust be attested or countersigned and sealed. The intent is to update the requirements for conveyance in accordance with the requirements for corporations.
- The memorandum of the declaration of trust required to be filed in the county in which the land is located could contain a designation of trustees and authorized officers and their authority in real property matters.

[1] See, 12A, CJS Business Trusts, p.392-394 (2004). CJS also notes "Business Trusts are distinguished from ordinary trusts by the fact that they are organized to make a profit, rather than to preserve property or facilitate its transfer."

- A new subdivision (b) would be created to provide that:
  - The conveyance of an interest in real property by an officer of the business trust, other than those identified in subdivision (a), would be authorized if the conveyance has attached a resolution of the Board of Trustees authorizing the officer to execute, sign, seal, and deliver deeds, conveyances, or other instruments.
  - One would also be able to comply with this section by recording the resolution separately at the register of deeds office in the county where the land is located.
  - A signed resolution would not be required in the case of an instrument signed by a trustee, president, vice president, or assistant vice president.
  - As long as there is nothing contrary in the trust agreement or provision in the memorandum or declaration of trust providing otherwise, if the instrument registered at the register of deeds office appears on its face to have been signed in the ordinary course of business by a trustee, president, vice president, or assistant vice president on behalf of the business trust, the instrument would be valid with respect to the rights of innocent third parties for value.
- New subsection (c) would provide that the Section does not exclude the power of a representative of the business trust to bind the trust pursuant to express or implied authority or other means.
- New subsection (d) would provide that the Section does not relieve a trustee or other officer of a business trust from liability incurred through a violation of their actual authority.

EFFECTIVE DATE: The act would become effective October 1, 2009 and apply to instruments recorded on or after that date.

Barbara Riley and Brad Krehely, Staff Attorneys, substantially contributed to the drafting of this summary.

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

HOUSE BILL 794
Committee Substitute Favorable 4/15/09

Short Title: Substitution of Trustees. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING SUBSTITUTION OF TRUSTEES IN MORTGAGES AND DEEDS OF TRUST.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 45-10 reads as rewritten:

"**§ 45-10. Substitution of trustees in mortgages and deeds of trust.**

(a) In addition to the rights and remedies now provided by law, the holders or owners of a majority in amount of the indebtedness, notes, bonds, or other instruments evidencing a promise or promises to pay money and secured by mortgages, deeds of trust, or other instruments conveying real property, or creating a lien thereon, may, in their discretion, substitute a trustee whether the trustee then named in the instrument is the original or a substituted trustee, by the execution of a written document properly recorded pursuant to Chapter 47 of the North Carolina General Statutes.

(b) If the name of a trustee is omitted from an instrument that appears on its face to be intended to be a deed of trust, the instrument shall be deemed to be a deed of trust, the owner or owners executing the deed of trust and granting an interest in the real property shall be deemed to be the constructive trustee or trustees of record for the secured party or parties named in the instrument, and a substitution of trustee may be undertaken under subsection (a) of this section. However, no such constructive trustee shall have the authority or power to take any of the following actions without the consent and joinder of the holders or owners of a majority in amount of the obligations secured by the deed of trust: (i) effect a substitution of trustee, (ii) effect the satisfaction of the deed of trust, (iii) release any property or any interest therein from the lien of the deed of trust, or (iv) modify or amend the terms of the deed of trust. Any substitute trustee named under the authority of subsection (a) of this section shall succeed to all the rights, titles, authority, and duties of the trustee under the terms of the deed of trust without regard to the limitations imposed by this subsection on the authority of a constructive trustee."

SECTION 2. This act is effective when it becomes law and applies to all instruments recorded before, on, or after that date.

HOUSE BILL 794:
Substitution of Trustees

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 11, 2009
Introduced by:	Representatives Martin, Hall	**Prepared by:**	Jeff Hudson
Analysis of:	Second Edition		Committee Counsel

SUMMARY: House Bill 794 would amend the law governing substitution of trustees in mortgages and deeds of trust.

CURRENT LAW: A deed of trust is a three party arrangement which includes the lender, the borrower, and the trustee. The lender loans money to the borrower. In exchange, the borrower places legal title to real property in the hands of a third party trustee to hold for the benefit of the lender until the borrower repays the loan. When the loan is repaid, the trustee cancels the deed of trust, and the borrower (who at all times has equitable title and can possess the land) obtains legal title.

Current law permits the substitution of trustees in mortgages and deeds of trust. The trustee who is then named in the instrument may be the original trustee or a substituted trustee. This substitution occurs by executing a written document and having it properly recorded. The holders or owners of a majority of the indebtedness secured by mortgages, deeds of trust, or other instruments conveying real property have discretion to substitute a trustee. The substitution of a trustee may be made as often as is justifiable.

BILL ANALYSIS: House Bill 794 deals with situations in which the name of a trustee is omitted from an instrument that appears on its face to be intended to be a deed of trust. In such cases the bill would provide that

- The instrument will be deemed to be a deed of trust.
- The owner/owners executing the deed of trust and granting an interest in the real property will be deemed to be the constructive trustee/trustees for the secured party or parties (e.g. the lender) named in the instrument.
- A substitution of trustee may be undertaken.

To prevent fraudulent transfers, the bill would provide that a *constructive trustee* cannot take any of the following actions without the consent of those who own a majority amount of the obligations:

- Effect a substitution of trustee or the satisfaction of the deed of trust.
- Release any property or interest in the property from the lien of the deed of trust.
- Modify or amend the terms of the deed of trust.

The bill would also clarify that a *substitute trustee* succeeds the rights of the trustee and does not have the same limitations that a *constructive trustee* has.

EFFECTIVE DATE: The act would become effective when it becomes law and apply to all instruments recorded before, on, or after that date.

Brad Krehely and Barbara Riley, Staff Attorneys, substantially contributed to this summary.

HOUSE BILL 799
Committee Substitute Favorable 4/28/09

Short Title: Unequal Shares/Joint Tenancy Survivorship. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT INTERESTS IN A JOINT TENANCY WITH A RIGHT OF SURVIVORSHIP MAY BE HELD IN UNEQUAL SHARES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 41-2 reads as rewritten:

"**§ 41-2. Survivorship in joint tenancy defined; proviso as to partnership.**

Except as otherwise provided herein, in all estates, real or personal, held in joint tenancy, the part or share of any tenant dying shall not descend or go to the surviving tenant, but shall descend or be vested in the heirs, executors, or administrators, respectively, of the tenant so dying, in the same manner as estates held by tenancy in common: Provided, that estates held in joint tenancy for the purpose of carrying on and promoting trade and commerce, or any useful work or manufacture, established and pursued with a view of profit to the parties therein concerned, are vested in the surviving partner, in order to enable him to settle and adjust the partnership business, or pay off the debts which may have been contracted in pursuit of the joint business; but as soon as the same is effected, the survivor shall account with, and pay, and deliver to the heirs, executors and administrators respectively of such deceased partner all such part, share, and sums of money as he may be entitled to by virtue of the original agreement, if any, or according to his share or part in the joint concern, in the same manner as partnership stock is usually settled between joint merchants and the representatives of their deceased partners. Nothing in this section prevents the creation of a joint tenancy with right of survivorship in real or personal property if the instrument creating the joint tenancy expressly provides for a right of survivorship, and no other document shall be necessary to establish said right of survivorship. Upon conveyance to a third party by less than all of three or more joint tenants holding property in joint tenancy with right of survivorship, a tenancy in common is created among the third party and the remaining joint tenants, who remain joint tenants with right of survivorship as between themselves. Upon conveyance to a third party by one of two joint tenants holding property in joint tenancy with right of survivorship, a tenancy in common is created between the third party and the remaining joint tenant. A conveyance of any interest in real property by a party to ~~himself and~~ one or more other parties, whether or not jointly with the grantor-party, as joint tenants with right of survivorship, creates in the parties that interest, if the instrument of conveyance expressly provides for a joint tenancy with right of survivorship. The interests of the grantees shall be deemed to be equal unless otherwise specified in the conveyance. Any joint tenancy interest held by a husband and wife, unless otherwise specified, shall be deemed to be held as a single tenancy by the entirety, which shall be treated as a single party when determining interests in the joint tenancy with right of survivorship. If joint tenancy interests among three or more joint tenants holding property in joint tenancy with right of survivorship are held in unequal shares, upon the death of one joint



tenant, the share of the deceased joint tenant shall be divided among the surviving joint tenants according to their respective pro rata interest and not equally, unless the creating instrument provides otherwise."

SECTION 2. This act is effective when it becomes law and shall apply to any conveyance of an interest in property created prior to the effective date that explicitly sought to create unequal ownership interests in a joint tenancy with right of survivorship; however, distributions made prior to the effective date of this act that were made in equal amounts from a joint tenancy with the right of survivorship that sought to create unequal ownership shares shall remain valid and shall not be subject to modification on the basis of this act.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 799
Committee Substitute Favorable 4/28/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H799-CSRC-36 [v.2]

6/10/2009 5:54:21 PM

Short Title: Unequal Shares/Joint Tenancy Survivorship. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT INTERESTS IN A JOINT TENANCY WITH A RIGHT OF SURVIVORSHIP MAY BE HELD IN UNEQUAL SHARES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 41-2 reads as rewritten:

"**§ 41-2. Survivorship in joint tenancy defined; proviso as to partnership.**

(a) Except as otherwise provided herein, in all estates, real or personal, held in joint tenancy, the part or share of any tenant dying shall not descend or go to the surviving tenant, but shall descend or be vested in the heirs, executors, or administrators, respectively, of the tenant so dying, in the same manner as estates held by tenancy in common: Provided, that estates held in joint tenancy for the purpose of carrying on and promoting trade and commerce, or any useful work or manufacture, established and pursued with a view of profit to the parties therein concerned, are vested in the surviving partner, in order to enable ~~him~~ the surviving partner to settle and adjust the partnership business, or pay off the debts which may have been contracted in pursuit of the joint business; but as soon as the same is effected, the survivor shall account with, and pay, and deliver to the heirs, executors and administrators respectively of such deceased partner all such part, share, and sums of money as ~~he~~ the deceased partner may be entitled to by virtue of the original agreement, if any, or according to ~~his~~ the deceased partner's share or part in the joint concern, in the same manner as partnership stock is usually settled between joint merchants and the representatives of their deceased partners. Nothing in this section prevents the creation of a joint tenancy with right of survivorship in real or personal property if the instrument creating the joint tenancy expressly provides for a right of survivorship, and no other document shall be necessary to establish said right of survivorship. Upon conveyance to a third party by less than all of three or more joint tenants holding property in joint tenancy with right of survivorship, a tenancy in common is created among the third party and the remaining joint tenants, who remain joint tenants with right of survivorship as between themselves. Upon conveyance to a third party by one of two joint tenants holding property in joint tenancy with right of survivorship, a tenancy in common is created between the third party and the remaining joint tenant. A conveyance of any interest in real property by a party to ~~himself and~~ one or more other parties, whether or not jointly with the grantor-party, as joint tenants with right of survivorship, creates in the parties that interest, if the instrument of conveyance expressly provides for a joint tenancy with right of survivorship.

(b) The interests of the grantees holding property in joint tenancy with right of survivorship shall be deemed to be equal unless otherwise specified in the conveyance. Any joint tenancy interest held by a husband and wife, unless otherwise specified, shall be deemed to be held as a single tenancy by the entirety, which shall be treated as a single party when determining interests in the joint tenancy with right of survivorship. If joint tenancy interests among three or more joint tenants holding property in joint tenancy with right of survivorship are held in unequal shares, upon the death of one joint tenant, the share of the deceased joint tenant shall be divided among the surviving joint tenants according to their respective pro rata interest and not equally, unless the creating instrument provides otherwise.

This subsection shall apply to any conveyance of an interest in property created at any time that explicitly sought to create unequal ownership interests in a joint tenancy with right of survivorship. Distributions made prior to the enactment of this subsection that were made in equal amounts from a joint tenancy with the right of survivorship that sought to create unequal ownership shares shall remain valid and shall not be subject to modification on the basis of this act"

SECTION 2. This act is effective when it becomes.

HOUSE BILL 799:
Unequal Shares/Joint Tenancy Survivorship

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 10, 2009
Introduced by:	Rep. Rhyne	**Prepared by:**	Kory Goldsmith
Analysis of:	PCS to Second Edition H799-CSRC-36		Committee Counsel

SUMMARY: ***HB 799 would provide that interest in a joint tenancy with right of survivorship (JTROS) may be held in unequal shares if specifically provided for in the conveyance.***

The PCS for HB 799 codifies provisions that had been in the effective date section to clarify how the new language applies to distributions prior to the effective date of the act.

CURRENT LAW: G.S. 41-2 provides for estates held in joint tenancy as follows:

- **No automatic JTROS:** Except as otherwise provide in the statute, for all estates held in joint tenancy, the part of the estate held by a deceased tenant shall not go to the surviving tenant, but shall instead descend or vest in the heirs of the deceased tenant.
  - **Partnership Exception:** Estates held in joint tenancy for trade or commerce are vested in the surviving partner to enable settlement and adjustment of partnership business and to pay off debts. Once this has been effected, the surviving partner must account to the deceased's estate anything entitled by the original agreement, or share of the joint concern.

  Express creation of JTROS permitted: A instrument created a joint tenancy may expressly provide for a right of survivorship, permitting the interest in the joint tenancy to go to the joint tenant, rather than the deceased's estate.
- **Conveyance:** In a conveyance to a third party by less than all of three or more joint tenants holding property in JTROS, the remaining joint tenants remains JTROS, and a tenancy in common is created with the third party. In a conveyance to a third party by one of two joint tenants holding property in JTROS, a tenancy in common is created between the third party and remaining tenant. A person's conveyance of an interest in real property to that person and one or more parties as JTROS creates that interest if expressly provided in the instrument of conveyance.

BILL ANALYSIS: HB 799 would modify G.S. 41-2 as follows:

- Provide that a conveyance of a interest by a party to one or more parties as JTROS would create that interest if expressly provided in the instrument of conveyance, whether or not the conveyance was jointly with the grantor-party.
- Provide that the interest of the grantees in such a conveyance be deemed equal unless otherwise specified in the conveyance.
- Provide that joint tenancy interest held by a husband and wife would be deemed a single tenancy by the entirely, and treated as a single party when determining interest in the JTROS, unless otherwise specified.
- Provide that if joint tenancy interests among three or more JTROS were held in unequal shares, upon the death of one joint tenant, the share of the deceased tenant would be divided among the surviving joint tenants according to their respective pro rata interest and not equally, unless otherwise provided in the creating instrument.
- Retroactively recognize past conveyances of unequal ownership interests in a JTROS prior to the effective date of the act, but would require that past distributions in equal amounts from a JTROS that sought to create unequal ownership shares remain valid and not be disturbed.

EFFECTIVE DATE: HB 799 would become effective when it becomes law.

Kara McCraw, counsel to House Judiciary II,, substantially contributed to this summary.

H799-SMRC-49(CSRC-36) v1

HOUSE BILL 1368
Committee Substitute Favorable 5/5/09

Short Title: Amend Future Advances Statutes. (Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE FUTURE ADVANCES STATUTES BY DISTINGUISHING BETWEEN A FUTURE ADVANCE AND A FUTURE OBLIGATION AND BY MAKING VARIOUS OTHER CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 45-67 reads as rewritten:

"**§ 45-67. ~~Definition.~~ Definitions.**

~~As used in this Article,~~ The following definitions apply in this Article:

(1) Advance. – A disbursement of funds or other action that increases the outstanding principal balance owing on an obligation for the payment of money.

(2) ~~"security instrument" means a~~ Security instrument. – A mortgage, deed of trust, or other instrument relating to real property securing an obligation or obligations to a person, firm, or corporation specifically named in such instrument for the payment of money."

SECTION 2. G.S. 45-68 reads as rewritten:

"**§ 45-68. Requirements.**

A security instrument, otherwise valid, shall secure ~~future obligations which may from time to time be incurred thereunder~~ the following so as to give priority ~~thereto~~ as provided in ~~G.S. 45-70, if:~~ G.S. 45-70:

(1a) Existing obligations identified in the security instrument and all advances made at or prior to the registration of the security instrument.

~~(1)~~(1b) ~~Such security instrument shows:~~ Future advances and future obligations that may from time to time be made or incurred under the security instrument, but only if the security instrument shows all of the following:

a. That ~~it~~ the security instrument is given wholly or partly to secure future advances and/or future obligations ~~which~~ that may be made or incurred ~~thereunder;~~ under the security instrument.

b. The ~~amount of present obligations secured, and the~~ maximum principal ~~amount, including present and future obligations, which~~ amount that may be secured ~~thereby~~ by the security instrument at any one ~~time;~~ time.

c. The period within which ~~such~~ future advances may be made and future obligations may be ~~incurred, which period~~ incurred, which period shall not extend more than ~~15~~ 30 years beyond the date of the security ~~instrument; and~~ instrument or, if the security agreement is not dated, the date the security instrument is registered.

~~(2) At the time of incurring any such future obligations, each obligation is evidenced by a written instrument or notation, signed by the obligor and stipulating that such obligation is secured by such security instrument; provided, however, that this subsection shall apply only if the obligor and obligee have contracted in writing that each future obligation shall be evidenced by a written instrument or notation; and~~

~~(3) At any time a security instrument securing future advances is transferred or assigned by the owner thereof that the amount, date and due date of each note, bond, or other undertaking for the payment of money representing a future obligation secured by such security instrument be noted in writing thereon.~~"

SECTION 3. G.S. 45-69 reads as rewritten:

"**§ 45-69. Fluctuation of obligations within maximum amount.**

Unless the security instrument provides to the contrary, if the maximum amount secured by the security instrument has not been advanced or if any obligation secured thereby is paid or is reduced by partial payment, further advances may be made and additional ~~obligation~~ obligations secured by the security instrument may be incurred from time to time within the time limit fixed by the security ~~instrument, provided the unpaid balance of principal outstanding shall never exceed the maximum amount authorized pursuant to G.S. 45-68(1)b.~~ instrument. Such further advances and obligations shall be secured to the same extent as original advances and obligations ~~thereunder,~~ under the security instrument, if the provisions of ~~G.S. 45-68(2) and (3)~~ G.S. 45-68 are complied with. However, if at any time the aggregate outstanding principal balance of the obligation or obligations secured by the security instrument exceeds the maximum principal amount that may be secured by the security instrument at any one time, then the excess shall not be secured by the security instrument."

SECTION 4. G.S. 45-70 reads as rewritten:

"**§ 45-70. Priority of security instrument.**

(a) Any security instrument ~~which~~ that conforms to the requirements of this Article shall, from the time and date of registration thereof, have the same priority to the extent of all future advances and future obligations secured by it, as if all the advances had been made and all the obligations incurred at the time ~~of the execution of the instrument.~~ the security instrument was registered.

(b) Repealed by Session Laws 1989, c. 496, s. 3.

(c) Payments made by the secured creditor for fire and extended coverage insurance, taxes, assessments, or other necessary expenditures for the preservation of the security shall be secured by the security instrument and shall have the same priority as if such payments had been made at the time ~~of the execution of the instrument.~~ the security instrument was registered. The provisions of ~~G.S. 45-68(2) and (3)~~ G.S. 45-68 shall not be applicable to such payments, nor shall such payments or accrued interest be considered in computing the maximum principal amount which may be secured by the instrument.

(d) Notwithstanding any other provision of this Article, any security instrument hereafter executed which secures an obligation or obligations of an electric or telephone membership corporation incorporated or domesticated in North Carolina to the United States of America or any of its agencies, or to any other financing institution, or of an electric or gas utility operating in North Carolina, shall from the time and date of registration of said security instrument have the same priority to the extent of all future advances secured by it as if all the advances had been made at the time of the execution of the instrument, regardless of whether the making of such advances is obligatory or whether the security instrument meets the requirements of G.S. 45-68."

SECTION 5. This act applies to all security instruments, whether registered before, after, or on the effective date of this act. Any security instrument registered before the effective

date of this act shall be conclusively presumed to comply with the provisions of G.S. 45-68, as enacted by this act, if the security instrument either (i) complies with the provisions of G.S. 45-68, as enacted by this act, or (ii) complied with the provisions of G.S. 45-68 in effect prior to the effective date of this act.

SECTION 6. This act becomes effective October 1, 2009.

HOUSE BILL 1368:
Amend Future Advances Statutes

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 10, 2009
Introduced by:	Reps. Love, Stam, Moore, Blue	**Prepared by:**	Brenda J. Carter
Analysis of:	Second Edition		Committee Counsel

SUMMARY: House Bill 1368 would amend the future advances statutes by distinguishing between a future advance and a future obligation and by making various other changes.

CURRENT LAW: Chapter 45 of the General Statutes deals with mortgages and deeds of trust. Article 7 addresses instruments to secure future advances and future obligations. A security instrument is "a mortgage, deed of trust, or other instrument relating to real property securing an obligation or obligations to a person, firm, or corporation specifically named in such instrument for the payment of money." The current law has provisions including definitions, requirements of the security instrument, and priority of security instruments.

BILL ANALYSIS:

Section 1 would define "advance" as "a disbursement of funds or other action that increases the outstanding principal balance owing on an obligation for the payment of money." This would help draw a distinction between an "obligation" (e.g. a note) and an "advance" (e.g. loan proceeds actually disbursed under a note).

Section 2 would rewrite the statute which sets out the requirements for priority of a security instrument. The bill provides that to give priority, a security instrument shall secure:

- existing obligations and advances made at or prior to registration of the security instrument
- future advances and future obligations that may from time to time be made or incurred under the security instrument, provided the security instrument shows specified information including:
    - the maximum principal amount that may be secured at any one time
    - the period within which future advances may be made and future obligations may be incurred.

The bill extends the period within which future advances may be made and future obligations incurred under a security instrument to 30 years (currently 15 years) beyond the date of the security instrument. The bill provides that if the security instrument is not dated, the date the security instrument is registered would be used.

Section 3 would amend the statute which addresses the fluctuation of the amounts secured by a security instrument. The bill would make it clear that further advances and additional obligations may be made under a security instrument within the specified time period and would be secured to the same extent as original advances and obligations under the security instrument. However, if at any time the outstanding principal balance exceeds the maximum principal amount that may be secured by the security instrument at one time, the excess would not be secured by the security instrument.

Section 4 would provide that a security instrument has the same priority to the extent of future obligations and future advances secured by it, as if the advances and obligations had been made or incurred at the time the instrument was registered (not the date it was executed).

Section 5 would make the bill applicable to all security instruments, whether registered before, after, or on the effective date of the bill. It provides that any security instrument registered before the effective date of the bill would be presumed to comply with the provisions of G.S. 45-68, as enacted by the bill, if the security instrument either (i) complies with the provisions of G.S. 45-68, as enacted by the bill, or (ii) complied with the provisions of G.S. 45-68 in effect prior to the effective date of the bill.

EFFECTIVE DATE: This bill would become effective October 1, 2009.

BACKGROUND: Article 7 of Chapter 45 has posed problems for real estate practitioners, title insurance companies, and lenders. The statute currently refers to "future advances" and "future obligations" without defining the terms or distinguishing between them. House Bill 1368 attempts to clarify some of the confusion in Article 7. Article 1, Section 10 of the United States Constitution prohibits states from enacting laws that impair existing contracts. However, it does not appear to prevent laws which would effectuate the intent of the parties.

Brad Krehely, Staff Attorney, contributed to this summary.

H1368-SMRV-97(e2) v2

HOUSE BILL 1390
Committee Substitute Favorable 5/7/09
Third Edition Engrossed 5/14/09

Short Title: Wills/Bequests to Drafting Attorney. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO RENDER VOID ANY BEQUEST OR DEVISE IN A WILL TO THE ATTORNEY WHO DRAFTED THE WILL UNLESS THE ATTORNEY IS A RELATIVE OF THE TESTATOR, AND TO REQUIRE ATTORNEYS WHO DRAFT A WILL OR CODICIL TO STATE THEIR NAME ON THE DOCUMENT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 31 of the General Statutes is amended by adding a new section to read:

"**§ 31-4.1. Attorneys as beneficiaries.**

An attorney who drafts an attested written will, or a codicil to an attested written will, may not be a beneficiary under that will or codicil, regardless of whether the attorney receives compensation for preparing the will or codicil, unless the attorney is a relative of the testator within five degrees of kinship, a present or former spouse of the testator, or a parent, sibling, or child of the testator's present or former spouse. Any bequest or devise to an attorney in violation of this section shall be void. A designation of the attorney in a fiduciary role is neither a bequest nor a devise within the meaning of this section.

An attorney who drafts an attested written will, or a codicil to an attested written will, under which the attorney is a beneficiary, shall attach to the will or codicil an affidavit certifying that the attorney is in compliance with the provisions of this section.

Nothing in this section prevents an attorney from being a beneficiary under a codicil to a will if the codicil was not drafted by that attorney."

SECTION 2. Chapter 31 of the General Statutes is amended by adding a new section to read:

"**§ 31-4.2. Attorney's name on will or codicil.**

An attorney who drafts an attested written will or a codicil to an attested written will must have his or her name and business address affixed to the instrument and indicate that he or she is the drafter."

SECTION 3. This act becomes effective January 1, 2010, and applies to wills and codicils executed on or after that date.

HOUSE BILL 1390:
Wills/Bequests to Drafting Attorney

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 10, 2009
Introduced by:	Reps. Mackey, Hall, Mobley, Faison	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	Third Edition		

SUMMARY: House Bill 1390 would provide that an attorney who drafts an attested written will, or a codicil to an attested written will, may not be a beneficiary under that will, regardless of whether the attorney receives compensation for preparing the will. The bill includes exceptions for attorneys who are relatives of the testator. An attorney who drafts a will or codicil would be required to include on the document the attorney's name and business address.

BILL ANALYSIS: **Section 1** would add a new section to Chapter 31 of the General Statutes, Wills. The bill would provide that an attorney who drafts an attested written will, or a codicil to an attested written will, may not be a beneficiary under that will, regardless of whether the attorney receives compensation for preparing the will. The bill includes an exception for attorneys who are relatives of the testator within five degrees of kinship, a present or former spouse of the testator, or a parent, sibling, or child of the testator's present or former spouse. An attorney who drafts a will or codicil in which the attorney is a beneficiary must attach an affidavit certifying that the attorney is in compliance with the law. The bill would void any bequest or devise to an attorney in violation of the law. The bill would not prevent an attorney from being a beneficiary under a codicil to a will if the codicil was not drafted by the attorney. **Section 2** an attorney who drafts an attested written will, or a codicil to an attested written will to place his or her name and business address on the instrument, as drafter.

EFFECTIVE DATE: House Bill 1390 would become effective January 1, 2010 and apply to wills and codicils executed on or after that date.

Additional Information:

§ 104A-1. Degrees of kinship; how computed.

In all cases where degrees of kinship are to be computed, the same shall be computed in accordance with the civil law rule, as follows:

(1) The degrees of lineal kinship of two persons is computed by counting one degree for each person in the line of ascent or descent, exclusive of the person from whom the computing begins; and

(2) The degree of collateral kinship of two persons is computed by commencing with one of the persons and ascending from him to a common ancestor, descending from that ancestor to the other person, and counting one degree for each person in the line of ascent and in the line of descent, exclusive of the person from whom the computation begins, the total to represent the degree of such kinship.

Steve Rose and Tim Hovis, Staff Attorneys, substantially contributed to this summary.

H1390-SMRV-98(e3) v2

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	June 16, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 578	Partition Sales/Commrs., Sellers, Buyers.	Representative Bryant Representative Michaux, Jr. Representative Allen Representative Harrison
HB 581	Partition Sales/Extend Report & Answer Times.	Representative Bryant Representative Michaux, Jr. Representative Stam Representative Spear
HB 1091	Clarify Action for Divorce/Incompetent Spouse.	Representative Rhyne, Jr.
HB 1112	Amend Birth Registration Requirements.	Representative Goodwin
HB 1377	Taxpayer Optimization Act.	Representative Folwell Representative Brown Representative McElraft Representative Moore

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II Committee
Tuesday, June 16, 2009, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 578	Partition Sales/Commrs., Sellers, Buyers.	Representative Bryant Representative Michaux, Jr. Representative Allen Representative Harrison
HB 581	Partition Sales/Extend Report & Answer Times.	Representative Bryant Representative Michaux, Jr. Representative Stam Representative Spear.
HB 1091	Clarify Action for Divorce/Incompetent Spouse.	Representative Rhyne, Jr.
HB 1112	Amend Birth Registration Requirements.	Representative Goodwin
HB 1377	Taxpayer Optimization Act.	Representative Folwell Representative Brown Representative McElraft Representative Moore

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE
Tuesday, June 16, 2009 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 10:00 AM on June 16, 2009, in Room 1124 of the Legislative Building with thirteen members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell recognized pages Leigh Cranford, Alison Walker, Curtis Hukins, Sophie Allen, Greg Hartman and Sara Lane and thanked them for their assistance.

Senator Hartsell noted that HB 578 and HB 581 would not be heard at today's meeting.

HB 1112 – (Amend Birth Registration Requirements.) Senator Apodaca moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Representative Goodwin explained the bill. Representative Goodwin and Mr. Jeff Hudson, Staff Attorney, answered questions from Senators Queen, Forrester, Jones and Vaughan. Senator Bingham moved for a favorable report of the Proposed Committee Substitute, unfavorable to the original bill. All voted and the motion carried.

HB 377 – (Taxpayer Optimization Act.) Senator Apodaca moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Representative Folwell explained the bill. Ms. Brenda Carter, Staff Attorney, gave additional explanation. Ms. Christy Agner and Mr. Tim Walton, representing the Department of Administration spoke in opposition to the bill. Mr. Speros Fleggas, Deputy Secretary of the Department of Administration, also spoke. After much discussion, Senator Hartsell named Senators Queen, Bingham and East, as a sub-committee to work with Representative Folwell on the bill. Senator Queen will chair the sub-committee.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Wednesday, June 17, 2009

Senator HARTSELL, 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) **1112** Amend Birth Registration Requirements.

Draft Number:	50738
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

Senator Hartsell will handle this bill.

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — June 16, 2009
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
James Wrenn	Sen. D Berger's office
Christy Agner	DOA
Tim Walton	DOA
Spiros Fleggos	DOA
Jessi Hays	NC HBA
Cody Thomas	NC Assn. of REALTORS
Amy Schilder	MWC
Brett Thompson	Wake CSC's office
Katherine Williams	Lyrch + Ecclesen / NCBA
Charles T. Steele, Jr.	Wishart, Norris Henninger & Pittman NCBA RDS
Lawrence Laughinghouse	NS

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — Name of Committee

JUNE 16, 2009 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Debra DeCamillis	UNC-IOG

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 3

HOUSE BILL 578
Committee Substitute Favorable 5/7/09
Committee Substitute #2 Favorable 5/12/09

Short Title: Partition Sales/Commrs., Sellers, Buyers. (Public)

Sponsors:

Referred to:

March 16, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE NOTICE OF RIGHT TO SEEK LEGAL COUNSEL AND CLARIFY NOTICE REQUIRED TO PARTIES WHO MAY BE UNKNOWN OR UNLOCATABLE IN A PARTITION PROCEEDING; TO CODIFY THE CURRENT PRACTICE OF GRANTING OWNERS CREDIT FOR THEIR EXISTING INTEREST IN LAND WHEN BIDDING ON A PARTITION SALE; TO PERMIT A COURT TO ORDER AN INDEPENDENT APPRAISAL IF REQUESTED AND PAID FOR BY A PARTY TO THE PARTITION WHO CHALLENGES THE AMOUNT BID IN A PARTITION SALE, AS RECOMMENDED BY THE PARTITION SALES STUDY COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 46 of the General Statutes is amended by adding a new section to read:

"**§ 46-2.1. Summons; notice.**

(a) In partition proceedings initiated under this Chapter, the period of time for answering a summons is provided in G.S. 1-394.

(b) Written notice shall be included in the petition in a manner reasonably calculated to make the respondent aware of the following:

(1) That the respondent has the right to seek the advice of an attorney and that free legal services may be available to the respondent by contacting Legal Aid of North Carolina or other legal services organizations.

(2) That pursuant to G.S. 6-21 the court has the authority, in its discretion, to order reasonable attorneys' fees to be paid as a part of the costs of the proceeding."

SECTION 2. G.S. 46-6 reads as rewritten:

"**§ 46-6. Unknown or unlocatable parties; ~~summons and~~ summons, notice, and representation.**

(a) If, upon the filing of a petition for partition, it be made to appear to the court by affidavit or otherwise that there are any persons interested in the premises whose names are unknown to and cannot after due diligence be ascertained by the petitioner, the court shall order notices to be given to all such persons by a publication of the petition, or of the substance thereof, with the order of the court thereon, in one or more newspapers to be designated in the order. The notice by publication shall include a description of the property which includes the street address, if any, or other common designation for the property, if any, and may include the legal description of the property.

(b) ~~If~~ Before or after such general notice by publication if any person interested in the premises and entitled to notice fails to appear, the court shall ~~in its discretion~~ appoint some

disinterested person to represent the owner of any shares in the property to be divided, the ownership of which is unknown or unlocatable and unrepresented."

SECTION 3. G.S. 46-28 reads as rewritten:

"**§ 46-28. Sale procedure.**

(a) The procedure for a partition sale shall be the same as is provided in Article 29A of Chapter 1 of the General ~~Statutes.~~ Statutes, except as provided herein.

(b) The commissioners shall certify to the court that at least 20 days prior to sale a copy of the notice of sale was sent by first class mail to the last known address of all petitioners and respondents who previously were served by personal delivery or by registered or certified mail. The commissioners shall also certify to the court that at least ten days prior to any resale pursuant to G.S. 46-28.1(e) a copy of the notice of resale was sent by first class mail to the last known address of all parties to the partition proceeding who have filed a written request with the court that they be given notice of any resale. An affidavit from the commissioners that copies of the notice of sale and resale were mailed to all parties entitled to notice in accordance with this section shall satisfy the certification requirement and shall also be deemed prima facie true. If after hearing it is proven that a party seeking to revoke the order of confirmation of a sale or subsequent resale was mailed notice as required by this section prior to the date of the sale or subsequent resale, then that party shall not prevail under the provisions of G.S. 46-28.1(a)(2)a. and b.

(c) Any cotenant who enters the high bid or offer at any sale of one hundred percent (100%) of the undivided interests in any parcel of real property shall receive a credit for the undivided interest the cotenant already owns therein and shall receive a corresponding reduction in the amount of the total purchase price owed after deducting the costs and fees associated with the sale and apportioning the costs and fees associated with the sale in accordance with the orders of the court. The high bid or offer shall be for one hundred percent (100%) of the undivided interests in the parcel of real property sold, and the credit and reduction shall be applied at the time of the closing of the cotenant's purchase of the real property. When jointly making the high bid or offer at the sale, two or more cotenants may receive at the closing an aggregate credit and reduction in the amount of the total purchase price representing the total of such cotenants' undivided interests in the real property. Any credits and reductions allowed by this subsection shall be further adjusted to reflect any court-ordered adjustments to the share(s) of the net sale proceeds of each of the cotenants entering the high bid or offer, including, but not limited to, equitable adjustments to the share(s) of the net sales proceeds due to a court finding of the lack of contribution of one or more cotenants to the payment of expenses of the real property."

SECTION 4. G.S. 46-28.1 reads as rewritten:

"**§ 46-28.1. Petition for revocation of confirmation order.**

(a) Notwithstanding G.S. 46-28 or any other provision of law, an order confirming the partition sale of real property shall not become final and effective until 15 days after entered. At any time before the confirmation order becomes final and effective, any party to the partition proceeding or the purchaser may petition the court to revoke its order of confirmation and to order the withdrawal of the purchaser's offer to purchase the property upon the following grounds:

(1) In the case of a purchaser, a lien remains unsatisfied on the property to be conveyed.

(2) In the case of any party to the partition proceeding:

a. Notice of the partition was not served on the petitioner for revocation as required by Rule 4 of the Rules of Civil Procedure; or

b. Notice of the sale was not mailed to the petitioner for revocation as required by G.S. 46-28(b); or

c. The amount bid or price offered is inadequate and inequitable and will result in irreparable damage to the owners of the real property.

In no event shall the confirmation order become final or effective during the pendency of a petition under this section. No upset bid shall be permitted after the entry of the confirmation order.

(b) The party petitioning for revocation shall deliver a copy of the petition to all parties required to be served under Rule 5 of G.S. 1A-1, and the officer or person designated to make such sale in the manner provided for service of process in Rule 4(j) of G.S. 1A-1. The court shall schedule a hearing on the petition within a reasonable time and shall cause a notice of the hearing to be served on the petitioner, the officer or person designated to make such a sale and all parties required to be served under Rule 5 of G.S. 1A-1.

(c) In the case of a petition brought under this section by a purchaser claiming the existence of an unsatisfied lien on the property to be conveyed, if the purchaser proves by a preponderance of the evidence that:

(1) A lien remains unsatisfied on the property to be conveyed; and
(2) The purchaser has not agreed in writing to assume the lien; and
(3) The lien will not be satisfied out of the proceeds of the sale; and
(4) The existence of the lien was not disclosed in the notice of sale of the property, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer.

The order of the court in revoking an order of confirmation under this section may not be introduced in any other proceeding to establish or deny the existence of a lien.

(d) In the case of a petition brought pursuant to this section by a party to the partition proceeding, if the court finds by a preponderance of the evidence that petitioner has proven a case pursuant to sub-subdivision (a)(2)a., b., or c. of ~~subsection (a)(2),~~ this section, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer.

(d1) In the case of a petition brought pursuant to sub-subdivision (a)(2)c. of this section, and when an independent appraisal of the property being sold has not been previously entered into evidence in the action, and upon the request of any party, the court may order an independent appraisal prepared by a real estate appraiser currently licensed by the North Carolina Appraisal Board and prepared in accordance with the Uniform Standards of Professional Appraisal Practice. The cost of an independent appraisal shall be borne by one or more of the parties requesting the appraisal in such proportions as they may agree. Before ruling on the petition brought pursuant to sub-subdivision (a)(2)c. of this section, the court may in its discretion require written evidence from the appraiser that the appraiser has been paid in full for the appraisal. If based on the appraisal and all of the evidence presented, the court finds the amount bid or price offered to be inadequate, inequitable, and resulting in irreparable damage to the owners, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's high bid or offer, and order the return to such purchaser of any money or security tendered by the purchaser pursuant to the high bid or offer.

(e) If the court revokes its order of confirmation under this section, the court shall order a resale. The procedure for a resale is the same as is provided for an original public sale under Article 29A of Chapter 1 of the General Statutes."

SECTION 5. This act becomes effective October 1, 2009, and applies to partition actions filed on or after that date.

HOUSE BILL 581

Short Title:	Partition Sales/Extend Report & Answer Times.	(Public)
Sponsors:	Representatives Bryant, Spear, Stam, Michaux (Primary Sponsors); Blue, Hall, Harrison, Jones, Lucas, Parmon, Pierce, Wainwright, and Womble.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary I.	

March 16, 2009

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE DEADLINE FOR THE COMMISSIONERS IN A PARTITION ACTION TO REPORT BACK TO THE COURT ON THEIR PROPOSED DIVISION OF THE LAND, AND TO EXTEND THE DEADLINE FOR RESPONDING TO A SUMMONS IN A PARTITION ACTION FROM TEN DAYS TO THIRTY DAYS, AS RECOMMENDED BY THE PARTITION SALES STUDY COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 46-17 reads as rewritten:

"**§ 46-17. Report of commissioners; contents; filing.**

The commissioners, within a reasonable time, not exceeding ~~60~~ 90 days after the notification of their appointment, shall make a full and ample report of their proceedings, under the hands of any two of them, specifying therein the manner of executing their trust and describing particularly the land or parcels of land divided, and the share allotted to each tenant in severalty, with the sum or sums charged on the more valuable dividends to be paid to those of inferior value. The report shall be filed in the office of the superior court clerk: Provided, that the clerk of the superior court may, in ~~his~~ the clerk's discretion, for good cause shown, extend the time for the filing of the report of said commissioners for an additional period not exceeding 60 days. This proviso shall be applicable to proceedings now pending for the partition of real property."

SECTION 2.(a) G.S. 1-394 reads as rewritten:

"**§ 1-394. Contested special proceedings; commencement; summons.**

Special proceedings against adverse parties shall be commenced as is prescribed for civil actions. The summons shall notify the defendant or defendants to appear and answer the complaint, or petition, of the plaintiff within 10 days after its service upon the defendant or defendants, and must contain a notice stating in substance that if the defendant or defendants fail to answer the complaint, or petition, within the time specified, plaintiff will apply to the court for the relief demanded in the complaint, or petition. The summons must run in the name of the State, and be dated and signed by the clerk, assistant clerk or deputy clerk of the superior court having jurisdiction in the special proceeding, and be directed to the defendant or defendants, and be delivered for service to some proper person, as defined by Rule 4(a) of the Rules of Civil Procedure. The clerk shall indicate on the summons by appropriate words that the summons is issued in a special proceeding and not in a civil action. The manner of service shall be as is prescribed for summons in civil actions by Rule 4 of the Rules of Civil Procedure: Provided, in partition proceedings under Chapter 46 of the General Statutes or where the defendant is an agency of the federal government, or an agency of the State, or a local government, or an agency of a local government, the time for filing answer or other plea shall

be within 30 days after the date of service of summons or after the final determination of any motion required to be made prior to the filing of an answer."

SECTION 2.(b) Article 1 of Chapter 46 of the General Statutes is amended by adding a new section to read:

"**§ 46-2.1 Summons.**

In partition proceedings initiated under this Chapter, the period of time for answering a summons is provided in G.S. 1-394."

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

HOUSE BILL 1091

Short Title:	Clarify Action for Divorce/Incompetent Spouse.	(Public)
Sponsors:	Representative Rhyne.	
Referred to:	Judiciary II.	

April 7, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY LAWS PERTAINING TO CIVIL ACTIONS ON BEHALF OF AN INCOMPETENT SPOUSE AS RELATED TO DIVORCE PROCEEDINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-22 reads as rewritten:

"**§ 50-22. Action on behalf of an incompetent.**

A ~~general guardian for an incompetent spouse may commence, defend or maintain any action authorized by this Chapter; however, the court shall not enter a decree of absolute divorce in such an action filed by the guardian on behalf of the incompetent spouse. As an exception to G.S. 50-21, the court may order equitable distribution on behalf of an incompetent spouse without entering a decree of divorce after the parties have lived separate and apart for a period of one year. Provided, however, that the competent spouse may seek and obtain a divorce from the incompetent spouse upon showing basis for the same.~~duly appointed attorney-in-fact who has the power to sue and defend civil actions on behalf of an incompetent spouse and who has been appointed pursuant to a durable power of attorney executed in accordance with Chapter 32A of the General Statutes, a guardian appointed in accordance with Chapter 35A of the General Statutes, or a guardian ad litem appointed in accordance with G.S. 1A-1, Rules 17 and 25(b), may commence, defend, maintain, arbitrate, mediate, or settle any action authorized by this Chapter on behalf of an incompetent spouse. However, only a competent spouse may commence an action for absolute divorce."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 4

HOUSE BILL 1112

Committee Substitute Favorable 4/29/09
Committee Substitute #2 Favorable 5/12/09
Fourth Edition Engrossed 5/13/09

Short Title: Amend Birth Registration Requirements. (Public)

Sponsors:

Referred to:

April 7, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING BIRTH REGISTRATION REQUIREMENTS TO ALLOW A CHILD'S PUTATIVE FATHER TO BE ENTERED ON THE BIRTH CERTIFICATE OF THE CHILD IF THE MOTHER HAS BEEN LIVING SEPARATE AND APART FROM HER HUSBAND AT THE TIME OF THE CHILD'S CONCEPTION OR BETWEEN CONCEPTION AND BIRTH.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-101 reads as rewritten:

"**§ 130A-101. Birth registration.**

(a) A certificate of birth for each live birth, regardless of the gestation period, which occurs in this State shall be filed with the local registrar of the county in which the birth occurs within 10 days after the birth and shall be registered by the registrar if it has been completed and filed in accordance with this Article and the rules.

(b) When a birth occurs in a hospital or other medical facility, the person in charge of the facility shall obtain the personal data, prepare the certificate, secure the signatures required by the certificate and file it with the local registrar within five days after the birth. The physician or other person in attendance shall provide the medical information required by the certificate.

(c) When a birth occurs outside a hospital or other medical facility, the certificate shall be prepared and filed by one of the following in the indicated order of priority:

(1) The physician in attendance at or immediately after the birth, or in the absence of such a person;

(2) Any other person in attendance at or immediately after the birth, or in the absence of such a person;

(3) The father, the mother or, in the absence or inability of the father and the mother, the person in charge of the premises where the birth occurred.

(d) When a birth occurs on a moving conveyance and the child is first moved from the conveyance in this State, the birth shall be registered in the county where the child is first removed from the conveyance, and that place shall be considered the place of birth.

(e) If the mother was married at the time of either conception or birth, or between conception and birth, the name of the husband shall be entered on the certificate as the father of the child, ~~unless paternity has been otherwise determined by a court of competent jurisdiction, in which case the name of the father as determined by the court shall be entered.~~ except as provided in this subsection. The surname of the child shall be the same as that of the husband,

except that upon agreement of the husband and mother, or upon agreement of the mother and father if paternity has been otherwise determined, any surname may be chosen. The name of putative father shall be entered on the certificate as the father of the child if one of the following conditions exists:

(1) Paternity has been otherwise determined by a court of competent jurisdiction, in which case the name of the father as determined by the court shall be entered.

(2) The child's mother, mother's husband, and putative father complete an affidavit acknowledging paternity which contains the following:

a. A sworn statement by the mother consenting to the assertion of paternity by the putative father and declaring that the putative father is the child's natural father.

b. A sworn statement by the putative father declaring that he believes he is the natural father of the child.

c. A sworn statement by the mother's husband consenting to the assertion of paternity by the putative father.

d. Information explaining in plain language the effect of signing the affidavit, including a statement of parental rights and responsibilities and an acknowledgment of the receipt of this information.

e. The social security numbers of the putative father, mother, and mother's husband.

f. That a DNA test has confirmed the paternity of the putative father.

(f) If the mother was unmarried at all times from date of conception through date of birth, the name of the father shall not be entered on the certificate unless the child's mother and father complete an affidavit acknowledging paternity which contains the following:

(1) A sworn statement by the mother consenting to the assertion of paternity by the father and declaring that the father is the child's natural ~~father;~~ father and that the mother was unmarried at all times from the date of conception through the date of birth;

(2) A sworn statement by the father declaring that he believes he is the natural father of the child;

(3) Information explaining in plain language the effect of signing the affidavit, including a statement of parental rights and responsibilities and an acknowledgment of the receipt of this information; and

(4) The social security numbers of both parents.

The State Registrar, in consultation with the Child Support Enforcement Section of the Division of Social Services, shall develop and disseminate a form affidavit for use in compliance with this section, together with an information sheet that contains all the information required to be disclosed by subdivision (3) of this subsection.

Upon the execution of the affidavit, the declaring father shall be listed as the father on the birth certificate, subject to the declaring father's right to rescind under G.S. 110-132. The executed affidavit shall be filed with the registrar along with the birth certificate. In the event paternity is properly placed at issue, a certified copy of the affidavit shall be admissible in any action to establish paternity. The surname of the child shall be determined by the mother, except if the father's name is entered on the certificate, the mother and father shall agree upon the child's surname. If there is no agreement, the child's surname shall be the same as that of the mother.

The execution and filing of this affidavit with the registrar does not affect rights of inheritance unless the affidavit is also filed with the clerk of court in accordance with G.S. 29-19(b)(2).

(g) Each parent shall provide his or her social security number to the person responsible for preparing and filing the certificate of birth."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1112
Committee Substitute Favorable 4/29/09
Committee Substitute #2 Favorable 5/12/09
Fourth Edition Engrossed 5/13/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1112-CSSB-51 [v.4]

6/15/2009 3:35:22 PM

Short Title: Amend Birth Registration Requirements. (Public)

Sponsors:

Referred to:

April 7, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND BIRTH REGISTRATION REQUIREMENTS TO ALLOW A CHILD'S PUTATIVE FATHER TO BE ENTERED ON THE BIRTH CERTIFICATE OF THE CHILD UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-101 reads as rewritten:

"**§ 130A-101. Birth registration.**

(a) A certificate of birth for each live birth, regardless of the gestation period, which occurs in this State shall be filed with the local registrar of the county in which the birth occurs within 10 days after the birth and shall be registered by the registrar if it has been completed and filed in accordance with this Article and the rules.

(b) When a birth occurs in a hospital or other medical facility, the person in charge of the facility shall obtain the personal data, prepare the certificate, secure the signatures required by the certificate and file it with the local registrar within five days after the birth. The physician or other person in attendance shall provide the medical information required by the certificate.

(c) When a birth occurs outside a hospital or other medical facility, the certificate shall be prepared and filed by one of the following in the indicated order of priority:

(1) The physician in attendance at or immediately after the birth, or in the absence of such a person;

(2) Any other person in attendance at or immediately after the birth, or in the absence of such a person;

(3) The father, the mother or, in the absence or inability of the father and the mother, the person in charge of the premises where the birth occurred.

(d) When a birth occurs on a moving conveyance and the child is first moved from the conveyance in this State, the birth shall be registered in the county where the child is first removed from the conveyance, and that place shall be considered the place of birth.

(e) If the mother was married at the time of either conception or birth, or between conception and birth, the name of the husband shall be entered on the certificate as the father of the child, ~~unless paternity has been otherwise determined by a court of competent jurisdiction, in which case the name of the father as determined by the court shall be entered.~~ except as

provided in this subsection. The surname of the child shall be the same as that of the husband, except that upon agreement of the husband and mother, or upon agreement of the mother and father if paternity has been otherwise determined, any surname may be chosen. The name of the putative father shall be entered on the certificate as the father of the child if one of the following conditions exists:

(1) Paternity has been otherwise determined by a court of competent jurisdiction, in which case the name of the father as determined by the court shall be entered.

(2) The child's mother, mother's husband, and putative father complete an affidavit acknowledging paternity that contains all of the following:

a. A sworn statement by the mother consenting to the assertion of paternity by the putative father and declaring that the putative father is the child's natural father.

b. A sworn statement by the putative father declaring that he believes he is the natural father of the child.

c. A sworn statement by the mother's husband consenting to the assertion of paternity by the putative father.

d. Information explaining in plain language the effect of signing the affidavit, including a statement of parental rights and responsibilities and an acknowledgment of the receipt of this information.

e. The social security numbers of the putative father, mother, and mother's husband.

f. The results of a DNA test that has confirmed the paternity of the putative father.

(f) If the mother was unmarried at all times from date of conception through date of birth, the name of the father shall not be entered on the certificate unless the child's mother and father complete an affidavit acknowledging paternity which contains the following:

(1) A sworn statement by the mother consenting to the assertion of paternity by the father and declaring that the father is the child's natural ~~father;~~ father and that the mother was unmarried at all times from the date of conception through the date of birth;

(2) A sworn statement by the father declaring that he believes he is the natural father of the child;

(3) Information explaining in plain language the effect of signing the affidavit, including a statement of parental rights and responsibilities and an acknowledgment of the receipt of this information; and

(4) The social security numbers of both parents.

The State Registrar, in consultation with the Child Support Enforcement Section of the Division of Social Services, shall develop and disseminate a form affidavit for use in compliance with this section, together with an information sheet that contains all the information required to be disclosed by subdivision (3) of this subsection.

Upon the execution of the affidavit, the declaring father shall be listed as the father on the birth certificate, subject to the declaring father's right to rescind under G.S. 110-132. The executed affidavit shall be filed with the registrar along with the birth certificate. In the event paternity is properly placed at issue, a certified copy of the affidavit shall be admissible in any action to establish paternity. The surname of the child shall be determined by the mother, except if the father's name is entered on the certificate, the mother and father shall agree upon the child's surname. If there is no agreement, the child's surname shall be the same as that of the mother.

The execution and filing of this affidavit with the registrar does not affect rights of inheritance unless the affidavit is also filed with the clerk of court in accordance with G.S. 29-19(b)(2).

(g) Each parent shall provide his or her social security number to the person responsible for preparing and filing the certificate of birth."

SECTION 2. This act is effective when it becomes law and applies to the birth certificates of children born on or after that date.

HOUSE BILL 1112:
Amend Birth Registration Requirements

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 16, 2009
Introduced by:	Representative Goodwin	**Prepared by:**	Jeff Hudson
Analysis of:	PCS to Fourth Edition H1112-CSSB-51 [v.4]		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for House Bill 1112 would amend the law governing birth registration to allow a child's putative father to be entered on the birth certificate under certain circumstances.***

CURRENT LAW:

Generally, under current law, if a mother was married at the time of either conception or birth, or between conception and birth, the name of the mother's husband must be entered on the birth certificate as the father. An exception is made, however, if a court has determined paternity in someone other than the mother's husband. In this case, the name of the father, as determined by the court, will be entered on the birth certificate.

BILL ANALYSIS:

The Proposed Committee Substitute for House Bill 1112 (PCS) would create a new exception to the requirement that the husband's name be entered on the birth certificate. The PCS would provide that the name of the putative father will be entered on the birth certificate if the mother, mother's husband, and putative father complete an affidavit acknowledging paternity that contains all of the following:

- A sworn statement by the mother consenting to and declaring that the putative father is the child's natural father.
- A sworn statement by the putative father declaring that he believes he is the natural father.
- A sworn statement by the husband consenting to the assertion of paternity by the putative father.
- Information explaining the effect of signing the affidavit, including a statement of parental rights and responsibilities and acknowledging receipt of the information.
- The social security numbers of all of the parties.
- The results of a DNA test that has confirmed the paternity of the putative father.

The PCS would also require an unmarried mother to include in an affidavit acknowledging the paternity of the father a statement that she was unmarried at all times from conception through birth.

EFFECTIVE DATE: The PCS would become effective when it becomes and apply to the birth certificates of children born on or after that date.

Karen Cochrane-Brown, counsel to House Judiciary II, substantially contributed to this summary.

HOUSE BILL 1377
Second Edition Engrossed 5/14/09

Short Title:	Taxpayer Optimization Act.	(Public)
Sponsors:	Representatives Folwell, McElraft, Brown, Moore (Primary Sponsors); and Starnes.	
Referred to:	State Government/State Personnel, if favorable, Judiciary II.	

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE CERTAIN SALES OF STATE PROPERTY SUBJECT TO UPSET BIDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 146-27 reads as rewritten:

"**§ 146-27. The role of the Department of Administration in sales, leases, and rentals.**

(a) General. – Every sale, lease, rental, or gift of land owned by the State or by any State agency shall be made by the Department of Administration and approved by the Governor and Council of State. A lease or rental of land owned by the State may not exceed a period of 99 years. The Department of Administration may initiate proceedings for sales, leases, rentals, and gifts of land owned by the State or by any State agency.

(b) Large Disposition. – If a proposed disposition is a sale or gift of land with an appraised value of at least twenty-five thousand dollars ($25,000), the sale or gift shall not be made until after consultation with the Joint Legislative Commission on Governmental Operations.

(b1) Upset Bids. – If a proposed disposition of land or other real property with a value of at least twenty-five thousand dollars ($25,000) is a sale or other transfer to a private entity that operates or is established to operate for profit, the proposed disposition shall be subject to upset bids, unless other, non-monetary consideration associated with the transaction has been made public. If other consideration is offered such that upset bids are not required, notice of the sale and other consideration shall be posted and published in a manner similar to that provided in G.S. 1-339.17. The Department of Administration shall adopt a procedure for upset bids that is based on the upset bid procedure set forth in Part 2 of Article 29A of Chapter 1 of the General Statutes.

(c) Expired effective September 1, 2007."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1377
Second Edition Engrossed 5/14/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1377-CSRV-49 [v.1]

6/10/2009 3:51:10 PM

Short Title: Taxpayer Optimization Act. (Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE CERTAIN SALES OF STATE PROPERTY SUBJECT TO UPSET BIDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 146-27 reads as rewritten:

"**§ 146-29. Procedure for sale, lease, or rental.**

(a) If, after investigation, the Department of Administration determines that it is in the best interest of the State that land be sold, leased, or rented, the Department shall proceed with its sale, lease, or rental, as the case may be, subject to the provisions of this section in accordance with rules adopted by the Governor and approved by the Council of State. If an agreement of sale, lease, or rental is reached, the proposed transaction shall then be submitted to the Governor and Council of State for their approval or disapproval. Every conveyance in fee of land owned by the State or by any State agency shall be made and executed in the manner prescribed in G.S. 146-74 through 146-78.

(b) If the sale under this section is of land with an appraised value of at least twenty-five thousand ($25,000), the sale shall be by public auction, subject to upset bids. If no acceptable bids are offered at sale by public auction, the sale may be by private sale subject to upset bids."

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

HOUSE BILL 1377:
Taxpayer Optimization Act

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 15, 2009
Introduced by:	Reps. Folwell, McElraft, Brown, Moore	**Prepared by:**	Brenda J. Carter
Analysis of:	PCS to Second Edition H1377-CSRV-49		Committee Counsel

SUMMARY: ***This proposed committee substitute for House Bill 1377 would require sale of State-owned real property by public auction subject to upset bids if the real property has a value of at least $25,000. If no acceptable bids are offered at sale by public auction, the property may be sold by private sale subject to upset bids.***

CURRENT LAW: The sale or transfer of State-owned land is made by the Department of Administration and approved by the Governor and Council of State. **G.S. 146-29** provides that when the Department of Administration determines that it is in the best interest of the State that land be sold, the Department can proceed with the sale in accordance with rules adopted by the Governor and approved by the Council of State. If an agreement of sale is reached, the proposed transaction is submitted to the Governor and Council of State for approval or disapproval. If the land has an appraised value of at least $25,000, the Council of State is required to consult with the Joint Legislative Commission on Governmental Operations before making a final decision.

BILL ANALYSIS: This proposed committee substitute for House Bill 1377 would add a new provision to the law concerning the procedure for the sale, lease, or rental of State property. The bill would require that any sale of State-owned real property with an appraised value of at least $25,000 be by public auction, subject to upset bids. If no acceptable bids are offered at public auction, the sale may then be held by private sale, subject to upset bids. Any sale of State land would be subject to provisions enacted in the bill and in accordance with rules adopted by the Governor and the Council of State.

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

Karen Cochrane-Brown, counsel to House Judiciary II, contributed to this summary.

H1377-SMRV-99(CSRV-49) v2

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	June 18, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 388	Campaign Disclosure.	Representative Carney Representative Earle Representative Parmon Representative Lucas
HB 629	Small Claims Court/Trials.	Representative Sutton
HB 630	Summary Ejectment/Trials.	Representative Sutton
HB 885	No Picketing/Disrupt Residential Tranquility.	Representative Ross
HB 1091	Clarify Action for Divorce/Incompetent Spouse.	Representative Rhyne, Jr.
HB 1447	Crime Stoppers Tips Are Confidential.	Representative Wiley

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II Committee
Thursday, June 18, 2009, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 388	Campaign Disclosure.	Representative Carney Representative Earle Representative Parmon Representative Lucas
HB 629	Small Claims Court/Trials.	Representative Sutton
HB 630	Summary Ejectment/Trials.	Representative Sutton
HB 885	No Picketing/Disrupt Residential Tranquility.	Representative Ross
HB 1091	Clarify Action for Divorce/Incompetent Spouse.	Representative Rhyne, Jr.
HB 1447	Crime Stoppers Tips Are Confidential.	Representative Wiley

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE
Thursday, June 18, 2009 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 10:00 AM on June 18, 2009, in Room 1124 of the Legislative Building with twelve members of the committee present. Senator Don Vaughan, Vice Chairman, presided.

Senator Vaughan noted that House Bills 388 and 1447 would not be heard at today's meeting.

HB 885 – (No Picketing/Disrupt Residential Tranquility.) Representative Ross explained the bill and answered questions from Senators Goodall, Forrester and Jones. Senator Apodaca moved for a favorable report. All voted and the motion carried.

HB 1091 – (Clarify Action for Divorce/Incompetent Spouses.) Representative Rhyne explained the bill and answered questions from Senators Dannelly, Queen, Goodall and Bingham. Senator Bingham moved for a favorable report. All voted and the motion carried.

HB 629 – (Small Claims Court/Trials.) Senator Jones offered a friendly amendment and moved that it be adopted. Representative Sutton accepted and explained the amendment. All voted and the motion carried. Representative Sutton then explained the bill and answered questions from Senators Apodaca and East. Senator Bingham moved for a favorable report as amended, unfavorable to the original bill and rolled into a new Committee Substitute. All voted and the motion carried.

HB 630 – (Representative Sutton explained the bill and answered questions from Senators Allran, Queen, Jones and Bingham. Ms. Colleen Kochanek, representing the Apartment Association, spoke on the bill. Senator Dannelly moved for a favorable report. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Thursday, June 18, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS #2) **630** Summary Ejectment/Trials.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #2) **885** No Picketing/Disrupt Residential Tranquility.
Sequential Referral: None
Recommended Referral: None

H.B. **1091** Clarify Action for Divorce/Incompetent Spouse.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 3

Committee Clerk Comments:

HB 630 – Sen. Weinstein
HB 885 – Sen. Hartsell
HB 1091 – Sen. Allran

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Monday, June 22, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **629** Small Claims Court/Trials.

Draft Number:	11005
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

Senator Weinstein will handle

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 6-18-09

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lindsay Clifton	Gov's Office
Melissa Reed	PP
Erin Schwettyoly	UNC-GA
Colleen Kochanek	AANC
Marvin Watson	CCPS
[illegible] Powell	AOC
Paul Stock	NCBA
Amber Woodard	NCBA
Brock Davis-Yerry	Intern- Senator Atwater
Chris Hollis	K&L Gates
Marlene Sanford	TREBIC

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 388
Committee Substitute Favorable 5/6/09

Short Title: Campaign Disclosure. (Public)

Sponsors:

Referred to:

March 4, 2009

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE THREE THOUSAND DOLLAR OR LESS EXEMPTION FOR CAMPAIGN REPORTING FOR CANDIDATES FOR MUNICIPAL OFFICE, SOIL AND WATER CONSERVATION DISTRICT BOARDS OF SUPERVISORS, AND SANITARY DISTRICT BOARDS TO FIVE HUNDRED DOLLARS OR LESS AND TO ELIMINATE THE THREE THOUSAND DOLLAR OR LESS EXEMPTION FOR CAMPAIGN REPORTING FOR CANDIDATES FOR ALL OTHER OFFICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.10A reads as rewritten:

"**§ 163-278.10A. Threshold of ~~$3,000~~ $500.00 for ~~Financial Reports.~~financial reports for certain candidates.**

(a) Notwithstanding any other provision of this Chapter, a ~~candidate~~ candidate for a municipal 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)~~five hundred dollars ($500.00) in contributions, and

(2) Does not receive more than ~~three thousand dollars ($3,000)~~five hundred dollars ($500.00) in loans, and

(3) Does not spend more than ~~three thousand dollars ($3,000).~~five hundred dollars ($500.00).

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)~~five hundred dollars ($500.00) 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)~~five hundred dollar ($500.00) 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 2. This act becomes effective January 1, 2010, and applies to all campaign finance reports covering periods on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 629
Committee Substitute Favorable 3/30/09

Short Title: Small Claims Court/Trials. (Public)

Sponsors:

Referred to:

March 18, 2009

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT THE TRIAL OF A SMALL CLAIMS ACTION MAY COMMENCE NOT SOONER THAN FIVE DAYS AFTER SERVICE OF THE MAGISTRATE SUMMONS ON THE DEFENDANT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-214 reads as rewritten:

"**§ 7A-214. Time within which trial is set.**

The time for trial of a small claim action is set not later than 30 days after the action is commenced. If the time set for trial is earlier than five days after service of the magistrate summons, the magistrate shall order a continuance. By consent of all parties the time for trial may be changed from the time set. For good cause shown, the magistrate to whom the action is assigned may grant continuances from time to time."

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 629

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

H629-ARV-15 [v.1]

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

Date 6-18-09 ,2009

Senator _____

moves to amend the bill on page 1, line 9, by rewriting that line to read:
"commenced. Except in an action demanding summary ejectment, if the time set for trial is earlier than five days after service of the magistrate".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 4

HOUSE BILL 630

Committee Substitute Favorable 3/30/09
Committee Substitute #2 Favorable 4/16/09
Fourth Edition Engrossed 4/20/09

Short Title: Summary Ejectment/Trials. (Public)

Sponsors:

Referred to:

March 18, 2009

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT THE TRIAL IN A SUMMARY EJECTMENT PROCEEDING MAY COMMENCE NOT SOONER THAN TWO BUSINESS DAYS AFTER SERVICE OF THE COMPLAINT AND SUMMONS ON THE DEFENDANT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 42-29 reads as rewritten:

"**§ 42-29. Service of summons.**

The officer receiving the summons shall mail a copy of the summons and complaint to the defendant no later than the end of the next business day or as soon as practicable at the defendant's last known address in a stamped addressed envelope provided by the plaintiff to the action. The officer may, within five days of the issuance of the summons, attempt to telephone the defendant requesting that the defendant either personally visit the officer to accept service, or schedule an appointment for the defendant to receive delivery of service from the officer. If the officer does not attempt to telephone the defendant or the attempt is unsuccessful or does not result in service to the defendant, the officer shall make at least one visit to the place of abode of the defendant within five days of the issuance of the ~~summons~~summons, but at least two days prior to the day the defendant is required to appear to answer the complaint, excluding legal holidays, at a time reasonably calculated to find the defendant at the place of abode to attempt personal delivery of service. He then shall deliver a copy of the summons together with a copy of the complaint to the defendant, or leave copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. If such service cannot be made the officer shall affix copies to some conspicuous part of the premises claimed and make due return showing compliance with this section."

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

HOUSE BILL 630:
Summary Ejectment/Trials

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 16, 2009
Introduced by:	Rep. Sutton	**Prepared by:**	Brenda J. Carter
Analysis of:	Fourth Edition		Committee Counsel

SUMMARY: ***House Bill 630 would amend the law regarding service of summons in a summary ejectment to require that if the officer does not otherwise effectuate service to the defendant, the officer must make a visit to the defendant's place of residence at least two days prior to the day the defendant is required to appear to answer the complaint, excluding legal holidays.***

CURRENT LAW: G.S. 42-28 requires that, upon filing of a complaint by a landlord asking *"...to be put in possession of the leased premises, the clerk of superior court shall issue a summons requiring the defendant to appear at a certain time and place not to exceed seven days from the issuance of the summons, excluding weekends and legal holidays, to answer the complaint."* G.S. 42-29 requires that if the officer receiving the summons does not attempt to telephone a defendant or if the attempt is unsuccessful or does not result in service to the defendant, the officer must make at least one visit to the defendant's place of residence within five days of the issuance of the summons, at a time reasonably calculated to find the defendant at the place of abode to attempt personal delivery of service

BILL ANALYSIS: House Bill 630 would amend G.S. 42-29 (service of summons in a summary ejectment) to require that the visit to the defendant's place of residence take place at least two days prior to the day the defendant is required to appear to answer the complaint, excluding legal holidays.

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

Ben Popkin, counsel to House Judiciary III, substantially contributed to this summary.

H630-SMRV-104(e4) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 3

HOUSE BILL 885

Committee Substitute Reported Without Prejudice 4/16/09
Committee Substitute #2 Favorable 5/12/09

Short Title: Targeted Picketing. (Public)

Sponsors:

Referred to:

March 31, 2009

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT PERSONS FROM PICKETING DIRECTED AT A SINGLE RESIDENCE IN A MANNER THAT WOULD CAUSE FEAR OR SUBSTANTIAL EMOTIONAL DISTRESS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 35 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-277.4A Targeted picketing of a residence.**

(a) Definitions. – As used in this section:

(1) "Residence" means any single-family or multifamily dwelling unit that is not being used as a targeted occupant's sole place of business or as a place of public meeting.

(2) "Targeted picketing" means picketing, with or without signs, that is specifically directed toward a residence, or one or more occupants of the residence, and that takes place on that portion of a sidewalk or street in front of the residence, in front of an adjoining residence, or on either side of the residence.

(b) It shall be unlawful for a person to engage in targeted picketing when the person knows or should know that the manner in which they are picketing would cause in a reasonable person any of the following:

(1) Fear for the person's safety or the safety of the person's immediate family or close personal associates.

(2) Substantial emotional distress. For the purposes of this subdivision, "substantial emotional distress" is defined as in G.S. 14-277.3A(b)(4).

(c) Any person who commits the offense defined in this section is guilty of a Class 2 misdemeanor.

(d) Any person aggrieved under this section may seek injunctive relief in a court of competent jurisdiction to prevent threatened or further violations of this section. Any violation of an injunction obtained pursuant to this section constitutes criminal contempt and shall be punishable by a term of imprisonment of not less than 30 days and no more than 12 months.

(e) Nothing in this section shall be construed to prohibit general picketing that proceeds through residential neighborhoods or that proceeds past residences."

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

HOUSE BILL 885: Targeted Picketing

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 18, 2009
Introduced by:	Representative Ross	**Prepared by:**	Jeff Hudson
Analysis of:	Third Edition		Committee Counsel

SUMMARY: ***House Bill 885 would make it unlawful to engage in the targeted picketing of a residence in a manner that would cause fear or substantial emotional distress.***

BILL ANALYSIS:

House Bill 885 would make it unlawful to engage in targeted picketing when the picketer knows or should know that the manner of picketing would cause a reasonable person: (i) to fear for the person's safety or the safety of the person's immediate family or close personal associates or (ii) substantial emotional distress.

For purposes of the new criminal prohibition:

- "Residence" means any single family or multifamily dwelling unit that is not being used as a targeted occupant's sole place of business or as a place of public meeting.
- "Targeted picketing" means picketing, with or without signs, that is specifically directed toward a residence, or one or more occupants of the residence, and that takes place on that portion of a sidewalk or street in front of the residence, in front of an adjoining residence, or on either side of the residence. The bill specifically provides that general picketing that proceeds through residential neighborhoods or past residences is not prohibited.
- "Substantial emotional distress" means significant mental suffering or distress that may, but does not necessarily require, medical or other professional treatment or counseling. This is the definition of "substantial emotional distress" used in the existing stalking statute.

A violation of the criminal prohibition of targeted picketing would be a Class 2 misdemeanor[1]. A person aggrieved by targeted picketing may seek injunctive relief to prevent further or future violations. A violation of such an injunction would constitute criminal contempt, punishable by a minimum of 30 days to a maximum of one year of confinement.

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

[1] Assuming no prior convictions, a Class 2 misdemeanor is punishable by 1 to 30 days of community punishment and a fine not to exceed $1,000.

HOUSE BILL 1091

Short Title:	Clarify Action for Divorce/Incompetent Spouse.	(Public)
Sponsors:	Representative Rhyne.	
Referred to:	Judiciary II.	

April 7, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY LAWS PERTAINING TO CIVIL ACTIONS ON BEHALF OF AN INCOMPETENT SPOUSE AS RELATED TO DIVORCE PROCEEDINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-22 reads as rewritten:

"**§ 50-22. Action on behalf of an incompetent.**

A ~~general guardian for an incompetent spouse may commence, defend or maintain any action authorized by this Chapter; however, the court shall not enter a decree of absolute divorce in such an action filed by the guardian on behalf of the incompetent spouse. As an exception to G.S. 50-21, the court may order equitable distribution on behalf of an incompetent spouse without entering a decree of divorce after the parties have lived separate and apart for a period of one year. Provided, however, that the competent spouse may seek and obtain a divorce from the incompetent spouse upon showing basis for the same.~~duly appointed attorney-in-fact who has the power to sue and defend civil actions on behalf of an incompetent spouse and who has been appointed pursuant to a durable power of attorney executed in accordance with Chapter 32A of the General Statutes, a guardian appointed in accordance with Chapter 35A of the General Statutes, or a guardian ad litem appointed in accordance with G.S. 1A-1, Rules 17 and 25(b), may commence, defend, maintain, arbitrate, mediate, or settle any action authorized by this Chapter on behalf of an incompetent spouse. However, only a competent spouse may commence an action for absolute divorce."

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

HOUSE BILL 1091:
Clarify Action for Divorce/Incompetent Spouse

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 16, 2009
Introduced by:	Rep. Rhyne	**Prepared by:**	Jennifer McGinnis Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 1091 would expand the list of who can engage in various actions under Chapter 50, Divorce and Alimony, on behalf of an incompetent spouse to include an attorney-in-fact and a guardian ad litem. It would also clarify that only a competent spouse can file an action for an absolute divorce.***

CURRENT LAW: G.S. 50-22 provides that a general guardian for an incompetent spouse can commence, defend, or maintain any action authorized by Chapter 50 (Divorce and Alimony), but the court cannot enter a decree of absolute divorce if the action is filed by the general guardian on behalf of the incompetent spouse. The court can order equitable distribution on behalf of an incompetent spouse without entering a divorce decree once the parties have lived separate and apart for one year.

The competent spouse can obtain a divorce from the incompetent spouse.

BILL ANALYSIS: House Bill 1091 would allow the following to commence, defend, maintain, arbitrate, mediate, or settle any action authorized by Chapter 50 on behalf of an incompetent spouse:

- A duly appointed attorney-in-fact who has the power to sue and defend civil actions on behalf of the incompetent spouse and who has been appointed pursuant to a durable power of attorney under Chapter 32A of the General Statutes;
- A guardian appointed in accordance with Chapter 35A of the General Statutes; or
- A guardian ad litem appointed in accordance with G.S. 1A-1, Rules 17 and 25(b).

The bill would provide that only a competent spouse can commence an action for absolute divorce.

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

BACKGROUND: The treatise, North Carolina Family Law Practice by Lloyd T. Kelso (2008), offers that G.S. 50-22 in its current form has created some confusion by using the term "general guardian". According to the treatise, by using the term "general guardian", the statute appears to limit who can engage in actions for incompetent spouses to general guardians who are appointed as guardian of the person and estate of an incompetent under Chapter 35A and there is some question as to whether a court could appoint a guardian ad litem. North Carolina Family Law Practice § 19:8. This would also conflict with Rule 17 of the Rules of Civil Procedure which authorizes a court to appoint a guardian ad litem even if there is a general guardian. Id. Furthermore, the treatise states that the current statute is unclear as to whether an attorney-in-fact can engage in the actions on behalf of the incompetent person even though the attorney-in-fact was specifically granted the right to sue or defend actions under a durable power of attorney under Chapter 32A since individuals with mental illnesses often execute durable powers of attorneys while competent to avoid guardianship proceedings. Id.

The treatise provides that there is some confusion as to whether G.S. 50-22 allows the competent spouse to obtain an absolute divorce or a divorce from bed and board since it only states that the competent spouse can obtain a divorce. Id.

Drupti Chauhan, Committee Counsel to House Judiciary II, substantially contributed to this summary.

H1091-SMRI-63(e1) v3

HOUSE BILL 1447
Committee Substitute Favorable 5/7/09
Third Edition Engrossed 5/13/09

Short Title: Crime Stoppers Tips Are Confidential. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE IDENTITY OF AN INDIVIDUAL WHO PROVIDES A TIP FOR AN UNSOLVED CASE THROUGH CRIME STOPPERS OR SIMILAR ORGANIZATIONS IS NOT A PUBLIC RECORD, TO PROVIDE THAT THE COMMUNICATION RECEIVED BY A CRIME STOPPERS ORGANIZATION IS NOT SUBJECT TO DISCOVERY OR ADMISSIBLE IN A COURT PROCEEDING, AND TO PROVIDE THAT A LAW ENFORCEMENT AGENCY HAS A DUTY TO MAINTAIN THE CONFIDENTIALITY OF A CRIME STOPPERS TIP.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 15A of the General Statutes is amended by adding a new Article to read:

"Article 47.

"Local Crime Stoppers Programs.

"**§ 15A-850. Local Crime Stoppers organizations; confidentiality.**

(a) Definition. – As used in this section, a "Crime Stoppers" organization or other similarly named organization means a private, nonprofit North Carolina corporation governed by a civilian volunteer board of directors that is operated on a local or statewide level that (i) offers anonymity to persons providing information to the organization, (ii) accepts and expends donations for cash rewards to persons who report to the organization information about alleged criminal activity and that the organization forwards to the appropriate law enforcement agency, and (iii) is established as a cooperative alliance among the news media, the community, and law enforcement officials.

(b) Prohibitions on Use of Crime Stoppers Tips.

(1) Evidence of a communication, and any information contained within a communication, from an anonymous source to a Crime Stoppers organization shall not be:

a. Relied upon, or considered by, a judicial official in determining whether probable cause exists to issue either an arrest or search warrant.

b. Admissible or subject to discovery in any court proceeding.

(2) Crime Stoppers tips may only be used to assist a law enforcement agency in directing its investigation of alleged criminal activity.

(c) Identity of Crime Stoppers Informant Is Not Public Record; Duty of Law Enforcement Agency to Maintain Confidentiality. – The identity of any individual providing information about a crime or criminal activity to a Crime Stoppers organization under a

promise of anonymity is not a public record as defined by G.S. 132-1 and shall not be disclosed. A law enforcement agency receiving information concerning alleged criminal activity from a Crime Stoppers organization shall maintain confidentiality pursuant to this section and pursuant to G.S. 132-1.4(h)."

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

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	June 23, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 578	Partition Sales/Commrs., Sellers, Buyers.	Representative Bryant Representative Michaux, Jr. Representative Allen Representative Harrison
HB 581	Partition Sales/Extend Report & Answer Times.	Representative Bryant Representative Michaux, Jr. Representative Stam Representative Spear
HB 1058	Increase Statutory Homestead Exemption.	Representative Blue Representative Weiss

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II Committee
Tuesday, June 23, 2009, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 578	Partition Sales/Commrs., Sellers, Buyers.	Representative Bryant Representative Michaux, Jr. Representative Allen Representative Harrison
HB 581	Partition Sales/Extend Report & Answer Times.	Representative Bryant Representative Michaux, Jr. Representative Stam Representative Spear
HB 1058	Increase Statutory Homestead Exemption.	Representative Blue Representative Weiss

Presentations

Other Business

Adjournment

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — June 23, 2009
Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	LLPP
Phyliss Craig-Taylor	Charlotte School of Law
Brandon Coleman	Rep. Angela Bryant
JOHN L. COOPER	5405 BLUET COURT, Holly Springs
Mariah West	NC AOC
Christopher Brook	Southern Coalition for Social Justice
Adam Harris	"
Brett Thompson	Wake C. CSC
Jeff Harris	Land Loss Prevention Project
Katherine Wilkerson	Lynch Eatman / NCBA
Charles Thomas Steele, Jr	NCBA Wishart, Norris Henninger & Pittman PA

SENATE JUDICIARY II COMMITTEE
Tuesday, June 23, 2009 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 10:00 AM on June 23, 2009, in Room 1124 of the Legislative Building with eleven members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell introduced pages Ellie Brown, Catherine Guy, Sudie Brown, Stephanie Cistrunk, Mark Burgess, Hussein Sharafi, Emilee Smith, Madison Page, Allyx Herring, Drew Kitchens and Devon Winslow and thanked them for their assistance.

Senator Hartsell noted that HB 1058 (Increase Statutory Homestead) would not be heard at today's meeting.

HB 578 – (Partition Sales/Commrs., Sellers) Representative Allen explained the bill and Mrs. Kory Goldsmith, Staff Attorney, gave additional explanation. No action was taken on the bill.

HB 581 – (Partition Sales/Extend Report & Answer Times.) Mrs. Kory Goldsmith, Staff Attorney, explained the bill. No action was taken on the bill.

Senator Hartsell noted that both bills should be heard, explained and discussed together.

Mr. Pete Powell, representing the Administrative Office of the Court, explained Partition Sales and answered questions from Senators Forrester, Bingham and Apodaca. Ms. Phyllis Craig-Taylor from the Charlotte School of Law spoke on the bills and answered questions from Senators Bingham, East, Vaughan and Dorsett. Representative Bryant also answered questions. Mr. Christopher Brooks, Attorney for the Southern Coalition for Social Justices, spoke on the bill and answered Senator Jones' question. Mr. Tom Steele, representing the Bar Association, spoke on the bills.

Senator Hartsell named Senator Berger as Chair of a sub-committee to work on the bills. Members of the committee are Senators Vaughan, Atwater, Jones and Bingham.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Emily Gallimore	NCBA
Trey Brannon	Intern
Cody Thomas	NCAR
Will Snyderwine	CFNC
Carley Ruff	NC Housing Coalition
[illegible]	NCJC
[illegible]	CKL
[illegible]	NCBA
Amy McConkey	Smith Anderson

PARTITIONS – THE CURRENT LAW

Joint Ownership:

- When people own real property together, they are called tenants in common or co-tenants.
- Tenancy in Common can be created # ways, e.g. divorce, inheritance.
- If one or more want out, they can agree to buy one another out or sell to a 3rd party.
- This is by agreement of the parties, and without court involvement.
- If there is a suit, the parties can settle at any time.
- When parties cannot agree, one or more can a special proceeding.

Starting the Process:

- A summons and petition for partition must be filed and served on all owners.
- As with all civil cases, if a party cannot be served, the petitioner must demonstrate due diligence in attempting actual service before resorting to publication. (Rule 4)
- If there are unknown or unlocatable parties, the court must appoint a guardian ad litem.

Is Actual Partition Possible?

- Step 1 - determine whether actual partition is possible without causing substantial injury.
- Law favors actual partition, so whenever possible, do a division.
- There may be a hearing, at which the clerk takes expert testimony or other evidence, or the situation may be clear, or commissioners may be appointed who then report special circumstances.
- In some cases, the matter clearly involves a single family residence, or perhaps a ½ acre lot with 10 co-tenants, and thus, actual division is not possible.
- Despite the number of properties in urban counties that are primarily single family residences, over 70% of all partitions involve actual division.
- Although difficult to apply from a fairness and tract selection view point, the court may order sale of a portion of the property with the remainder still held as tenants in common. (Partial partition)

The Substantial Injury Test

- Will actual partition result in the material impairment of a co-tenant's rights, such that the fair market value of each share would be materially less than the value of each share if the property were sold as a whole? - G.S. 46-22
- Case law directs the CSC to consider the totality of the circumstances, including the following factors:
    - The nature, character, extent, condition and location of the land.
    - The respective ownership interests of ant he number of owners.
    - The possibility of dividing the property according to value.
    - Any economic waste that may be caused by division.

  See Duke v. Hill, 68 NC App. 261 (wetland).

See also Brown v. Boger, 263 NC 248 – "Substantial Injury" means substantial injustice, and that it would be unconscionable to require an actual partition ($280K vs. $278K).

Transfer or Appeal

- While most special proceedings can be transferred to superior court, the issue of whether an actual division is possible must be decided before the clerk. G.S. 1-301.2.
- That decision is appealable for a de novo hearing in superior court.

Actual Division – The Process

- The court appoints 3 disinterested commissioners. Where possible these are usually land use professionals, surveyors or realtors.
- Their job is to recommend a plan for the division of the land into tracts with as equal a value as possible.
- The presence of creeks, roads or other factors may make absolute equality impossible, and money (Owelty) may be ordered paid toward one tract or the other to even up the values.
- The Comm'rs may hire a surveyor to map each share. The cost is paid by the parties, and we suggest this be collected in advance.

The Report – Objection, Confirmation and Appeal

- The Comm'rs must file the report within 60 days, but the CSC may extend the time for an additional 60 days.
- The parties have 10 days to object to the report. If no one objects, the report is confirmed.
- If an objection is filed, the Clerk may
  - Confirm the report
  - Recommit the matter to the Comm'rs for further consideration.
  - Vacate the report and direct the Comm'rs to do a reappraisal.
  - Vacate the report, discharge the Comm'rs and appoint new ones.
- If the CSC confirms the sale, any party may appeal to Superior Court
- The Superior Court Judge has the same authority to confirm, recommit or vacate the report.

The Sale Process

- If an actual division is not possible and a sale is ordered, the statutory process is the same for all judicial sales (Article 29A- of Chapter 1 of the General Statutes) with a few extras.
- The sale can be as a whole or in parts, or both, with the understanding that whichever method yields the highest price controls.
- The CSC can order a public auction or a private sale, whichever is deemed advantageous, or may order a time within which to try a private sale before resorting to an auction. If timber is involved, the sale may be by sealed bid.
- If a private sale is ordered, an appraisal is normally required to verify value.

- The CSC appoints one or more commissioners to conduct the sale and account to the court.

Notice of Sale

- A Notice of Sale must be prepared setting forth the time, date and place of the sale, describing the property, and setting out the terms of the sale and any deposit required.
- The Notice of Sale must be posted at the courthouse for at least 20 days before the sale, and a copy mailed to all parties at least 20 days in advance.
- The Notice of Sale must be published in the newspaper at least once a week for two successive weeks prior to the sale.

The Upset Bid Period

- Public and private sales are subject to a 10 day upset bid period.
- Each upset bid starts a new 10 day period.

The Confirmation Process

- The sale must be confirmed by the CSC or by the judge ordering the sale
- If a minor or incompetent is involved, the sale must be confirmed by both the CSC and the judge.

The Revocation Process

- After confirmation, any party has 15 days to petition of revocation of the confirmation. IN other words, the confirmation is not final for 15 days.
- The grounds for revocation by an owner are improper or inadequate notice or inadequate or inequitable price.
- The purchaser may petition for revocation due to undisclosed or unsatisfied liens.
- The court can revoke the confirmation, order the withdrawal of the purchaser's offer and the return of the deposit. If revocation is ordered, the court must order a resale.
- At the end of the revocation period, the confirmation becomes final.

Closing

- The bidder tenders the purchase price in return for a deed to the property.
- The commissioner files a final report and account with the clerk.
- All fees and commissions must be approved or set by the court.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 3

HOUSE BILL 578
Committee Substitute Favorable 5/7/09
Committee Substitute #2 Favorable 5/12/09

Short Title: Partition Sales/Commrs., Sellers, Buyers. (Public)

Sponsors:

Referred to:

March 16, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE NOTICE OF RIGHT TO SEEK LEGAL COUNSEL AND CLARIFY NOTICE REQUIRED TO PARTIES WHO MAY BE UNKNOWN OR UNLOCATABLE IN A PARTITION PROCEEDING; TO CODIFY THE CURRENT PRACTICE OF GRANTING OWNERS CREDIT FOR THEIR EXISTING INTEREST IN LAND WHEN BIDDING ON A PARTITION SALE; TO PERMIT A COURT TO ORDER AN INDEPENDENT APPRAISAL IF REQUESTED AND PAID FOR BY A PARTY TO THE PARTITION WHO CHALLENGES THE AMOUNT BID IN A PARTITION SALE, AS RECOMMENDED BY THE PARTITION SALES STUDY COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 46 of the General Statutes is amended by adding a new section to read:

"**§ 46-2.1. Summons; notice.**

(a) In partition proceedings initiated under this Chapter, the period of time for answering a summons is provided in G.S. 1-394.

(b) Written notice shall be included in the petition in a manner reasonably calculated to make the respondent aware of the following:

(1) That the respondent has the right to seek the advice of an attorney and that free legal services may be available to the respondent by contacting Legal Aid of North Carolina or other legal services organizations.

(2) That pursuant to G.S. 6-21 the court has the authority, in its discretion, to order reasonable attorneys' fees to be paid as a part of the costs of the proceeding."

SECTION 2. G.S. 46-6 reads as rewritten:

"**§ 46-6. Unknown or unlocatable parties; ~~summons and~~ summons, notice, and representation.**

(a) If, upon the filing of a petition for partition, it be made to appear to the court by affidavit or otherwise that there are any persons interested in the premises whose names are unknown to and cannot after due diligence be ascertained by the petitioner, the court shall order notices to be given to all such persons by a publication of the petition, or of the substance thereof, with the order of the court thereon, in one or more newspapers to be designated in the order. The notice by publication shall include a description of the property which includes the street address, if any, or other common designation for the property, if any, and may include the legal description of the property.

(b) ~~If~~ Before or after such general notice by publication if any person interested in the premises and entitled to notice fails to appear, the court shall ~~in its discretion~~ appoint some

disinterested person to represent the owner of any shares in the property to be divided, the ownership of which is unknown or unlocatable and unrepresented."

SECTION 3. G.S. 46-28 reads as rewritten:

"**§ 46-28. Sale procedure.**

(a) The procedure for a partition sale shall be the same as is provided in Article 29A of Chapter 1 of the General ~~Statutes.~~ Statutes, except as provided herein.

(b) The commissioners shall certify to the court that at least 20 days prior to sale a copy of the notice of sale was sent by first class mail to the last known address of all petitioners and respondents who previously were served by personal delivery or by registered or certified mail. The commissioners shall also certify to the court that at least ten days prior to any resale pursuant to G.S. 46-28.1(e) a copy of the notice of resale was sent by first class mail to the last known address of all parties to the partition proceeding who have filed a written request with the court that they be given notice of any resale. An affidavit from the commissioners that copies of the notice of sale and resale were mailed to all parties entitled to notice in accordance with this section shall satisfy the certification requirement and shall also be deemed prima facie true. If after hearing it is proven that a party seeking to revoke the order of confirmation of a sale or subsequent resale was mailed notice as required by this section prior to the date of the sale or subsequent resale, then that party shall not prevail under the provisions of G.S. 46-28.1(a)(2)a. and b.

(c) Any cotenant who enters the high bid or offer at any sale of one hundred percent (100%) of the undivided interests in any parcel of real property shall receive a credit for the undivided interest the cotenant already owns therein and shall receive a corresponding reduction in the amount of the total purchase price owed after deducting the costs and fees associated with the sale and apportioning the costs and fees associated with the sale in accordance with the orders of the court. The high bid or offer shall be for one hundred percent (100%) of the undivided interests in the parcel of real property sold, and the credit and reduction shall be applied at the time of the closing of the cotenant's purchase of the real property. When jointly making the high bid or offer at the sale, two or more cotenants may receive at the closing an aggregate credit and reduction in the amount of the total purchase price representing the total of such cotenants' undivided interests in the real property. Any credits and reductions allowed by this subsection shall be further adjusted to reflect any court-ordered adjustments to the share(s) of the net sale proceeds of each of the cotenants entering the high bid or offer, including, but not limited to, equitable adjustments to the share(s) of the net sales proceeds due to a court finding of the lack of contribution of one or more cotenants to the payment of expenses of the real property."

SECTION 4. G.S. 46-28.1 reads as rewritten:

"**§ 46-28.1. Petition for revocation of confirmation order.**

(a) Notwithstanding G.S. 46-28 or any other provision of law, an order confirming the partition sale of real property shall not become final and effective until 15 days after entered. At any time before the confirmation order becomes final and effective, any party to the partition proceeding or the purchaser may petition the court to revoke its order of confirmation and to order the withdrawal of the purchaser's offer to purchase the property upon the following grounds:

(1) In the case of a purchaser, a lien remains unsatisfied on the property to be conveyed.

(2) In the case of any party to the partition proceeding:

a. Notice of the partition was not served on the petitioner for revocation as required by Rule 4 of the Rules of Civil Procedure; or

b. Notice of the sale was not mailed to the petitioner for revocation as required by G.S. 46-28(b); or

c. The amount bid or price offered is inadequate and inequitable and will result in irreparable damage to the owners of the real property.

In no event shall the confirmation order become final or effective during the pendency of a petition under this section. No upset bid shall be permitted after the entry of the confirmation order.

(b) The party petitioning for revocation shall deliver a copy of the petition to all parties required to be served under Rule 5 of G.S. 1A-1, and the officer or person designated to make such sale in the manner provided for service of process in Rule 4(j) of G.S. 1A-1. The court shall schedule a hearing on the petition within a reasonable time and shall cause a notice of the hearing to be served on the petitioner, the officer or person designated to make such a sale and all parties required to be served under Rule 5 of G.S. 1A-1.

(c) In the case of a petition brought under this section by a purchaser claiming the existence of an unsatisfied lien on the property to be conveyed, if the purchaser proves by a preponderance of the evidence that:

(1) A lien remains unsatisfied on the property to be conveyed; and
(2) The purchaser has not agreed in writing to assume the lien; and
(3) The lien will not be satisfied out of the proceeds of the sale; and
(4) The existence of the lien was not disclosed in the notice of sale of the property, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer.

The order of the court in revoking an order of confirmation under this section may not be introduced in any other proceeding to establish or deny the existence of a lien.

(d) In the case of a petition brought pursuant to this section by a party to the partition proceeding, if the court finds by a preponderance of the evidence that petitioner has proven a case pursuant to sub-subdivision (a)(2)a., b., or c. of ~~subsection (a)(2),~~ this section, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer.

(d1) In the case of a petition brought pursuant to sub-subdivision (a)(2)c. of this section, and when an independent appraisal of the property being sold has not been previously entered into evidence in the action, and upon the request of any party, the court may order an independent appraisal prepared by a real estate appraiser currently licensed by the North Carolina Appraisal Board and prepared in accordance with the Uniform Standards of Professional Appraisal Practice. The cost of an independent appraisal shall be borne by one or more of the parties requesting the appraisal in such proportions as they may agree. Before ruling on the petition brought pursuant to sub-subdivision (a)(2)c. of this section, the court may in its discretion require written evidence from the appraiser that the appraiser has been paid in full for the appraisal. If based on the appraisal and all of the evidence presented, the court finds the amount bid or price offered to be inadequate, inequitable, and resulting in irreparable damage to the owners, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's high bid or offer, and order the return to such purchaser of any money or security tendered by the purchaser pursuant to the high bid or offer.

(e) If the court revokes its order of confirmation under this section, the court shall order a resale. The procedure for a resale is the same as is provided for an original public sale under Article 29A of Chapter 1 of the General Statutes."

SECTION 5. This act becomes effective October 1, 2009, and applies to partition actions filed on or after that date.

HOUSE BILL 578:
Partition Sales/Commrs., Sellers, Buyers

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 23, 2009
Introduced by:	Reps. Bryant, Michaux, Allen, Harrison	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	Third Edition		

SUMMARY: ***This proposed committee substitute for House Bill 578 would require that respondents in a partition proceeding be notified of their right to seek legal counsel, and would clarify the requirements for providing notice to unknown or unlocatable parties in a partition proceeding. The bill would grant owners credit for their existing interest in the land when bidding on it in a partition sale, and would require the court to order an independent appraisal if requested and paid for by a party who challenges the amount bid in a partition sale. The bill contains recommendations from the Partition Sales Study Committee.***

CURRENT LAW: To legally "partition" property means to bring a proceeding in court to force the physical division or sale of real property and in the event of sale to have the property or proceeds from sale of the property divided among co-owners of the property. Under the laws governing the partition of real property (Chapter 46 of the General Statutes), one or more persons claiming joint ownership in real property may petition the superior court for partition of the property.

BILL ANALYSIS: **Section 1** of the bill would enact a new provision specifying that the period of time for answering a summons in a partition proceeding is governed by G.S. 1-394, which pertains to contested special proceedings. It would increase the time from 10 to 30 days. It also would require that a written notice be attached to the summons making respondents aware of the right to seek legal advice, that free legal services may be available by contacting legal services organizations, and that the court has the authority to order payment of attorneys fees as part of the costs of the proceeding.

Section 2 of the bill would amend the statute concerning the notification of unknown parties to a partition proceeding. Under existing law, when the court determines that there are persons with an interest in the property whose names are unknown and cannot be ascertained by the petitioner, the court can order that notice be made by publication in a newspaper. The bill would require that notice by publication include a full description of the property, and require the court to appoint someone to represent any unknown or unlocatable parties.

Section 3 of the bill would amend the statute concerning the sale procedure for partition sales, to provide that any cotenant making an offer to purchase the entire parcel would receive credit for the value of his or her share and received a corresponding reduction in the amount owed after deducting the costs and fees associated with the sale. The bill would allow two or more cotenants to aggregate the credit for their interests.

Section 4 of the bill would amend the law pertaining to a petition for revocation of an order confirming the partition sale of real property by making a technical change, and by adding a new provision that would require the court to order an independent appraisal of the property upon request of the petitioner. If, based on the appraisal and other evidence, the court finds the sale price to be inadequate the court may revoke the order confirming the sale. The cost of the appraisal would be apportioned to all parties requesting it, and the court could require the parties to pay all or part of that cost prior to the appraisal.

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

HOUSE BILL 581

Short Title:	Partition Sales/Extend Report & Answer Times.	(Public)
Sponsors:	Representatives Bryant, Spear, Stam, Michaux (Primary Sponsors); Blue, Hall, Harrison, Jones, Lucas, Parmon, Pierce, Wainwright, and Womble.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary I.	

March 16, 2009

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE DEADLINE FOR THE COMMISSIONERS IN A PARTITION ACTION TO REPORT BACK TO THE COURT ON THEIR PROPOSED DIVISION OF THE LAND, AND TO EXTEND THE DEADLINE FOR RESPONDING TO A SUMMONS IN A PARTITION ACTION FROM TEN DAYS TO THIRTY DAYS, AS RECOMMENDED BY THE PARTITION SALES STUDY COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 46-17 reads as rewritten:

"**§ 46-17. Report of commissioners; contents; filing.**

The commissioners, within a reasonable time, not exceeding ~~60~~ 90 days after the notification of their appointment, shall make a full and ample report of their proceedings, under the hands of any two of them, specifying therein the manner of executing their trust and describing particularly the land or parcels of land divided, and the share allotted to each tenant in severalty, with the sum or sums charged on the more valuable dividends to be paid to those of inferior value. The report shall be filed in the office of the superior court clerk: Provided, that the clerk of the superior court may, in ~~his~~ the clerk's discretion, for good cause shown, extend the time for the filing of the report of said commissioners for an additional period not exceeding 60 days. This proviso shall be applicable to proceedings now pending for the partition of real property."

SECTION 2.(a) G.S. 1-394 reads as rewritten:

"**§ 1-394. Contested special proceedings; commencement; summons.**

Special proceedings against adverse parties shall be commenced as is prescribed for civil actions. The summons shall notify the defendant or defendants to appear and answer the complaint, or petition, of the plaintiff within 10 days after its service upon the defendant or defendants, and must contain a notice stating in substance that if the defendant or defendants fail to answer the complaint, or petition, within the time specified, plaintiff will apply to the court for the relief demanded in the complaint, or petition. The summons must run in the name of the State, and be dated and signed by the clerk, assistant clerk or deputy clerk of the superior court having jurisdiction in the special proceeding, and be directed to the defendant or defendants, and be delivered for service to some proper person, as defined by Rule 4(a) of the Rules of Civil Procedure. The clerk shall indicate on the summons by appropriate words that the summons is issued in a special proceeding and not in a civil action. The manner of service shall be as is prescribed for summons in civil actions by Rule 4 of the Rules of Civil Procedure: Provided, in partition proceedings under Chapter 46 of the General Statutes or where the defendant is an agency of the federal government, or an agency of the State, or a local government, or an agency of a local government, the time for filing answer or other plea shall

be within 30 days after the date of service of summons or after the final determination of any motion required to be made prior to the filing of an answer."

SECTION 2.(b) Article 1 of Chapter 46 of the General Statutes is amended by adding a new section to read:

"**§ 46-2.1 Summons.**

In partition proceedings initiated under this Chapter, the period of time for answering a summons is provided in G.S. 1-394."

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

HOUSE BILL 581:
Partition Sales/Extend Report & Answer Times

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 19, 2009
Introduced by:	Reps. Bryant, Spear, Stam, Michaux	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 581 extends the deadline for the commissioners in a partition action to report back to the court on their proposed division of the land, and extends the deadline for responding to a summons in a partition action from ten days to thirty days, as recommended by the Partition Sales Study Committee. This act becomes effective October 1, 2009.***

BILL ANALYSIS:

Section 1 of House Bill 581 extends the deadline for the commissioners in a partition action to report back to the court on their proposed division of the land from 60 days to 90 days.

Section 2 of House Bill 581 extends the deadline for responding to a summons in a partition action from 10 days to 30 days, by amendment to the procedural rules applicable to special proceedings.

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

BACKGROUND:

- One or more persons claiming real estate as joint tenants or tenants in common may petition the superior court for partition of the property.
- The action is a special proceeding, and is deemed equitable in nature.
- The court has the discretion to order a sale and distribution of proceeds in lieu of partition.
- The court appoints three disinterested commissioners to divide and apportion the real estate, or that portion that the court so designates, among the tenants in common or joint tenants.
- Special proceedings generally allow 10 days to respond to a summons. Thirty days are allowed when the defendant is an agency of the federal government, a State or local agency, or a local government.

Susan Sitze, Staff Attorney to House Ways and Means, substantially contributed to this summary.

1581-SMRC-55(e1) v1

HOUSE BILL 1058*
Committee Substitute Favorable 5/12/09
Third Edition Engrossed 5/14/09

Short Title: Increase Statutory Homestead Exemption. (Public)

Sponsors:

Referred to:

April 6, 2009

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE STATUTORY HOMESTEAD EXEMPTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1C-1601(a) reads as rewritten:

"(a) Exempt property. – Each individual, resident of this State, who is a debtor is entitled to retain free of the enforcement of the claims of creditors:

(1) The debtor's aggregate interest, not to exceed ~~eighteen thousand five hundred dollars ($18,500)~~seventy-five thousand dollars ($75,000) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a ~~residence,~~residence or in a cooperative that owns property that the debtor or a dependent of the debtor uses as a ~~residence, or in a burial plot for the debtor or a dependent of the debtor; however, an unmarried debtor who is 65 years of age or older is entitled to retain an aggregate interest in the property not to exceed thirty-seven thousand dollars ($37,000) in value so long as the property was previously owned by the debtor as a tenant by the entireties or as a joint tenant with rights of survivorship and the former co-owner of the property is deceased.~~residence. In the case of a married couple owning property as tenants by the entirety, the total exemption for husband and wife is seventy five thousand dollars ($75,000).

(2) The debtor's aggregate interest in any property, not to exceed five thousand dollars ($5,000) in value of any unused exemption amount to which the debtor is entitled under subdivision (1) of this subsection.

(3) The debtor's interest, not to exceed three thousand five hundred dollars ($3,500) in value, in one motor vehicle.

(4) The debtor's aggregate interest, not to exceed five thousand dollars ($5,000) in value for the debtor plus one thousand dollars ($1,000) for each dependent of the debtor, not to exceed four thousand dollars ($4,000) total for dependents, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest, not to exceed two thousand dollars ($2,000) in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

(6) Life insurance as provided in Article X, Section 5 of the Constitution of North Carolina.

(7) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(8) Compensation for personal injury, including compensation from private disability policies or annuities, or compensation for the death of a person upon whom the debtor was dependent for support, but such compensation is not exempt from claims for funeral, legal, medical, dental, hospital, and health care charges related to the accident or injury giving rise to the compensation.

(9) Individual retirement plans as defined in the Internal Revenue Code and any plan treated in the same manner as an individual retirement plan under the Internal Revenue Code, including individual retirement accounts and Roth retirement accounts as described in section 408(a) and section 408A of the Internal Revenue Code, individual retirement annuities as described in section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in section 408(c) of the Internal Revenue Code.

(10) Funds in a college savings plan qualified under section 529 of the Internal Revenue Code, not to exceed a cumulative limit of twenty-five thousand dollars ($25,000), but excluding any funds placed in a college savings plan account within the preceding 12 months (except to the extent any of the contributions were made in the ordinary course of the debtor's financial affairs and were consistent with the debtor's past pattern of contributions) and only to the extent that the funds are for a child of the debtor and will actually be used for the child's college or university expenses.

(11) Retirement benefits under the retirement plans of other states and governmental units of other states, to the extent that these benefits are exempt under the laws of the state or governmental unit under which the benefit plan is established.

(12) Alimony, support, separate maintenance, and child support payments or funds that have been received or to which the debtor is entitled, to the extent the payments or funds are reasonably necessary for the support of the debtor or any dependent of the debtor.

(13) The debtor's aggregate interest, not to exceed three thousand dollars ($3,000) in value, in a burial plot for the debtor or a dependent of the debtor."

SECTION 2. This act becomes effective January 1, 2010, and applies to judgments and bankruptcy petitions filed on or after that date.

Principal Clerk ____
Reading Clerk ____

CORRECTED NOTICE –HB 1449 removed

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	June 25, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1077	Venue/Municipalities in Multiple Districts.	Representative Jones Representative Wiley
HB 1347	Chief Court Counselor Delegation.	Representative Mobley
HB 1438	Videoconference Tech. in Court Proceedings.	Representative Sutton Representative Randleman Representative Warren Representative Spear
HB 1449	Juvenile Code Revisions.	Representative Weiss Representative Goodwin Representative Glazier Representative Moore

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

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HB 1449	Juvenile Code Revisions.	Representative Weiss Representative Goodwin Representative Glazier Representative Moore

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II Committee
Thursday, June 25, 2009, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 1077	Venue/Municipalities in Multiple Districts.	Representative Jones Representative Wiley
HB 1347	Chief Court Counselor Delegation.	Representative Mobley
HB 1438	Videoconference Tech. in Court Proceedings.	Representative Sutton Representative Randleman Representative Warren Representative Spear

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE
Thursday, June 25, 2009 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 10:00 AM on June 25, 2009, in Room 1124 of the Legislative Building with twelve members of the committee present. Senator Ed Jones, Vice Chair, presided.

Senator Jones introduced pages Oceania Anderson, Ashton Carrick, Devon Winslow, Sy McRae, Jessica Atkinson, Amber Weely, Nicole Graham, Olivia Parker, Slim Ogbuneke and Stephanie Cistrunk and thanked them for their assistance.

HB 1077 – (Venue/Municipalities in Multiple Districts.) Representative Wiley explained the bill. Brian T. Beasley, Attorney with the High Point Police Department spoke on the bill. After much discussion, Representative Wiley decided to withdraw the bill until a later time. No action was taken on the bill.

HB 1347 – (Chief Court Counselor Delegation.) Representative Parmon explained the bill and presented an amendment. Ms. Brenda Carter gave additional explanation. Senator Apodaca moved to adopt the amendment. All voted and the motion carried. Senator Queen moved for a favorable report as amended and rolled into a new Proposed Committee Substitute. All voted and the motion carried.

HB 1438 – (Videoconference Tech. in Court Proceedings.) Representative Spear explained the bill. Questions from Senators Apodaca, Forrester, Queen, Atwater, Snow and Vaughan were answered by Representative Spear and Mr. Robert S. Brinson from the North Carolina Department of Correction. Ms. Sarah Preston of the ACLU-NC spoke on the bill. Senator Bingham moved for a favorable report. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Monday, June 29, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **1438** Videoconference Tech. in Court Proceedings.
Sequential Referral: None
Recommended Referral: None

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

H.B. **1347** Chief Court Counselor Delegation.
Draft Number: 50750
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comments:

Sen. Jones will handle HB 1347
Sen. Snow will handle HB 1438

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — June 25, 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sarah Preston	ACLU-NC
Keith Sutton	DJJDP
Donald Pinchback	DJJDP/District 14/Durham
Judy Stephens	DJJDP
Fred Baggett	Smith Moore Leatherwood
Brock David-Yerums	Intern - Senator Atwater
Sam Sands	WCSP
Brian Beasley	High Point Police Department
Mildred Spearman	NCDOC
Bob Brinson	Correction
Penny Huffin	School of Gov.

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Marc Meyer	NCLM

HOUSE BILL 1077*
Committee Substitute Favorable 5/12/09

Short Title: Venue/Municipalities in Multiple Districts. (Public)

Sponsors:

Referred to:

April 6, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE VENUE RULES AND THE AUTHORITY OF MAGISTRATES FOR MUNICIPALITIES LYING IN FOUR OR MORE COUNTIES, EACH OF WHICH IS IN A DIFFERENT JUDICIAL DISTRICT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-199(c) reads as rewritten:

"(c) A district court judge sitting at a seat of court described in this section may, in criminal cases, conduct preliminary hearings and try misdemeanors arising within the corporate limits of the municipality plus the territory embraced within a distance of one mile in all directions therefrom.

If the corporate limits of the municipality extend into two or more counties, each of which is in a separate district court district, a district court judge assigned to sit at the seat of court has the same authority over criminal cases arising in the municipality and the territory embraced within a distance of one mile in all directions that he would have if the corporate limits of the municipality were solely located in a single district court district. Judges assigned to sit in such a municipality shall be assigned by the chief district court judge serving the district in which a majority of the voters of the municipality reside, but offenses arising in ~~the~~ a portion of the municipality in which ~~the~~ a minority of the voters reside shall not be disposed of in the municipality unless the chief district court judge for that district consents in writing to the disposition of criminal cases in the municipality. However, for charges brought by municipal law enforcement officers only, if the corporate limits of the municipality extend into four or more counties, each of which is in a separate district court district, offenses arising in a portion of the municipality in which a minority of the voters reside shall be disposed of in the portion of the municipality in which a majority of the voters reside without obtaining the consent of the chief district court judge for the district in which the offense occurred."

SECTION 2. G.S. 7A-293 reads as rewritten:

"**§ 7A-293. Special authority of a magistrate assigned to a municipality located in more than one county of a district court district.**

A magistrate assigned to an incorporated municipality, the boundaries of which lie in more than one county of a district court district, may, in criminal matters, exercise the powers granted by G.S. 7A-273 as if the corporate limits plus the territory embraced within a distance of one mile in all directions therefrom were located wholly within the magistrate's county of residence. Appeals from a magistrate exercising the authority granted by this section shall be taken in the district court in the county in which the offense was committed. A magistrate exercising the special authority granted by this section shall transmit all records, reports, and monies collected to the clerk of the superior court of the county in which the offense was committed. In addition, if a magistrate is assigned to an incorporated municipality, the

boundaries of which lie in two or more district court districts, the magistrate may exercise the powers described in this section as if ~~both~~ the counties were in the same district court district, if the clerks of superior court and the chief district court judges serving ~~both~~the districts in which the municipality is located agree in writing that the exercise of this special authority would promote the administration of justice in the municipality and in ~~both~~the districts. However, if a magistrate is assigned to an incorporated municipality, the boundaries of which lie in four or more counties, each of which is in a separate district court district, the magistrate may exercise the powers described in this section as if all the counties were in the same district court district, without the necessity of such an agreement between the clerks and judges of the affected counties, and the records, reports, and monies collected in connection with the exercise of that authority shall be transmitted to the clerk of the superior court district for which the municipality is a seat of court."

SECTION 3. G.S. 15A-131(c) reads as rewritten:

"(c) Except as otherwise provided in this subsection, venue for probable cause hearings and trial proceedings in cases within the original jurisdiction of the superior court lies in the county where the charged offense occurred. ~~If~~ Except as otherwise provided in this subsection, if the alleged offense is committed within the corporate limits of a municipality which is the seat of superior court and is located in more than one county, venue lies in the superior court which sits within that municipality, but upon timely objection of the defendant or the district attorney in the county in which the alleged offense occurred the case must be transferred to the county in which the alleged offense occurred. However, for charges brought by municipal law enforcement officers only, if the alleged offense is committed within the corporate limits of a municipality that extends into four or more counties, each of which is in a separate superior court district, offenses committed within the corporate limits of the municipality but in a superior court district other than the one for which the municipality is the seat of superior court shall be disposed of in the municipality with no allowance for objections by the defendant or the district attorney."

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

HOUSE BILL 1077:
Venue/Municipalities in Multiple Districts

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 25, 2009
Introduced by:	Reps. Wiley, Jones	**Prepared by:**	Jennifer McGinnis
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 1077 amends the venue rules and the authority of magistrates for municipalities lying in four or more counties, each of which is in a different judicial district.***

[As introduced, this bill was identical to S854, as introduced by Sen. Vaughan, which is currently in Senate Judiciary II.]

CURRENT LAW: North Carolina law currently makes provisions for the handling of criminal cases that occur in a municipality that is located in two counties which are in two different judicial districts by allowing the cases to be handled in the judicial district that has the majority of the voters in the municipality, with the written consent of the appropriate counterpart in the other judicial district. This is generally handled by standing agreements between the two judicial districts.

BILL ANALYSIS: House Bill 1077 amends the statutes relating to venue and the authorities of magistrates that currently apply to criminal cases within municipalities located in two counties and two judicial districts. The current law remains the same in its application to those municipalities located in two counties and two judicial districts.

House Bill 1077 adds language to the current law to make provisions for the handling of criminal cases in a municipality that is located in four or more counties, all of which are in different judicial districts.

Section 1 provides that with regard to venue for criminal matters in district court, the conduct of preliminary hearings and trial of misdemeanors, if a municipality is located in four or more counties, all of which are in different district court districts, criminal cases arising in the portions of the municipality where a minority of the voters reside shall be handled in the district court district where the majority of the voters in the municipality reside without obtaining the consent of the chief district court judge for the district in which the offense occurred.

Section 2 provides that if a municipality is located in four or more counties, all of which are in different district court districts, an assigned magistrate may exercise authority as if all the counties were in the same court district (an agreement between the clerks and judges of the affected counties to grant this special authority would not be necessary). The records, reports, and monies collected in connection with the magistrate's exercise of authority shall be transmitted to the clerk of the superior court district for which the municipality is a seat of court.

Section 3 provides that with regard to venue for probable cause hearings and trial proceedings in cases within the original jurisdiction of the superior court, if a municipality is located in four or more counties, all of which are in different superior court districts, criminal cases arising in the portions of the municipality where a minority of the voters reside may be handled in the superior court district where the majority of the voters in the municipality reside with no allowance for objections by the defendant or the district attorney.

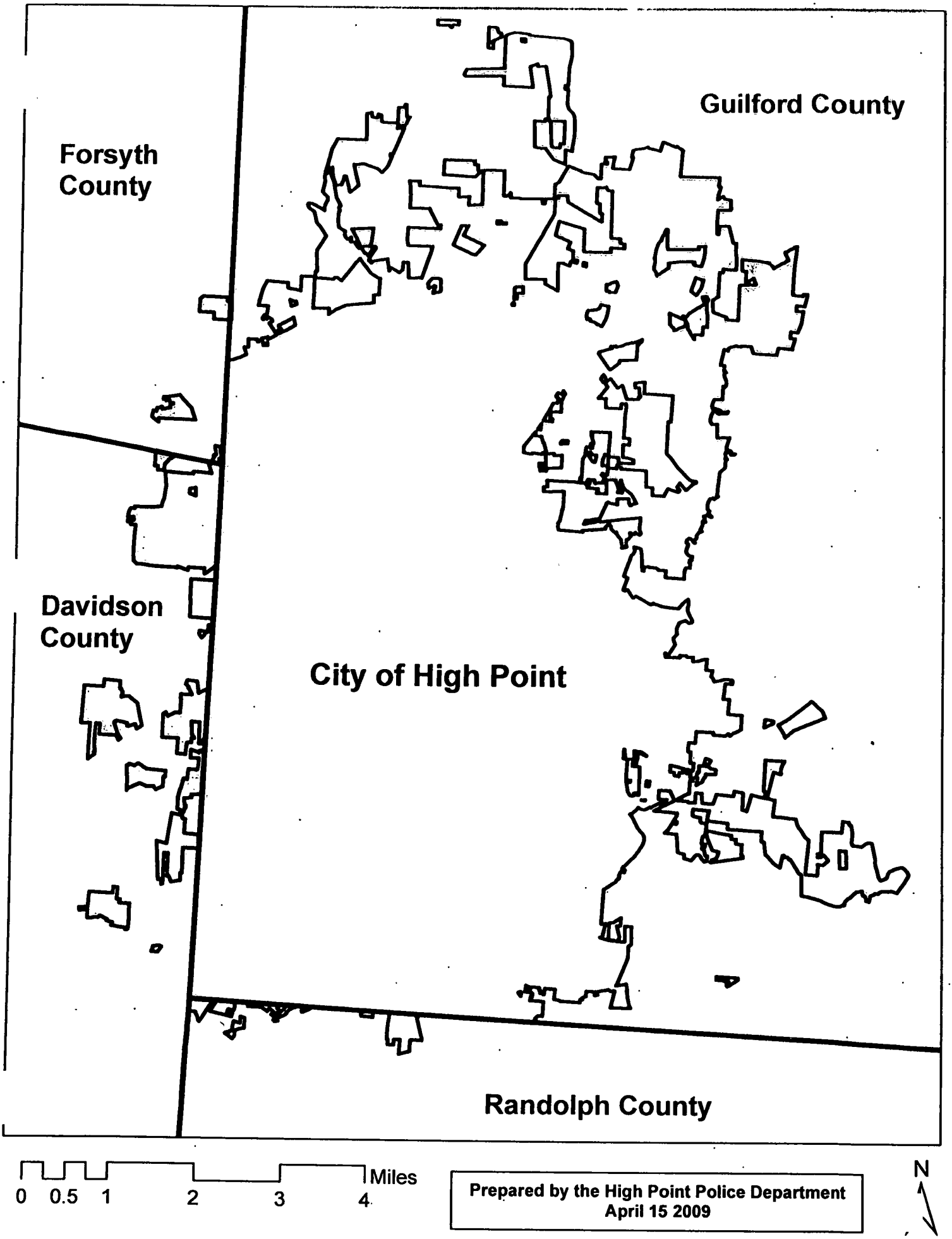
EFFECTIVE DATE: This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

BACKGROUND: Currently, the only municipality this Act would apply to is High Point.

Susan Sitze, Committee Counsel for House Ways and Means/Broadband Connectivity, and Steven Rose, Committee Counsel to House Judiciary III, substantially contributed to this summary.

H1077-SMRI-67(e2) v1

The Four Counties and the High Point, NC City Limits



HOUSE BILL 1347

Short Title:	Chief Court Counselor Delegation.	(Public)
Sponsors:	Representatives Mobley; and Parmon.	
Referred to:	Juvenile Justice, if favorable, Judiciary I.	

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CHIEF COURT COUNSELOR IN EACH DISTRICT TO DELEGATE CERTAIN RESPONSIBILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-535 reads as rewritten:

"**§ 143B-535. Duties and powers of chief court counselors.**

The chief court counselor in each district appointed under G.S. 143B-516(b)(15) may:

(1) Appoint juvenile court counselors, secretaries, and other personnel authorized by the Department in accordance with the personnel policies adopted by the Department.

(2) Supervise and direct the program of juvenile intake, protective supervision, probation, and post-release supervision within the district.

(3) Provide in-service training for staff as required by the Department.

(4) Keep any records and make any reports requested by the Secretary in order to provide statewide data and information about juvenile needs and services.

(5) Delegate to a juvenile court counselor the authority to carry out specified responsibilities of the chief court counselor to facilitate the effective operation of the district.

(6) Designate a juvenile court counselor in the district as acting chief court counselor, to act during the absence or disability of the chief court counselor."

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

HOUSE BILL 1347:
Chief Court Counselor Delegation

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 24, 2009
Introduced by:	Rep. Mobley	**Prepared by:**	Brenda J. Carter
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***House Bill 1347 authorizes the chief court counselor appointed by the Secretary of the Department of Juvenile Justice and Delinquency Prevention in each district to delegate certain responsibilities or designate an acting chief court counselor.***

CURRENT LAW: G.S. 143B-516 authorizes the Secretary of the Department of Juvenile Justice and Delinquency Prevention (DJJDP) to appoint a chief court counselor in each judicial district upon the recommendation of the chief district court judge of that district. The duties and powers of chief court counselors are set out in G.S. 143B-535, including the authority to appoint court counselors and other personnel, and to supervise and direct the program of juvenile intake, protective supervision, probation, and post-release supervision within the district. Current law does not authorize any person other than the chief court counselor to carry out the statutory responsibilities of the office.

BILL ANALYSIS: House Bill 1347 would amend G.S. 143B-535 concerning the duties and powers of chief court counselors appointed by the Secretary of the Department of Juvenile Justice and Delinquency Prevention.

Section 1 of the bill would do the following:

- Make a technical correction by inserting the word "juvenile" before "court counselor" in the statute.
- Allow the appointed chief court counselor in each district to delegate to a juvenile court counselor the authority to carry out specified responsibilities.
- Allow the appointed chief court counselor, in the case of absence or disability, to designate a juvenile court counselor in the district to serve as acting chief court counselor.

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

Hal Pell and Susan Sitze, Staff Attorneys, substantially contributed to this summary.

H1347-SMRV-108(e1) v1

H 1

HOUSE BILL 1438

Short Title:	Videoconference Tech. in Court Proceedings.	(Public)
Sponsors:	Representatives Spear, R. Warren, Sutton, Randleman (Primary Sponsors); Braxton, Brisson, Crawford, Faison, Guice, Haire, Harrison, Hilton, Hurley, Love, Lucas, McLawhorn, Rapp, Steen, Stewart, Tucker, E. Warren, Wilkins, Williams, and Wray.	
Referred to:	Science and Technology, if favorable, Judiciary II.	

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A PILOT PROGRAM TO DETERMINE THE EFFECTIVENESS OF USING VIDEOCONFERENCE TECHNOLOGY TO CONDUCT COURT PROCEEDINGS, OTHER THAN TRIALS, INVOLVING PERSONS IN THE CUSTODY OF THE DEPARTMENT OF CORRECTION AND IN LOCAL CONFINEMENT FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. The Administrative Office of the Courts, in consultation with the Department of Correction, shall conduct a pilot program to test the feasibility of using videoconference or similar technology to conduct court proceedings involving defendants in the custody of the Department of Correction, instead of requiring live appearances in court for those defendants. The Administrative Office of the Courts shall designate two counties to participate in the pilot, and the Department of Correction shall designate one prison facility. The Administrative Office of the Courts may also designate one or more counties to participate in a pilot program involving persons in the custody of local confinement facilities to test the feasibility of using videoconferencing equipment to conduct proceedings authorized by this act but not otherwise authorized by law.

SECTION 2. Notwithstanding any other provision of law, the courts participating in the pilot program authorized by this act may conduct proceedings required under G.S. 15A-511, Article 26 of Chapter 15A of the General Statutes, G.S. 15A-601, and G.S. 15A-941 by videoconference without the consent of the defendant. If a defendant voluntarily and knowingly waives his or her right to appear in person, the court may also accept guilty pleas and impose sentences in cases in which the plea is taken by videoconference, conduct hearings on motions, and conduct probation modification or revocation proceedings. The waiver may be taken by videoconference. In the jurisdictions participating in the pilot programs, no proceeding in which a person is charged with a capital felony may be conducted using videoconferencing equipment, but nothing in this act shall be construed to limit the use of testimony at a trial taken by videoconferencing equipment when the testimony is otherwise allowed by law to be taken in that manner.

SECTION 3. The equipment used in conducting the videoconference proceedings authorized by this act shall be used in a manner that ensures that the judicial official conducting the proceeding and the defendant can see and hear each other and that ensures that the defendant and his or her attorney may communicate during the proceeding in a manner that preserves the defendant's right to confidential communication with counsel.

SECTION 4. The North Carolina Rural Courts Commission, in cooperation with the Department of Correction, shall study the effectiveness of the use of videoconferences for these proceedings and report its findings and recommendations for expansion or modification to the Chief Justice, the Secretary of Correction, the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety, and the Chairs of the Senate and House Appropriations Committees. The study shall address the costs of implementing videoconferencing on a statewide basis for these purposes, as well as the cost savings obtained through the use of such equipment, the quality of the transmissions, the frequency of use, and any other relevant information the Commission deems appropriate. The report shall be submitted no later than May 1, 2010. The Administrative Office of the Courts and the Department of Correction may seek grant funds to offset any costs associated with the study that cannot be provided by appropriations to those agencies.

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

HOUSE BILL 1438:
Videoconference Tech. in Court Proceedings

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 25, 2009
Introduced by:	Reps. Spear, R. Warren, Sutton, Randleman	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 1438 would provide for a pilot program to determine the effectiveness of utilizing audio/visual technology to conduct specified criminal proceedings instead of live appearances by the defendant.

CURRENT LAW: Statutes authorize the use of audio and video transmission between the judicial official and the defendant in various stages of a noncapital criminal case, including initial appearance, first appearance, arraignment, and bail determinations. Requirements include that the parties be able to see and hear each other and that defendant be allowed to communicate fully and confidentially with his or her attorney during the proceeding. Prior to the use of audio and video transmission, the procedures and type of equipment for audio and video transmission must be approved by the Administrative Office of the Courts.

BILL ANALYSIS:

- The Administrative Office of the Courts, in consultation with the Department of Correction, would be required to conduct a pilot program to test the feasibility of using videoconference or similar technology to conduct court proceedings involving defendants in the Department's custody.
- The pilot would involve two counties and one prison facility.
- The AOC would be authorized to also designate one or more counties to participate in using videoconferencing equipment to conduct proceedings authorized by the act involving local confinement facility prisoners.
- The act specifically provides that the courts may utilize the teleconferencing procedures in the pilot program without the consent of the defendant.
- If a defendant voluntarily waives his or her right of appearance, the act would expand the types of proceedings where teleconferencing may be used, to include guilty pleas, motion hearings, and probation revocation proceedings.
- Capital proceedings would be excluded from any videoconferencing.
- The judicial official conducting the proceeding and the defendant must be able to see and hear each other, and the defendant must be able to communicate confidentially with counsel.
- The North Carolina Rural Courts Commission, in cooperation with the Department of Correction, would report its findings and recommendations on the effectiveness of the use of videoconferences to the Chief Justice, the Secretary of Correction, the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety, and the Chairs of the Senate and House Appropriations Committees. The report shall be submitted no later than May 1, 2010.

- The study must address the costs of implementing videoconferencing on a statewide basis, as well as the (i) cost savings obtained through the use of such equipment, (ii) the quality of the transmissions, (iii) the frequency of use, and (iv) any other relevant information the Commission deems appropriate.
- The Administrative Office of the Courts and the Department of Correction are authorized to seek grant funds to offset any study costs not covered by appropriations.

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

H1438-SMRC-57(e1) v1

Hal Pell, counsel to House Science and Technology, and Brad Krehely, counsel to House Judiciary II, contributed substantially to the drafting of this summary.

Principal Clerk ____
Reading Clerk ____

Corrected Notice HB 581 added

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	June 30, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 581	Partition Sales/Extend Report & Answer Times.	Representative Bryant Representative Michaux, Jr. Representative Stam Representative Spear
HB 765	Revise Elective Share Statutes.	Representative Stam
HB 1449	Juvenile Code Revisions.	Representative Weiss Representative Goodwin Representative Glazier Representative Moore

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

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Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II Committee
Tuesday, June 30, 2009, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 581	Partition Sales/Extend Report & Answer Times.	Representative Bryant Representative Michaux, Jr. Representative Stam Representative Spear
HB 765	Revise Elective Share Statutes.	Representative Stam
HB 1449	Juvenile Code Revisions.	Representative Weiss Representative Goodwin Representative Glazier Representative Moore

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE
Tuesday, June 30, 2009 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 10:00 AM on June 30, 2009, in Room 1124 of the Legislative Building with fourteen members of the committee present. Senator Fletcher Hartsell, Jr., Chairman, presided.

Senator Hartsell introduced pages Addison McDowell, Shaquila Jones, Nia Matherson, Brea Wilkerson, Tiffany Owens and Kiyana Watts and thanked them for their assistance.

Senator Vaughan chaired as Senator Hartsell was needed in another committee.

HB 581 – (Partition Sales/Extend Report & Answer Times.) Senator Vaughan noted the bill was being taken out of the sub committee and brought back to the full committee. Senator Goodall moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Representative Bryant explained the bill. Senator Jones moved for a favorable report to the Proposed Committee Substitute. All voted and the motion carried.

HB 765 – (Revise Elective Share Statutes.) SenatorForrester moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Representative Stam explained the bill. Questions from Senators Allran, Goodall and Bingham were answered by Representative Stam and Ms. Kory Goldsmith, Staff Attorney. Ms. Liz Arias noted that the Bar Association was on board with the bill. Senator Jones moved for a favorable report to the Proposed Committee Substitute. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, June 30, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

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

H.B. **581** Partition Sales/Extend Report & Answer Times.

Draft Number:	80479
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **765** Revise Elective Share Statutes.

Draft Number:	80458
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

HB 581 – Sen. Atwater will handle
HB 765 – Sen. Hartsell will handle

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 6-30-09

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Katherine Wilkerson	Lynch & Eatmon / NCBA
[signature]	AOC
Brett Thompson	Wake CSC's office
Jeff Harris	Land Loss Prevention Project
LIZ ARIAS	Womble Carlyle
Kim Crouch	NCBA
[illegible] WHITE	NCAOC
Deana Fleming	NC AOC
Whitney Scarborough	AOC Intern
Bob & Joe Hope	424 Cameron Woods Dr. Apex, NC
Patrick Buffkin	[signature]

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 6-30-09

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Penny Griffin	School of Gov.
T. Ten Mees	Executive
Edgar Miller	CTNC
Will Snyderwine	CTNC
Mary Henderson	Land Loss Prevention Project
Jeff Harris	Land Loss Prevention Project
Patrick Yancey	LLPP

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 1

HOUSE BILL 581

Short Title:	Partition Sales/Extend Report & Answer Times.	(Public)
Sponsors:	Representatives Bryant, Spear, Stam, Michaux (Primary Sponsors); Blue, Hall, Harrison, Jones, Lucas, Parmon, Pierce, Wainwright, and Womble.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary I.	

March 16, 2009

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE DEADLINE FOR THE COMMISSIONERS IN A PARTITION ACTION TO REPORT BACK TO THE COURT ON THEIR PROPOSED DIVISION OF THE LAND, AND TO EXTEND THE DEADLINE FOR RESPONDING TO A SUMMONS IN A PARTITION ACTION FROM TEN DAYS TO THIRTY DAYS, AS RECOMMENDED BY THE PARTITION SALES STUDY COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 46-17 reads as rewritten:

"**§ 46-17. Report of commissioners; contents; filing.**

The commissioners, within a reasonable time, not exceeding ~~60~~ 90 days after the notification of their appointment, shall make a full and ample report of their proceedings, under the hands of any two of them, specifying therein the manner of executing their trust and describing particularly the land or parcels of land divided, and the share allotted to each tenant in severalty, with the sum or sums charged on the more valuable dividends to be paid to those of inferior value. The report shall be filed in the office of the superior court clerk: Provided, that the clerk of the superior court may, in ~~his~~ the clerk's discretion, for good cause shown, extend the time for the filing of the report of said commissioners for an additional period not exceeding 60 days. This proviso shall be applicable to proceedings now pending for the partition of real property."

SECTION 2.(a) G.S. 1-394 reads as rewritten:

"**§ 1-394. Contested special proceedings; commencement; summons.**

Special proceedings against adverse parties shall be commenced as is prescribed for civil actions. The summons shall notify the defendant or defendants to appear and answer the complaint, or petition, of the plaintiff within 10 days after its service upon the defendant or defendants, and must contain a notice stating in substance that if the defendant or defendants fail to answer the complaint, or petition, within the time specified, plaintiff will apply to the court for the relief demanded in the complaint, or petition. The summons must run in the name of the State, and be dated and signed by the clerk, assistant clerk or deputy clerk of the superior court having jurisdiction in the special proceeding, and be directed to the defendant or defendants, and be delivered for service to some proper person, as defined by Rule 4(a) of the Rules of Civil Procedure. The clerk shall indicate on the summons by appropriate words that the summons is issued in a special proceeding and not in a civil action. The manner of service shall be as is prescribed for summons in civil actions by Rule 4 of the Rules of Civil Procedure: Provided, in partition proceedings under Chapter 46 of the General Statutes or where the defendant is an agency of the federal government, or an agency of the State, or a local government, or an agency of a local government, the time for filing answer or other plea shall

be within 30 days after the date of service of summons or after the final determination of any motion required to be made prior to the filing of an answer."

SECTION 2.(b) Article 1 of Chapter 46 of the General Statutes is amended by adding a new section to read:

"**§ 46-2.1 Summons.**

In partition proceedings initiated under this Chapter, the period of time for answering a summons is provided in G.S. 1-394."

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

HOUSE BILL 581:
Partition Sales/Extend Report & Answer Times

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 29, 2009
Introduced by:	Reps. Bryant, Spear, Stam, Michaux	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	PCS to First Edition H581-CSRC-41		

SUMMARY: ***House Bill 581 extends the deadline for the commissioners in a partition action to report back to the court on their proposed division of the land, and extends the deadline for responding to a summons in a partition action from ten days to thirty days, as recommended by the Partition Sales Study Committee. The PCS provides that the petition include reasonable notice to respondents of their right to seek counsel and clarifies when an entry of judgment becomes final and effective for purposes of an appeal.***

BILL ANALYSIS:

Section 1 extends (from 60 to 90 days) the deadline for the commissioners in a partition action to report back to the court on their proposed division of the land.

Section 2 extends (from 10 to 30 days) the deadline for responding to a summons in a partition action.

Section 3 creates G.S. 46-2.1 which requires that the petition include written notice that will make the respondent aware of his or her right to seek the advice of counsel and references existing law (G.S. 6-21(e)) that allows a court to order attorneys' fees be paid as part of the cost of the proceeding. (These provisions had been included in House Bill 578 as it passed the House.)

Section 4 clarifies that an entry of judgment becomes final and effective either 15 days after entry or when the clerk denies a petition for revocation, which ever occurs later. Provides that the order confirming the sale may be appealed within 10 days of the order becoming final and effective.

Section 5 places a cross-reference regarding the amount of time to appeal the order of confirmation of sale.

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

H581-SMRC-63(CSRC-41) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 581
PROPOSED SENATE COMMITTEE SUBSTITUTE H581-CSRC-41 [v.8]

6/29/2009 9:31:11 PM

Short Title: Partition Sales/Extend Report & Answer Times. (Public)

Sponsors:

Referred to:

March 16, 2009

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE DEADLINE FOR THE COMMISSIONERS IN A PARTITION ACTION TO REPORT BACK TO THE COURT ON THEIR PROPOSED DIVISION OF THE LAND, TO EXTEND THE DEADLINE FOR RESPONDING TO A SUMMONS IN A PARTITION ACTION FROM TEN DAYS TO THIRTY DAYS, TO PROVIDE NOTICE OF RIGHT TO SEEK COUNSEL, AND TO CLARIFY THE TIME PERIOD FOR APPEALING A CONFIRMATION ORDER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 46-17 reads as rewritten:

"**§ 46-17. Report of commissioners; contents; filing.**

The commissioners, within a reasonable time, not exceeding ~~60~~ 90 days after the notification of their appointment, shall make a full and ample report of their proceedings, under the hands of any two of them, specifying therein the manner of executing their trust and describing particularly the land or parcels of land divided, and the share allotted to each tenant in severalty, with the sum or sums charged on the more valuable dividends to be paid to those of inferior value. The report shall be filed in the office of the superior court clerk: Provided, that the clerk of the superior court may, in ~~his~~ the clerk's discretion, for good cause shown, extend the time for the filing of the report of said commissioners for an additional period not exceeding 60 days. This proviso shall be applicable to proceedings now pending for the partition of real property."

SECTION 2. G.S. 1-394 reads as rewritten:

"**§ 1-394. Contested special proceedings; commencement; summons.**

Special proceedings against adverse parties shall be commenced as is prescribed for civil actions. The summons shall notify the defendant or defendants to appear and answer the complaint, or petition, of the plaintiff within 10 days after its service upon the defendant or defendants, and must contain a notice stating in substance that if the defendant or defendants fail to answer the complaint, or petition, within the time specified, plaintiff will apply to the court for the relief demanded in the complaint, or petition. The summons must run in the name of the State, and be dated and signed by the clerk, assistant clerk or deputy clerk of the superior court having jurisdiction in the special proceeding, and be directed to the defendant or defendants, and be delivered for service to some proper person, as defined by Rule 4(a) of the Rules of Civil Procedure. The clerk shall indicate on the summons by appropriate words that the summons is issued in a special proceeding and not in a civil action. The manner of service shall be as is prescribed for summons in civil actions by Rule 4 of the Rules of Civil Procedure:

Provided, in partition proceedings under Chapter 46 of the General Statutes or where the defendant is an agency of the federal government, or an agency of the State, or a local government, or an agency of a local government, the time for filing answer or other plea shall be within 30 days after the date of service of summons or after the final determination of any motion required to be made prior to the filing of an answer."

SECTION 3. Article 1 of Chapter 46 of the General Statutes is amended by adding a new section to read:

"**§ 46-2.1 Summons.**

(a) In partition proceedings initiated under this Chapter, the period of time for answering a summons is provided in G.S. 1-394.

(b) Written notice shall be included in the petition in a manner reasonably calculated to make the respondent aware of the following:

(1) That the respondent has the right to seek the advice of an attorney and that free legal services may be available to the respondent by contacting Legal Aid of North Carolina or other legal services organizations.

(2) That pursuant to G.S. 6-21 the court has the authority, in its discretion, to order reasonable attorneys' fees to be paid as a part of the costs of the proceeding."

SECTION 4. G.S. 46-28.1 reads as rewritten:

"**§ 46-28.1. Petition for revocation of confirmation order.**

(a) Notwithstanding G.S. 46-28 or any other provision of law, ~~an order confirming the partition sale of real property shall not become final and effective until 15 days after entered. At any time before the confirmation order becomes final and effective,~~ within 15 days of entry of the order confirming the partition sale or real property, any party to the partition proceeding or the purchaser may petition the court to revoke its order of confirmation and to order the withdrawal of the purchaser's offer to purchase the property upon the following grounds:

(1) In the case of a purchaser, a lien remains unsatisfied on the property to be conveyed.

(2) In the case of any party to the partition proceeding:

a. Notice of the partition was not served on the petitioner for revocation as required by Rule 4 of the Rules of Civil Procedure; or

b. Notice of the sale was not mailed to the petitioner for revocation as required by G.S. 46-28(b); or

c. The amount bid or price offered is inadequate and inequitable and will result in irreparable damage to the owners of the real property.

In no event shall the confirmation order become final or effective during the pendency of a petition under this section. No upset bid shall be permitted after the entry of the confirmation order.

(b) The party petitioning for revocation shall deliver a copy of the petition to all parties required to be served under Rule 5 of G.S. 1A-1, and the officer or person designated to make such sale in the manner provided for service of process in Rule 4(j) of G.S. 1A-1. The court shall schedule a hearing on the petition within a reasonable time and shall cause a notice of the hearing to be served on the petitioner, the officer or person designated to make such a sale and all parties required to be served under Rule 5 of G.S. 1A-1.

(c) In the case of a petition brought under this section by a purchaser claiming the existence of an unsatisfied lien on the property to be conveyed, if the purchaser proves by a preponderance of the evidence that:

(1) A lien remains unsatisfied on the property to be conveyed; and

(2) The purchaser has not agreed in writing to assume the lien; and

(3) The lien will not be satisfied out of the proceeds of the sale; and

(4) The existence of the lien was not disclosed in the notice of sale of the property, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer.

The order of the court in revoking an order of confirmation under this section may not be introduced in any other proceeding to establish or deny the existence of a lien.

(d) In the case of a petition brought pursuant to this section by a party to the partition proceeding, if the court finds by a preponderance of the evidence that petitioner has proven a case pursuant to a., b., or c. of subsection (a)(2), the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer.

(e) If the court revokes its order of confirmation under this section, the court shall order a resale. The procedure for a resale is the same as is provided for an original public sale under Article 29A of Chapter 1 of the General Statutes.

(f) An order confirming the partition sale of real property becomes final and effective 15 days after entry of the order of confirmation or when the clerk denies a petition for revocation, whichever occurs later. A party may appeal an order confirming the partition of sale of real property within 10 days of the order becoming final and effective."

SECTION 5. G.S. 1-301.2(e) reads as rewritten:

"(e) Appeal of Clerk's Decisions. ~~A~~ Except as provided in G.S. 46-28.1(f), a party aggrieved by an order or judgment of a clerk that finally disposed of a special proceeding, may, within 10 days of entry of the order or judgment, appeal to the appropriate court for a hearing de novo. Notice of appeal shall be in writing and shall be filed with the clerk. The order or judgment of the clerk remains in effect until it is modified or replaced by an order or judgment of a judge. A judge of the court to which the appeal lies or the clerk may issue a stay of the order or judgment upon the appellant's posting of an appropriate bond set by the judge or clerk issuing the stay. Any matter previously transferred and determined by the court shall not be relitigated in a hearing de novo under this subsection.

SECTION 6. This act becomes effective October 1, 2009.

HOUSE BILL 765
Committee Substitute Favorable 4/8/09

Short Title: Revise Elective Share Statutes. (Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO REVISE THE EXISTING ELECTIVE SHARE STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1A of Chapter 30 of the General Statutes reads as rewritten:

"Article 1A.

"Elective Share.

"§ 30-3.1. Right of elective share.

(a) Elective Share. – The surviving spouse of a decedent who dies domiciled in this State has a right to claim an "elective share", which means an amount equal to (i) the applicable share of the Total Net Assets, as defined in G.S. 30-3.2(4), less (ii) the value of Net Property Passing to Surviving Spouse, as defined in ~~G.S. 30-3.3(a).~~G.S. 30-3.2(2b). The applicable share of the Total Net Assets is as follows:

(1) If the decedent is not survived by any lineal descendants, one-half of the Total Net Assets.

(2) If the decedent is survived by one child, or lineal descendants of one deceased child, one-half of the Total Net Assets.

(3) If the decedent is survived by two or more children, or by one or more children and the lineal descendants of one or more deceased children, or by the lineal descendants of two or more deceased children, one-third of the Total Net Assets.

(b) Reduction of Applicable Share. – In those cases in which the surviving spouse is a second or successive spouse, and the decedent has one or more lineal descendants ~~surviving by a prior marriage~~ surviving who are not lineal descendants of the decedent's marriage to the surviving spouse but there are no lineal descendants surviving by the surviving spouse, the applicable share as determined in subsection (a) of this section shall be reduced by one-half.

~~(c) Death Taxes. Death taxes shall be taken into account as a claim against the estate in determining Total Net Assets only to the extent that the assets received by the surviving spouse do not qualify for the federal estate tax marital deduction pursuant to section 2056 of the Code or similar provisions under the laws of any other applicable taxing jurisdiction. The amount of such claims shall equal the difference between the amount of such death taxes as finally determined and the amount such death taxes would have been if all assets received by the surviving spouse had qualified for the federal estate tax marital deduction pursuant to section 2056 of the Code and similar provisions under the laws of any other applicable taxing jurisdictions.~~

"§ 30-3.2. Definitions.

The following definitions apply in this Article:

(1) ~~"Code" means the~~ Code. – The Internal Revenue Code in effect at the time of the decedent's death.

(1a) Claims. – Includes liabilities of the decedent whether arising in contract, in tort, or otherwise, and liabilities of the decedent's estate which arise at or after the death of the decedent, including funeral and administrative expenses, except for:

a. A claim for equitable distribution of property pursuant to G.S. 50-20 awarded subsequent to the death of the decedent.

b. Death taxes, except for those death taxes attributable to Property Passing to the Surviving Spouse. "Death taxes attributable to Property Passing to the Surviving Spouse" equals the amount of decedent's death taxes as finally determined, less the amount such death taxes would have been if all Property Passing to the Surviving Spouse had qualified for the federal estate tax marital deduction pursuant to section 2056 of the Code or had qualified for a similar provision under the laws of another applicable taxing jurisdiction.

c. A claim founded on a promise or agreement of the decedent, to the extent such claim is not arm's length or is not supported by full or adequate consideration in money or money's worth.

(2) ~~"Death taxes" means any~~ Death taxes. – Any estate, inheritance, succession, and similar taxes imposed by any taxing authority, reduced by any applicable credits against those taxes.

(2a) General power of appointment. – Any power of appointment, including a power to designate the beneficiary of a beneficiary designation, exercisable by the decedent, regardless of the decedent's capacity to exercise such power, in favor of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate, except for (i) powers limited by an "ascertainable standard" as defined in G.S. 36C-1-103 and (ii) powers which are not exercisable by the decedent except in conjunction with a person who created the power or has a substantial interest in the property subject to the power and whose interest is adverse to the exercise of the power in favor of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate. In no event shall a power held by the decedent as attorney-in-fact under a power of attorney be considered a general power of appointment.

(2b) Net Property Passing to Surviving Spouse. – The Property Passing to Surviving Spouse reduced by (i) death taxes attributable to Property Passing to the Surviving Spouse, (ii) any expenses described in G.S. 30-3.4(h) that are a charge against or are apportioned to the surviving spouse with respect to property included in Property Passing to Surviving Spouse, and (iii) claims satisfied out of property included in Property Passing to the Surviving Spouse.

(2c) Lineal descendant. – Defined in G.S. 29-2.

(3) ~~"Nonadverse trustee" means:~~ Nonadverse trustee. – Any of the following:

a. Any person who does not possess a substantial beneficial interest in the trust that would be adversely affected by the exercise or nonexercise of the power that the individual trustee possesses respecting the trust;

b. Any person subject to a power of removal by the surviving spouse with or without cause; or

c. Any company authorized to engage in trust business under the laws of this State, or that otherwise meets the requirements to engage in trust business under the laws of this State.

(3a) Nonspousal assets. – All property included in total assets other than the property included in Property Passing to Surviving Spouse. The value of nonspousal assets shall be their net values used in determining Total Net Assets.

(3b) Presently exercisable general power of appointment. – A general power of appointment which is exercisable at the time in question. A testamentary general power of appointment is not presently exercisable.

(3c) Property Passing to Surviving Spouse. – The sum of the values, as valued pursuant to G.S. 30-3.3A, of the following:

a. Property (i) devised, outright or in trust, by the decedent to the surviving spouse or (ii) that passes, outright or in trust, to the surviving spouse by intestacy, beneficiary designation, the exercise or failure to exercise the decedent's testamentary general power of appointment or the decedent's testamentary limited power of appointment, operation of law, or otherwise by reason of the decedent's death, excluding any benefits under the federal social security system.

b. Any year's allowance awarded to the surviving spouse.

c. Property renounced by the surviving spouse.

d. The surviving spouse's interest in any life insurance proceeds on the life of the decedent.

e. Any interest in property, outright or in trust, transferred from the decedent to the surviving spouse during the lifetime of the decedent for which the surviving spouse signs a statement acknowledging such a gift. For purposes of this sub-subdivision, any gift to the surviving spouse by the decedent of the decedent's interest in any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with right of survivorship shall be deemed to be a gift of one-half of the entire interest in property so held by the decedent and the surviving spouse.

f. Property awarded to the surviving spouse, subsequent to the death of the decedent, pursuant to an equitable distribution claim under G.S. 50-20.

g. Property held in a spousal trust described in G.S. 30-3.3A(e)(1).

If property falls under more than one sub-subdivision of this subdivision, then the property shall be included only once, but under the sub-subdivision yielding the greatest value of the property.

(3d) Responsible person. – A person or entity other than the surviving spouse that received, held, or controlled property constituting nonspousal assets on the date used to determine the value of the property.

(3e) Responsible person's nonspousal assets. – The nonspousal assets received, held, or controlled by a responsible person.

(3f) Total assets. – The sum of the values, as determined pursuant to G.S. 30-3.3A, of the following:

a. The decedent's property that would pass by intestate succession if the decedent died without a will, other than wrongful death proceeds;

b. Property over which the decedent, immediately before death, held a presently exercisable general power of appointment, except for (i)

property held jointly with right of survivorship, which is includable in total assets only to the extent provided in sub-subdivision c. of this subdivision and (ii) life insurance, which is includable in Total Assets only to the extent provided in sub-subdivision d. of this subdivision. Includes, without limitation:

1. Property held in a trust that the decedent could revoke.
2. Property held in a trust to the extent that the decedent had an unrestricted power to withdraw the property.
3. Property held in a depository account owned by the decedent in a financial institution payable or transferable at decedent's death to a beneficiary designated by the decedent.
4. Securities owned by the decedent in an account or in certificated form that are payable or transferable at decedent's death to a beneficiary designated by the decedent.

c. Property held as tenants by the entirety or jointly with rights of survivorship as follows:

1. One-half of any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with rights of survivorship is included, without regard to who contributed the property.
2. Property held by the decedent and one or more other persons other than the surviving spouse as joint tenants with rights of survivorship is included to the following extent:
   I. All property attributable to the decedent's contribution.
   II. The decedent's pro rata share of property not attributable to the decedent's contribution, except to the extent of property attributable to contributions by a surviving joint tenant.

   The decedent is presumed to have contributed the jointly owned property unless contribution by another is proven by clear and convincing evidence.

d. Benefits payable by reason of the decedent's death under any policy, plan, contract, or other arrangement, either owned by the decedent or over which the decedent had a general power of appointment or had the power to designate the surviving spouse as beneficiary, including, without limitation:

1. Insurance on the life of the decedent.
2. Accidental death benefits.
3. Annuities.
4. Employee benefits or similar arrangements.
5. Individual retirement accounts.
6. Pension or profit-sharing plans.
7. Deferred compensation.
8. Any private or governmental retirement plan.

e. Property irrevocably transferred by the decedent to the extent the decedent retained the possession or enjoyment of, or the right to income from, the property for life or for any period not ascertainable without reference to the decedent's death or for any period which does not in fact end before the decedent's death, except:

1. Property transferred for full and adequate consideration.

2. Transfers to which the surviving spouse consented in writing by signing a deed, an income or gift tax return that reports the gift, or other writing.
3. Transfers which became irrevocable before the decedent's marriage to the surviving spouse.

The property included in total assets is that fraction of the transferred property to which the decedent retained the right.

f. Property transferred by the decedent to the extent the decedent created a power over the property or the income from the property, which, immediately prior to death, could be exercised by the decedent in conjunction with any other person, or which could be exercised by a person who does not have a substantial interest that would be adversely affected by the exercise or nonexercise of the power, for the benefit of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate, except:
1. Property transferred for full and adequate consideration.
2. Transfers to which the surviving spouse consented in writing by signing a deed, an income or gift tax return that reports the gift, or other writing.
3. Transfers which became irrevocable before the decedent's marriage to the surviving spouse.

The property included in total assets with respect to a power over property is that fraction of the property to which the power related.

g. Property transferred by the decedent to persons other than the surviving spouse if such transfer was made both during the one-year period immediately preceding the decedent's death and during the decedent's marriage to the surviving spouse, except:
1. Property transferred for full and adequate consideration.
2. Transfers to which the surviving spouse consented in writing by signing a deed, an income or gift tax return that reports such gift, or other writing.
3. That part of any property transferred to any one transferee that qualified for exclusion from gift tax under section 2503 of the Code.

For purposes of this sub-subdivision, the termination of a right or interest in, or power over, property that would have been included in the total assets under sub-subdivisions b., e., or f. if the right, interest, or power had not terminated until the decedent's death shall be deemed to be a transfer of such property. Termination occurs when, with respect to a right or interest in property, the decedent transfers or relinquishes the right or interest; with respect to a power over property, the power terminates by exercise or release, but not by lapse or default.

If property falls under more than one sub-subdivision of this subdivision, then the property shall be included only once, but under the sub-subdivision yielding the greatest value of the property.

(4) ~~"Total Net Assets" means, after the payment or provision for payment of the decedent's funeral expenses, year's allowances to persons other than to the surviving spouse, debts, claims other than an equitable distribution of property awarded to the surviving spouse pursuant to G.S. 50-20 subsequent~~

~~to the death of the decedent, and administration expenses, the sum of the following:~~

~~a. All property to which the decedent had legal and equitable title immediately prior to death;~~

~~b. All property received by the decedent's personal representative by reason of the decedent's death, other than wrongful death proceeds;~~

~~c. One half of the value of any property held by the decedent and the surviving spouse as tenants by the entirety, or as joint tenants with rights of survivorship;~~

~~d. The entire value of any interest in property held by the decedent and another person, other than the surviving spouse, as joint tenants with right of survivorship, except to the extent that contribution can be proven by clear and convincing evidence;~~

~~e. The value of any property which would be included in the taxable estate of the decedent pursuant to sections 2033, 2035, 2036, 2037, 2038, 2039, or 2040 of the Code.~~

~~f. Any gifts of property made by the decedent to donees other than the surviving spouse within six months of the decedent's death, excluding:~~

~~1. Any gifts within the annual exclusion provisions of section 2503 of the Code;~~

~~2. Any gifts to which the surviving spouse consented. A signing of a deed, or income or gift tax return reporting such gift shall be considered consent; and~~

~~3. Any gifts made prior to marriage;~~

~~g. Any proceeds of any individual retirement account, pension or profit sharing plan, or any private or governmental retirement plan or annuity of which the decedent controlled the designation of beneficiary, excluding any benefits under the federal social security system;~~

~~h. Any other Property Passing to Surviving Spouse under G.S. 30-3.3; and~~

~~i. In case of overlapping application of the same property under more than one provision, the property shall be included only once under the provision yielding the greatest value."~~

Total Net Assets. – The total assets reduced by year's allowances to persons other than the surviving spouse and claims.

"~~§ 30-3.3. Property passing to surviving spouse.~~

~~(a) Property Passing to Surviving Spouse. For purposes of this Article, "Property Passing to Surviving Spouse" means the sum of the following:~~

~~(1) One half of the value of any interest in property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with rights of survivorship;~~

~~(2) The value of any interest in property (outright or in trust, including any interest subject to a general power of appointment held by the surviving spouse, as defined in section 2041 of the Code) devised by the decedent to the surviving spouse, or which passes to the surviving spouse by intestacy, or by beneficiary designation, or by exercise of or in default of the exercise of the decedent's testamentary general or limited power of appointment, or by operation of law or otherwise by reason of the decedent's death, excluding any benefits under the federal social security system;~~

~~(3) Any year's allowance awarded to the surviving spouse;~~
~~(4) The value of any property renounced by the surviving spouse;~~
~~(5) The value of the surviving spouse's interest, outright or in trust, in any life insurance proceeds on the life of the decedent;~~
~~(6) The value of any interest in property, outright or in trust, transferred from the decedent to the surviving spouse during the lifetime of decedent for which (i) a gift tax return is timely filed reporting such gift, or (ii) the surviving spouse signs a statement acknowledging such a gift. For purposes of this subdivision, any gift to the surviving spouse by the decedent of the decedent's interest in any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with right of survivorship shall be valued at one half of the entire value of that interest in property at the time the gift is made;~~
~~(7) Notwithstanding any other provision of law related to valuing a partial interest in property, the entire fair market value of any property held in trust for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime, if the terms of the trust meet the following requirements:~~
~~a. During the lifetime of the surviving spouse, the trust is controlled by one or more Nonadverse Trustees;~~
~~b. The trustee is required to distribute to or for the benefit of the surviving spouse either (i) the entire net income of the trust at least annually; or (ii) the income of the trust in such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse;~~
~~c. The trustee is required to distribute to or for the benefit of the surviving spouse out of the principal of the trust such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse; and~~
~~In exercising discretion, the trustee may be authorized or required to take into consideration all other income, assets, and other means of support as are available to the surviving spouse; and~~
~~(8) The net value of the marital estate awarded to the surviving spouse pursuant to G.S. 50-20 subsequent to the death of the decedent.~~

~~(b) Death Taxes. The value of Property Passing to Surviving Spouse shall be reduced by any death taxes that are a charge against or apportioned against the surviving spouse on property interests included in Property Passing to Surviving Spouse.~~

~~(c) No Duplication. In case of overlapping application of the same property under more than one provision, the property shall be included only once, under the provision yielding the greatest value.~~

"**§ 30-3.3A. Valuation of property.**

(a) Basic Principles. – Unless otherwise expressly stated to the contrary in this section, the value of property shall be that property's fair market value, taking into consideration any applicable discounts. The value shall be determined as of the date of death, except for (i) property transferred to persons other than the surviving spouse described in G.S. 30-3.2(3f)g. and (ii) property transferred to the surviving spouse described in G.S. 30-3.2(3c)e. that is not held in trust, that is not life insurance, and that is not held as tenants by the entirety or some other form of ownership that passes to the surviving spouse by reason of survivorship. The value of gift property described in clauses (i) and (ii) shall be determined as the value on the date of transfer; but if the donee proves to the satisfaction of the clerk that the value on the date of disposal of the asset prior to the decedent's death is less than on the original date of transfer

or that the value on the date of death is less than on the original date of transfer, then the lesser value shall be used.

(b) Certain Joint Property. – In valuing a partial interest in jointly owned property with rights of survivorship, there shall be no discount taken to reflect the decedent's partial interest including, but not limited to, discounts for lack of control, ownership of a fractional interest, or lack of marketability.

(c) Certain Powers of Appointment. – In valuing property over which the decedent held a presently exercisable general power of appointment, the value includes only the property subject to the power that passes at the decedent's death, whether by exercise, release, lapse, default, or otherwise.

(d) Certain Transfers With Retained Interests. – In valuing property transferred by the decedent with a retained right of possession or enjoyment or the right to income described in G.S. 30-3.2(3f)e., only the fraction of the property to which the decedent retained a right shall be included. In valuing property in which the decedent created a power as described in G.S. 30-3.2(3f)f., the value includes, with respect to a power, the value of the property subject to the power, and the amount included in the valuation with respect to a power over the income is the value of the property that produces or produced the income; provided, however, if the power is a power over both income and property and the foregoing produces different amounts, the amount included in the valuation is the greater amount.

(e) Partial or Contingent Interest Property. – The valuation of partial and contingent property interests, outright or in trust, which are limited to commence or terminate upon the death of one or more persons, upon the expiration of a period of time, or upon the occurrence of one or more contingencies, shall be determined by computations based upon the mortality and annuity tables set forth in G.S. 8-46 and G.S. 8-47, and by using a presumed rate of return of six percent (6%) of the value of the underlying property in which those interests are limited. However, in valuing partial and contingent interests passing to the surviving spouse, the following special rules apply:

(1) The value of the beneficial interest of a spouse shall be the entire fair market value of any property held in trust if the decedent was the settlor of the trust, if the trust is held for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime, and if the terms of the trust meet the following requirements:

a. During the lifetime of the surviving spouse, the trust is controlled by one or more nonadverse trustees.

b. The trustee shall distribute to or for the benefit of the surviving spouse either (i) the entire net income of the trust at least annually or (ii) the income of the trust in such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse.

c. The trustee shall distribute to or for the benefit of the surviving spouse out of the principal of the trust such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse.

d. In exercising discretion, the trustee may be authorized or required to take into consideration all other income assets and other means of support available to the surviving spouse.

(2) To the extent that the partial or contingent interest is dependent upon the occurrence of any contingency that is not subject to the control of the surviving spouse and that is not subject to valuation by reference to the mortality and annuity tables set forth in G.S. 8-46 and G.S. 8-47, the contingency will be conclusively presumed to result in the lowest possible

value passing to the surviving spouse. However, a life estate or income interest that will terminate upon the surviving spouse's death or remarriage will be valued without regard to the possibility of termination upon remarriage.

(3) To the extent that the valuation of a partial or contingent interest is dependent upon the life expectancy of the surviving spouse, that life expectancy shall be conclusively presumed to be no less than 10 years, regardless of the actual attained age of the surviving spouse at the decedent's death.

(f) Method for Determining Value. – Unless otherwise stated in this Article, the value of property shall be determined as follows:

(1) The value of property passing by intestacy described in G.S. 30-3.2(3f)a. and Property Passing to Surviving Spouse, other than property held in a trust, shall be established by the good faith agreement of the surviving spouse and the personal representative, unless either (i) the surviving spouse is the personal representative or (ii) the clerk determines that the personal representative may not be able to represent the estate adversely to the surviving spouse, in which cases the value of such property shall be determined pursuant to subdivision (4) of this subsection.

(2) The value of property constituting an interest in a trust shall be established by good faith agreement of the surviving spouse, the personal representative, and the trustee, unless either (i) the surviving spouse is both the personal representative and the trustee or (ii) the clerk determines that the trustee or the personal representative may not be able to represent the trust or the estate, respectively, adversely to the surviving spouse, in which cases the value of such property shall be determined pursuant to subdivision (4) of this subsection.

(3) The value of all other property shall be established by the good faith agreement of the surviving spouse, the personal representative, and the responsible person that received, held, or controlled such property on the date used to determine the value of such property for purposes of determining total assets, unless the clerk determines that valuation under subdivision (4) of this subsection is more appropriate.

(4) If the value of any property is not established by agreement as provided above, the parties may present evidence regarding value, which may include expert testimony, and the clerk may appoint one or more qualified and disinterested persons to help determine the value of such property. After hearing, the clerk shall make a finding of fact of the value of each asset.

"**§ 30-3.4. Procedure for determining the elective share.**

(a) Exercisable Only During Lifetime. – The right of the surviving spouse to file a claim for an elective share must be exercised during the lifetime of the surviving spouse, by the surviving spouse, by the surviving spouse's ~~agent under a~~ attorney-in-fact if the surviving spouse's power of ~~attorney,~~ attorney expressly authorizes the attorney-in-fact to do so or to generally engage in estate transactions, ~~or~~ or, with approval of court, by the guardian of the surviving spouse's ~~estate.~~ estate or general guardian. If a surviving spouse dies before the claim for an elective share has been settled, the surviving spouse's personal representative shall succeed to the surviving spouse's rights to an elective share.

(b) Time Limitations. – A claim for an elective share must be made within six months after the issuance of letters testamentary or letters of administration in connection with the will or intestate proceeding with respect to which the surviving spouse claims the elective share by (i) filing a petition with the clerk of superior court of the county in which the primary

administration of the decedent's estate lies, and (ii) mailing or delivering a copy of that petition to the personal representative of the decedent's estate. A surviving spouse's incapacity shall not toll the six-month period of limitations.

(c) Time for Hearing. – Unless waived by the personal representative and the surviving spouse, the clerk shall set the matter for hearing no earlier than two months and no later than six months after the filing of the petition. However, the clerk may extend the time of hearing as the clerk sees fit. The surviving spouse shall give notice of the hearing to the personal representative, and to any person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share.

~~(d) Preparation of Tax Form. – In every case in which a petition to determine an elective share has been filed, and within two months of the filing of the petition, the personal representative shall prepare and submit to the clerk a proposed Form 706, federal estate tax return, for the estate, regardless of whether that form is required to be filed with the Internal Revenue Service. The clerk may extend the time for submission of the proposed Form 706 as the clerk sees fit.~~

~~(e) Valuation. – The valuation of interests in property for purposes of G.S. 30-3.2 and G.S. 30-3.3 shall be determined as follows:~~

~~(1) Basic principles. – Each interest shall be valued at its fair market value, reduced by all liens, claims, or encumbrances against the interest. For interests passing at the decedent's death, valuation shall be as of the date of death, and for interests transferred during the decedent's lifetime, valuation shall be as of the date of transfer.~~

~~(2) Valuation of partial and contingent interests in property. – The valuation of interests in property, outright or in trust, which are limited to commence or terminate upon the death of one or more persons, upon the expiration of a period of time, or upon the occurrence of one or more contingencies, shall be determined by computations based upon the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, and upon the basis of six percent (6%) of the gross value of the underlying property in which those interests are limited. However, in valuing interests passing to the surviving spouse, the following special rules apply:~~

~~a. An interest described in G.S. 30-3.3(a)(7) that shall be valued as if the underlying property or interest passed outright to the surviving spouse unencumbered by any trust;~~

~~b. To the extent that the interest is dependent upon the occurrence of any contingency that is not subject to the control of the surviving spouse and that is not subject to valuation by reference to the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, the contingency will be conclusively presumed to result in the lowest possible value passing to the surviving spouse. However, a life estate or income interest that will terminate only upon the earlier of the surviving spouse's death or remarriage will be valued without regard to the possibility of termination upon remarriage; and~~

~~c. To the extent that the valuation of an interest is dependent upon the life expectancy of the surviving spouse, that life expectancy shall be conclusively presumed to be no less than 10 years, regardless of the actual attained age of the surviving spouse at the decedent's death.~~

~~(3) Determination of fair market value. – The fair market value of each asset comprising Total Net Assets shall be determined as follows:~~

~~a. Probate assets and assets passing to spouse. – The value of each probate asset and Property Passing to Surviving Spouse, other than~~

~~assets held in trust, shall be established by the good faith agreement of the surviving spouse and the personal representative, unless either (i) the surviving spouse is the personal representative, or (ii) the clerk determines that the personal representative may not be able to represent the estate adversely to the surviving spouse.~~

~~b. Trust assets. The value of each trust asset shall be established by good faith agreement of the surviving spouse and the trustee, unless either (i) the surviving spouse is the trustee, or (ii) the clerk determines that the trustee may not be able to represent the trust adversely to the surviving spouse.~~

~~c. Other assets. The value of any other asset shall be established by the good faith agreement of the surviving spouse and each person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share because of that person's interest in the asset, unless the clerk determines that valuation under sub-subdivision d. of this subdivision is more appropriate.~~

~~d. Use of disinterested persons. If the value of any asset is not established by agreement, the clerk shall appoint one or more qualified and disinterested persons to determine a value of each asset. That determination of the value of an asset shall be final for the exclusive purposes of this Article.~~

(d1) Mediation. – The clerk may order mediation as described in G.S. 7A-38.3B of any disputes in connection with an elective share proceeding.

(e1) Procedure. – An elective share proceeding shall be an estate matter and may be appealed pursuant to G.S. 1-301.3.

(e2) Information About Total Net Assets. – In order to assist the clerk in determining whether a surviving spouse is entitled to an elective share, and, if so, the amount thereof, the following provisions apply:

(1) Submission within two months. – In every case in which a petition to determine an elective share has been filed, within two months of the filing of the petition, the personal representative shall submit sufficient information about the total assets for the clerk to determine the elective share. To fulfill its obligation to provide information, the personal representative may prepare and submit to the clerk a proposed Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, for the estate, regardless of whether that form is required to be filed with the Internal Revenue Service. The clerk may extend the time for submission of the proposed Form 706 or other information as the clerk sees fit.

(2) Examination regarding assets. – If the personal representative, the surviving spouse, or a responsible person has reasonable grounds to believe that any person has a claim or has in its possession assets included in Total Net Assets, then the personal representative, surviving spouse, or responsible person may use the procedures set out in G.S. 28A-15-12 to cause the clerk to examine the person believed to have a claim or to possess assets included in Total Net Assets.

(f) Findings and Conclusions. – After notice and hearing, the clerk shall determine whether or not the surviving spouse is entitled to an elective share, and if so, the clerk shall then determine the elective share and shall order the personal representative to transfer that amount to the surviving spouse. The clerk's order shall recite specific findings of fact and conclusions of law in arriving at the decedent's Total Net Assets, Property Passing to Surviving Spouse, and the elective share.

~~(g) Appeals. Any party in interest may appeal from the decision of the clerk to the superior court. If an appeal is taken from the decision of the clerk, that appeal shall have the effect of staying the judgment and order of the clerk until the cause is heard and determined by the superior court upon the appeal taken. Upon an appeal taken from the clerk to the superior court, the judge may review the findings of fact by the clerk and may find the facts or take other evidence, but the facts found by the judge shall be final and conclusive upon any appeal to the Appellate Division.~~

(h) Expenses. – The expenses (including attorneys' fees) reasonably incurred by the personal representative, other responsible persons, and the surviving spouse in connection with elective share proceedings shall be equitably apportioned by the clerk of court in the clerk's discretion among the personal representative, other responsible persons, and the surviving spouse. Each responsible person shall pay its apportioned expenses to the personal representative in cash.

"§ 30-3.5. ~~Recovery of assets by personal representative.~~ **Satisfaction of elective share.**

~~(a) Recovery of Assets. The personal representative is entitled to recover proportionately from all persons, other than the surviving spouse, receiving or in possession of any of the decedent's Total Net Assets a sufficient amount to enable the personal representative to pay the elective share. The apportionment shall be made in the proportion that the value of the interest of each person receiving or in possession of any of Total Net Assets bears to Total Net Assets, excluding any Property Passing to Surviving Spouse. The only persons subject to contribution to make up the elective share are (i) original recipients of property comprising the decedent's Total Net Assets, and subsequent gratuitous inter vivos donees or persons claiming by testate or intestate succession to the extent those persons have the property or its proceeds on or after the date of decedent's death, and (ii) a fiduciary, as to the property under the fiduciary's control at or after the time a fiduciary receives notice that a surviving spouse has claimed an elective share. A fiduciary shall not be considered to have notice until it receives notice at its address as shown in the decedent's estate papers in the clerk's office or, if there are no such papers or no such address is shown in those papers, at the fiduciary's residence or the office of its registered agent.~~

~~The personal representative may withhold from any property of the decedent in his possession, distributable to any person subject to apportionment, the amount of the elective share apportioned to such person. If the property in possession of the personal representative and distributable to any person subject to apportionment is insufficient to satisfy the proportionate amount of the elective share determined to be due from that person, the personal representative may recover the deficiency from that person. If the property is not in possession of the personal representative, the personal representative may recover from the person the amount of the elective share apportioned to that person in accordance with this Article. If the personal representative cannot reasonably collect from any person subject to apportionment the amount of the elective share apportioned to that person, the amount not reasonably recoverable shall, with the approval of the clerk, be apportioned among the other persons who are subject to apportionment. The apportionment shall be made in the proportion that the value of the interest of each remaining person bears to the total value of the interests of all remaining persons.~~

(a1) Apportionment. – The personal representative shall determine each responsible person's liability to the surviving spouse by multiplying the value of the elective share by a fraction, the numerator of which is the value of the responsible person's nonspousal assets and the denominator of which is the total value of all of the nonspousal assets included in Total Net Assets.

(a2) Recovery From Responsible Persons. – As a responsible person, the personal representative shall satisfy its liability for payment of the elective share out of the decedent's estate's nonspousal assets using first the nonspousal assets in the decedent's residuary estate. If the nonspousal assets in the residuary estate are not sufficient, the personal representative shall

reduce each other responsible person's share of the nonspousal assets proportionately based on the values used in determining the Total Net Assets. The personal representative shall recover from each other responsible person the responsible person's liability for the payment of the elective share. Each responsible person, including the decedent's personal representative, may elect to satisfy its liability in full by any of the following methods:

(1) Conveyance of that portion of the responsible person's nonspousal assets (or identical substitute assets), valued on the date of conveyance, sufficient to satisfy the responsible person's liability; or, if the value of the responsible person's nonspousal assets on the date of conveyance is less than the responsible person's liability, conveyance of all of the responsible person's nonspousal assets (or identical substitute assets).

(2) Payment of the liability in cash.

(3) Payment of the liability in other property upon written agreement of the surviving spouse at values agreed by the surviving spouse for purposes of determining the extent of the liability satisfied.

(4) Any combination of the payment methods set forth under subdivisions (2) through (4) of this subsection, provided that the total value of assets conveyed by the responsible person equals such responsible person's liability.

(a3) Inability or Refusal to Pay. – The personal representative shall be entitled to petition the clerk of court for an order requiring any responsible person to satisfy its liability. Upon refusal of a responsible person to obey such an order, the personal representative shall be entitled to a judgment against such responsible person in the amount of the liability and to any other remedies the clerk deems appropriate. Although the responsible person shall remain primarily liable for such responsible person's liability for the elective share, the following rules apply:

(1) If the responsible person makes a gratuitous transfer, whether inter vivos or by testate or intestate succession, of all or any part of the responsible person's nonspousal assets or the proceeds thereof after the decedent's death, then the gratuitous transferee shall be liable for the amount transferred, and the personal representative shall be entitled to recover that amount from the transferee as if the transferee were the responsible person.

(2) If the responsible person is a fiduciary and makes a distribution of all or any part of the responsible person's nonspousal assets or the proceeds thereof after the decedent's death, then the distributee shall be liable for the amount transferred, and the personal representative shall be entitled to recover that amount from the distributee as if the distributee were the responsible person.

If, after exhausting all other remedies in this section, the personal representative cannot reasonably recover a responsible person's liability, then, with the approval of the clerk, the defaulting responsible person's liability shall be apportioned on a pro rata basis among the responsible persons who have not defaulted. Each nondefaulting other responsible person shall be liable for the amount of the liability apportioned to it in the same manner and to the same extent as its original liability for the elective share; provided, that each responsible person's liability shall not exceed the responsible person's proportionate share of the value of the nonspousal assets based on the values used in determining Total Net Assets. Each nondefaulting other responsible person shall be entitled to a proportionate share of any judgment against or subsequent recovery of the liability from the defaulting responsible person.

(b) Standstill Order. – After the filing of the petition demanding an elective share, ~~either the personal representative or surviving spouse~~ the personal representative, surviving spouse, or any responsible person may request the clerk to issue an order that any ~~recipients~~ responsible person not dispose of ~~any~~ all or a portion of the decedent's Total Net Assets or the proceeds

thereof pending the ~~hearing.~~ payment of the elective share. The decision to issue such an order shall be in the discretion of the clerk. A person who violates the standstill order may be held in civil contempt of court pursuant to Article 5A of Chapter 2 of the General Statutes. The clerk shall enter an order terminating the standstill order upon the clerk's determination that the standstill order is no longer necessary or desirable.

~~(c) Satisfaction of Liability. A person receiving or in possession of any of the decedent's Total Net Assets may pay his proportionate elective share liability with respect to that property by any of the following methods:~~

~~(1) Conveyance of the property included in the decedent's Total Net Assets;~~

~~(2) Payment of the value of his liability in cash or, upon agreement of the surviving spouse, other property; or~~

~~(3) Partial conveyance and partial payment under subdivisions (1) and (2) of this subsection, provided the value conveyed and paid is equal to his liability.~~

~~(d) Expenses. The expenses reasonably incurred by the personal representative in connection with the appraisal or recovery of assets shall be apportioned as provided for the elective share under this Article. If the personal representative finds that it is inequitable to apportion the expenses because those expenses were incurred because of the fault of one or more persons subject to apportionment, the personal representative may direct other more equitable apportionment, with the approval of the clerk.~~

(e) Bond. – ~~If property held by the personal representative is distributed~~ If a responsible person distributes or disposes of nonspousal assets prior to final apportionment of the elective ~~share,~~ share and expenses, the personal representative may require the ~~distributee~~ responsible person or the transferee to provide a bond or other security for the ~~apportionment~~ responsible person's liability for payment of the elective share and apportioned expenses in the form and amount prescribed by the personal representative, with the approval of the clerk.

"§ 30-3.6. Waiver of rights.

(a) The right of a surviving spouse to claim an elective share may be waived, wholly or partially, before or after marriage, with or without consideration, by a written waiver signed by the surviving ~~spouse.~~ spouse, by the surviving spouse's attorney-in-fact if the surviving spouse's power of attorney expressly authorizes the attorney-in-fact to do so or to generally engage in estate transactions, or, with approval of court, by the guardian of the surviving spouse's estate or general guardian.

(b) A waiver is not enforceable if the surviving spouse proves that:

(1) The waiver was not executed voluntarily; or

(2) The surviving spouse or the surviving spouse's representative making the waiver was not provided a fair and reasonable disclosure of the property and financial obligations of the decedent, unless the surviving spouse waived, in writing, the right to that disclosure.

(c) A written waiver that would have been effective to waive a spouse's right to dissent in estates of decedents dying on or before December 31, 2000, under Article 1 of Chapter 30 of the General Statutes is effective to waive that spouse's right of elective share under this Article for estates of decedents dying on or after January 1, 2001."

SECTION 2. This act is effective when it becomes law and applies to decedents dying on or after October 1, 2009.

HOUSE BILL 765:
Revise Elective Share Statutes

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 8, 2009
Introduced by:	Rep. Stam	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	PCS to Second Edition H765-PCS80458		

SUMMARY: The Proposed Committee Substitute for House Bill 765 rewrites Article 1A of Chapter 30 of the General Statutes governing a surviving spouse's elective share.

The bill is a recommendation of the Estate Planning Section of the North Carolina State Bar.

BACKGROUND: Under North Carolina law, a surviving spouse is entitled to a minimum share of their deceased spouse's estate regardless of the provisions, if any, of the deceased spouse's will. The minimum share is one-half of the surviving spouse's net assets if the decedent is survived by no lineal descendants or no more than one lineal descendants and one-third of the assets if decedent is survived by two or more children. The purpose of the elective share is to prevent a spouse from disinheriting a surviving spouse.

BILL ANALYSIS: The Proposed Committee Substitute makes changes to each section of Article 1A. An overview of the changes to each section is set out below.

G.S. 30-3.1. Right to Elective Share

Subsection (b) is changed to allow for the consideration of lineal descendants whether or not those descendants are the children of a prior marriage.

In addition to technical changes, subsection (c) governing the treatment and computation of death taxes is deleted. This language is now included in the definition section in the new definition of claims.

G.S. 30-3.2. Definitions

This section was changed to include computational language or calculations where appropriate, leaving primarily procedural language in the other sections.

New definitions include:

- "Claims" -- The current definition of "total net assets" (p.6, line 38) provides for the payment of funeral expenses, debts and other claims. The new definition of claims clarifies what is considered a claim against a decedent's estate and exempts from claims the following: (1) a claim for equitable distribution awarded subsequent to the decedent's death; (2) death taxes; and (3) claims not supported by adequate consideration, all of which are exempted under current law.
- "General Power of Appointment" -- This term is referenced in the new definition of "total assets" (p.3, line 48). The purpose of the new definition, coupled with the definition of total assets, is to include in total assets that property or interest over which the decedent retains control by a general power of appointment.
- "Net Property Passing to Surviving Spouse" – This term is added to include in the definitions the calculation under existing language as intended in the current G.S. 30-3.3 which is repealed by the bill (page 6, line 40).

- "Nonspousal Assets" – This term is used in new language in G.S. 30-3.5 (p. 12, line 44). The personal representative may recover non-spousal assets from a responsible person if the property is part of the decedent's total net assets.
- "Property Passing to the Surviving Spouse" – This definition is added and is substantially the same as language currently in G.S. 30-3.3 which is repealed by the bill. Again, the language is primarily used to compute the elective share and, as such, is being placed in the definitions.
- "Responsible person" and "Responsible Person's Non-spousal Assets" – These terms are used in new language in G.S. 30-3.5. Non-spousal assets may be recovered from responsible persons if the property is a part of the decedent's total net assets.
- "Total Assets" – This term is added and the definition is primarily based on language originally found in the definition of "Total Net Assets" included in a decedent's estate (p. 5, line 47) which is deleted by the bill. Again, the language is primarily a calculation or computation to determine the elective share. The language is expanded from the original language to provide clarification and divides property into the following categories:
    1. Property that would pass by intestate succession. (sub-subdivision a)
    2. Property over which the decedent held a general power of appointment including property held in revocable trusts, or a trust in which the decedent had the power to withdraw property, bank accounts, and stocks. (sub-subdivision b)
    3. Property held by joint tenancy. (sub-subdivision c)
    4. Beneficiary property including life insurance (not specified under current law), death benefits, annuities, IRAs, pensions, and retirement plans. (sub-subdivision d)
    5. Irrevocable transfers to the extent the decedent retained possession or enjoyment or income from the property. (sub-subdivision e)
    6. Property transferred with and to the extent of a power that could be exercised by the decedent with someone else. (sub-subdivision f)
    7. Gifts made one year preceding death (currently 6 months) (sub-subdivision g)

    For 5, 6, and 7 above, property transferred for full and adequate consideration or with the written consent of the surviving spouse are not include in total assets. **In addition, for 5 and 6 above, transfers which are irrevocable and made before the decedent's marriage to the surviving spouse are not included. This language is new.** Also, for 7 above, gifts that qualify for exclusion from gift tax ($13,000 or less) are not included.
- "Total Net Assets" – This definition is new and is based on total assets less funeral expenses, administration expenses, and claims.

G.S. 30-3.3. Property passing to surviving spouse.

This section is repealed. Provisions governing property passing to surviving spouse are now included in the definition in G.S. 30-3.2(3c) (p. 3, line 11).

G.S. 30-3.3A Valuation of Property. (new section added)

The valuation of property is currently addressed in G.S. 30-3.4(e) (p. 10, line 16) which is repealed by the bill.

Subsection (a) is based on the current language and provides that the value of the property shall be the fair market value at the time of death except for: (1) gifts made to person other than the surviving spouse and (2) gifts made to the surviving spouse that is not held in trust, not life insurance, or other form of ownership that passes to the surviving spouse on the decedent's death. For these transfers, the value is determined as of the date of transfer, unless the property is disposed of and the donee proves that the value prior to death is less than the value on the date of transfer.

Other provisions include the following:

- For joint property with right of survivorship, there shall be no discount taken to reflect the decedent's partial interest (subsection (b)).
- For property subject to power of appointment, value shall be only for the property subject to the power (subsection (c)).
- For transfers with a sole or shared retained right of possession or enjoyment, values shall be only for the property subject to the power (subsection (d)).
- For partial or contingent property interests commencing or terminating on the death of one or more persons, value is based on the statutory mortality and annuity tables. (subsection (e)). Special rules under the current law for contingent interests passing to the surviving spouse are included in this subsection. (repealed under current law on p. 7, line 16).

Subsection (f) provides that the method for determining fair market value can be by good faith agreement of, as applicable: (1) the surviving spouse and the personal representative for property passing by intestacy; (2) in the case of a trust, the personal representative, surviving spouse, and trustee; (3) the personal representative, surviving spouse, and the responsible person, for property held by a responsible person. If an agreement cannot be reached, the parties may present evidence to the clerk who shall determine the fair market value. This language is based on language deleted from the current G.S. 30-3.4(e)(3) (p. 10, line 17).

Subsection (f) adds new language requiring the clerk to make findings of fact from which the parties may appeal to the superior court.

G.S. 30-3.4. Procedure for determining the elective share

Subsection (a) adds language to (1) require a power of attorney to specifically authorize the attorney-in-fact to exercise the right to file for an elective share or to engage in estate transactions and (2) to require a general guardian or guardian of the estate to obtain court approval before filing for an elective share.

Subsection (d) requiring the preparation of a tax return within two months of filing a petition for elective share is repealed. This language is deleted because some estates or property within the estate aren't taxable. Under new language set out in subsection (e2)(1) of this section, the personal representative **may** file a return to assist the clerk in determining whether the spouse is entitled to an elective share.

Subsection (e) governing valuation is deleted in light of new language included in G.S. 30-3.3 discussed above.

Subsection (d1) is new and adds language authorizing the clerk to order mediation of disputes in connection with elective share claims.

Subsection (e1) is new and adds language authorizing appeal of an elective share claim as an estate matter under G.S.1-301.3. Under G.S. 1-301.3, a superior court judge may only consider whether the

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 765
Committee Substitute Favorable 4/8/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H765-PCS80458-RC-32

Short Title: Revise Elective Share Statutes. (Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO REVISE THE EXISTING ELECTIVE SHARE STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1A of Chapter 30 of the General Statutes reads as rewritten:

"Article 1A.

"Elective Share.

"**§ 30-3.1. Right of elective share.**

(a) Elective Share. – The surviving spouse of a decedent who dies domiciled in this State has a right to claim an "elective share", which means an amount equal to (i) the applicable share of the Total Net Assets, as defined in G.S. 30-3.2(4), less (ii) the value of Net Property Passing to Surviving Spouse, as defined in ~~G.S. 30-3.3(a).~~G.S. 30-3.2(2c). The applicable share of the Total Net Assets is as follows:

(1) If the decedent is not survived by any lineal descendants, one-half of the Total Net Assets.

(2) If the decedent is survived by one child, or lineal descendants of one deceased child, one-half of the Total Net Assets.

(3) If the decedent is survived by two or more children, or by one or more children and the lineal descendants of one or more deceased children, or by the lineal descendants of two or more deceased children, one-third of the Total Net Assets.

(b) Reduction of Applicable Share. – In those cases in which the surviving spouse is a second or successive spouse, and the decedent has one or more lineal descendants ~~surviving by a prior marriage~~ surviving who are not lineal descendants of the decedent's marriage to the surviving spouse but there are no lineal descendants surviving by the surviving spouse, the applicable share as determined in subsection (a) of this section shall be reduced by one-half.

~~(c) Death Taxes. Death taxes shall be taken into account as a claim against the estate in determining Total Net Assets only to the extent that the assets received by the surviving spouse do not qualify for the federal estate tax marital deduction pursuant to section 2056 of the Code or similar provisions under the laws of any other applicable taxing jurisdiction. The amount of such claims shall equal the difference between the amount of such death taxes as finally determined and the amount such death taxes would have been if all assets received by the surviving spouse had qualified for the federal estate tax marital deduction pursuant to~~

~~section 2056 of the Code and similar provisions under the laws of any other applicable taxing jurisdictions.~~

"§ 30-3.2. Definitions.

The following definitions apply in this Article:

(1) ~~"Code" means the~~ Code. – The Internal Revenue Code in effect at the time of the decedent's death.

(1a) Claims. – Includes liabilities of the decedent, whether arising in contract, in tort, or otherwise, and liabilities of the decedent's estate that arise at or after the death of the decedent, including funeral and administrative expenses, except for:

a. A claim for equitable distribution of property pursuant to G.S. 50-20 awarded subsequent to the death of the decedent.

b. Death taxes, except for those death taxes attributable to Property Passing to the Surviving Spouse. "Death taxes attributable to Property Passing to the Surviving Spouse" equals the amount of decedent's death taxes as finally determined, less the amount such death taxes would have been if all Property Passing to the Surviving Spouse had qualified for the federal estate tax marital deduction pursuant to section 2056 of the Code or had qualified for a similar provision under the laws of another applicable taxing jurisdiction.

c. A claim founded on a promise or agreement of the decedent, to the extent such claim is not arm's length or is not supported by full or adequate consideration in money or money's worth.

d. Expenses apportioned by the clerk of court under G.S. 30-3.4(h).

(2) ~~"Death taxes" means any~~ Death taxes. – Any estate, inheritance, succession, and similar taxes imposed by any taxing authority, reduced by any applicable credits against those taxes.

(2a) General power of appointment. – Any power of appointment, including a power to designate the beneficiary of a beneficiary designation, exercisable by the decedent, regardless of the decedent's capacity to exercise such power, in favor of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate, except for (i) powers limited by an "ascertainable standard" as defined in G.S. 36C-1-103 and (ii) powers which are not exercisable by the decedent except in conjunction with a person who created the power or has a substantial interest in the property subject to the power and whose interest is adverse to the exercise of the power in favor of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate. In no event shall a power held by the decedent as attorney-in-fact under a power of attorney be considered a general power of appointment.

(2b) Lineal descendant. – Defined in G.S. 29-2.

(2c) Net Property Passing to Surviving Spouse. – The Property Passing to Surviving Spouse reduced by (i) death taxes attributable to property passing to surviving spouse, and (ii) claims payable out of, charged against or otherwise properly allocated to Property Passing to Surviving Spouse.

(3) ~~"Nonadverse trustee" means:~~ Nonadverse trustee. – Any of the following:

a. Any person who does not possess a substantial beneficial interest in the trust that would be adversely affected by the exercise or nonexercise of the power that the individual trustee possesses respecting the trust;

b. Any person subject to a power of removal by the surviving spouse with or without cause; or

c. Any company authorized to engage in trust business under the laws of this State, or that otherwise meets the requirements to engage in trust business under the laws of this State.

(3a) Nonspousal assets. – All property included in total assets other than the property included in Property Passing to Surviving Spouse.

(3b) Presently exercisable general power of appointment. – A general power of appointment which is exercisable at the time in question. A testamentary general power of appointment is not presently exercisable.

(3c) Property Passing to Surviving Spouse. – The sum of the values, as valued pursuant to G.S. 30-3.3A, of the following:

a. Property (i) devised, outright or in trust, by the decedent to the surviving spouse or (ii) that passes, outright or in trust, to the surviving spouse by intestacy, beneficiary designation, the exercise or failure to exercise the decedent's testamentary general power of appointment or the decedent's testamentary limited power of appointment, operation of law, or otherwise by reason of the decedent's death, excluding any benefits under the federal social security system.

b. Any year's allowance awarded to the surviving spouse.

c. Property renounced by the surviving spouse.

d. The surviving spouse's interest in any life insurance proceeds on the life of the decedent.

e. Any interest in property, outright or in trust, transferred from the decedent to the surviving spouse during the lifetime of the decedent for which the surviving spouse signs a statement acknowledging such a gift. For purposes of this sub-subdivision, any gift to the surviving spouse by the decedent of the decedent's interest in any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with right of survivorship shall be deemed to be a gift of one-half of the entire interest in property so held by the decedent and the surviving spouse.

f. Property awarded to the surviving spouse, subsequent to the death of the decedent, pursuant to an equitable distribution claim under G.S. 50-20.

g. Property held in a spousal trust described in G.S. 30-3.3A(e)(1).

If property falls under more than one sub-subdivision of this subdivision, then the property shall be included only once, but under the sub-subdivision yielding the greatest value of the property.

(3d) Responsible person. – A person or entity other than the surviving spouse that received, held, or controlled property constituting nonspousal assets on the date used to determine the value of the property. The personal representative is the responsible person for nonspousal assets that pass under the decedent's will or by intestate succession.

(3e) Responsible person's nonspousal assets. – The nonspousal assets received, held, or controlled by a responsible person.

(3f) Total assets. – The sum of the values, as determined pursuant to G.S. 30-3.3A, of the following:

a. The decedent's property that would pass by intestate succession if the decedent died without a will, other than wrongful death proceeds;

b. Property over which the decedent, immediately before death, held a presently exercisable general power of appointment, except for (i) property held jointly with right of survivorship, which is includable in total assets only to the extent provided in sub-subdivision c. of this subdivision and (ii) life insurance, which is includable in Total Assets only to the extent provided in sub-subdivision d. of this subdivision. Includes, without limitation:
   1. Property held in a trust that the decedent could revoke.
   2. Property held in a trust to the extent that the decedent had an unrestricted power to withdraw the property.
   3. Property held in a depository account owned by the decedent in a financial institution payable or transferable at decedent's death to a beneficiary designated by the decedent.
   4. Securities owned by the decedent in an account or in certificated form that are payable or transferable at decedent's death to a beneficiary designated by the decedent.

c. Property held as tenants by the entirety or jointly with right of survivorship as follows:
   1. One-half of any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with right of survivorship is included, without regard to who contributed the property.
   2. Property held by the decedent and one or more other persons other than the surviving spouse as joint tenants with right of survivorship is included to the following extent:
      I. All property attributable to the decedent's contribution.
      II. The decedent's pro rata share of property not attributable to the decedent's contribution, except to the extent of property attributable to contributions by a surviving joint tenant.

      The decedent is presumed to have contributed the jointly owned property unless contribution by another is proven by clear and convincing evidence.

d. Benefits payable by reason of the decedent's death under any policy, plan, contract, or other arrangement, either owned by the decedent or over which the decedent had a general power of appointment or had the power to designate the surviving spouse as beneficiary, including, without limitation:
   1. Insurance on the life of the decedent.
   2. Accidental death benefits.
   3. Annuities.
   4. Employee benefits or similar arrangements.
   5. Individual retirement accounts.
   6. Pension or profit sharing plans.
   7. Deferred compensation.
   8. Any private or governmental retirement plan.

e. Property irrevocably transferred by the decedent to the extent the decedent retained the possession or enjoyment of, or the right to income from, the property for life or for any period not ascertainable

without reference to the decedent's death or for any period that does not in fact end before the decedent's death, except:

1. Property transferred for full and adequate consideration.
2. Transfers to that the surviving spouse consented in writing by signing a deed, an income or gift tax return that reports the gift, or other writing.
3. Transfers that became irrevocable before the decedent's marriage to the surviving spouse.

The property included in total assets is that fraction of the transferred property to which the decedent retained the right.

f. Property transferred by the decedent to the extent the decedent created a power over the property or the income from the property, which, immediately prior to death, could be exercised by the decedent in conjunction with any other person, or which could be exercised by a person who does not have a substantial interest that would be adversely affected by the exercise or nonexercise of the power, for the benefit of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate, except:

1. Property transferred for full and adequate consideration.
2. Transfers to which the surviving spouse consented in writing by signing a deed, an income or gift tax return that reports the gift, or other writing.
3. Transfers which became irrevocable before the decedent's marriage to the surviving spouse.

The property included in total assets with respect to a power over property is that fraction of the property to which the power related.

g. Property transferred by the decedent to persons other than the surviving spouse if such transfer was made both during the one-year period immediately preceding the decedent's death and during the decedent's marriage to the surviving spouse, except:

1. Property transferred for full and adequate consideration.
2. Transfers to which the surviving spouse consented in writing by signing a deed, an income or gift tax return that reports such gift, or other writing.
3. That part of any property transferred to any one transferee that qualified for exclusion from gift tax under section 2503 of the Code.

For purposes of this sub-subdivision, the termination of a right or interest in, or power over, property that would have been included in the total assets under sub-subdivisions b., e., or f. of this subdivision if the right, interest, or power had not terminated until the decedent's death shall be deemed to be a transfer of such property. Termination occurs when, with respect to a right or interest in property, the decedent transfers or relinquishes the right or interest; with respect to a power over property, the power terminates by exercise or release, but not by lapse or default.

If property falls under more than one sub-subdivision of this subdivision, then the property shall be included only once, but under the sub-subdivision yielding the greatest value of the property.

(4) ~~"Total Net Assets" means, after the payment or provision for payment of the decedent's funeral expenses, year's allowances to persons other than to the~~

~~surviving spouse, debts, claims other than an equitable distribution of property awarded to the surviving spouse pursuant to G.S. 50-20 subsequent to the death of the decedent, and administration expenses, the sum of the following:~~

~~a. All property to which the decedent had legal and equitable title immediately prior to death;~~

~~b. All property received by the decedent's personal representative by reason of the decedent's death, other than wrongful death proceeds;~~

~~c. One-half of the value of any property held by the decedent and the surviving spouse as tenants by the entirety, or as joint tenants with rights of survivorship;~~

~~d. The entire value of any interest in property held by the decedent and another person, other than the surviving spouse, as joint tenants with right of survivorship, except to the extent that contribution can be proven by clear and convincing evidence;~~

~~e. The value of any property which would be included in the taxable estate of the decedent pursuant to sections 2033, 2035, 2036, 2037, 2038, 2039, or 2040 of the Code.~~

~~f. Any gifts of property made by the decedent to donees other than the surviving spouse within six months of the decedent's death, excluding:~~

~~1. Any gifts within the annual exclusion provisions of section 2503 of the Code;~~

~~2. Any gifts to which the surviving spouse consented. A signing of a deed, or income or gift tax return reporting such gift shall be considered consent; and~~

~~3. Any gifts made prior to marriage;~~

~~g. Any proceeds of any individual retirement account, pension or profit-sharing plan, or any private or governmental retirement plan or annuity of which the decedent controlled the designation of beneficiary, excluding any benefits under the federal social security system;~~

~~h. Any other Property Passing to Surviving Spouse under G.S. 30-3.3; and~~

~~i. In case of overlapping application of the same property under more than one provision, the property shall be included only once under the provision yielding the greatest value."~~

Total Net Assets. – The total assets reduced by year's allowances to persons other than the surviving spouse and claims.

"~~§ 30-3.3. Property passing to surviving spouse.~~

~~(a) Property Passing to Surviving Spouse. For purposes of this Article, "Property Passing to Surviving Spouse" means the sum of the following:~~

~~(1) One-half of the value of any interest in property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with rights of survivorship;~~

~~(2) The value of any interest in property (outright or in trust, including any interest subject to a general power of appointment held by the surviving spouse, as defined in section 2041 of the Code) devised by the decedent to the surviving spouse, or which passes to the surviving spouse by intestacy, or by beneficiary designation, or by exercise of or in default of the exercise of the decedent's testamentary general or limited power of appointment, or~~

~~by operation of law or otherwise by reason of the decedent's death, excluding any benefits under the federal social security system;~~

~~(3) Any year's allowance awarded to the surviving spouse;~~

~~(4) The value of any property renounced by the surviving spouse;~~

~~(5) The value of the surviving spouse's interest, outright or in trust, in any life insurance proceeds on the life of the decedent;~~

~~(6) The value of any interest in property, outright or in trust, transferred from the decedent to the surviving spouse during the lifetime of decedent for which (i) a gift tax return is timely filed reporting such gift, or (ii) the surviving spouse signs a statement acknowledging such a gift. For purposes of this subdivision, any gift to the surviving spouse by the decedent of the decedent's interest in any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with right of survivorship shall be valued at one-half of the entire value of that interest in property at the time the gift is made;~~

~~(7) Notwithstanding any other provision of law related to valuing a partial interest in property, the entire fair market value of any property held in trust for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime, if the terms of the trust meet the following requirements:~~

~~a. During the lifetime of the surviving spouse, the trust is controlled by one or more Nonadverse Trustees;~~

~~b. The trustee is required to distribute to or for the benefit of the surviving spouse either (i) the entire net income of the trust at least annually; or (ii) the income of the trust in such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse;~~

~~c. The trustee is required to distribute to or for the benefit of the surviving spouse out of the principal of the trust such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse; and~~

~~In exercising discretion, the trustee may be authorized or required to take into consideration all other income, assets, and other means of support as are available to the surviving spouse; and~~

~~(8) The net value of the marital estate awarded to the surviving spouse pursuant to G.S. 50-20 subsequent to the death of the decedent.~~

~~(b) Death Taxes. The value of Property Passing to Surviving Spouse shall be reduced by any death taxes that are a charge against or apportioned against the surviving spouse on property interests included in Property Passing to Surviving Spouse.~~

~~(c) No Duplication. In case of overlapping application of the same property under more than one provision, the property shall be included only once, under the provision yielding the greatest value.~~

"**§ 30-3.3A. Valuation of property.**

(a) Basic Principles. – Unless otherwise expressly stated to the contrary in this section, the value of property shall be that property's fair market value, taking into consideration any applicable discounts. The value shall be determined as of the date of death, except for (i) property transferred to persons other than the surviving spouse described in G.S. 30-3.2(3f)g. and (ii) property transferred to the surviving spouse described in G.S. 30-3.2(3c)e. that is not held in trust, that is not life insurance, and that is not held as tenants by the entirety or some other form of ownership that passes to the surviving spouse by reason of survivorship. The value of gift property described in clauses (i) and (ii) shall be determined as the value on the date of transfer; but if the donee proves to the satisfaction of the clerk that the value on the date

of disposal of the asset prior to the decedent's death is less than on the original date of transfer or that the value on the date of death is less than on the original date of transfer, then the lesser value shall be used.

(b) Certain Joint Property. – In valuing a partial interest in jointly owned property with right of survivorship, there shall be no discount taken to reflect the decedent's partial interest including, but not limited to, discounts for lack of control, ownership of a fractional interest, or lack of marketability.

(c) Certain Powers of Appointment. – In valuing property over which the decedent held a presently exercisable general power of appointment, the value includes only the property subject to the power that passes at the decedent's death, whether by exercise, release, lapse, default, or otherwise.

(d) Certain Transfers With Retained Interests. – In valuing property transferred by the decedent with a retained right of possession or enjoyment or the right to income described in G.S. 30-3.2(3f)e., only the fraction of the property to which the decedent retained a right shall be included. In valuing property in which the decedent created a power as described in G.S. 30-3.2(3f)f., the value includes, with respect to a power, the value of the property subject to the power, and the amount included in the valuation with respect to a power over the income is the value of the property that produces or produced the income; provided, however, if the power is a power over both income and property and the foregoing produces different amounts, the amount included in the valuation is the greater amount.

(e) Partial or Contingent Interest Property. – The valuation of partial and contingent property interests, outright or in trust, which are limited to commence or terminate upon the death of one or more persons, upon the expiration of a period of time, or upon the occurrence of one or more contingencies, shall be determined by computations based upon the mortality and annuity tables set forth in G.S. 8-46 and G.S. 8-47, and by using a presumed rate of return of six percent (6%) of the value of the underlying property in which those interests are limited. However, in valuing partial and contingent interests passing to the surviving spouse, the following special rules apply:

(1) The value of the beneficial interest of a spouse shall be the entire fair market value of any property held in trust if the decedent was the settlor of the trust, if the trust is held for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime, and if the terms of the trust meet the following requirements:

a. During the lifetime of the surviving spouse, the trust is controlled by one or more nonadverse trustees.

b. The trustee shall distribute to or for the benefit of the surviving spouse either (i) the entire net income of the trust at least annually or (ii) the income of the trust in such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse.

c. The trustee shall distribute to or for the benefit of the surviving spouse out of the principal of the trust such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse.

d. In exercising discretion, the trustee may be authorized or required to take into consideration all other income assets and other means of support available to the surviving spouse.

(2) To the extent that the partial or contingent interest is dependent upon the occurrence of any contingency that is not subject to the control of the surviving spouse and that is not subject to valuation by reference to the mortality and annuity tables set forth in G.S. 8-46 and G.S. 8-47, the

contingency will be conclusively presumed to result in the lowest possible value passing to the surviving spouse. However, a life estate or income interest that will terminate upon the surviving spouse's death or remarriage will be valued without regard to the possibility of termination upon remarriage.

(3) To the extent that the valuation of a partial or contingent interest is dependent upon the life expectancy of the surviving spouse, that life expectancy shall be conclusively presumed to be no less than 10 years, regardless of the actual attained age of the surviving spouse at the decedent's death.

(f) Method for Determining Value. – Unless otherwise stated in this Article, the value of property shall be determined as follows:

(1) The value of property passing by intestacy described in G.S. 30-3.2(3f)a. and Property Passing to Surviving Spouse, other than property held in a trust, shall be established by the good-faith agreement of the surviving spouse and the personal representative, unless either (i) the surviving spouse is the personal representative or (ii) the clerk determines that the personal representative may not be able to represent the estate adversely to the surviving spouse, in which cases the value of such property shall be determined pursuant to subdivision (4) of this subsection.

(2) The value of property constituting an interest in a trust shall be established by good-faith agreement of the surviving spouse, the personal representative, and the trustee, unless either (i) the surviving spouse is both the personal representative and the trustee or (ii) the clerk determines that the trustee or the personal representative may not be able to represent the trust or the estate, respectively, adversely to the surviving spouse, in which cases the value of such property shall be determined pursuant to subdivision (4) of this subsection.

(3) The value of all other property shall be established by the good-faith agreement of the surviving spouse, the personal representative, and the responsible person that received, held, or controlled such property on the date used to determine the value of such property for purposes of determining total assets, unless the clerk determines that valuation under subdivision (4) of this subsection is more appropriate.

(4) If the value of any property is not established by agreement as provided above, the parties may present evidence regarding value, which may include expert testimony, and the clerk may appoint one or more qualified and disinterested persons to help determine the value of such property. After hearing, the clerk shall make a finding of fact of the value of each asset.

"**§ 30-3.4. Procedure for determining the elective share.**

(a) Exercisable Only During Lifetime. – The right of the surviving spouse to file a claim for an elective share must be exercised during the lifetime of the surviving spouse, by the surviving spouse, by the surviving spouse's ~~agent under a~~ attorney-in-fact if the surviving spouse's power of ~~attorney,~~ attorney expressly authorizes the attorney-in-fact to do so or to generally engage in estate transactions, ~~or~~ or, with approval of court, by the guardian of the surviving spouse's ~~estate.~~ estate or general guardian. If a surviving spouse dies before the claim for an elective share has been settled, the surviving spouse's personal representative shall succeed to the surviving spouse's rights to an elective share.

(b) Time Limitations. – A claim for an elective share must be made within six months after the issuance of letters testamentary or letters of administration in connection with the will or intestate proceeding with respect to which the surviving spouse claims the elective share by

(i) filing a petition with the clerk of superior court of the county in which the primary administration of the decedent's estate lies, and (ii) mailing or delivering a copy of that petition to the personal representative of the decedent's estate. A surviving spouse's incapacity shall not toll the six-month period of limitations.

(c) Time for Hearing. – Unless waived by the personal representative and the surviving spouse, the clerk shall set the matter for hearing no earlier than two months and no later than six months after the filing of the petition. However, the clerk may extend the time of hearing as the clerk sees fit. The surviving spouse shall give notice of the hearing to the personal representative, and to any person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share.

~~(d) Preparation of Tax Form. – In every case in which a petition to determine an elective share has been filed, and within two months of the filing of the petition, the personal representative shall prepare and submit to the clerk a proposed Form 706, federal estate tax return, for the estate, regardless of whether that form is required to be filed with the Internal Revenue Service. The clerk may extend the time for submission of the proposed Form 706 as the clerk sees fit.~~

~~(e) Valuation. – The valuation of interests in property for purposes of G.S. 30-3.2 and G.S. 30-3.3 shall be determined as follows:~~

~~(1) Basic principles. – Each interest shall be valued at its fair market value, reduced by all liens, claims, or encumbrances against the interest. For interests passing at the decedent's death, valuation shall be as of the date of death, and for interests transferred during the decedent's lifetime, valuation shall be as of the date of transfer.~~

~~(2) Valuation of partial and contingent interests in property. – The valuation of interests in property, outright or in trust, which are limited to commence or terminate upon the death of one or more persons, upon the expiration of a period of time, or upon the occurrence of one or more contingencies, shall be determined by computations based upon the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, and upon the basis of six percent (6%) of the gross value of the underlying property in which those interests are limited. However, in valuing interests passing to the surviving spouse, the following special rules apply:~~

~~a. An interest described in G.S. 30-3.3(a)(7) that shall be valued as if the underlying property or interest passed outright to the surviving spouse unencumbered by any trust;~~

~~b. To the extent that the interest is dependent upon the occurrence of any contingency that is not subject to the control of the surviving spouse and that is not subject to valuation by reference to the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, the contingency will be conclusively presumed to result in the lowest possible value passing to the surviving spouse. However, a life estate or income interest that will terminate only upon the earlier of the surviving spouse's death or remarriage will be valued without regard to the possibility of termination upon remarriage; and~~

~~c. To the extent that the valuation of an interest is dependent upon the life expectancy of the surviving spouse, that life expectancy shall be conclusively presumed to be no less than 10 years, regardless of the actual attained age of the surviving spouse at the decedent's death.~~

~~(3) Determination of fair market value. – The fair market value of each asset comprising Total Net Assets shall be determined as follows:~~

~~a. Probate assets and assets passing to spouse. The value of each probate asset and Property Passing to Surviving Spouse, other than assets held in trust, shall be established by the good faith agreement of the surviving spouse and the personal representative, unless either (i) the surviving spouse is the personal representative, or (ii) the clerk determines that the personal representative may not be able to represent the estate adversely to the surviving spouse.~~

~~b. Trust assets. The value of each trust asset shall be established by good faith agreement of the surviving spouse and the trustee, unless either (i) the surviving spouse is the trustee, or (ii) the clerk determines that the trustee may not be able to represent the trust adversely to the surviving spouse.~~

~~c. Other assets. The value of any other asset shall be established by the good faith agreement of the surviving spouse and each person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share because of that person's interest in the asset, unless the clerk determines that valuation under sub-subdivision d. of this subdivision is more appropriate.~~

~~d. Use of disinterested persons. If the value of any asset is not established by agreement, the clerk shall appoint one or more qualified and disinterested persons to determine a value of each asset. That determination of the value of an asset shall be final for the exclusive purposes of this Article.~~

(d1) Mediation. – The clerk may order mediation as described in G.S. 7A-38.3B of any disputes in connection with an elective share proceeding.

(e1) Procedure. – An elective share proceeding shall be an estate matter and may be appealed pursuant to G.S. 1-301.3.

(e2) Information About Total Net Assets. – In order to assist the clerk in determining whether a surviving spouse is entitled to an elective share, and, if so, the amount thereof, the following provisions apply:

(1) Submission within two months. – In every case in which a petition to determine an elective share has been filed, within two months of the filing of the petition, the personal representative shall submit sufficient information about the total assets for the clerk to determine the elective share. To fulfill its obligation to provide information, the personal representative may prepare and submit to the clerk a proposed Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, for the estate, regardless of whether that form is required to be filed with the Internal Revenue Service. The clerk may extend the time for submission of the proposed Form 706 or other information as the clerk sees fit.

(2) Examination regarding assets. – If the personal representative, the surviving spouse, or a responsible person has reasonable grounds to believe that any person has a claim or has in its possession assets included in Total Net Assets, then the personal representative, surviving spouse, or responsible person may use the procedures set out in G.S. 28A-15-12 to cause the clerk to examine the person believed to have a claim or to possess assets included in Total Net Assets.

(f) Findings and Conclusions. – After notice and hearing, the clerk shall determine whether or not the surviving spouse is entitled to an elective share, and if so, the clerk shall then determine the elective share and shall order the personal representative to transfer that amount to the surviving spouse. The clerk's order shall recite specific findings of fact and

conclusions of law in arriving at the decedent's Total Net Assets, Property Passing to Surviving Spouse, and the elective share.

~~(g) Appeals. – Any party in interest may appeal from the decision of the clerk to the superior court. If an appeal is taken from the decision of the clerk, that appeal shall have the effect of staying the judgment and order of the clerk until the cause is heard and determined by the superior court upon the appeal taken. Upon an appeal taken from the clerk to the superior court, the judge may review the findings of fact by the clerk and may find the facts or take other evidence, but the facts found by the judge shall be final and conclusive upon any appeal to the Appellate Division.~~

(h) Expenses. – The expenses (including attorneys' fees) reasonably incurred by the personal representative, other responsible persons, and the surviving spouse in connection with elective share proceedings shall be equitably apportioned by the clerk of court in the clerk's discretion among the personal representative, other responsible persons, and the surviving spouse.

"**§ 30-3.5. ~~Recovery of assets by personal representative.~~ Satisfaction of elective share.**

~~(a) Recovery of Assets. – The personal representative is entitled to recover proportionately from all persons, other than the surviving spouse, receiving or in possession of any of the decedent's Total Net Assets a sufficient amount to enable the personal representative to pay the elective share. The apportionment shall be made in the proportion that the value of the interest of each person receiving or in possession of any of Total Net Assets bears to Total Net Assets, excluding any Property Passing to Surviving Spouse. The only persons subject to contribution to make up the elective share are (i) original recipients of property comprising the decedent's Total Net Assets, and subsequent gratuitous inter vivos donees or persons claiming by testate or intestate succession to the extent those persons have the property or its proceeds on or after the date of decedent's death, and (ii) a fiduciary, as to the property under the fiduciary's control at or after the time a fiduciary receives notice that a surviving spouse has claimed an elective share. A fiduciary shall not be considered to have notice until it receives notice at its address as shown in the decedent's estate papers in the clerk's office or, if there are no such papers or no such address is shown in those papers, at the fiduciary's residence or the office of its registered agent.~~

~~The personal representative may withhold from any property of the decedent in his possession, distributable to any person subject to apportionment, the amount of the elective share apportioned to such person. If the property in possession of the personal representative and distributable to any person subject to apportionment is insufficient to satisfy the proportionate amount of the elective share determined to be due from that person, the personal representative may recover the deficiency from that person. If the property is not in possession of the personal representative, the personal representative may recover from the person the amount of the elective share apportioned to that person in accordance with this Article. If the personal representative cannot reasonably collect from any person subject to apportionment the amount of the elective share apportioned to that person, the amount not reasonably recoverable shall, with the approval of the clerk, be apportioned among the other persons who are subject to apportionment. The apportionment shall be made in the proportion that the value of the interest of each remaining person bears to the total value of the interests of all remaining persons.~~

(a1) Apportionment. – The personal representative shall apportion the liability to the surviving spouse for the amount of the elective share among all responsible persons as follows:

(1) The net value of each nonspousal asset shall be determined by calculating the value of the nonspousal asset under G.S. 30-3.3A and reducing such value by that portion of the claims (including year's allowances to persons other than the surviving spouse) payable out of, charged against, or otherwise properly allocable to the nonspousal asset.

(2) Using the net value of each nonspousal asset as determined under subdivision (1) of this subsection, the personal representative shall determine each responsible person's liability to the surviving spouse by multiplying the amount of the elective share by a fraction, the numerator of which is the net value of the responsible person's nonspousal assets and the denominator of which is the net value of all of the nonspousal assets.

(a2) Recovery From Responsible Persons. – In recovering assets from responsible persons, the following rules apply:

(1) To the extent the personal representative is a responsible person, the personal representative shall satisfy its liability to the surviving spouse out of its nonspousal assets according to the following order of priority:

a. The personal representative shall satisfy its liability out of the net value of the nonspousal assets passing by intestate succession by allocating the liability proportionately among each intestate heir based on the fraction of the net value of the nonspousal assets passing by intestate succession that each intestate heir is entitled to receive.

b. If the net value of the nonspousal assets passing by intestate succession is not sufficient to satisfy the personal representative's liability in full, the personal representative shall satisfy its remaining liability out of the net value of the nonspousal assets passing as part of the decedent's residuary estate by allocating the liability proportionately among each beneficiary of the decedent's residuary estate based on the fraction of the net value of the nonspousal assets passing as part of the decedent's residuary estate that each residuary beneficiary is entitled to receive.

c. If the net value of the nonspousal assets in the residuary estate is not sufficient to satisfy the personal representative's liability in full, the personal representative shall satisfy its remaining liability by allocating the remaining liability proportionately among each other beneficiary of the decedent's will based on the fraction of the net value of the remaining nonspousal assets each other beneficiary is entitled to receive.

(2) The personal representative shall recover from each other responsible person the responsible person's liability to the surviving spouse.

(3) Each responsible person, including the personal representative in its capacity as a responsible person, may elect to satisfy its liability in full by any of the following methods:

a. Conveyance of that portion of the responsible person's nonspousal assets (or identical substitute assets), valued on the date of conveyance, sufficient to satisfy the responsible person's liability; or, if the value of the responsible person's nonspousal assets on the date of conveyance is less than the responsible person's liability, conveyance of all of the responsible person's nonspousal assets (or identical substitute assets).

b. Payment of the liability in cash.

c. Payment of the liability in other property upon written agreement of the surviving spouse at values agreed by the surviving spouse for purposes of determining the extent of the liability satisfied.

d. Any combination of the payment methods set forth under sub-subdivision a. through d. of this subdivision, provided that the

total value of assets conveyed by the responsible person equals such responsible person's liability.

(a3) Inability or Refusal to Pay. – The personal representative shall be entitled to petition the clerk of court for an order requiring any responsible person to satisfy its liability. Upon refusal of a responsible person to obey such an order, the personal representative shall be entitled to a judgment against such responsible person in the amount of the liability and to any other remedies the clerk deems appropriate. Although the responsible person shall remain primarily liable for such responsible person's liability for the elective share, the following rules apply:

(1) If the responsible person makes a gratuitous transfer, whether inter vivos or by testate or intestate succession, of all or any part of the responsible person's nonspousal assets or the proceeds thereof after the decedent's death, then the gratuitous transferee shall be liable for the amount transferred, and the personal representative shall be entitled to recover that amount from the transferee as if the transferee were the responsible person.

(2) If the responsible person is a fiduciary and makes a distribution of all or any part of the responsible person's nonspousal assets or the proceeds thereof after the decedent's death, then the distributee shall be liable for the amount transferred, and the personal representative shall be entitled to recover that amount from the distributee as if the distributee were the responsible person.

If, after exhausting all other remedies in this section, the personal representative cannot reasonably recover a responsible person's liability, then, with the approval of the clerk, the defaulting responsible person's liability shall be apportioned on a pro rata basis among the responsible persons who have not defaulted. Each nondefaulting other responsible person shall be liable for the amount of the liability apportioned to it in the same manner and to the same extent as its original liability for the elective share; provided, that each responsible person's liability shall not exceed the responsible person's proportionate share of the value of the nonspousal assets based on the values used in determining Total Net Assets. Each nondefaulting other responsible person shall be entitled to a proportionate share of any judgment against or subsequent recovery of the liability from the defaulting responsible person.

(b) Standstill Order. – After the filing of the petition demanding an elective share, ~~either the personal representative or surviving spouse~~ the personal representative, surviving spouse, or any responsible person may request the clerk to issue an order that any ~~recipients~~ responsible person not dispose of ~~any~~ all or a portion of the decedent's Total Net Assets or the proceeds thereof pending the ~~hearing.~~ payment of the elective share. The decision to issue such an order shall be in the discretion of the clerk. A person who violates the standstill order may be held in civil contempt of court pursuant to Article 5A of Chapter 2 of the General Statutes. The clerk shall enter an order terminating the standstill order upon the clerk's determination that the standstill order is no longer necessary or desirable.

~~(c) Satisfaction of Liability. – A person receiving or in possession of any of the decedent's Total Net Assets may pay his proportionate elective share liability with respect to that property by any of the following methods:~~

~~(1) Conveyance of the property included in the decedent's Total Net Assets;~~

~~(2) Payment of the value of his liability in cash or, upon agreement of the surviving spouse, other property; or~~

~~(3) Partial conveyance and partial payment under subdivisions (1) and (2) of this subsection, provided the value conveyed and paid is equal to his liability.~~

~~(d) Expenses. – The expenses reasonably incurred by the personal representative in connection with the appraisal or recovery of assets shall be apportioned as provided for the elective share under this Article. If the personal representative finds that it is inequitable to apportion the expenses because those expenses were incurred because of the fault of one or~~

~~more persons subject to apportionment, the personal representative may direct other more equitable apportionment, with the approval of the clerk.~~

(e) Bond. – ~~If property held by the personal representative is distributed~~ If a responsible person distributes or disposes of nonspousal assets prior to final apportionment of the elective ~~share,~~ share and expenses, the personal representative may require the ~~distributee~~ responsible person or the transferee to provide a bond or other security for the ~~apportionment~~ responsible person's liability for payment of the elective share and apportioned expenses in the form and amount prescribed by the personal representative, with the approval of the clerk.

"**§ 30-3.6. Waiver of rights.**

(a) The right of a surviving spouse to claim an elective share may be waived, wholly or partially, before or after marriage, with or without consideration, by a written waiver signed by the surviving ~~spouse.~~ spouse, by the surviving spouse's attorney-in-fact if the surviving spouse's power of attorney expressly authorizes the attorney-in-fact to do so or to generally engage in estate transactions, or, with approval of court, by the guardian of the surviving spouse's estate or general guardian.

(b) A waiver is not enforceable if the surviving spouse proves that:

(1) The waiver was not executed voluntarily; or

(2) The surviving spouse or the surviving spouse's representative making the waiver was not provided a fair and reasonable disclosure of the property and financial obligations of the decedent, unless the surviving spouse waived, in writing, the right to that disclosure.

(c) A written waiver that would have been effective to waive a spouse's right to dissent in estates of decedents dying on or before December 31, 2000, under Article 1 of Chapter 30 of the General Statutes is effective to waive that spouse's right of elective share under this Article for estates of decedents dying on or after January 1, 2001."

SECTION 2. This act is effective when it becomes law and applies to decedents dying on or after October 1, 2009.

HOUSE BILL 1449
Committee Substitute Favorable 4/29/09

Short Title: Juvenile Code Revisions. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS REVISIONS TO THE JUVENILE CODE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-302 reads as rewritten:

"**§ 7B-302. Assessment by director; access to confidential information; notification of person making the report.**

(a) When a report of abuse, neglect, or dependency is received, the director of the department of social services shall make a prompt and thorough assessment, using either a family assessment response or an investigative assessment response, in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. When the report alleges abuse, the director shall immediately, but no later than 24 hours after receipt of the report, initiate the assessment. When the report alleges neglect or dependency, the director shall initiate the assessment within 72 hours following receipt of the report. When the report alleges abandonment, the director shall immediately initiate an assessment, take appropriate steps to assume temporary custody of the juvenile, and take appropriate steps to secure an order for nonsecure custody of the juvenile. The assessment and evaluation shall include a visit to the place where the juvenile resides, except when the report alleges abuse or neglect in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes. When a report alleges abuse or neglect in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes, a visit to the place where the juvenile resides is not required. When the report alleges abandonment, the assessment shall include a request from the director to law enforcement officials to investigate through the North Carolina Center for Missing Persons and other national and State resources whether the juvenile is a missing child. ~~All information received by the department of social services, including the identity of the reporter, shall be held in strictest confidence by the department. However, the department of social services shall disclose confidential information to any federal, State, or local governmental entity or its agent needing confidential information to protect a juvenile from abuse and neglect. Any confidential information disclosed to any federal, State, or local governmental entity, or its agent, under this subsection shall remain confidential with the other governmental entity, or its agent, and shall only be redisclosed by the governmental entity or its agent for purposes directly connected with carrying out the governmental entity's or agent's mandated responsibilities.~~

(a1) All information received by the department of social services, including the identity of the reporter, shall be held in strictest confidence by the department, except that:

(1) The department shall disclose confidential information to any federal, State, or local government entity or its agent in order to protect a juvenile from abuse or neglect. Any confidential information disclosed to any federal,

State, or local government entity or its agent under this subsection shall remain confidential with the other government entity or its agent and shall only be redisclosed for purposes directly connected with carrying out that entity's mandated responsibilities.

(2) The information may be examined upon request by the juvenile's guardian ad litem or the juvenile, including a juvenile who has reached age 18 or been emancipated.

(3) A district or superior court judge of this State presiding over a civil matter in which the department of social services is not a party may order the department to release confidential information, after providing the department with reasonable notice and an opportunity to be heard and then determining that the information is relevant and necessary to the trial of the matter before the court and unavailable from any other source. This subdivision shall not be construed to relieve any court of its duty to conduct hearings and make findings required under relevant federal law, before ordering the release of any private medical or mental health information or records related to substance abuse or HIV status or treatment. The department of social services may surrender the requested records to the court, for in camera review, if the surrender is necessary to make the required determinations.

(4) A district or superior court judge of this State presiding over a criminal or delinquency matter shall conduct an in camera review prior to releasing to the defendant or juvenile any confidential records maintained by the department of social services, except those records the defendant or juvenile is entitled to pursuant to subdivision (2) of this subsection.

(5) The department may disclose confidential information to a parent, guardian, custodian, or caretaker in accordance with G.S. 7B-700 of this Subchapter.

(a2) If the director, at any time after receiving a report that a juvenile may be abused, neglected, or dependent, determines that the juvenile's legal residence is in another county, the director shall promptly notify the director in the county of the juvenile's residence, and the two directors shall coordinate efforts to ensure that appropriate actions are taken.

(b) When a report of a juvenile's death as a result of suspected maltreatment or a report of suspected abuse, neglect, or dependency of a juvenile in a noninstitutional setting is received, the director of the department of social services shall immediately ascertain if other juveniles live in the home, and, if so, initiate an assessment in order to determine whether they require protective services or whether immediate removal of the juveniles from the home is necessary for their protection. When a report of a juvenile's death as a result of maltreatment or a report of suspected abuse, neglect, or dependency of a juvenile in an institutional setting such as a residential child care facility or residential educational facility is received, the director of the department of social services shall immediately ascertain if other juveniles remain in the facility subject to the alleged perpetrator's care or supervision, and, if so, assess the circumstances of those juveniles in order to determine whether they require protective services or whether immediate removal of those juveniles from the facility is necessary for their protection.

(c) If the assessment indicates that abuse, neglect, or dependency has occurred, the director shall decide whether immediate removal of the juvenile or any other juveniles in the home is necessary for their protection. If immediate removal does not seem necessary, the director shall immediately provide or arrange for protective services. If the parent, guardian, custodian, or caretaker refuses to accept the protective services provided or arranged by the director, the director shall sign a ~~complaint~~ petition seeking to invoke the jurisdiction of the court for the protection of the juvenile or juveniles.

(d) If immediate removal seems necessary for the protection of the juvenile or other juveniles in the home, the director shall sign a ~~complaint~~ petition that alleges the applicable facts to invoke the jurisdiction of the court. Where the assessment shows that it is warranted, a protective services worker may assume temporary custody of the juvenile for the juvenile's protection pursuant to Article 5 of this Chapter.

(d1) Whenever a juvenile is removed from the home of a parent, guardian, custodian, stepparent, or adult relative entrusted with the juvenile's care due to physical abuse, the director shall conduct a thorough review of the background of the alleged abuser or abusers. This review shall include a criminal history check and a review of any available mental health records. If the review reveals that the alleged abuser or abusers have a history of violent behavior against people, the director shall petition the court to order the alleged abuser or abusers to submit to a complete mental health evaluation by a licensed psychologist or psychiatrist.

(e) In performing any duties related to the assessment of the report or the provision or arrangement for protective services, the director may consult with any public or private agencies or individuals, including the available State or local law enforcement officers who shall assist in the assessment and evaluation of the seriousness of any report of abuse, neglect, or dependency when requested by the director. The director or the director's representative may make a written demand for any information or reports, whether or not confidential, that may in the director's opinion be relevant to the assessment or provision of protective services. Upon the director's or the director's representative's request and unless protected by the attorney-client privilege, any public or private agency or individual shall provide access to and copies of this confidential information and these records to the extent permitted by federal law and regulations. If a custodian of criminal investigative information or records believes that release of the information will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation, it may seek an order from a court of competent jurisdiction to prevent disclosure of the information. In such an action, the custodian of the records shall have the burden of showing by a preponderance of the evidence that disclosure of the information in question will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation. Actions brought pursuant to this paragraph shall be set down for immediate hearing, and subsequent proceedings in the actions shall be accorded priority by the trial and appellate courts.

(f) Within five working days after receipt of the report of abuse, neglect, or dependency, the director shall give written notice to the person making the report, unless requested by that person not to give notice, as to whether the report was accepted for assessment and whether the report was referred to the appropriate State or local law enforcement agency.

(g) Within five working days after completion of the protective services assessment, the director shall give subsequent written notice to the person making the report, unless requested by that person not to give notice, as to whether there is a finding of abuse, neglect, or dependency, whether the county department of social services is taking action to protect the juvenile, and what action it is taking, including whether or not a petition was filed. The person making the report shall be informed of procedures necessary to request a review by the prosecutor of the director's decision not to file a petition. A request for review by the prosecutor shall be made within five working days of receipt of the second notification. The second notification shall include notice that, if the person making the report is not satisfied with the director's decision, the person may request review of the decision by the prosecutor within five working days of receipt. The person making the report may waive the person's right to this notification, and no notification is required if the person making the report does not identify himself to the director.

(h) The director or the director's representative may not enter a private residence for assessment purposes without at least one of the following:

(1) The reasonable belief that a juvenile is in imminent danger of death or serious physical injury.

(2) The permission of the parent or person responsible for the juvenile's care.

(3) The accompaniment of a law enforcement officer who has legal authority to enter the residence.

(4) An order from a court of competent jurisdiction."

SECTION 2. G.S. 7B-400 reads as rewritten:

"**§ 7B-400. ~~Venue; pleading.~~Venue.**

A proceeding in which a juvenile is alleged to be abused, neglected, or dependent may be commenced in the district in which the juvenile resides or is present. ~~When a proceeding is commenced in a district other than that of the juvenile's residence, the court, on its own motion or upon motion of any party, may transfer the proceeding to the court in the district where the juvenile resides. A transfer under this section may be made at any time.~~"

SECTION 3. G.S. 7B-402 is amended by adding the following new subsection to read:

"(d) If the petition is filed in a county other than the county of the juvenile's residence, the petitioner shall provide a copy of the petition and any notices of hearing to the director of the department of social services in the county of the juvenile's residence."

SECTION 4. G.S. 7B-700 reads as rewritten:

"**§ 7B-700. ~~Regulation of discovery; protective orders.~~Sharing of information; discovery.**

~~(a) Upon written motion of a party and a finding of good cause, the court may at any time order that discovery be denied, restricted, or deferred.~~

~~(b) The court may permit a party seeking relief under subsection (a) of this section to submit supporting affidavits or statements to the court for in camera inspection. If, thereafter, the court enters an order granting relief under subsection (a) of this section, the material submitted in camera must be available to the Court of Appeals in the event of an appeal.~~

(a) Sharing of Information. – A department of social services is authorized to share with any other party information relevant to the subject matter of an action pending under this Subchapter. However, this subsection does not authorize the disclosure of the identity of the reporter or any uniquely identifying information that would lead to the discovery of the reporter's identity in accordance with G.S. 7B-302 or the identity of any other person where the agency making the information available determines that the disclosure would be likely to endanger the life or safety of the person.

(b) Local Rules. – The chief district court judge may adopt local rules or enter an administrative order addressing the sharing of information among parties and the use of discovery.

(c) Discovery. – Any party may file a motion for discovery. The motion shall contain a specific description of the information sought and a statement that the requesting party has made a reasonable effort to obtain the information pursuant to subsections (a) and (b) of this section or that the information cannot be obtained pursuant to subsections (a) and (b) of this section. The motion shall be served upon all parties pursuant to G.S. 1A-1, Rule 5. The motion shall be heard and ruled upon within 10 business days of the filing of the motion. The court may grant, restrict, defer, or deny the relief requested. Any order shall avoid unnecessary delay of the hearing, establish expedited deadlines for completion, and conform to G.S. 7B-803.

(d) Protective Order. – Any party served with a motion for discovery may request that the discovery be denied, restricted, or deferred and shall submit, for in camera inspection, the document, information, or materials the party seeks to protect. If the court enters any order granting relief, copies of the documents, information, or materials submitted in camera shall be preserved for appellate review in the event of an appeal.

(e) Redisclosure. – Information obtained through discovery or sharing of information under this section may not be redisclosed if the redisclosure is prohibited by State or federal law.

(f) Guardian Ad Litem. – Unless provided otherwise by local rules, information or reports obtained by the guardian ad litem pursuant to G.S. 7B-601 are not subject to disclosure pursuant to this subsection, except that reports and records shall be shared with all parties before submission to the court."

SECTION 5. Article 9 of Chapter 7B of the General Statutes is amended by adding the following new section to read:

"**§ 7B-900.1. Post adjudication venue.**

(a) At any time after adjudication, the court on its own motion or motion of any party may transfer venue to a different county, regardless of whether the action could have been commenced in that county, if the court finds that the forum is inconvenient, that transfer of the action to the other county is in the best interest of the juvenile, and that the rights of the parties are not prejudiced by the change of venue.

(b) Before ordering that a case be transferred to another county, the court shall find that the director of the department of social services in the county in which the action is pending and the director in the county to which transfer is contemplated have communicated about the case and that:

(1) The two directors are in agreement with respect to each county's responsibility for providing financial support for the juvenile and services for the juvenile and the juvenile's family; or

(2) The Director of the Division of Social Services or the Director's designee has made that determination pursuant to G.S. 153A-257(d).

(c) When the court transfers a case to a different county, the court shall join or substitute as a party to the action the director of the department of social services in the county to which the case is being transferred and, if the juvenile is in the custody of the department of social services in the county in which the action is pending, shall transfer custody to the department of social services in the county to which the case is being transferred. The director of the department of social services in the county to which the case is being transferred must be given notice and an opportunity to be heard before the court enters an order pursuant to this subsection. However, the director may waive the right to notice and a hearing.

(d) Before ordering that a case be transferred to a different district, the court shall communicate with the chief district court judge or a judge presiding in juvenile court in the district to which the transfer is contemplated explaining the reasons for the proposed transfer. If the judge in the district to which the transfer is proposed makes a timely objection to the transfer, either verbally or in writing, the court shall order the transfer only after making detailed findings of fact that support a conclusion that the juvenile's best interests require that the case be transferred.

(e) Before ordering that a case be transferred to another county, the court shall consider relevant factors, which may include:

(1) The current residences of the juvenile and the parent, guardian, or custodian and the extent to which those residences have been and are likely to be stable.

(2) The reunification plan or other permanent plan for the juvenile and the likely effect of a change in venue on efforts to achieve permanence for the juvenile expeditiously.

(3) The nature and location of services and service providers necessary to achieve the reunification plan or other permanent plan for the juvenile.

(4) The impact upon the juvenile of the potential disruption of an existing therapeutic relationship.

(5) The nature and location of witnesses and evidence likely to be required in future hearings.
(6) The degree to which the transfer would cause inconvenience to one or more parties.
(7) Any agreement of the parties as to which forum is most convenient.
(8) The familiarity of the departments of social services, the courts, and the local offices of the guardian ad litem with the juvenile and the juvenile's family.
(9) Any other factor the court considers relevant.

(f) The order transferring venue shall be in writing, signed, and entered no later than 30 days from completion of the hearing. The order shall identify the next court action and specify the date within which the next hearing shall be held. If the order is not entered within 30 days following completion of the hearing, the clerk of court for juvenile matters shall schedule a subsequent hearing at the first session of court scheduled for the hearing of juvenile matters following the 30-day period to determine and explain the reason for the delay and to obtain any needed clarification as to the contents of the order. The order shall be entered within 10 days of the subsequent hearing required by this subsection.

(g) The clerk shall transmit to the court in the county to which the case is being transferred a copy of the complete record of the case within three business days after entry of the order transferring venue.

Upon receiving a case that has been transferred from another county, the clerk shall promptly satisfy the following:

(1) Assign an appropriate file number to the case.
(2) Ensure that any necessary appointments of new attorneys or guardians ad litem are made.
(3) Calendar the next court action as set forth in the order transferring venue and give appropriate notice to all parties."

SECTION 6. G.S. 7B-906(a) reads as rewritten:

"(a) In any case where custody is removed from a parent, guardian, custodian, or caretaker the court shall conduct a review hearing within 90 days from the date of the dispositional hearing and shall conduct a review hearing within six months thereafter. The director of social services shall make a timely request to the clerk to calendar each review at a session of court scheduled for the hearing of juvenile matters. The clerk shall give 15 days' notice of the review and its purpose to the parent, the juvenile, if 12 years of age or more, the guardian, ~~any~~ the foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency the court may specify, indicating the court's impending review. The department of social services shall either provide to the clerk the name and address of the foster parent, relative, or preadoptive parent providing care for the child for notice under this subsection or file written documentation with the clerk that the child's current care provider was sent notice of hearing. Nothing in this subsection shall be construed to make ~~any~~ the foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and the right to be heard."

SECTION 7. G.S. 7B-907(a) reads as rewritten:

"(a) In any case where custody is removed from a parent, guardian, custodian, or caretaker, the judge shall conduct a review hearing designated as a permanency planning hearing within 12 months after the date of the initial order removing custody, and the hearing may be combined, if appropriate, with a review hearing required by G.S. 7B-906. The purpose of the permanency planning hearing shall be to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. Subsequent permanency planning hearings shall be held at least every six months thereafter, or earlier as set by the court, to review the progress made in finalizing the permanent plan for the juvenile, or if necessary, to

make a new permanent plan for the juvenile. The Director of Social Services shall make a timely request to the clerk to calendar each permanency planning hearing at a session of court scheduled for the hearing of juvenile matters. The clerk shall give 15 days' notice of the hearing and its purpose to the parent, the juvenile if 12 years of age or more, the guardian, ~~any~~ the foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency the court may specify, indicating the court's impending review. The department of social services shall either provide to the clerk the name and address of the foster parent, relative, or preadoptive parent providing care for the child for notice under this subsection or file written documentation with the clerk that the child's current care provider was sent notice of hearing. Nothing in this provision shall be construed to make ~~any~~ the foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and the right to be heard."

SECTION 8. G.S. 7B-908 reads as rewritten:

"**§ 7B-908. Post termination of parental rights' placement court review.**

(a) The purpose of each placement review is to ensure that every reasonable effort is being made to provide for a permanent placement plan for the juvenile who has been placed in the custody of a county director or licensed child-placing agency, which is consistent with the juvenile's best interests. At each review hearing the court may consider information from the department of social services, the licensed child-placing agency, the guardian ad litem, the child, ~~any~~ the foster parent, relative, or preadoptive parent providing care for the child, and any other person or agency the court determines is likely to aid in the review. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition.

(b) The court shall conduct a placement review not later than six months from the date of the termination hearing when parental rights have been terminated by a petition brought by any person or agency designated in G.S. 7B-1103(2) through (5) and a county director or licensed child-placing agency has custody of the juvenile. The court shall conduct reviews every six months thereafter until the juvenile is the subject of a decree of adoption:

(1) No more than 30 days and no less than 15 days prior to each review, the clerk shall give notice of the review to the juvenile if the juvenile is at least 12 years of age, the legal custodian of the juvenile, ~~any~~ the foster parent, relative, or preadoptive parent providing care for the juvenile, the guardian ad litem, if any, and any other person or agency the court may specify. The department of social services shall either provide to the clerk the name and address of the foster parent, relative, or preadoptive parent providing care for the child for notice under this subsection or file written documentation with the clerk that the child's current care provider was sent notice of hearing. Only the juvenile, if the juvenile is at least 12 years of age, the legal custodian of the juvenile, ~~any~~ the foster parent, relative, or preadoptive parent providing care for the juvenile, and the guardian ad litem shall attend the review hearings, except as otherwise directed by the court. Nothing in this subdivision shall be construed to make ~~any~~ the foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and the right to be heard. Any individual whose parental rights have been terminated shall not be considered a party to the proceeding unless an appeal of the order terminating parental rights is pending, and a court has stayed the order pending the appeal.

(2) If a guardian ad litem for the juvenile has not been appointed previously by the court in the termination proceeding, the court, at the initial six-month review hearing, may appoint a guardian ad litem to represent the juvenile.

The court may continue the case for such time as is necessary for the guardian ad litem to become familiar with the facts of the case.

(c) The court shall consider at least the following in its review:

(1) The adequacy of the plan developed by the county department of social services or a licensed child-placing agency for a permanent placement relative to the juvenile's best interests and the efforts of the department or agency to implement such plan;

(2) Whether the juvenile has been listed for adoptive placement with the North Carolina Adoption Resource Exchange, the North Carolina Photo Adoption Listing Service (PALS), or any other specialized adoption agency; and

(3) The efforts previously made by the department or agency to find a permanent home for the juvenile.

(d) The court, after making findings of fact, shall affirm the county department's or child-placing agency's plans or require specific additional steps which are necessary to accomplish a permanent placement which is in the best interests of the juvenile.

(e) If the juvenile is the subject of a decree of adoption prior to the date scheduled for the review, ~~written notice of the issuance of the decree of adoption shall be given to the clerk to be placed in the court file, and the and~~within 10 days of receiving notice that the adoption decree has been entered, the department of social services shall file with the court and serve on any guardian ad litem for the juvenile written notice of the entry. The adoption decree shall not be filed in the court file. The review hearing shall be cancelled with notice of said cancellation given by the clerk to all persons previously notified.

(f) The process of selection of specific adoptive parents shall be the responsibility of and within the discretion of the county department of social services or licensed child-placing agency. The guardian ad litem may request information from and consult with the county department or child-placing agency concerning the selection process. If the guardian ad litem requests information about the selection process, the county shall provide the information within five days. ~~Any issue of abuse of discretion by the county department or child placing agency in the selection process must be raised by the guardian ad litem within 10 days following the date the agency notifies the court and the guardian ad litem in writing of the filing of the adoption petition.~~ Within 10 days of receiving a copy of the adoption petition, the county department of social services shall file with the court and serve on any guardian ad litem for the juvenile written notice that the adoption petition has been filed. The adoption petition shall not be filed in the court file. The guardian ad litem has 10 days from service of the written notice that the adoption petition has been filed to file a motion alleging any abuse of discretion by the county department of social services or child placing agency in the adoption selection process. The motion shall be filed in the adoption proceeding and result in the transfer of the adoption proceeding to the district court pursuant to G.S. 48-2-601(a1). The guardian ad litem shall file with the court and serve the department of social services written notice that the motion was filed. The motion shall not be filed in the court file."

SECTION 9. G.S. 7B-1101.1 reads as rewritten:

"**§ 7B-1101.1. Parent's right to counsel; guardian ad litem.**

(a) The parent has the right to counsel, and to appointed counsel in cases of indigency, unless the parent waives the right. The fees of appointed counsel shall be borne by the Office of Indigent Defense Services. When a petition is filed, unless the parent is already represented by counsel, the clerk shall appoint provisional counsel for each respondent parent named in the petition and indicate the appointment on the juvenile summons. At the first hearing after service upon the respondent parent, the court shall dismiss the provisional counsel if the respondent parent:

(1) Does not appear at the hearing;

(2) Does not qualify for court-appointed counsel;

(3) Has retained counsel; or
(4) Waives the right to counsel.

The court shall confirm the appointment of counsel if subdivisions (1) through (4) of this subsection are not applicable to the respondent parent. The court may reconsider a parent's eligibility and desire for appointed counsel at any stage of the proceeding.

(b) In addition to the right to appointed counsel under subsection (a) of this section, a guardian ad litem shall be appointed in accordance with G.S. 1A-1, Rule 17, to represent any parent who is under the age of 18 years and who is not married or otherwise emancipated.

(c) On motion of any party or on the court's own motion, the court may appoint a guardian ad litem for a parent in accordance with G.S. 1A-1, Rule 17 if the court determines that there is a reasonable basis to believe that the parent is incompetent or has diminished capacity and cannot adequately act in his or her own interest. The parent's counsel shall not be appointed to serve as the guardian ad litem.

(d) Communications between the guardian ad litem appointed under this section and the parent and between the guardian ad litem and the parent's counsel shall be privileged and confidential to the same extent that communications between the parent and the parent's counsel are privileged and confidential.

(e) Guardians ad litem appointed under this section may engage in all of the following practices:

(1) Helping the parent to enter consent orders, if appropriate.
(2) Facilitating service of process on the parent.
(3) Assuring that necessary pleadings are filed.
(4) Assisting the parent and the parent's counsel, if requested by the parent's counsel, to ensure that the parent's procedural due process requirements are met.

(f) The fees of a guardian ad litem appointed pursuant to this section shall be borne by the Office of Indigent Defense Services when the court finds that the respondent is indigent. In other cases, the fees of the court-appointed guardian ad litem shall be a proper charge against the respondent if the respondent does not secure private legal counsel."

SECTION 10. G.S. 7B-1106(b) reads as rewritten:

"(b) The summons shall be issued for the purpose of terminating parental rights pursuant to the provisions of subsection (a) of this section and shall include:

(1) The name of the minor juvenile;
(2) Notice that a written answer to the petition must be filed with the clerk who signed the petition within 30 days after service of the summons and a copy of the petition, or the parent's rights may be terminated;
(3) ~~Notice that if they are indigent, the parents are entitled to appointed counsel; the parents may contact the clerk immediately to request counsel;~~ Notice that any counsel appointed previously and still representing the parent in an abuse, neglect, or dependency proceeding shall continue to represent the parent unless otherwise ordered by the court;
(4) ~~Notice that this is a new case. Any attorney appointed previously will not represent the parents in this proceeding unless ordered by the court;~~ Notice that if the parent is indigent and is not already represented by appointed counsel, the parent is entitled to appointed counsel, that provisional counsel has been appointed, and that the appointment of provisional counsel shall be reviewed by the court at the first hearing after service;
(5) Notice that the date, time, and place of any pretrial hearing pursuant to G.S. 7B-1108.1 and the hearing on the petition will be mailed by the clerk upon filing of the answer or 30 days from the date of service if no answer is filed; and

(6) Notice of the purpose of the hearing and notice that the parents may attend the termination hearing."

SECTION 11. G.S. 7B-1106.1(b) reads as rewritten:

"(b) The notice required by subsection (a) of this section shall include all of the following:

(1) The name of the minor juvenile.

(2) Notice that a written response to the motion must be filed with the clerk within 30 days after service of the motion and notice, or the parent's rights may be terminated.

(3) Notice that any ~~attorney~~ counsel appointed previously ~~to represent~~and still representing the parent in ~~the~~ an abuse, neglect, or dependency proceeding will continue to represent the parents unless otherwise ordered by the court.

(4) Notice that if the parent is indigent, the parent is entitled to appointed counsel and if the parent is not already represented by appointed counsel the parent may contact the clerk immediately to request counsel.

(5) Notice that the date, time, and place of any pretrial hearing pursuant to G.S. 7B-1108.1 and the hearing on the motion will be mailed by the moving party upon filing of the response or 30 days from the date of service if no response is filed.

(6) Notice of the purpose of the hearing and notice that the parents may attend the termination hearing."

SECTION 12. G.S. 7B-1108 reads as rewritten:

"**§ 7B-1108. Answer or response of ~~parent.~~parent; appointment of guardian ad litem for juvenile.**

(a) Any respondent may file a written answer to the petition or written response to the motion. The answer or response shall admit or deny the allegations of the petition or motion and shall set forth the name and address of the answering respondent or the respondent's attorney.

(b) If an answer or response denies any material allegation of the petition or motion, the court shall appoint a guardian ad litem for the juvenile to represent the best interests of the juvenile, unless the petition or motion was filed by the guardian ad litem pursuant to G.S. 7B-1103, or a guardian ad litem has already been appointed pursuant to G.S. 7B-601. A licensed attorney shall be appointed to assist those guardians ad litem who are not attorneys licensed to practice in North Carolina. The appointment, duties, and payment of the guardian ad litem shall be the same as in G.S. 7B-601 and G.S. 7B-603, but in no event shall a guardian ad litem who is trained and supervised by the guardian ad litem program be appointed to any case unless the juvenile is or has been the subject of a petition for abuse, neglect, or dependency or with good cause shown the local guardian ad litem program consents to the appointment. ~~The court shall conduct a special hearing after notice of not less than 10 days nor more than 30 days given by the petitioner or movant to the respondent who answered or responded, and the guardian ad litem for the juvenile to determine the issues raised by the petition and answer or motion and response.~~

~~Notice of the hearing shall be deemed to have been given upon the depositing thereof in the United States mail, first class postage prepaid, and addressed to the respondent, and guardian ad litem or their counsel of record, at the addresses appearing in the petition or motion and responsive pleading.~~

(c) In proceedings under this Article, the appointment of a guardian ad litem shall not be required except, as provided above, in cases in which an answer or response is filed denying material allegations, or as required under G.S. 7B-1101; but the court may, in its discretion, appoint a guardian ad litem for a juvenile, either before or after determining the existence of

grounds for termination of parental rights, in order to assist the court in determining the best interests of the juvenile.

(d) If a guardian ad litem has previously been appointed for the juvenile under G.S. 7B-601, and the appointment of a guardian ad litem could also be made under this section, the guardian ad litem appointed under G.S. 7B-601, and any attorney appointed to assist that guardian, shall also represent the juvenile in all proceedings under this Article and shall have the duties and payment of a guardian ad litem appointed under this section, unless the court determines that the best interests of the juvenile require otherwise."

SECTION 13. Article 11 of Chapter 7B of the General Statutes is amended by adding the following new section to read:

"**§ 7B-1108.1. Pretrial hearing.**

(a) The court shall conduct a pretrial hearing. However, the court may combine the pretrial hearing with the adjudicatory hearing on termination in which case no separate pretrial hearing order is required. At the pretrial hearing, the court shall consider the following:

(1) Retention or release of provisional counsel.

(2) Whether a guardian ad litem should be appointed for the juvenile, if not previously appointed.

(3) Whether all summons, service of process, and notice requirements have been met.

(4) Any pretrial motions.

(5) Any issues raised by any responsive pleading, including any affirmative defenses.

(6) Any other issue which can be properly addressed as a preliminary matter.

(b) Written notice of the pretrial hearing shall be in accordance with G.S. 7B-1106 and G.S. 7B-1106.1."

SECTION 14. Article 17 of Chapter 7B of the General Statutes is amended by adding the following new section to read:

"**§ 7B-1700.1. Duty to report abuse, neglect, dependency.**

Any time a juvenile court counselor or any person has cause to suspect that a juvenile is abused, neglected, or dependent, or has died as the result of maltreatment, the juvenile court counselor or the person shall make a report to the county department of social services as required by G.S. 7B-301."

SECTION 15. G.S. 7B-1904 reads as rewritten:

"**§ 7B-1904. Order for secure or nonsecure custody.**

The custody order shall be in writing and shall direct a law enforcement officer or other authorized person to assume custody of the juvenile and to make due return on the order. The official executing the order shall give a copy of the order to the juvenile's parent, guardian, or custodian. If the order is for nonsecure custody, the official executing the order shall also give a copy of the petition and order to the person or agency with whom the juvenile is being placed. If the order is for secure custody, copies of the petition and custody order shall accompany the juvenile to the detention facility or holdover facility of the jail. A message of the Division of Criminal Information, State Bureau of Investigation, stating that a juvenile petition and secure custody order relating to a specified juvenile are on file in a particular county shall be authority to detain the juvenile in secure custody until a copy of the juvenile petition and secure custody order can be forwarded to the juvenile detention facility. The copies of the juvenile petition and secure custody order shall be transmitted to the detention facility no later than 72 hours after the initial detention of the juvenile.

An officer receiving an order for custody which is complete and regular on its face may execute it in accordance with its terms and need not inquire into its regularity or continued validity, nor does the officer incur criminal or civil liability for its execution."

SECTION 16. G.S. 7B-2503(1)c. reads as rewritten:

"(1) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the judge may:

...

c. ~~Place~~ If the director of the department of social services has received notice and an opportunity to be heard, place the juvenile in the custody of a department of social services in the county of the juvenile's residence, or in the case of a juvenile who has legal residence outside the State, in the physical custody of a department of social services in the county where the juvenile is found so that agency may return the juvenile to the responsible authorities in the juvenile's home state. An order placing a juvenile in the custody or placement responsibility of a county department of social services shall contain a finding that the juvenile's continuation in the juvenile's own home would be contrary to the juvenile's best interest. This placement shall be reviewed in accordance with G.S. 7B-906. The director may, unless otherwise ordered by the judge, arrange for, provide, or consent to, needed routine or emergency medical or surgical care or treatment. In the case where the parent is unknown, unavailable, or unable to act on behalf of the juvenile or juveniles, the director may, unless otherwise ordered by the judge, arrange for, provide or consent to any psychiatric, psychological, educational, or other remedial evaluations or treatment for the juvenile placed by a judge or the judge's designee in the custody or physical custody of a county department of social services under the authority of this or any other Chapter of the General Statutes: Prior to exercising this authority, the director shall make reasonable efforts to obtain consent from a parent, guardian, or custodian of the affected juvenile. If the director cannot obtain consent, the director shall promptly notify the parent, guardian, or custodian that care or treatment has been provided and shall give the parent, guardian, or custodian frequent status reports on the circumstances of the juvenile. Upon request of a parent, guardian, or custodian of the affected juvenile, the results or records of the aforementioned evaluations, findings, or treatment shall be made available to the parent, guardian, or custodian by the director unless prohibited by G.S. 122C-53(d)."

SECTION 17. G.S. 7B-2506(1)c. reads as rewritten:

"(1) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the judge may:

...

c. ~~Place~~ If the director of the county department of social services has received notice and an opportunity to be heard, place the juvenile in the custody of the department of social services in the county of his residence, or in the case of a juvenile who has legal residence outside the State, in the physical custody of a department of social services in the county where the juvenile is found so that agency may return the juvenile to the responsible authorities in the juvenile's home state. An order placing a juvenile in the custody or placement responsibility of a county department of social services shall contain a finding that the juvenile's continuation in the juvenile's own home would be contrary to the juvenile's best interest. This placement shall be reviewed in accordance with G.S. 7B-906. The director may, unless otherwise

ordered by the judge, arrange for, provide, or consent to, needed routine or emergency medical or surgical care or treatment. In the case where the parent is unknown, unavailable, or unable to act on behalf of the juvenile or juveniles, the director may, unless otherwise ordered by the judge, arrange for, provide, or consent to any psychiatric, psychological, educational, or other remedial evaluations or treatment for the juvenile placed by a judge or his designee in the custody or physical custody of a county department of social services under the authority of this or any other Chapter of the General Statutes. Prior to exercising this authority, the director shall make reasonable efforts to obtain consent from a parent, guardian, or custodian of the affected juvenile. If the director cannot obtain consent, the director shall promptly notify the parent, guardian, or custodian that care or treatment has been provided and shall give the parent, guardian, or custodian frequent status reports on the circumstances of the juvenile. Upon request of a parent, guardian, or custodian of the affected juvenile, the results or records of the aforementioned evaluations, findings, or treatment shall be made available to the parent, guardian, or custodian by the director unless prohibited by G.S. 122C-53(d)."

SECTION 18. G.S. 7B-2901(b) reads as rewritten:

"(b) The Director of the Department of Social Services shall maintain a record of the cases of juveniles under protective custody by the Department or under placement by the court, which shall include family background information; reports of social, medical, psychiatric, or psychological information concerning a juvenile or the juvenile's family; interviews with the juvenile's family; or other information which the court finds should be protected from public inspection in the best interests of the juvenile. The records maintained pursuant to this subsection may be examined only ~~by order of the court except that the guardian ad litem, or juvenile, shall have the right to examine them.~~ in the following circumstances:

(1) The juvenile's guardian ad litem or the juvenile, including a juvenile who has reached age 18 or been emancipated, may examine the records.

(2) A district or superior court judge of this State presiding over a civil matter in which the department is not a party may order the department to release confidential information, after providing the department with reasonable notice and an opportunity to be heard and then determining that the information is relevant and necessary to the trial of the matter before the court and unavailable from any other source. This subsection shall not be construed to relieve any court of its duty to conduct hearings and make findings required under relevant federal law before ordering the release of any private medical or mental health information or records related to substance abuse or HIV status or treatment. The department may surrender the requested records to the court, for in camera review, if surrender is necessary to make the required determinations.

(3) A district or superior court judge of this State presiding over a criminal or delinquency matter shall conduct an in camera review before releasing to the defendant or juvenile any confidential records maintained by the department of social services, except those records the defendant or juvenile is entitled to pursuant to subdivision (1) of this subsection.

(4) The department may disclose confidential information to a parent, guardian, custodian, or caretaker in accordance with G.S. 7B-700."

SECTION 19. This act becomes effective October 1, 2009.

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	July 2, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1098	Kill Search and Rescue Animal.	Representative Jones Representative Frye
HB 1449	Juvenile Code Revisions.	Representative Weiss Representative Goodwin Representative Glazier Representative Moore

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II Committee
Thursday, July 2, 2009, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 1098	Kill Search and Rescue Animal.	Representative Jones Representative Frye
HB 1449	Juvenile Code Revisions.	Representative Weiss Representative Goodwin Representative Glazier Representative Moore

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE
Thursday, July 2, 2009 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 10:00 AM on July 2, 2009, in Room 1124 of the Legislative Building with ten members of the committee present. Senator Allran, Vice Chairman, presided.

Senator Allran introduced pages Nia Matherson, Tiffany Owens, Vessi Edwards, Brea Wilkerson, Kiyanna Watts, Shaquila Jones, Kate Chamblee, Kathleen Reittinger, Kaitlyn Shaw, Robby Rucho and Herman Fernandes and thanked them for their assistance.

HB 1098 – (Kill Search and Rescue Animal.) Senator Forrester moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Representative Frye explained the bill. Senator Jacumin moved for a favorable report to the Proposed Committee Substitute, unfavorable to the original bill. All voted and the motion carried.

HB 1449 – (Juvenile Code Revisions.) Representative Weiss explained the bill. Ms. Brenda Carter, Staff Attorney, gave additional explanation. Questions from Senators Forrester, Vaughan and Jones were answered by Representative Weiss. Ms. Deana Fleming, representing the Administrative Office of the Court, spoke on the bill. Senator Vaughan moved for a favorable report. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

7/2/09
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Whitney Scarborough	AOC Intern
Deana Fleming	NCAOC
Cassandra White	NCAOC
Jim Slaughter	Attorney
Paul K. Mengert	AMG, Inc.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Thursday, July 02, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS #1) **1449** Juvenile Code Revisions.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

Sen. Hartsell will handle

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Thursday, July 02, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1098** Kill Search and Rescue Animal.

Draft Number:	80485
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

Sen. Swindell will handle this bill on the floor.

HOUSE BILL 1098
Committee Substitute Favorable 4/15/09

Short Title: Kill Search and Rescue Animal. (Public)

Sponsors:

Referred to:

April 7, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A CLASS H FELONY TO WILLFULLY KILL OR ATTEMPT TO KILL A SEARCH AND RESCUE ANIMAL AND TO MAKE IT AN AGGRAVATING CIRCUMSTANCE FOR OTHER CRIMINAL OFFENSES THAT A SEARCH AND RESCUE ANIMAL WAS SERIOUSLY HARMED OR KILLED WHILE THE ANIMAL WAS ENGAGED IN PERFORMING OFFICIAL DUTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-163.1 reads as rewritten:

"**§ 14-163.1. Assaulting a law enforcement agency ~~animal or~~ animal, an assistance ~~animal.~~animal, or a search and rescue animal.**

(a) The following definitions apply in this section:

(1) Assistance animal. – An animal that is trained and may be used to assist a "person with a disability" as defined in G.S. 168A-3. The term "assistance animal" is not limited to a dog and includes any animal trained to assist a person with a disability as provided in Article 1 of Chapter 168 of the General Statutes.

(2) Law enforcement agency animal. – An animal that is trained and may be used to assist a law enforcement officer in the performance of the officer's official duties.

(2a) Search and rescue animal. – An animal that is trained and may be used to assist in a search and rescue operation.

(3) Harm. – Any injury, illness, or other physiological impairment; or any behavioral impairment that impedes or interferes with duties performed by a law enforcement agency animal or an assistance animal.

(4) Serious harm. – Harm that does any of the following:

a. Creates a substantial risk of death.

b. Causes maiming or causes substantial loss or impairment of bodily function.

c. Causes acute pain of a duration that results in substantial suffering.

d. Requires retraining of the law enforcement agency animal or assistance animal.

e. Requires retirement of the law enforcement agency animal or assistance animal from performing duties.

(a1) Any person who knows or has reason to know that an animal is a law enforcement agency ~~animal or~~animal, an assistance ~~animal~~ animal, or a search and rescue animal and who willfully kills the animal is guilty of a Class H felony.

(b) Any person who knows or has reason to know that an animal is a law enforcement agency ~~animal or an assistance animal~~ animal, an assistance animal, or a search and rescue animal and who willfully causes or attempts to cause serious harm to the animal is guilty of a Class I felony.

(c) Unless the conduct is covered under some other provision of law providing greater punishment, any person who knows or has reason to know that an animal is a law enforcement agency ~~animal or an assistance animal~~ animal, an assistance animal, or a search and rescue animal and who willfully causes or attempts to cause harm to the animal is guilty of a Class 1 misdemeanor.

(d) Unless the conduct is covered under some other provision of law providing greater punishment, any person who knows or has reason to know that an animal is a law enforcement agency ~~animal or an assistance animal~~ animal, an assistance animal, or a search and rescue animal and who willfully taunts, teases, harasses, delays, obstructs, or attempts to delay or obstruct the animal in the performance of its duty as a law enforcement agency ~~animal or assistance animal~~animal, an assistance animal, or a search and rescue animal is guilty of a Class 2 misdemeanor.

(d1) A defendant convicted of a violation of this section shall be ordered to make restitution to the person with a disability, or to a person, group, or law enforcement agency who owns or is responsible for the care of the law enforcement agency animal or search and rescue animal for any of the following as appropriate:

(1) Veterinary, medical care, and boarding expenses for the assistance animal or law enforcement animal.

(2) Medical expenses for the person with the disability relating to the harm inflicted upon the assistance animal.

(3) Replacement and training or retraining expenses for the assistance animal or law enforcement animal.

(4) Expenses incurred to provide temporary mobility services to the person with a disability.

(5) Wages or income lost while the person with a disability is with the assistance animal receiving training or retraining.

(6) The salary of the law enforcement agency animal handler as a result of the lost services to the agency during the time the handler is with the law enforcement agency animal receiving training or retraining.

(7) Any other expense reasonably incurred as a result of the offense.

(e) This section shall not apply to a licensed veterinarian whose conduct is in accordance with Article 11 of Chapter 90 of the General Statutes.

(f) Self-defense is an affirmative defense to a violation of this section.

(g) Nothing in this section shall affect any civil remedies available for violation of this section."

SECTION 2. G.S. 15A-1340.16(d)(6a) reads as rewritten:

"(6a) The offense was committed against or proximately caused serious harm as defined in G.S. 14-163.1 or death to a law enforcement agency ~~animal or assistance animal~~animal, an assistance animal, or a search and rescue animal as defined in G.S. 14-163.1, while engaged in the performance of the animal's official duties."

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

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HOUSE BILL 1098
Committee Substitute Favorable 4/15/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1098-CSSB-58 [v.2]

7/1/2009 3:31:15 PM

Short Title: Protect Search and Rescue Animal. (Public)

Sponsors:

Referred to:

April 7, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THE SAME PROTECTIONS TO SEARCH AND RESCUE ANIMALS AS THOSE PROVIDED TO LAW ENFORCEMENT AGENCY ANIMALS AND ANIMALS THAT ASSIST THE DISABLED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-163.1 reads as rewritten:

"**§ 14-163.1. Assaulting a law enforcement agency ~~animal or~~ animal, an assistance ~~animal.~~animal, or a search and rescue animal.**

(a) The following definitions apply in this section:

(1) Assistance animal. – An animal that is trained and may be used to assist a "person with a disability" as defined in G.S. 168A-3. The term "assistance animal" is not limited to a dog and includes any animal trained to assist a person with a disability as provided in Article 1 of Chapter 168 of the General Statutes.

(2) Law enforcement agency animal. – An animal that is trained and may be used to assist a law enforcement officer in the performance of the officer's official duties.

(3) Harm. – Any injury, illness, or other physiological impairment; or any behavioral impairment that impedes or interferes with duties performed by a law enforcement agency animal or an assistance animal.

(3a) Search and rescue animal. – An animal that is trained and may be used to assist in a search and rescue operation.

(4) Serious harm. – Harm that does any of the following:

a. Creates a substantial risk of death.

b. Causes maiming or causes substantial loss or impairment of bodily function.

c. Causes acute pain of a duration that results in substantial suffering.

d. Requires retraining of the law enforcement agency animal or assistance animal.

e. Requires retirement of the law enforcement agency animal or assistance animal from performing duties.

(a1) Any person who knows or has reason to know that an animal is a law enforcement agency ~~animal or~~animal, an assistance ~~animal~~ animal, or a search and rescue animal and who willfully kills the animal is guilty of a Class H felony.

(b) Any person who knows or has reason to know that an animal is a law enforcement agency ~~animal or an assistance animal~~ animal, an assistance animal, or a search and rescue animal and who willfully causes or attempts to cause serious harm to the animal is guilty of a Class I felony.

(c) Unless the conduct is covered under some other provision of law providing greater punishment, any person who knows or has reason to know that an animal is a law enforcement agency ~~animal or an assistance animal~~ animal, an assistance animal, or a search and rescue animal and who willfully causes or attempts to cause harm to the animal is guilty of a Class 1 misdemeanor.

(d) Unless the conduct is covered under some other provision of law providing greater punishment, any person who knows or has reason to know that an animal is a law enforcement agency ~~animal or an assistance animal~~ animal, an assistance animal, or a search and rescue animal and who willfully taunts, teases, harasses, delays, obstructs, or attempts to delay or obstruct the animal in the performance of its duty as a law enforcement agency ~~animal or assistance animal~~animal, an assistance animal, or a search and rescue animal is guilty of a Class 2 misdemeanor.

(d1) A defendant convicted of a violation of this section shall be ordered to make restitution to the person with a disability, or to a person, group, or law enforcement agency who owns or is responsible for the care of the law enforcement agency animal or search and rescue animal for any of the following as appropriate:

(1) Veterinary, medical care, and boarding expenses for the ~~assistance animal or law enforcement animal.~~law enforcement agency animal, the assistance animal, or the search and rescue animal.

(2) Medical expenses for the person with the disability relating to the harm inflicted upon the assistance animal.

(3) Replacement and training or retraining expenses for the ~~assistance animal or law enforcement animal.~~law enforcement agency animal, the assistance animal, or the search and rescue animal.

(4) Expenses incurred to provide temporary mobility services to the person with a disability.

(5) Wages or income lost while the person with a disability is with the assistance animal receiving training or retraining.

(6) The salary of the law enforcement agency animal handler as a result of the lost services to the agency during the time the handler is with the law enforcement agency animal receiving training or retraining.

(6a) The salary of the search and rescue animal handler as a result of the search and rescue services lost during the time the handler is with the search and rescue animal receiving training or retraining.

(7) Any other expense reasonably incurred as a result of the offense.

(e) This section shall not apply to a licensed veterinarian whose conduct is in accordance with Article 11 of Chapter 90 of the General Statutes.

(f) Self-defense is an affirmative defense to a violation of this section.

(g) Nothing in this section shall affect any civil remedies available for violation of this section."

SECTION 2. G.S. 15A-1340.16(d)(6a) reads as rewritten:

"(6a) The offense was committed against or proximately caused serious harm as defined in G.S. 14-163.1 or death to a law enforcement agency ~~animal or assistance animal~~animal, an assistance animal, or a search and rescue animal

as defined in G.S. 14-163.1, while engaged in the performance of the animal's official duties."

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

HOUSE BILL 1098:
Kill Search and Rescue Animal

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	July 2, 2009
Introduced by:	Representatives Frye and Jones	**Prepared by:**	Jeff Hudson
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 1098 would add search and rescue animals to statutes that protect law enforcement animals and animals that assist persons with disabilities.***

CURRENT LAW: G.S. 14-163.1 provides the following offenses related to killing, harming, or obstructing a law enforcement agency animal or an animal that assists the disabled:

Willfully killing – Any person who knows or has reason to know that an animal is a law enforcement agency animal or an assistance animal and who willfully kills the animal is guilty of a **Class H felony.**

Willfully causing or attempting to cause serious harm – Any person who knows or has reason to know that an animal is a law enforcement agency animal or an assistance animal and who willfully causes or attempts to cause serious harm to the animal is guilty of a **Class I felony.**

Willfully causing or attempting to cause harm – Any person who knows or has reason to know that an animal is a law enforcement agency animal or an assistance animal and who willfully causes or attempts to cause harm to the animal is guilty of a **Class 1 misdemeanor.**

Willfully taunting, teasing, obstructing the animal – Any person who knows or has reason to know that an animal is a law enforcement agency animal or an assistance animal and who willfully taunts, teases, harasses, delays, obstructs, or attempts to delay or obstruct the animal in the performance of its duty as a law enforcement agency animal or assistance animal is guilty of a **Class 2 misdemeanor**.

Restitution – A defendant who violates the above provisions must make restitution to the person with a disability or the law enforcement agency who owns or is responsible for the care of the animal.

Aggravating factor – For felony convictions, there are three ranges of imprisonment: presumptive, aggravated, and mitigated. In many instances, the court will sentence a defendant in the presumptive range. If aggravating factors outweigh mitigating factors, a court may impose a term from the aggravated range, which is longer than a term from the presumptive range. G.S. 15A-1340.16(d) lists aggravating factors.

BILL ANALYSIS: House Bill 1098 would add search and rescue animals to law enforcement agency animals and assistance animals under the offense and restitution provisions of G.S. 14-163.1.

Further, the bill would add search and rescue animals to law enforcement agency animals and assistance animals in G.S. 15A-1340.16(d)(6a), which makes committing an offense against or proximately causing serious harm or death to these animals while engaged in the performance of the animal's official duties an aggravating factor for sentencing purposes.

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

Ben Popkin, counsel to House Judiciary III, substantially contributed to this summary.

H1098-SMSB-75(e2) v3

HOUSE BILL 1449
Committee Substitute Favorable 4/29/09

Short Title: Juvenile Code Revisions. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS REVISIONS TO THE JUVENILE CODE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-302 reads as rewritten:

"**§ 7B-302. Assessment by director; access to confidential information; notification of person making the report.**

(a) When a report of abuse, neglect, or dependency is received, the director of the department of social services shall make a prompt and thorough assessment, using either a family assessment response or an investigative assessment response, in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. When the report alleges abuse, the director shall immediately, but no later than 24 hours after receipt of the report, initiate the assessment. When the report alleges neglect or dependency, the director shall initiate the assessment within 72 hours following receipt of the report. When the report alleges abandonment, the director shall immediately initiate an assessment, take appropriate steps to assume temporary custody of the juvenile, and take appropriate steps to secure an order for nonsecure custody of the juvenile. The assessment and evaluation shall include a visit to the place where the juvenile resides, except when the report alleges abuse or neglect in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes. When a report alleges abuse or neglect in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes, a visit to the place where the juvenile resides is not required. When the report alleges abandonment, the assessment shall include a request from the director to law enforcement officials to investigate through the North Carolina Center for Missing Persons and other national and State resources whether the juvenile is a missing child. ~~All information received by the department of social services, including the identity of the reporter, shall be held in strictest confidence by the department. However, the department of social services shall disclose confidential information to any federal, State, or local governmental entity or its agent needing confidential information to protect a juvenile from abuse and neglect. Any confidential information disclosed to any federal, State, or local governmental entity, or its agent, under this subsection shall remain confidential with the other governmental entity, or its agent, and shall only be redisclosed by the governmental entity or its agent for purposes directly connected with carrying out the governmental entity's or agent's mandated responsibilities.~~

(a1) All information received by the department of social services, including the identity of the reporter, shall be held in strictest confidence by the department, except that:

(1) The department shall disclose confidential information to any federal, State, or local government entity or its agent in order to protect a juvenile from abuse or neglect. Any confidential information disclosed to any federal,

State, or local government entity or its agent under this subsection shall remain confidential with the other government entity or its agent and shall only be redisclosed for purposes directly connected with carrying out that entity's mandated responsibilities.

(2) The information may be examined upon request by the juvenile's guardian ad litem or the juvenile, including a juvenile who has reached age 18 or been emancipated.

(3) A district or superior court judge of this State presiding over a civil matter in which the department of social services is not a party may order the department to release confidential information, after providing the department with reasonable notice and an opportunity to be heard and then determining that the information is relevant and necessary to the trial of the matter before the court and unavailable from any other source. This subdivision shall not be construed to relieve any court of its duty to conduct hearings and make findings required under relevant federal law, before ordering the release of any private medical or mental health information or records related to substance abuse or HIV status or treatment. The department of social services may surrender the requested records to the court, for in camera review, if the surrender is necessary to make the required determinations.

(4) A district or superior court judge of this State presiding over a criminal or delinquency matter shall conduct an in camera review prior to releasing to the defendant or juvenile any confidential records maintained by the department of social services, except those records the defendant or juvenile is entitled to pursuant to subdivision (2) of this subsection.

(5) The department may disclose confidential information to a parent, guardian, custodian, or caretaker in accordance with G.S. 7B-700 of this Subchapter.

(a2) If the director, at any time after receiving a report that a juvenile may be abused, neglected, or dependent, determines that the juvenile's legal residence is in another county, the director shall promptly notify the director in the county of the juvenile's residence, and the two directors shall coordinate efforts to ensure that appropriate actions are taken.

(b) When a report of a juvenile's death as a result of suspected maltreatment or a report of suspected abuse, neglect, or dependency of a juvenile in a noninstitutional setting is received, the director of the department of social services shall immediately ascertain if other juveniles live in the home, and, if so, initiate an assessment in order to determine whether they require protective services or whether immediate removal of the juveniles from the home is necessary for their protection. When a report of a juvenile's death as a result of maltreatment or a report of suspected abuse, neglect, or dependency of a juvenile in an institutional setting such as a residential child care facility or residential educational facility is received, the director of the department of social services shall immediately ascertain if other juveniles remain in the facility subject to the alleged perpetrator's care or supervision, and, if so, assess the circumstances of those juveniles in order to determine whether they require protective services or whether immediate removal of those juveniles from the facility is necessary for their protection.

(c) If the assessment indicates that abuse, neglect, or dependency has occurred, the director shall decide whether immediate removal of the juvenile or any other juveniles in the home is necessary for their protection. If immediate removal does not seem necessary, the director shall immediately provide or arrange for protective services. If the parent, guardian, custodian, or caretaker refuses to accept the protective services provided or arranged by the director, the director shall sign a ~~complaint~~ petition seeking to invoke the jurisdiction of the court for the protection of the juvenile or juveniles.

(d) If immediate removal seems necessary for the protection of the juvenile or other juveniles in the home, the director shall sign a ~~complaint~~ petition that alleges the applicable facts to invoke the jurisdiction of the court. Where the assessment shows that it is warranted, a protective services worker may assume temporary custody of the juvenile for the juvenile's protection pursuant to Article 5 of this Chapter.

(d1) Whenever a juvenile is removed from the home of a parent, guardian, custodian, stepparent, or adult relative entrusted with the juvenile's care due to physical abuse, the director shall conduct a thorough review of the background of the alleged abuser or abusers. This review shall include a criminal history check and a review of any available mental health records. If the review reveals that the alleged abuser or abusers have a history of violent behavior against people, the director shall petition the court to order the alleged abuser or abusers to submit to a complete mental health evaluation by a licensed psychologist or psychiatrist.

(e) In performing any duties related to the assessment of the report or the provision or arrangement for protective services, the director may consult with any public or private agencies or individuals, including the available State or local law enforcement officers who shall assist in the assessment and evaluation of the seriousness of any report of abuse, neglect, or dependency when requested by the director. The director or the director's representative may make a written demand for any information or reports, whether or not confidential, that may in the director's opinion be relevant to the assessment or provision of protective services. Upon the director's or the director's representative's request and unless protected by the attorney-client privilege, any public or private agency or individual shall provide access to and copies of this confidential information and these records to the extent permitted by federal law and regulations. If a custodian of criminal investigative information or records believes that release of the information will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation, it may seek an order from a court of competent jurisdiction to prevent disclosure of the information. In such an action, the custodian of the records shall have the burden of showing by a preponderance of the evidence that disclosure of the information in question will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation. Actions brought pursuant to this paragraph shall be set down for immediate hearing, and subsequent proceedings in the actions shall be accorded priority by the trial and appellate courts.

(f) Within five working days after receipt of the report of abuse, neglect, or dependency, the director shall give written notice to the person making the report, unless requested by that person not to give notice, as to whether the report was accepted for assessment and whether the report was referred to the appropriate State or local law enforcement agency.

(g) Within five working days after completion of the protective services assessment, the director shall give subsequent written notice to the person making the report, unless requested by that person not to give notice, as to whether there is a finding of abuse, neglect, or dependency, whether the county department of social services is taking action to protect the juvenile, and what action it is taking, including whether or not a petition was filed. The person making the report shall be informed of procedures necessary to request a review by the prosecutor of the director's decision not to file a petition. A request for review by the prosecutor shall be made within five working days of receipt of the second notification. The second notification shall include notice that, if the person making the report is not satisfied with the director's decision, the person may request review of the decision by the prosecutor within five working days of receipt. The person making the report may waive the person's right to this notification, and no notification is required if the person making the report does not identify himself to the director.

(h) The director or the director's representative may not enter a private residence for assessment purposes without at least one of the following:

(1) The reasonable belief that a juvenile is in imminent danger of death or serious physical injury.

(2) The permission of the parent or person responsible for the juvenile's care.

(3) The accompaniment of a law enforcement officer who has legal authority to enter the residence.

(4) An order from a court of competent jurisdiction."

SECTION 2. G.S. 7B-400 reads as rewritten:

"**§ 7B-400. ~~Venue; pleading.~~Venue.**

A proceeding in which a juvenile is alleged to be abused, neglected, or dependent may be commenced in the district in which the juvenile resides or is present. ~~When a proceeding is commenced in a district other than that of the juvenile's residence, the court, on its own motion or upon motion of any party, may transfer the proceeding to the court in the district where the juvenile resides. A transfer under this section may be made at any time.~~"

SECTION 3. G.S. 7B-402 is amended by adding the following new subsection to read:

"(d) If the petition is filed in a county other than the county of the juvenile's residence, the petitioner shall provide a copy of the petition and any notices of hearing to the director of the department of social services in the county of the juvenile's residence."

SECTION 4. G.S. 7B-700 reads as rewritten:

"**§ 7B-700. ~~Regulation of discovery; protective orders.~~Sharing of information; discovery.**

~~(a) Upon written motion of a party and a finding of good cause, the court may at any time order that discovery be denied, restricted, or deferred.~~

~~(b) The court may permit a party seeking relief under subsection (a) of this section to submit supporting affidavits or statements to the court for in camera inspection. If, thereafter, the court enters an order granting relief under subsection (a) of this section, the material submitted in camera must be available to the Court of Appeals in the event of an appeal.~~

(a) Sharing of Information. – A department of social services is authorized to share with any other party information relevant to the subject matter of an action pending under this Subchapter. However, this subsection does not authorize the disclosure of the identity of the reporter or any uniquely identifying information that would lead to the discovery of the reporter's identity in accordance with G.S. 7B-302 or the identity of any other person where the agency making the information available determines that the disclosure would be likely to endanger the life or safety of the person.

(b) Local Rules. – The chief district court judge may adopt local rules or enter an administrative order addressing the sharing of information among parties and the use of discovery.

(c) Discovery. – Any party may file a motion for discovery. The motion shall contain a specific description of the information sought and a statement that the requesting party has made a reasonable effort to obtain the information pursuant to subsections (a) and (b) of this section or that the information cannot be obtained pursuant to subsections (a) and (b) of this section. The motion shall be served upon all parties pursuant to G.S. 1A-1, Rule 5. The motion shall be heard and ruled upon within 10 business days of the filing of the motion. The court may grant, restrict, defer, or deny the relief requested. Any order shall avoid unnecessary delay of the hearing, establish expedited deadlines for completion, and conform to G.S. 7B-803.

(d) Protective Order. – Any party served with a motion for discovery may request that the discovery be denied, restricted, or deferred and shall submit, for in camera inspection, the document, information, or materials the party seeks to protect. If the court enters any order granting relief, copies of the documents, information, or materials submitted in camera shall be preserved for appellate review in the event of an appeal.

(e) Redisclosure. – Information obtained through discovery or sharing of information under this section may not be redisclosed if the redisclosure is prohibited by State or federal law.

(f) Guardian Ad Litem. – Unless provided otherwise by local rules, information or reports obtained by the guardian ad litem pursuant to G.S. 7B-601 are not subject to disclosure pursuant to this subsection, except that reports and records shall be shared with all parties before submission to the court."

SECTION 5. Article 9 of Chapter 7B of the General Statutes is amended by adding the following new section to read:

"**§ 7B-900.1. Post adjudication venue.**

(a) At any time after adjudication, the court on its own motion or motion of any party may transfer venue to a different county, regardless of whether the action could have been commenced in that county, if the court finds that the forum is inconvenient, that transfer of the action to the other county is in the best interest of the juvenile, and that the rights of the parties are not prejudiced by the change of venue.

(b) Before ordering that a case be transferred to another county, the court shall find that the director of the department of social services in the county in which the action is pending and the director in the county to which transfer is contemplated have communicated about the case and that:

(1) The two directors are in agreement with respect to each county's responsibility for providing financial support for the juvenile and services for the juvenile and the juvenile's family; or

(2) The Director of the Division of Social Services or the Director's designee has made that determination pursuant to G.S. 153A-257(d).

(c) When the court transfers a case to a different county, the court shall join or substitute as a party to the action the director of the department of social services in the county to which the case is being transferred and, if the juvenile is in the custody of the department of social services in the county in which the action is pending, shall transfer custody to the department of social services in the county to which the case is being transferred. The director of the department of social services in the county to which the case is being transferred must be given notice and an opportunity to be heard before the court enters an order pursuant to this subsection. However, the director may waive the right to notice and a hearing.

(d) Before ordering that a case be transferred to a different district, the court shall communicate with the chief district court judge or a judge presiding in juvenile court in the district to which the transfer is contemplated explaining the reasons for the proposed transfer. If the judge in the district to which the transfer is proposed makes a timely objection to the transfer, either verbally or in writing, the court shall order the transfer only after making detailed findings of fact that support a conclusion that the juvenile's best interests require that the case be transferred.

(e) Before ordering that a case be transferred to another county, the court shall consider relevant factors, which may include:

(1) The current residences of the juvenile and the parent, guardian, or custodian and the extent to which those residences have been and are likely to be stable.

(2) The reunification plan or other permanent plan for the juvenile and the likely effect of a change in venue on efforts to achieve permanence for the juvenile expeditiously.

(3) The nature and location of services and service providers necessary to achieve the reunification plan or other permanent plan for the juvenile.

(4) The impact upon the juvenile of the potential disruption of an existing therapeutic relationship.

(5) The nature and location of witnesses and evidence likely to be required in future hearings.

(6) The degree to which the transfer would cause inconvenience to one or more parties.

(7) Any agreement of the parties as to which forum is most convenient.

(8) The familiarity of the departments of social services, the courts, and the local offices of the guardian ad litem with the juvenile and the juvenile's family.

(9) Any other factor the court considers relevant.

(f) The order transferring venue shall be in writing, signed, and entered no later than 30 days from completion of the hearing. The order shall identify the next court action and specify the date within which the next hearing shall be held. If the order is not entered within 30 days following completion of the hearing, the clerk of court for juvenile matters shall schedule a subsequent hearing at the first session of court scheduled for the hearing of juvenile matters following the 30-day period to determine and explain the reason for the delay and to obtain any needed clarification as to the contents of the order. The order shall be entered within 10 days of the subsequent hearing required by this subsection.

(g) The clerk shall transmit to the court in the county to which the case is being transferred a copy of the complete record of the case within three business days after entry of the order transferring venue.

Upon receiving a case that has been transferred from another county, the clerk shall promptly satisfy the following:

(1) Assign an appropriate file number to the case.

(2) Ensure that any necessary appointments of new attorneys or guardians ad litem are made.

(3) Calendar the next court action as set forth in the order transferring venue and give appropriate notice to all parties."

SECTION 6. G.S. 7B-906(a) reads as rewritten:

"(a) In any case where custody is removed from a parent, guardian, custodian, or caretaker the court shall conduct a review hearing within 90 days from the date of the dispositional hearing and shall conduct a review hearing within six months thereafter. The director of social services shall make a timely request to the clerk to calendar each review at a session of court scheduled for the hearing of juvenile matters. The clerk shall give 15 days' notice of the review and its purpose to the parent, the juvenile, if 12 years of age or more, the guardian, ~~any~~ the foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency the court may specify, indicating the court's impending review. The department of social services shall either provide to the clerk the name and address of the foster parent, relative, or preadoptive parent providing care for the child for notice under this subsection or file written documentation with the clerk that the child's current care provider was sent notice of hearing. Nothing in this subsection shall be construed to make ~~any~~ the foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and the right to be heard."

SECTION 7. G.S. 7B-907(a) reads as rewritten:

"(a) In any case where custody is removed from a parent, guardian, custodian, or caretaker, the judge shall conduct a review hearing designated as a permanency planning hearing within 12 months after the date of the initial order removing custody, and the hearing may be combined, if appropriate, with a review hearing required by G.S. 7B-906. The purpose of the permanency planning hearing shall be to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. Subsequent permanency planning hearings shall be held at least every six months thereafter, or earlier as set by the court, to review the progress made in finalizing the permanent plan for the juvenile, or if necessary, to

make a new permanent plan for the juvenile. The Director of Social Services shall make a timely request to the clerk to calendar each permanency planning hearing at a session of court scheduled for the hearing of juvenile matters. The clerk shall give 15 days' notice of the hearing and its purpose to the parent, the juvenile if 12 years of age or more, the guardian, ~~any~~ the foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency the court may specify, indicating the court's impending review. The department of social services shall either provide to the clerk the name and address of the foster parent, relative, or preadoptive parent providing care for the child for notice under this subsection or file written documentation with the clerk that the child's current care provider was sent notice of hearing. Nothing in this provision shall be construed to make ~~any~~ the foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and the right to be heard."

SECTION 8. G.S. 7B-908 reads as rewritten:

"**§ 7B-908. Post termination of parental rights' placement court review.**

(a) The purpose of each placement review is to ensure that every reasonable effort is being made to provide for a permanent placement plan for the juvenile who has been placed in the custody of a county director or licensed child-placing agency, which is consistent with the juvenile's best interests. At each review hearing the court may consider information from the department of social services, the licensed child-placing agency, the guardian ad litem, the child, ~~any~~ the foster parent, relative, or preadoptive parent providing care for the child, and any other person or agency the court determines is likely to aid in the review. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition.

(b) The court shall conduct a placement review not later than six months from the date of the termination hearing when parental rights have been terminated by a petition brought by any person or agency designated in G.S. 7B-1103(2) through (5) and a county director or licensed child-placing agency has custody of the juvenile. The court shall conduct reviews every six months thereafter until the juvenile is the subject of a decree of adoption:

(1) No more than 30 days and no less than 15 days prior to each review, the clerk shall give notice of the review to the juvenile if the juvenile is at least 12 years of age, the legal custodian of the juvenile, ~~any~~ the foster parent, relative, or preadoptive parent providing care for the juvenile, the guardian ad litem, if any, and any other person or agency the court may specify. The department of social services shall either provide to the clerk the name and address of the foster parent, relative, or preadoptive parent providing care for the child for notice under this subsection or file written documentation with the clerk that the child's current care provider was sent notice of hearing. Only the juvenile, if the juvenile is at least 12 years of age, the legal custodian of the juvenile, ~~any~~ the foster parent, relative, or preadoptive parent providing care for the juvenile, and the guardian ad litem shall attend the review hearings, except as otherwise directed by the court. Nothing in this subdivision shall be construed to make ~~any~~ the foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and the right to be heard. Any individual whose parental rights have been terminated shall not be considered a party to the proceeding unless an appeal of the order terminating parental rights is pending, and a court has stayed the order pending the appeal.

(2) If a guardian ad litem for the juvenile has not been appointed previously by the court in the termination proceeding, the court, at the initial six-month review hearing, may appoint a guardian ad litem to represent the juvenile.

The court may continue the case for such time as is necessary for the guardian ad litem to become familiar with the facts of the case.

(c) The court shall consider at least the following in its review:

(1) The adequacy of the plan developed by the county department of social services or a licensed child-placing agency for a permanent placement relative to the juvenile's best interests and the efforts of the department or agency to implement such plan;

(2) Whether the juvenile has been listed for adoptive placement with the North Carolina Adoption Resource Exchange, the North Carolina Photo Adoption Listing Service (PALS), or any other specialized adoption agency; and

(3) The efforts previously made by the department or agency to find a permanent home for the juvenile.

(d) The court, after making findings of fact, shall affirm the county department's or child-placing agency's plans or require specific additional steps which are necessary to accomplish a permanent placement which is in the best interests of the juvenile.

(e) If the juvenile is the subject of a decree of adoption prior to the date scheduled for the review, ~~written notice of the issuance of the decree of adoption shall be given to the clerk to be placed in the court file, and the and~~within 10 days of receiving notice that the adoption decree has been entered, the department of social services shall file with the court and serve on any guardian ad litem for the juvenile written notice of the entry. The adoption decree shall not be filed in the court file. The review hearing shall be cancelled with notice of said cancellation given by the clerk to all persons previously notified.

(f) The process of selection of specific adoptive parents shall be the responsibility of and within the discretion of the county department of social services or licensed child-placing agency. The guardian ad litem may request information from and consult with the county department or child-placing agency concerning the selection process. If the guardian ad litem requests information about the selection process, the county shall provide the information within five days. ~~Any issue of abuse of discretion by the county department or child placing agency in the selection process must be raised by the guardian ad litem within 10 days following the date the agency notifies the court and the guardian ad litem in writing of the filing of the adoption petition.~~ Within 10 days of receiving a copy of the adoption petition, the county department of social services shall file with the court and serve on any guardian ad litem for the juvenile written notice that the adoption petition has been filed. The adoption petition shall not be filed in the court file. The guardian ad litem has 10 days from service of the written notice that the adoption petition has been filed to file a motion alleging any abuse of discretion by the county department of social services or child placing agency in the adoption selection process. The motion shall be filed in the adoption proceeding and result in the transfer of the adoption proceeding to the district court pursuant to G.S. 48-2-601(a1). The guardian ad litem shall file with the court and serve the department of social services written notice that the motion was filed. The motion shall not be filed in the court file."

SECTION 9. G.S. 7B-1101.1 reads as rewritten:

"**§ 7B-1101.1. Parent's right to counsel; guardian ad litem.**

(a) The parent has the right to counsel, and to appointed counsel in cases of indigency, unless the parent waives the right. The fees of appointed counsel shall be borne by the Office of Indigent Defense Services. When a petition is filed, unless the parent is already represented by counsel, the clerk shall appoint provisional counsel for each respondent parent named in the petition and indicate the appointment on the juvenile summons. At the first hearing after service upon the respondent parent, the court shall dismiss the provisional counsel if the respondent parent:

(1) Does not appear at the hearing;

(2) Does not qualify for court-appointed counsel;

(3) Has retained counsel; or
(4) Waives the right to counsel.

The court shall confirm the appointment of counsel if subdivisions (1) through (4) of this subsection are not applicable to the respondent parent. The court may reconsider a parent's eligibility and desire for appointed counsel at any stage of the proceeding.

(b) In addition to the right to appointed counsel under subsection (a) of this section, a guardian ad litem shall be appointed in accordance with G.S. 1A-1, Rule 17, to represent any parent who is under the age of 18 years and who is not married or otherwise emancipated.

(c) On motion of any party or on the court's own motion, the court may appoint a guardian ad litem for a parent in accordance with G.S. 1A-1, Rule 17 if the court determines that there is a reasonable basis to believe that the parent is incompetent or has diminished capacity and cannot adequately act in his or her own interest. The parent's counsel shall not be appointed to serve as the guardian ad litem.

(d) Communications between the guardian ad litem appointed under this section and the parent and between the guardian ad litem and the parent's counsel shall be privileged and confidential to the same extent that communications between the parent and the parent's counsel are privileged and confidential.

(e) Guardians ad litem appointed under this section may engage in all of the following practices:

(1) Helping the parent to enter consent orders, if appropriate.
(2) Facilitating service of process on the parent.
(3) Assuring that necessary pleadings are filed.
(4) Assisting the parent and the parent's counsel, if requested by the parent's counsel, to ensure that the parent's procedural due process requirements are met.

(f) The fees of a guardian ad litem appointed pursuant to this section shall be borne by the Office of Indigent Defense Services when the court finds that the respondent is indigent. In other cases, the fees of the court-appointed guardian ad litem shall be a proper charge against the respondent if the respondent does not secure private legal counsel."

SECTION 10. G.S. 7B-1106(b) reads as rewritten:

"(b) The summons shall be issued for the purpose of terminating parental rights pursuant to the provisions of subsection (a) of this section and shall include:

(1) The name of the minor juvenile;
(2) Notice that a written answer to the petition must be filed with the clerk who signed the petition within 30 days after service of the summons and a copy of the petition, or the parent's rights may be terminated;
(3) ~~Notice that if they are indigent, the parents are entitled to appointed counsel; the parents may contact the clerk immediately to request counsel;~~ Notice that any counsel appointed previously and still representing the parent in an abuse, neglect, or dependency proceeding shall continue to represent the parent unless otherwise ordered by the court;
(4) ~~Notice that this is a new case. Any attorney appointed previously will not represent the parents in this proceeding unless ordered by the court;~~ Notice that if the parent is indigent and is not already represented by appointed counsel, the parent is entitled to appointed counsel, that provisional counsel has been appointed, and that the appointment of provisional counsel shall be reviewed by the court at the first hearing after service;
(5) Notice that the date, time, and place of any pretrial hearing pursuant to G.S. 7B-1108.1 and the hearing on the petition will be mailed by the clerk upon filing of the answer or 30 days from the date of service if no answer is filed; and

(6) Notice of the purpose of the hearing and notice that the parents may attend the termination hearing."

SECTION 11. G.S. 7B-1106.1(b) reads as rewritten:

"(b) The notice required by subsection (a) of this section shall include all of the following:

(1) The name of the minor juvenile.

(2) Notice that a written response to the motion must be filed with the clerk within 30 days after service of the motion and notice, or the parent's rights may be terminated.

(3) Notice that any ~~attorney~~ counsel appointed previously ~~to represent~~ and still representing the parent in ~~the~~ an abuse, neglect, or dependency proceeding will continue to represent the parents unless otherwise ordered by the court.

(4) Notice that if the parent is indigent, the parent is entitled to appointed counsel and if the parent is not already represented by appointed counsel the parent may contact the clerk immediately to request counsel.

(5) Notice that the date, time, and place of any pretrial hearing pursuant to G.S. 7B-1108.1 and the hearing on the motion will be mailed by the moving party upon filing of the response or 30 days from the date of service if no response is filed.

(6) Notice of the purpose of the hearing and notice that the parents may attend the termination hearing."

SECTION 12. G.S. 7B-1108 reads as rewritten:

"**§ 7B-1108. Answer or response of ~~parent.~~parent; appointment of guardian ad litem for juvenile.**

(a) Any respondent may file a written answer to the petition or written response to the motion. The answer or response shall admit or deny the allegations of the petition or motion and shall set forth the name and address of the answering respondent or the respondent's attorney.

(b) If an answer or response denies any material allegation of the petition or motion, the court shall appoint a guardian ad litem for the juvenile to represent the best interests of the juvenile, unless the petition or motion was filed by the guardian ad litem pursuant to G.S. 7B-1103, or a guardian ad litem has already been appointed pursuant to G.S. 7B-601. A licensed attorney shall be appointed to assist those guardians ad litem who are not attorneys licensed to practice in North Carolina. The appointment, duties, and payment of the guardian ad litem shall be the same as in G.S. 7B-601 and G.S. 7B-603, but in no event shall a guardian ad litem who is trained and supervised by the guardian ad litem program be appointed to any case unless the juvenile is or has been the subject of a petition for abuse, neglect, or dependency or with good cause shown the local guardian ad litem program consents to the appointment. ~~The court shall conduct a special hearing after notice of not less than 10 days nor more than 30 days given by the petitioner or movant to the respondent who answered or responded, and the guardian ad litem for the juvenile to determine the issues raised by the petition and answer or motion and response.~~

~~Notice of the hearing shall be deemed to have been given upon the depositing thereof in the United States mail, first class postage prepaid, and addressed to the respondent, and guardian ad litem or their counsel of record, at the addresses appearing in the petition or motion and responsive pleading.~~

(c) In proceedings under this Article, the appointment of a guardian ad litem shall not be required except, as provided above, in cases in which an answer or response is filed denying material allegations, or as required under G.S. 7B-1101; but the court may, in its discretion, appoint a guardian ad litem for a juvenile, either before or after determining the existence of

grounds for termination of parental rights, in order to assist the court in determining the best interests of the juvenile.

(d) If a guardian ad litem has previously been appointed for the juvenile under G.S. 7B-601, and the appointment of a guardian ad litem could also be made under this section, the guardian ad litem appointed under G.S. 7B-601, and any attorney appointed to assist that guardian, shall also represent the juvenile in all proceedings under this Article and shall have the duties and payment of a guardian ad litem appointed under this section, unless the court determines that the best interests of the juvenile require otherwise."

SECTION 13. Article 11 of Chapter 7B of the General Statutes is amended by adding the following new section to read:

"**§ 7B-1108.1. Pretrial hearing.**

(a) The court shall conduct a pretrial hearing. However, the court may combine the pretrial hearing with the adjudicatory hearing on termination in which case no separate pretrial hearing order is required. At the pretrial hearing, the court shall consider the following:

(1) Retention or release of provisional counsel.

(2) Whether a guardian ad litem should be appointed for the juvenile, if not previously appointed.

(3) Whether all summons, service of process, and notice requirements have been met.

(4) Any pretrial motions.

(5) Any issues raised by any responsive pleading, including any affirmative defenses.

(6) Any other issue which can be properly addressed as a preliminary matter.

(b) Written notice of the pretrial hearing shall be in accordance with G.S. 7B-1106 and G.S. 7B-1106.1."

SECTION 14. Article 17 of Chapter 7B of the General Statutes is amended by adding the following new section to read:

"**§ 7B-1700.1. Duty to report abuse, neglect, dependency.**

Any time a juvenile court counselor or any person has cause to suspect that a juvenile is abused, neglected, or dependent, or has died as the result of maltreatment, the juvenile court counselor or the person shall make a report to the county department of social services as required by G.S. 7B-301."

SECTION 15. G.S. 7B-1904 reads as rewritten:

"**§ 7B-1904. Order for secure or nonsecure custody.**

The custody order shall be in writing and shall direct a law enforcement officer or other authorized person to assume custody of the juvenile and to make due return on the order. The official executing the order shall give a copy of the order to the juvenile's parent, guardian, or custodian. If the order is for nonsecure custody, the official executing the order shall also give a copy of the petition and order to the person or agency with whom the juvenile is being placed. If the order is for secure custody, copies of the petition and custody order shall accompany the juvenile to the detention facility or holdover facility of the jail. A message of the Division of Criminal Information, State Bureau of Investigation, stating that a juvenile petition and secure custody order relating to a specified juvenile are on file in a particular county shall be authority to detain the juvenile in secure custody until a copy of the juvenile petition and secure custody order can be forwarded to the juvenile detention facility. The copies of the juvenile petition and secure custody order shall be transmitted to the detention facility no later than 72 hours after the initial detention of the juvenile.

An officer receiving an order for custody which is complete and regular on its face may execute it in accordance with its terms and need not inquire into its regularity or continued validity, nor does the officer incur criminal or civil liability for its execution."

SECTION 16. G.S. 7B-2503(1)c. reads as rewritten:

"(1) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the judge may:

...

c. ~~Place~~ If the director of the department of social services has received notice and an opportunity to be heard, place the juvenile in the custody of a department of social services in the county of the juvenile's residence, or in the case of a juvenile who has legal residence outside the State, in the physical custody of a department of social services in the county where the juvenile is found so that agency may return the juvenile to the responsible authorities in the juvenile's home state. An order placing a juvenile in the custody or placement responsibility of a county department of social services shall contain a finding that the juvenile's continuation in the juvenile's own home would be contrary to the juvenile's best interest. This placement shall be reviewed in accordance with G.S. 7B-906. The director may, unless otherwise ordered by the judge, arrange for, provide, or consent to, needed routine or emergency medical or surgical care or treatment. In the case where the parent is unknown, unavailable, or unable to act on behalf of the juvenile or juveniles, the director may, unless otherwise ordered by the judge, arrange for, provide or consent to any psychiatric, psychological, educational, or other remedial evaluations or treatment for the juvenile placed by a judge or the judge's designee in the custody or physical custody of a county department of social services under the authority of this or any other Chapter of the General Statutes. Prior to exercising this authority, the director shall make reasonable efforts to obtain consent from a parent, guardian, or custodian of the affected juvenile. If the director cannot obtain consent, the director shall promptly notify the parent, guardian, or custodian that care or treatment has been provided and shall give the parent, guardian, or custodian frequent status reports on the circumstances of the juvenile. Upon request of a parent, guardian, or custodian of the affected juvenile, the results or records of the aforementioned evaluations, findings, or treatment shall be made available to the parent, guardian, or custodian by the director unless prohibited by G.S. 122C-53(d)."

SECTION 17. G.S. 7B-2506(1)c. reads as rewritten:

"(1) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the judge may:

...

c. ~~Place~~ If the director of the county department of social services has received notice and an opportunity to be heard, place the juvenile in the custody of the department of social services in the county of his residence, or in the case of a juvenile who has legal residence outside the State, in the physical custody of a department of social services in the county where the juvenile is found so that agency may return the juvenile to the responsible authorities in the juvenile's home state. An order placing a juvenile in the custody or placement responsibility of a county department of social services shall contain a finding that the juvenile's continuation in the juvenile's own home would be contrary to the juvenile's best interest. This placement shall be reviewed in accordance with G.S. 7B-906. The director may, unless otherwise

ordered by the judge, arrange for, provide, or consent to, needed routine or emergency medical or surgical care or treatment. In the case where the parent is unknown, unavailable, or unable to act on behalf of the juvenile or juveniles, the director may, unless otherwise ordered by the judge, arrange for, provide, or consent to any psychiatric, psychological, educational, or other remedial evaluations or treatment for the juvenile placed by a judge or his designee in the custody or physical custody of a county department of social services under the authority of this or any other Chapter of the General Statutes. Prior to exercising this authority, the director shall make reasonable efforts to obtain consent from a parent, guardian, or custodian of the affected juvenile. If the director cannot obtain consent, the director shall promptly notify the parent, guardian, or custodian that care or treatment has been provided and shall give the parent, guardian, or custodian frequent status reports on the circumstances of the juvenile. Upon request of a parent, guardian, or custodian of the affected juvenile, the results or records of the aforementioned evaluations, findings, or treatment shall be made available to the parent, guardian, or custodian by the director unless prohibited by G.S. 122C-53(d)."

SECTION 18. G.S. 7B-2901(b) reads as rewritten:

"(b) The Director of the Department of Social Services shall maintain a record of the cases of juveniles under protective custody by the Department or under placement by the court, which shall include family background information; reports of social, medical, psychiatric, or psychological information concerning a juvenile or the juvenile's family; interviews with the juvenile's family; or other information which the court finds should be protected from public inspection in the best interests of the juvenile. The records maintained pursuant to this subsection may be examined only ~~by order of the court except that the guardian ad litem, or juvenile, shall have the right to examine them.~~in the following circumstances:

(1) The juvenile's guardian ad litem or the juvenile, including a juvenile who has reached age 18 or been emancipated, may examine the records.

(2) A district or superior court judge of this State presiding over a civil matter in which the department is not a party may order the department to release confidential information, after providing the department with reasonable notice and an opportunity to be heard and then determining that the information is relevant and necessary to the trial of the matter before the court and unavailable from any other source. This subsection shall not be construed to relieve any court of its duty to conduct hearings and make findings required under relevant federal law before ordering the release of any private medical or mental health information or records related to substance abuse or HIV status or treatment. The department may surrender the requested records to the court, for in camera review, if surrender is necessary to make the required determinations.

(3) A district or superior court judge of this State presiding over a criminal or delinquency matter shall conduct an in camera review before releasing to the defendant or juvenile any confidential records maintained by the department of social services, except those records the defendant or juvenile is entitled to pursuant to subdivision (1) of this subsection.

(4) The department may disclose confidential information to a parent, guardian, custodian, or caretaker in accordance with G.S. 7B-700."

SECTION 19. This act becomes effective October 1, 2009.

HOUSE BILL 1449:
Juvenile Code Revisions

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 29, 2009
Introduced by:	Reps. Weiss, Moore, Goodwin, Glazier	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 1449 makes various changes to the Juvenile Code.***

CURRENT LAW: The North Carolina Juvenile Code, set out in Chapter 7B of the General Statutes, contains provisions relating to the abuse, neglect, and dependency of juveniles as well as provisions relating to undisciplined and delinquent juveniles. Chapter 7B is divided into five subchapters, as follows:

I. Abuse, Neglect, Dependency
II. Undisciplined and Delinquent Juveniles
III. Juvenile Records
IV. Parental Authority; Emancipation
V. Placement of Juveniles

BILL ANALYSIS: House Bill 1449 makes various changes to the Juvenile Code, as follows:

Abuse, Neglect & Dependency

Section 1 of the bill rewrites G.S. 7B-302, concerning assess to confidential information, to provide that:

- Confidential information relating to a child protective services assessment may be examined by the juvenile's guardian ad litem or the juvenile, even if the juvenile is 18 or older.
- A NC judge in any civil action to which the department of social services (DSS) is not a party may order DSS to release confidential information after giving DSS notice and a chance to be heard and determining, through in camera inspection if necessary, that the information is relevant and necessary to the action and not available elsewhere.
- A NC judge in a criminal or delinquency matter must conduct an in camera review before releasing to the defendant or juvenile any confidential DSS records to which that person is not already entitled.
- DSS may disclose confidential information to a parent, guardian, custodian, or caretaker but cannot disclose the identity of the reporter of abuse or neglect or the identity of any other person if the disclosure would likely endanger the life or safety of the person.
- If a DSS director receives a report of abuse, neglect, or dependency regarding a juvenile whose legal residence is in another county, the director must promptly notify the director in the county of the juvenile's residence, and the two directors must coordinate efforts to ensure appropriate action.

Section 2 rewrites G.S. 7B-400, concerning venue, to conform to new G.S. 7B-900.1 created in Section 5 of the bill.

Section 3 adds a new G.S. 7B-402(d) to require a DSS director who files a petition in a county other than the county of the juvenile's residence to provide a copy of the petition and notices of hearings to the director in the county of the juvenile's residence.

Section 4 rewrites GS 7B-700, relating to discovery, to:

- Authorize DSS to share with other parties confidential information other than the identify of the reporter or any person whose life or safety would be endangered by disclosure.
- Authorize the chief district judge, through local rules or administrative order, to address information sharing among parties and use of discovery.
- Set out criteria for discovery motions and protective orders.
- State that information obtained in discovery or through sharing of information cannot be redisclosed if the redisclosure is prohibited by State or federal law.
- Provide that unless local rules provide otherwise, these provisions do not apply to information or reports held by the child's guardian ad litem, except that reports and records must be shared with all parties before being submitted to the court.

Section 5 adds a new GS 7B-900.1, relating to venue, to allow a change of venue after an adjudication of abuse, neglect, or dependency, and provide standards and procedures for changes of venue after adjudication. The bill requires the court, before ordering a post-adjudication venue change to do all of the following:

- Determine that the change is in the juvenile's best interest and not prejudicial to the parties
- Determine that the two DSS directors either are in agreement or have obtained a determination from the state Division of Social Services about the counties' respective responsibilities for financial support and services relating to the juvenile
- Join or substitute as a party the DSS director in the transferee county and place the juvenile in that county DSS's custody, after giving that director notice and a chance to be heard
- Communicate with the chief district judge or judge presiding in juvenile court in the transferee county and, if that judge makes a timely objection to the transfer, order the case transferred only after making findings and concluding that the juvenile's best interests required the transfer
- Consider other relevant factors such as the current residence of the juvenile; reunification plan, and nature and location of services.

This section also specifies the duties of the clerk of court in each county when a case is transferred.

Sections 6, 7 & 8 rewrite G.S. 7B-906, 7B-907, and 7B-908, relating to review hearings, to require DSS to either provide the clerk with the name and address of any foster parent, relative, or preadoptive parent caring for the child or file written documentation with the clerk that the child's care provider was sent notice of the hearing. Additionally, Section 8 of the bill requires that if the juvenile is the subject of an adoption decree prior to the date scheduled for the review DSS must, within 10 days of receiving notice that the adoption decree has been entered, file notice of the entry with the court and serve the notice on any guardian ad litem for the juvenile. Within 10 days of receiving an adoption petition, DSS must file the petition with the court and serve notice on any guardian ad litem that the petition has been filed. The guardian ad litem then has 10 days to file in the adoption proceeding any motion alleging an abuse of discretion. That motion requires the clerk to transfer the adoption proceeding to district court.

Section 9 rewrites G.S. 7B-1101.1, concerning parent's right to counsel, to provide that in actions to terminate parental rights, when a petition is filed, provisional counsel must be appointed for any parent

who is not already represented by counsel. The court can reconsider a parent's eligibility and desire for appointed counsel at any stage of the proceeding.

Section 10 rewrites G.S. 7B-1106(b) concerning the issuance of summons in the termination of parental rights, to make conforming changes and to require notice that previously appointed counsel still representing the parent in an abuse, neglect, or dependency case must continue to represent the parent in the termination unless the court orders otherwise, and that the parent is entitled to appointed counsel if the parent is indigent and not already represented by appointed counsel.

Section 11 makes conforming changes in the notice provisions for termination of parental rights.

Sections 12 & 13 rewrite G.S. 7B-1108 to delete provisions relating to a "special hearing" in parental rights termination cases and add a new G.S. 7B-1108.1 requiring the court to conduct a pretrial hearing either before or with the adjudicatory hearing on termination. The pretrial hearing is for the court to consider the retention or release of provisional counsel; whether a guardian ad litem should be appointed for the juvenile; whether procedural requirements have been met; and other issues that can be addressed as preliminary matters.

Undisciplined and Delinquent Juveniles

Section 14 adds a new G.S. 7B-1700.1, providing that a juvenile court counselor or any other person with cause to suspect that a juvenile is abused, neglected, or dependent or has died as a result of maltreatment, must make a report to DSS.

Section 15 amends G.S. 7B-1904 to require that a copy of a nonsecure custody order and a copy of the petition be given to the person or agency with whom the juvenile is being placed. (Nonsecure custody includes temporary residential placement in a licensed foster home, a facility operated by the department of social services, or other home or facility approved by the court.)

Sections 16 & 17 rewrite G.S. 7B-2503 and G.S. 7B-2506 to allow the court, at disposition in the case of a delinquent or undisciplined juvenile, to place the juvenile in the custody of DSS only if the director has received notice and a chance to be heard.

Juvenile Records

Section 18 amends G.S. 7B-2901(b) concerning a DSS director's responsibilities with regard to juvenile records, to conform to the changes made in Section 1 of the bill.

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

H1449-SMRV-109(e2) v2

**Susan Sitze, Counsel to House Juvenile Justice, and Drupti Chauhan, Counsel to House Judiciary II, significantly contributed to this summary.*

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	July 7, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1189	DHHS/Tracking Outpatient Commitments.-AB	Representative Earle Representative England, M.D. Representative Alexander Representative Insko
HB 1299	Virtual Visitation/Family Law.	Representative Alexander Representative Rapp Representative Glazier
HB 1463	Expand Access/Confidential Intermediaries.	Representative Farmer-Butterfield Representative Dickson Representative Harrell Representative Wilkins, Jr.

NOTE:

Sub-Committee reports from House Bills 578, 1261 and 1377, will be received.

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II Committee
Tuesday, July 7, 2009, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 1189	DHHS/Tracking Outpatient Commitments.-AB	Representative Earle Representative England, M.D. Representative Alexander Representative Insko
HB 1299	Virtual Visitation/Family Law.	Representative Alexander Representative Rapp Representative Glazier
HB 1463	Expand Access/Confidential Intermediaries.	Representative Farmer-Butterfield Representative Dickson Representative Harrell Representative Wilkins, Jr.

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE
Tuesday, July 7, 2009 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 10:00 AM on July 7, 2009, in Room 1124 of the Legislative Building with fourteen members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell introduced pages McLeod Phillips, Elizabeth Safrit, Wil Safrit, Jamie Fleming, Boysen Rush and Cole Rainey and thanked them for their assistance.

Senator Hartsell called for Sub-committee reports. Senator Vaughan reported that the committee for HB 1261 has met and will meet again today. They expect to have a report by Thursday, July 9, 2009. Senator Atwater reported that the committee for HB 578 has met and is continuing to meet.

HB 1189 – (DHHS/Tracking Outpatient commitments.-AB) Senator Atwater explained the bill. Questions from Senators Swindell, Dannelly and Bingham were answered by Senator Atwater, Sharnese Ransome of the North Carolina Department of Health and Human Services and Dr. Michael Lancaster of the North Carolina Department of Health and Human Services. Senator Dannelly moved for a favorable report. All voted and the motion carried.

HB 1299 – (Virtual Visitation/Family Law.) Representative Rapp explained the bill and answered questions from Senators Goodall and Dannelly. Senator Dannelly moved for a favorable report. All voted and the motion carried.

HB 1463 – (Expand Access/Confidential Intermediaries.) Representative Dickson explained the bill. After much discussion, Senator Hartsell stated that no vote would be taken and the bill would be heard again on Thursday.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, July 07, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS #1) **1189** DHHS/Tracking Outpatient Commitments.-AB
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **1299** Virtual Visitation/Family Law.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comments:

HB 1189 – Sen. Atwater will handle
HB 1299 – Sen. Snow will handle

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

July 7, 2009
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rick Murphy	CAROLINA GOLF / PGA 1317 Pleasant Road Greensboro, NC 27409
DEL RATCLIFFE	NGCOA/RATCLIFFE GOLF SERVICES 800 RADIO ROAD, CHARLOTTE, NC 28216
Brittany Farrell	NCFPC
Edith Vatta	Children's Home Society of NC
Roberta MacDonald	NC COALITION for Adoption Reform
Louise G Fisher	Volunteer Advocate for M.L.
Michael Lankford	DMH/DD/SAS
S Ram	DHHS
Sarah Preston	ACLU-NC
Annaliese Dolph	DRNC
Christine Wunsche	SOG-Daily Bulletin

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

July 7, 2009
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dennis Patterson	OSA
Wayne Yancey	Sen Charlie Dannelly
Gregory A. Pettigrew	DHHS

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 1189
Committee Substitute Favorable 5/12/09

Short Title: DHHS/Tracking Outpatient Commitments.-AB (Public)

Sponsors:

Referred to:

April 8, 2009

A BILL TO BE ENTITLED

AN ACT REQUIRING PHYSICIANS OR ELIGIBLE PSYCHOLOGISTS CONDUCTING EXAMINATIONS TO INFORM THE LOCAL MANAGEMENT ENTITY THAT AN INDIVIDUAL HAS BEEN SCHEDULED FOR AN APPOINTMENT WITH AN OUTPATIENT TREATMENT PHYSICIAN OR CENTER; TO ALLOW FIRST COMMITMENTS TO BE CONDUCTED VIA TELEMEDICINE; AND PERTAINING TO SECURITY FORCES AT CERTAIN MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-261(d) reads as rewritten:

"(d) If the affiant is a physician or eligible psychologist, the affiant may execute the affidavit before any official authorized to administer oaths. This affiant is not required to appear before the clerk or magistrate for this purpose. This affiant shall file the affidavit with the clerk or magistrate by delivering to the clerk or magistrate the original affidavit or a copy in paper form that is printed through the facsimile transmission of the affidavit. If the affidavit is filed through facsimile transmission, the affiant shall mail the original affidavit no later than five days after the facsimile transmission of the affidavit to the clerk or magistrate to be filed by the clerk or magistrate with the facsimile copy of the affidavit. This affiant's examination shall comply with the requirements of the initial examination as provided in G.S. 122C-263(c). If the physician or eligible psychologist recommends outpatient commitment and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for outpatient commitment, the clerk or magistrate shall issue an order that a hearing before a district court judge be held to determine whether the respondent will be involuntarily committed. The physician or eligible psychologist shall provide the respondent with written notice of any scheduled appointment and the name, address, and telephone number of the proposed outpatient treatment physician or center. The physician or eligible psychologist shall contact the local management entity that serves the county where the respondent resides or the local management entity that coordinated services for the respondent to inform the local management entity that the respondent has been scheduled for an appointment with an outpatient treatment physician or center. If the physician or eligible psychologist recommends inpatient commitment and the clerk or magistrate finds probable cause to believe that the respondent meets the criteria for inpatient commitment, the clerk or magistrate shall issue an order for transportation to or custody at a 24-hour facility described in G.S. 122C-252. However, if the clerk or magistrate finds probable cause to believe that the respondent, in addition to being mentally ill, is also mentally retarded, the clerk or magistrate shall contact the area authority before issuing the order and the area authority shall designate the facility to which the respondent is to be transported. If a physician or eligible psychologist executes an affidavit for inpatient

commitment of a respondent, a second physician shall be required to perform the examination required by G.S. 122C-266."

SECTION 2. G.S. 122C-263(c) reads as rewritten:

"(c) The physician or eligible psychologist described in subsection (a) of this section shall examine the respondent as soon as possible, and in any event within 24 hours, after the respondent is presented for examination. When the examination set forth in subsection (a) of this section is performed by a physician or eligible psychologist the respondent may either be in the physical face-to-face presence of the physician or eligible psychologist or may be examined utilizing telemedicine equipment and procedures. A physician or eligible psychologist who examines a respondent by means of telemedicine must be satisfied to a reasonable medical certainty that the determinations made in accordance with subsection (d) of this section would not be different if the examination had been done in the physical presence of the physician or eligible psychologist. A physician or eligible psychologist who is not so satisfied must note that the examination was not satisfactorily accomplished, and the respondent must be taken for a face-to-face examination in the physical presence of a person authorized to perform examinations under this section. As used in this subsection, "telemedicine" is the use of two-way real-time interactive audio and video between places of lesser and greater medical capability or expertise to provide and support health care when distance separates participants who are in different geographical locations. A recipient is referred by one provider to receive the services of another provider via telemedicine.

The examination shall include but is not limited to an assessment of the respondent's:

(1) Current and previous mental illness and mental retardation including, if available, previous treatment history;

(2) Dangerousness to self, as defined in G.S. 122C-3(11)a. or others, as defined in G.S. 122C-3(11)b.;

(3) Ability to survive safely without inpatient commitment, including the availability of supervision from family, friends or others; and

(4) Capacity to make an informed decision concerning treatment."

SECTION 3. Article 6 of Chapter 122C of the General Statues is amended by adding the following new Part to read:

"Part 2D. Long Leaf Neuro-Medical Treatment Center and Eastern North Carolina School for the Deaf Joint Security Force.

"**§ 122C-430.30. Joint security force.**

The Secretary may designate one or more special police officers who shall make up a joint security force to enforce the law of North Carolina and any ordinance or regulation adopted pursuant to G.S. 143-116.6 or G.S. 143-116.7 or pursuant to the authority granted the Department by any other law on the territory of the Long Leaf Neuro-Medical Treatment Center and the Eastern North Carolina School for the Deaf in Wilson County. After taking the oath of office for law enforcement officers as set out in G.S. 11-11, these special police officers have the same powers as peace officers now vested in sheriffs within the territory embraced by the named facilities. These special police officers may arrest persons outside the territory of the named institutions but within the confines of Wilson County when the person arrested has committed a criminal offense within that territory for which the officers could have arrested the person within that territory, and the arrest is made during the person's immediate and continuous flight from that territory."

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

HOUSE BILL 1189:
DHHS/Tracking Outpatient Commitments.-AB

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	July 6, 2009
Introduced by:	Reps. Insko, Earle, M. Alexander, England	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	Second Edition		

SUMMARY: House Bill 1189 requires a physician or eligible psychologist, when determining that an individual meets the criteria for outpatient commitment for mental illness, to inform the Local Management Entity (LME) serving the county where the individual resides or the LME that coordinated services, that the individual has been scheduled for an appointment with an outpatient treatment center. The bill also allows first examinations for involuntary commitment for mental illness to be conducted by telemedicine. Finally, the bill provides for special police to be designated to provide a security force for the Long Leaf Neuro-Medical Treatment Center and the Eastern North Carolina School for the Deaf in Wilson County. The act is effective when it becomes law.

CURRENT LAW: G.S. 122C-261(d) provides that if the physician or eligible psychologist conducting a first examination to determine whether an individual is mentally ill and a threat to himself or others recommends outpatient treatment, and the clerk or magistrate finds reasonable cause to believe the respondent meets the criteria for outpatient commitment, the magistrate or clerk shall issue an order for a hearing to determine whether the respondent should be involuntarily committed to outpatient treatment. The physician or psychologist is required to provide the respondent with written notice of any scheduled appointment and name address, and telephone number of the proposed outpatient treatment center or physician.

G.S. 122C-263(c) requires that a respondent's first examination to determine whether the respondent is mentally ill and a danger to self and others shall occur within 24 hours after the respondent is presented for examination. This statute has been interpreted as requiring the physician or eligible psychologist to be physically present in order to conduct the first examination.

BILL ANALYSIS: **Section 1** of House Bill 1189 requires a physician or eligible psychologist recommending outpatient commitment after performing a first examination to contact the LME serving the county where a respondent resides or the LME that coordinated services for the respondent to inform the LME that the respondent has been scheduled for an appointment with an outpatient treatment center.

Section 2 of the bill allows the first examination of a respondent to be conducted using telemedicine. "Telemedicine" is defined as the use of 2 way real time interactive audio and video between places of greater and lesser medical capability or expertise to provide support health care when the participants are in different geographical locations. The physician or eligible psychologist using telemedicine must be satisfied that the determinations that are made would not be different if the exam were done face to face. If not satisfied, the respondent must be taken for a face to face evaluation.

Section 3 allows the Secretary of DHHS to designate one or more special police officers to constitute a joint security force to enforce NC law and any ordinance or regulation adopted by DHHS for State owned institutions under DHHS jurisdiction, including traffic rules and regulations for the use of buildings and grounds, on the territory of the Long Leaf Neuro-Medical Treatment Center and the Eastern North Carolina School for the Deaf in Wilson County. The special police will have arrest authority outside the territory in cases where the offense was committed within their territory and the arrest is made in hot pursuit of the offender.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 1299
Committee Substitute Favorable 5/11/09

Short Title: Virtual Visitation/Family Law. (Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS PERTAINING TO CUSTODY OF A MINOR CHILD BY DEFINING VISITATION TO INCLUDE VISITATION BY ELECTRONIC COMMUNICATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-13.2 is amended by adding a new subsection to read:

"(e) An order for custody of a minor child may provide for visitation rights by electronic communication. In granting visitation by electronic communication, the court shall consider the following:

(1) Whether electronic communication is in the best interest of the minor child.

(2) Whether equipment to communicate by electronic means is available, accessible, and affordable to the parents of the minor child.

(3) Any other factor the court deems appropriate in determining whether to grant visitation by electronic communication.

The court may set guidelines for electronic communication, including the hours in which the communication may be made, the allocation of costs between the parents in implementing electronic communication with the child, and the furnishing of access information between parents necessary to facilitate electronic communication. Electronic communication with a minor child may be used to supplement visitation with the child. Electronic communication may not be used as a replacement or substitution for custody or visitation. The amount of time electronic communication is used shall not be a factor in calculating child support or be used to justify or support relocation by the custodial parent out of the immediate area or the State. Electronic communication between the minor child and the parent may be subject to supervision as ordered by the court. As used in this subsection, 'electronic communication' means contact, other than face-to-face contact, facilitated by electronic means, such as by telephone, electronic mail, instant messaging, video teleconferencing, wired or wireless technologies by Internet, or other medium of communication."

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

HOUSE BILL 1299:
Virtual Visitation/Family Law

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	July 6, 2009
Introduced by:	Reps. Rapp, M. Alexander, Glazier	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 1299 would amend the laws pertaining to custody of a minor child by authorizing the court to provide for visitation rights by electronic communication. Electronic communication, which includes telephone, e-mail, instant messaging, video teleconferencing and other mediums, could be used to supplement visitation but could not be used as a replacement or substitution for custody or visitation.***

CURRENT LAW: G.S. 50-13.2 provides that any order for custody shall include such terms, including visitation, as will best promote the interest and welfare of the child. A copy of G.S. 50-13.2 is set forth on the reverse side of this summary.

BILL ANALYSIS: House Bill 1299 would provide for visitation rights by electronic communication. Electronic communication is defined under the bill as contact other than face-to-face contact, facilitated by electronic means including telephone, e-mail, instant messaging, video teleconferencing, wired or wireless Internet technologies or other mediums. In granting this type of visitation, the court would be required to consider the following:

- Whether electronic communication is in the best interest of the child.
- Whether the necessary equipment is available and affordable to the parents of the child.
- Any other appropriate factors.

The bill would authorize the court to set guidelines, including the hours in which the communication is made, the allocation of costs between the parents, and the furnishing of access information between the parents. Electronic communication may be used to supplement regular visitation, but may not be used as a replacement for custody or visitation or to justify relocation by a custodial parent out of the area. Electronic communication would also not be a factor in calculating child support.

EFFECTIVE DATE: House Bill 1299 would be effective when it becomes law.

§ 50-13.2. Who entitled to custody; terms of custody; visitation rights of grandparents; taking child out of State.

(a) An order for custody of a minor child entered pursuant to this section shall award the custody of such child to such person, agency, organization or institution as will best promote the interest and welfare of the child. In making the determination, the court shall consider all relevant factors including acts of domestic violence between the parties, the safety of the child, and the safety of either party from domestic violence by the other party and shall make findings accordingly. An order for custody must include findings of fact which support the determination of what is in the best interest of the child. Between the mother and father, whether natural or adoptive, no presumption shall apply as to who will better promote the interest and welfare of the child. Joint custody to the parents shall be considered upon the request of either parent.

(b) An order for custody of a minor child may grant joint custody to the parents, exclusive custody to one person, agency, organization, or institution, or grant custody to two or more persons, agencies, organizations, or institutions. Any order for custody shall include such terms, including visitation, as will best promote the interest and welfare of the child. If the court finds that domestic violence has occurred, the court shall enter such orders that best protect the children and party who were the victims of domestic violence, in accordance with the provisions of G.S. 50B-3(a1)(1), (2), and (3). If a party is absent or relocates with or without the children because of an act of domestic violence, the absence or relocation shall not be a factor that weighs against the party in determining custody or visitation. Absent an order of the court to the contrary, each parent shall have equal access to the records of the minor child involving the health, education, and welfare of the child.

(b1) An order for custody of a minor child may provide visitation rights for any grandparent of the child as the court, in its discretion, deems appropriate. As used in this subsection, "grandparent" includes a biological grandparent of a child adopted by a stepparent or a relative of the child where a substantial relationship exists between the grandparent and the child. Under no circumstances shall a biological grandparent of a child adopted by adoptive parents, neither of whom is related to the child and where parental rights of both biological parents have been terminated, be entitled to visitation rights.

(c) An order for custody of a minor child may provide for such child to be taken outside of the State, but if the order contemplates the return of the child to this State, the judge may require the person, agency, organization or institution having custody out of this State to give bond or other security conditioned upon the return of the child to this State in accordance with the order of the court.

(d) If, within a reasonable time, one parent fails to consent to adoption pursuant to Chapter 48 of the General Statutes or parental rights have not been terminated, the consent of the other consenting parent shall not be effective in an action for custody of the child.

Tim Hovis, counsel to House Judiciary I, substantially contributed to this summary.

H1299-SMRV-111(e2) v1

HOUSE BILL 1463
Committee Substitute Favorable 5/5/09

Short Title: Expand Access/Confidential Intermediaries. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT ALLOWING ADULT BIOLOGICAL SIBLINGS OF ADULT ADOPTEES, ADULT BIOLOGICAL HALF SIBLINGS OF ADULT ADOPTEES, ADULT FAMILY MEMBERS OF DECEASED ADOPTEES, AND ADULT FAMILY MEMBERS OF DECEASED BIOLOGICAL PARENTS TO HAVE ACCESS TO CONFIDENTIAL INTERMEDIARY SERVICES UPON THE CONSENT OF THE PARTIES AND TO ALLOW AN AGENCY ACTING AS A CONFIDENTIAL INTERMEDIARY TO OBTAIN A COPY OF A DEATH CERTIFICATE OF THE PERSON WHO IS THE SUBJECT OF THE SEARCH AND DELIVER IT TO THE PERSON REQUESTING SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 48-1-101 reads as rewritten:

"**§ 48-1-101. Definitions.**

...

(5a) "Confidential intermediary" means a licensed adoption agency staff person who may act as a third party to facilitate ~~contact between an adult adoptee or the adult lineal descendant of a deceased adoptee and the biological parent.~~ the sharing of information authorized by G.S. 48-9-104.

...

~~(9a) "Lineal descendant of a deceased adoptee" means any person who descends from the direct line of the adoptee.~~

...."

SECTION 2. G.S. 48-9-101 reads as rewritten:

"**§ 48-9-101. ~~Certain terms~~ Records defined.**

~~(a)~~ For purposes of this Article, "records" means any petition, affidavit, consent or relinquishment, transcript or notes of testimony, deposition, power of attorney, report, decree, order, judgment, correspondence, document, invoice, receipt, certificate, or other printed, written, microfilmed or microfiched, video-taped or tape-recorded material or electronic data processing records regardless of physical form or characteristics pertaining to a proceeding for adoption under this Chapter.

~~(b) Notwithstanding G.S. 48-1-101, for purposes of this Article, "adult" means an individual who has attained 21 years of age.~~"

SECTION 3. G.S. 48-9-104 reads as rewritten:

"**§ 48-9-104. Release of identifying ~~information.~~information; confidential intermediary services.**

(a) Except as provided in this section or in G.S. 48-9-109(2) or (3), no person or entity shall release from any records retained and sealed under this Article the name, address, or other

information that reasonably could be expected to lead directly to the identity of an adoptee, an adoptive parent of an adoptee, an adoptee's parent at birth, or an individual who, but for the adoption, would be the adoptee's sibling or grandparent, except upon order of the court for cause pursuant to G.S. 48-9-105.

(b) A child placing agency licensed by the Department or a county department of social services may agree to act as a confidential intermediary for ~~a biological parent or adult adoptee or adult lineal descendant of a deceased adoptee, without appointment by the court pursuant to G.S. 48-9-105, in order to obtain and share nonidentifying birth family health information or facilitate contact or share identifying information with adult adoptees, adult lineal descendants of deceased adoptees, and biological parents with the written consent of all parties to the contact or the sharing of information.~~ any of the following:

(1) A biological parent.
(2) An adult adoptee.
(3) An adult biological sibling of an adult adoptee.
(4) An adult biological half sibling of an adult adoptee.
(5) An adult family member of a deceased biological parent.
(6) An adult family member of a deceased adoptee.

An agency may act as a confidential intermediary without appointment by the court pursuant to G.S. 48-9-105, in order to obtain and share nonidentifying birth family health information or to facilitate contact or share identifying information with any person listed in subdivisions (1) through (6) of this subsection with the written consent of all parties to the contact or the sharing of information. Written consent of the biological parent is required if the biological parent is living at the time any party described in subdivisions (2) through (6) of this subsection seeks to contact or share identifying information with any other party described in subdivisions (2) through (6) of this subsection. Further, ~~a child placing agency licensed by the Department or a county department of social services~~an agency may agree to act as a confidential intermediary for the adoptive parents of a minor adoptee, or the guardian of a minor adoptee without appointment by the court pursuant to G.S. 48-9-105, to obtain and share nonidentifying birth family health information. An agency providing confidential intermediary services shall contact individuals in a manner reasonably calculated to prevent incidental disclosure of confidential information. An agency that agrees to provide confidential intermediary services may charge a reasonable fee for doing so, which fee must be pursuant to written agreement signed by the individual to be charged. The Division shall establish guidelines for confidential intermediary services.

(c) For purposes of this section only, the term 'family member' means a spouse, child, stepchild, parent, stepparent, grandparent, or grandchild.

(d) If in the provision of confidential intermediary services a child placing agency licensed by the Department or a county department of social services determines that the person who is the subject of the search is deceased, the agency may obtain a copy of the death certificate pursuant to G.S. 130A-93 and deliver it to the person who requested the services."

SECTION 4. G.S. 130A-93 is amended by adding a new subsection to read:

"(c2) A child placing agency licensed by the Department of Health and Human Services or a county department of social services acting as a confidential intermediary in accordance with G.S. 48-9-104 shall be entitled upon request to a certified copy of a death certificate."

SECTION 5. This act becomes effective October 1, 2009.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1463
Committee Substitute Favorable 5/5/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1463-CSRV-57 [v.2]

7/6/2009 7:45:33 PM

Short Title: Expand Access/Confidential Intermediaries. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT ALLOWING ADULT BIOLOGICAL SIBLINGS OF ADULT ADOPTEES, ADULT BIOLOGICAL HALF SIBLINGS OF ADULT ADOPTEES, ADULT FAMILY MEMBERS OF DECEASED ADOPTEES, AND ADULT FAMILY MEMBERS OF DECEASED BIOLOGICAL PARENTS TO HAVE ACCESS TO CONFIDENTIAL INTERMEDIARY SERVICES UPON THE CONSENT OF THE PARTIES, AND ALLOWING AN AGENCY ACTING AS A CONFIDENTIAL INTERMEDIARY TO OBTAIN A COPY OF A DEATH CERTIFICATE OF THE PERSON WHO IS THE SUBJECT OF THE SEARCH AND DELIVER IT TO THE PERSON REQUESTING SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 48-1-101 reads as rewritten:

"**§ 48-1-101. Definitions.**

...

(5a) "Confidential intermediary" means ~~a licensed adoption agency staff person who~~ an agency that may act as a third party to facilitate ~~contact between an adult adoptee or the adult lineal descendant of a deceased adoptee and the biological parent.~~ the sharing of information authorized by G.S. 48-9-104.

...

~~(9a) "Lineal descendant of a deceased adoptee" means any person who descends from the direct line of the adoptee.~~

...."

SECTION 2. G.S. 48-9-101 reads as rewritten:

"**§ 48-9-101. ~~Certain terms~~ Records defined.**

~~(a)~~ For purposes of this Article, "records" means any petition, affidavit, consent or relinquishment, transcript or notes of testimony, deposition, power of attorney, report, decree, order, judgment, correspondence, document, invoice, receipt, certificate, or other printed, written, microfilmed or microfiched, video-taped or tape-recorded material or electronic data processing records regardless of physical form or characteristics pertaining to a proceeding for adoption under this Chapter.

~~(b) Notwithstanding G.S. 48-1-101, for purposes of this Article, "adult" means an individual who has attained 21 years of age.~~"

SECTION 3. G.S. 48-9-104 reads as rewritten:

"§ 48-9-104. Release of identifying ~~information.~~information; confidential intermediary services.

(a) Except as provided in this section or in G.S. 48-9-109(2) or (3), no person or entity shall release from any records retained and sealed under this Article the name, address, or other information that reasonably could be expected to lead directly to the identity of an adoptee, an adoptive parent of an adoptee, an adoptee's parent at birth, or an individual who, but for the adoption, would be the adoptee's sibling or grandparent, except upon order of the court for cause pursuant to G.S. 48-9-105.

(b) A child placing agency licensed by the Department or a county department of social services may agree to act as a confidential intermediary for ~~a biological parent or adult adoptee or adult lineal descendant of a deceased adoptee, without appointment by the court pursuant to G.S. 48-9-105, in order to obtain and share nonidentifying birth family health information or facilitate contact or share identifying information with adult adoptees, adult lineal descendants of deceased adoptees, and biological parents with the written consent of all parties to the contact or the sharing of information.~~ any of the following:

(1) A biological parent.

(2) An adult adoptee.

(3) An adult biological sibling of an adult adoptee.

(4) An adult biological half sibling of an adult adoptee.

(5) An adult family member of a deceased biological parent.

(6) An adult family member of a deceased adoptee.

In order to obtain and share nonidentifying birth family health information, to facilitate contact, or to share identifying information with any person listed in subdivisions (1) through (6) of this subsection, an agency may act as a confidential intermediary without appointment by the court pursuant to G.S. 48-9-105 and with the written consent of all parties to the contact or the sharing of information. Written consent of the biological parent is required if the biological parent is living at the time any party described in subdivisions (2) through (6) of this subsection seeks to contact or share identifying information with any other party described in subdivisions (2) through (6) of this subsection. Further, ~~a child placing agency licensed by the Department or a county department of social services~~ an agency may agree to act as a confidential intermediary for the adoptive parents of a minor adoptee or the guardian of a minor adoptee, without appointment by the court pursuant to G.S. 48-9-105, to obtain and share nonidentifying birth family health information. An agency providing confidential intermediary services shall contact individuals in a manner reasonably calculated to prevent incidental disclosure of confidential information. An agency that agrees to provide confidential intermediary services may charge a reasonable fee for doing so, which fee must be pursuant to written agreement signed by the individual to be charged. The Division shall establish guidelines for confidential intermediary services.

(c) For purposes of this section only, the term 'family member' means a spouse, child, stepchild, parent, stepparent, grandparent, or grandchild.

(d) If an agency providing confidential intermediary services determines that the person who is the subject of the search is deceased, the agency may obtain a copy of the death certificate pursuant to G.S. 130A-93 and deliver it to the person who requested the services."

SECTION 4. G.S. 130A-93 is amended by adding a new subsection to read:

"(c2) An agency acting as a confidential intermediary in accordance with G.S. 48-9-104 shall be entitled to a certified copy of a death certificate upon request."

SECTION 5. This act becomes effective October 1, 2009.

HOUSE BILL 1463:
Expand Access/Confidential Intermediaries

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	July 6, 2009
Introduced by:	Reps. Dickson, Wilkins, Harrell, Farmer-Butterfield	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	PCS to Second Edition H1463-CSRV-57		

SUMMARY: ***House Bill 1463 would allow adult full and half siblings of adult adoptees, and adult family members of deceased adoptees or deceased biological parents, to have access to confidential intermediary services from an adoption agency for facilitation of contact or to obtain identifying adoption information. The bill would also allow an agency acting as a confidential intermediary to obtain a copy of a death certificate of the person who is the subject of the search and deliver it to the person requesting services. This proposed committee substitute makes technical changes.***

CURRENT LAW: Currently, NC adoption records are closed. The law provides that, with certain exceptions, no one may release a record that would lead directly to the identity of an adoptee, an adoptive parent of an adoptee, an adoptee's parent at birth, or an adoptee's birth sibling or grandparent. Exceptions are available through a court order, through voluntary consent, or through the services of a confidential intermediary. A confidential intermediary must be a staff person of a licensed adoption agency. The confidential intermediary may facilitate contact, release nonidentifying medical information, or release identifying information without a court order to any of the following:

- Adult adoptees.
- Adult lineal descendants of deceased adoptees.
- Biological parents.

To facilitate contact or share the information, the confidential intermediary must have written consent of all parties.

BILL ANALYSIS:

Section 1 – Definition of "confidential intermediary." This section would amend the definition of "confidential intermediary" to define the term as an agency (licensed child placing agency or a county department of social services) that may act as a third party to facilitate the sharing of information authorized by G.S. 48-9-104 (which is rewritten in Section 3 of the bill). This section of the bill would also delete the definition of "lineal descendant of a deceased adoptee".

Section 2 – Definition of "adult." This section would delete the provision that defined "adult" as someone 21 or older for purposes of the provisions relating to the use of confidential intermediaries. The would mean that the general definition of "adult" in G.S. 48-1-101 would apply, which says an adult is 18 or older, or a person under 18 who is either married or legally emancipated.

Section 3 – New Categories of People Added. This section would amend the list of people authorized to use confidential intermediary services to include the following:

- An adult biological sibling of an adult adoptee.
- An adult biological half sibling of an adult adoptee.
- An adult family member of a deceased biological parent.

- An adult family member of a deceased adoptee.

For purposes of this section, "family member" would mean spouse, child, stepchild, parent, stepparent, grandparent, or grandchild.

If the biological parent is living, written consent of the biological parent is required before contact with or sharing of identifying information between any other parties.

If a confidential intermediary determines that the person who is the subject of the search is deceased, the agency may obtain a copy of the death certificate and deliver it to the person who requested the services.

Section 4 – Access to Death Certificate. This section would amend the statute related to access to vital records to authorize agencies providing confidential intermediary services to obtain a copy of the death certificate.

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

BACKGROUND: House Bill 1463 is a combination of two bills recommended by the House Select Committee on Adoptee Birth Certificates in its interim report to the 2008 Short Session. A similar bill passed the House in 2008, but did not reach the floor of the Senate for a vote.

Susan Sitze and William Gilkeson, Staff Attorneys in the Research Division, contributed significantly to this summary.

H1463-SMRV-110(CSRV-57) v2

Looking Ellen Teruko Cunningham or her children

I am looking for my adopted sons mother ..He was born Sept.19,1981 and his mother is Ellen Teruko Cunningham..She was married to Larry Cunningham and divorced in 1983...She is Japanese. anyone knowing of her or her children please contact me.....cwhitley@northstate.net

ISO female adoptee born in 1963 or 1964 in Charlotte NC

Birth mom was around 16 yrs. old at time of birth. Birth mom's DOB is July/1947. Birth mom was a ward of the state and lived in an orphanage called "Jr. Order Home" in Lexington, NC until she became pregnant and was sent to a home for unwed mothers in Charlotte NC. Birth Moms name is Linda May but may have used the name Babs Murphy while at the maternity home. She gave birth and was able to keep baby in room with her over night and baby was taken away the next day. She may have named the girl Melinda. This was the name on a baby braclet she had with her. Adoption is believed to have been handled by DSS but unsure and the Social workers name believed to be Ms. Pully. Both birth parents were from the Granville and Franklin County area. Birth father was also around 16-17 at time of birth. It is believed that the adoptive parents sent pictures of the girl for a few years in the beginning so it is possible the adoptive parents know the birth moms name.

♡**ISO Half-brother born 3-15-71 in Durham NC**

My mother gave up a baby boy(my half brother) for adoption in 1971. Birth date of 3-15-71, she named him Michael Eugene and as I understand it, there was a stipulation that his middle name NOT be changed. As far as I know there was no last name on the BC, but if there were it would most likely have been her maiden name of Davenport. She lived with her parents in Fayetteville prior to the birth, but moved to the Salvation Army Maternity Home in Durham for the last 6 weeks of her pregnancy, and gave birth in Durham, most likely at Duke Hospital.

However, because of her place of permanent residency, **Cumberland County DSS** handled the adoption. The DSS gave a 30 reversal period for if she changed her mind on giving him up for adoption. I do not know the birthfather's name, but both of them were originally from Roanoke Rapids, NC., a very small north eastern NC mill town where I grew up. They were not married. My mother was 16 at the time of birth and the birthfather was in his 20s.

I really want to find my brother! If this sounds like a match, please contact me. I have not been able to find a search angel that can help in this area.

If he happens to be looking for us, please know we are looking for you too!!!!!!

Looking for Niece born 1965/1966 Charlotte Memorial Hospital

W/F born at Charlotte Memorial Hospital in 1965, possibly early 1966. Both parents were age 18 at the time, and from South Carolina. Both parents are still living. Family member wants to communicate with niece in confidence. Carolina Jim

looking for brother

i am looking for a brother i did not know i had. was born in or around Durham, NC in maybe 64 or 65 or 66. mothers name was Linda Brown, from Roanoke Rapids, NC...this is also my mother and she is now deceased...but would still like to find my brother, he would be older than me...i am 34, i was born in 68. mother stayed at a home for unwed mothers in durham, nc..she was still in high school at the time...bio fathers name may have been Charles or Chuck.

Please feel free to reply to this Archived post.

Please note that there may not be a way to contact the author of this post unless they left contact information.

♡SEARCHING FOR HALF SISTER BORN 2/28/1983 at charlotte memorial

searching for a half sister my mother gave birth to in Charlotte , NC on february 28, 1983 we believe. She was delivered by C-section. Mother was 17 at the time and baby girl was bi-racial. Mother believes she weighed 7 Lbs. 10 Oz. Mothers completed education level was 10th grade. Mother was from Alamance county but was sent to Charlotte to give birth by her parents. Baby girl was adopted by family that adopted many bi-racial children my mother was told. Mother cant remember what adoption agency took over the adoption, for her parents basically brainwashed her of that memory. Please if anyone has any info that could lead me to my sister...please email me. . Please put Sister in the subject line so i dont delete it. Mothers birth name was Pore.

Looking for K.C., Marsha, and Robert Owen Williams Junior

My father's previous wife adopted his three children out from under him while he was away on an extended truck driving job. We are searching for the three with haste since he is not in very good condition. If you have any info or help please post. They were born in Pinehurst, NC and adopted out either in NC or Alabama. Please help. Marsha Williams, Robert Owen Williams Jr., Kester Carl Earnest Williams. Their parents were Beverly Williams and my father Robert Owen Williams

♡ISO Half-brother born 3-15-71 in Durham NC

My mother gave up a baby boy(my half brother) for adoption in 1971. Birth date of 3-15-71, she named him Michael Eugene and as I understand it, there was a stipulation that his middle name NOT be changed. As far as I know there was no last name on the BC, but if there were it would most likely have been her maiden name of Davenport. She lived with her parents in Fayetteville prior to the birth, but moved to the Salvation Army Maternity Home in Durham for the last 6 weeks of her pregnancy, and gave birth in Durham, most likely at Duke Hospital. However, because of her place of permanent residency, **Cumberland County DSS** handled the adoption. The maternity home (or the DSS, not sure) gave her the option of keeping the child for 30 days before relinquishing them to the DSS, and she took this option. I do not know the birthfather's name, but both of them were originally from Roanoke Rapids, NC., a very small north eastern NC mill town where I grew up. They were not married. My mother was 16 at the time of birth and the birthfather was in his 20s.



I really want to find my brother! If this sounds like a match, please contact me.

If he happens to be looking for us, please know we are looking for you too!!!!!!

Roberta MacDonald

ɔm: alphametrics@mindspring.com [mailto:alphametrics@mindspring.com]
nt: Monday, July 06, 2009 1:08 PM
To: nccar@mindspring.com
Subject: Re: Write up of something to read

Honorable Senators and Representatives,

I am a Concerned Citizen of the great state of North Carolina. With so many complex issues before us, we should consider the words of wisdom written anonymously on behalf of people who were adopted.

As a voter, I've listened to your debates, and seen the progress brought forth by those who have the courage, compassion and insight to do the right thing.
Yet, I also hear a great deal of misinformation being spread by those whose interests may or may not reflect the adult adoptees of NC.

Please listen to this short and simple declaration - known as the "The Adoptees Bill of Rights". Please open your mind and your heart, and you will see our nation was founded on these very same principles.

Sincerely,
Laura Gibowski, Durham NC

THE ADOPTTES BILL of RIGHTS

Author Unknown

1. We have the right to dignity and respect.
2. We have the right to know we are adopted.
3. We have the right to possess our original birth certificate.
4. We have the right to possess all of our adoption records.
5. We have the right to full knowledge of our origins, ethnic and religious background, our original name and any pertinent medical and social details.
6. We have the right to updated medical and social history of our birthparents.
7. We have the right to personal contacts with each of our birth families, as all other humans.
8. We have the right to live without guilt toward any set of parents.
9. We have the right to treat and love both sets of parents as one family.
10. We have the right and obligation to show our feelings.
11. We have the right to become whole and complete people.
12. We have a right and obligation not to violate the dignity of all people involved in the adoption triad and to carry our message to all adopted children who still suffer.

Roberta MacDonald

From: Sara Bailey [sarasmartfit@earthlink.net]
ent: Monday, July 06, 2009 2:48 PM
o: Roberta MacDonald
ubject: letter

I am 42 years old, and I was adopted in North Carolina in 1967. I have lived **all** of my life without having access to that most basic of identifying documents, my original birth certificate. I lived the **first 41 years** of my life without updated, accurate family health history. Time and again in doctors' offices, when the question of family history was addressed, all I had to say was "I don't know, I'm adopted," and suddenly the same information that seemed so vital only moments earlier was simply x-d off the page. My chances of living a full and healthy life were habitually being compromised by laws that made it impossible for me to know my genetic disease risks. Through the CI program, I was able to locate both of my biological families, and the health information I've learned may well save my life and the life of my son. At 42 years of age, healthy and active, I was not what you would consider at high risk for colon cancer. But during my first conversation with my biological father's family, I learned of a strong family history of early-onset colon cancer, in one case ending in the death of my up-until-then healthy and active uncle at the age of 50. My colonoscopy came back negative, and armed with what I know now, I'll be very proactive in terms of regular testing, and my 14-year-old son will never know the frustration of not having updated health history from both sides of his family.

The CI program as it currently stands has been a good first step. HB1463 (Expand Access/Confidential Intermediaries) will make it a little bit easier for the type of information sharing from which I have benefited to help others. I implore you to vote "yes" on HB1463.

Thank you.

Sara W. Bailey
Burlington, NC

I have a website!
www.sarasmartfit.com

When you pray, move your feet.

Life is not a journey to the grave with the intention of arriving safely in one pretty and well-preserved piece, but to skid across the line broadside, thoroughly used up, worn out, leaking oil, shouting GERONIMO!

Roberta MacDonald

From: Alan Priddy [japster49@yahoo.com]
ɜnt: Monday, July 06, 2009 7:15 PM
›: nccar@mindspring.com
ɹbject: Fw: Support of HB1463 - Expand Access/Confidential Intermediaries

Roberta,
This is what I sent Sen.Stan Bingham.Feel free to use any part of the message that you feel will help.
Thanks,
James Priddy

--- On **Thu, 7/2/09, Alan Priddy** <*japster49@yahoo.com*> wrote:

From: Alan Priddy <japster49@yahoo.com>
Subject: Support of HB1463 - Expand Access/Confidential Intermediaries
To: Stan.Bingham@ncleg.net
Date: Thursday, July 2, 2009, 4:36 PM

Hello Senator Bingham,

I am writing to ask for your support for HB1463.I am 60 years old and was adopted at seven weeks old by parents that I would not trade for any others.For that I am thankful.They have been gone for several years.I started realizing some years ago that when I would have Dr.visits I always had to answer "I don't know,I was ɗopted" when asked about my family health history.I have 3 sons and several grandchildren now that could enefit from any knowledge of a family health history.
ıı would be wonderful to be allowed contact to siblings and have access to records of any known health issues in the biological family.
I owe it to my family to be able to supply any information that could be useful in management of any future health issues.
I ask that you please consider how much the benefit of this bill out ways any negatives.

I thank you for listening and hope you have a great 4th Holiday.
Best Regards,

James Alan Priddy
165 Black Horse Trail
Thomasville,N.C. 27360
336-472-6589

Honorable Senators

After speaking with Senator Goodall, I only wish I could be with you all today. However I have asked Roberta MacDonald to please speak to you on my behalf.

I speak to you first of all as Susan Self (Birth mother)
During the reunion with my daughter, one of the first questions I was asked "Do I have Grandparents alive?" Are their other living relatives? When can I meet them?

My daughter was willing to make a special trip to see her Grandmother and now also wants to attend our family reunion. I can tell you after this reunion, that branch relatives are very important to those who grew up with no blood relatives near them. It is extremely important and they should be able to connect with this lost side of blood family.

Second I speak to all of you as Susan Self (Aunt)
Recently, I have lived through my worst nightmare. My only nephew has lost custody of his children to the foster care system. This is due to drug and alcohol problems of both parents. However during this process, I soon came to realize that even as a blood relative, I have no rights. Even though I have been like a grandparent to these children, as my sister is deceased.

I realize after one year these children could go up for adoption, and if that is not bad enough upon the finalization of the adoption the records would be sealed. And the way the current law is should the parents become deceased all contact with these children could be lost forever to their blood relatives. These blood family members would be cut off with no future of ever seeing them again.

All too often the kids who land in the adoption system are taken away from parents who could not do the right thing in the beginning. But it cannot be the right, or fair thing for our State to do, in severing family ties forever. Especially after the bonds with family members these children have already made.

These children in the end will end up feeling like nobody cared about them or wanted to save them. The State steps in and must approve of your home, and if you have a medical condition, you can just about forget about trying to help or save the children you care so much about from being adopted into families of strangers, with no guarantee of them being adopted and kept together. Unfortunately to our State, love is not enough to help keep children with their own blood relatives.

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	July 9, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1447	Crime Stoppers Tips Are Confidential.	Representative Wiley
HB 1463	Expand Access/Confidential Intermediaries.	Representative Farmer-Butterfield Representative Dickson Representative Harrell Representative Wilkins, Jr.

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II Committee
Thursday, July 9, 2009, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 1447	Crime Stoppers Tips Are Confidential.	Representative Wiley
HB 1463	Expand Access/Confidential Intermediaries.	Representative Farmer-Butterfield Representative Dickson Representative Harrell Representative Wilkins, Jr.

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE
Thursday, July 9, 2009 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 10:00 AM on July 9, 2009, in Room 1124 of the Legislative Building with nine members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell recognized pages Baker Mills, Kyri Beasley, Caroline Ward, Holly Setzer, JR Borders, McLeod Phillips and Jamie Fleming and thanked them for their assistance.

HB 1447 – (Crime Stoppers Tips are Confidential.) Senator Hartsell noted that the bill would not be heard but he would name a sub-committee to work on the bill. Representative Wiley spoke on the merits of the bill. Senator Hartsell named Senators Allran,(Chairman), Vaughan, Snow, Jones and Bingham as the sub-committee for the bill.

HB 1463 – (Expand Access/Confidential Intermediaries.) Representative Dickson spoke on the bill. Brittany Farrell of the North Carolina Family Policy Council and Tami Fitzgerald of the Christian Action League spoke regarding their concerns with the bill. Senator Hartsell named Senators Vaughan, (Chairman), Berger, Jacumin, Atwater, Snow and Apodaca as a sub-committee for the bill.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

July 9, 2009
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Paige Fitzgerald	Rep. Folwell
Marion Waters	CCPS
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety
Tammy Johnson	DHHS
Brittany Farrell	NCFPC
Paul Pully	NCAJ

HOUSE BILL 1447
Committee Substitute Favorable 5/7/09
Third Edition Engrossed 5/13/09

Short Title: Crime Stoppers Tips Are Confidential. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE IDENTITY OF AN INDIVIDUAL WHO PROVIDES A TIP FOR AN UNSOLVED CASE THROUGH CRIME STOPPERS OR SIMILAR ORGANIZATIONS IS NOT A PUBLIC RECORD, TO PROVIDE THAT THE COMMUNICATION RECEIVED BY A CRIME STOPPERS ORGANIZATION IS NOT SUBJECT TO DISCOVERY OR ADMISSIBLE IN A COURT PROCEEDING, AND TO PROVIDE THAT A LAW ENFORCEMENT AGENCY HAS A DUTY TO MAINTAIN THE CONFIDENTIALITY OF A CRIME STOPPERS TIP.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 15A of the General Statutes is amended by adding a new Article to read:

"Article 47.

"Local Crime Stoppers Programs.

"**§ 15A-850. Local Crime Stoppers organizations; confidentiality.**

(a) Definition. – As used in this section, a "Crime Stoppers" organization or other similarly named organization means a private, nonprofit North Carolina corporation governed by a civilian volunteer board of directors that is operated on a local or statewide level that (i) offers anonymity to persons providing information to the organization, (ii) accepts and expends donations for cash rewards to persons who report to the organization information about alleged criminal activity and that the organization forwards to the appropriate law enforcement agency, and (iii) is established as a cooperative alliance among the news media, the community, and law enforcement officials.

(b) Prohibitions on Use of Crime Stoppers Tips.

(1) Evidence of a communication, and any information contained within a communication, from an anonymous source to a Crime Stoppers organization shall not be:

a. Relied upon, or considered by, a judicial official in determining whether probable cause exists to issue either an arrest or search warrant.

b. Admissible or subject to discovery in any court proceeding.

(2) Crime Stoppers tips may only be used to assist a law enforcement agency in directing its investigation of alleged criminal activity.

(c) Identity of Crime Stoppers Informant Is Not Public Record; Duty of Law Enforcement Agency to Maintain Confidentiality. – The identity of any individual providing information about a crime or criminal activity to a Crime Stoppers organization under a

promise of anonymity is not a public record as defined by G.S. 132-1 and shall not be disclosed. A law enforcement agency receiving information concerning alleged criminal activity from a Crime Stoppers organization shall maintain confidentiality pursuant to this section and pursuant to G.S. 132-1.4(h)."

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

HOUSE BILL 1463
Committee Substitute Favorable 5/5/09

Short Title: Expand Access/Confidential Intermediaries. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT ALLOWING ADULT BIOLOGICAL SIBLINGS OF ADULT ADOPTEES, ADULT BIOLOGICAL HALF SIBLINGS OF ADULT ADOPTEES, ADULT FAMILY MEMBERS OF DECEASED ADOPTEES, AND ADULT FAMILY MEMBERS OF DECEASED BIOLOGICAL PARENTS TO HAVE ACCESS TO CONFIDENTIAL INTERMEDIARY SERVICES UPON THE CONSENT OF THE PARTIES AND TO ALLOW AN AGENCY ACTING AS A CONFIDENTIAL INTERMEDIARY TO OBTAIN A COPY OF A DEATH CERTIFICATE OF THE PERSON WHO IS THE SUBJECT OF THE SEARCH AND DELIVER IT TO THE PERSON REQUESTING SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 48-1-101 reads as rewritten:

"**§ 48-1-101. Definitions.**

...

(5a) "Confidential intermediary" means a licensed adoption agency staff person who may act as a third party to facilitate ~~contact between an adult adoptee or the adult lineal descendant of a deceased adoptee and the biological parent.~~ the sharing of information authorized by G.S. 48-9-104.

...

~~(9a) "Lineal descendant of a deceased adoptee" means any person who descends from the direct line of the adoptee.~~

...."

SECTION 2. G.S. 48-9-101 reads as rewritten:

"**§ 48-9-101. ~~Certain terms~~ Records defined.**

~~(a)~~ For purposes of this Article, "records" means any petition, affidavit, consent or relinquishment, transcript or notes of testimony, deposition, power of attorney, report, decree, order, judgment, correspondence, document, invoice, receipt, certificate, or other printed, written, microfilmed or microfiched, video-taped or tape-recorded material or electronic data processing records regardless of physical form or characteristics pertaining to a proceeding for adoption under this Chapter.

~~(b) Notwithstanding G.S. 48-1-101, for purposes of this Article, "adult" means an individual who has attained 21 years of age.~~"

SECTION 3. G.S. 48-9-104 reads as rewritten:

"**§ 48-9-104. Release of identifying ~~information.~~information; confidential intermediary services.**

(a) Except as provided in this section or in G.S. 48-9-109(2) or (3), no person or entity shall release from any records retained and sealed under this Article the name, address, or other

information that reasonably could be expected to lead directly to the identity of an adoptee, an adoptive parent of an adoptee, an adoptee's parent at birth, or an individual who, but for the adoption, would be the adoptee's sibling or grandparent, except upon order of the court for cause pursuant to G.S. 48-9-105.

(b) A child placing agency licensed by the Department or a county department of social services may agree to act as a confidential intermediary for ~~a biological parent or adult adoptee or adult lineal descendant of a deceased adoptee, without appointment by the court pursuant to G.S. 48-9-105, in order to obtain and share nonidentifying birth family health information or facilitate contact or share identifying information with adult adoptees, adult lineal descendants of deceased adoptees, and biological parents with the written consent of all parties to the contact or the sharing of information.~~ any of the following:

(1) A biological parent.

(2) An adult adoptee.

(3) An adult biological sibling of an adult adoptee.

(4) An adult biological half sibling of an adult adoptee.

(5) An adult family member of a deceased biological parent.

(6) An adult family member of a deceased adoptee.

An agency may act as a confidential intermediary without appointment by the court pursuant to G.S. 48-9-105, in order to obtain and share nonidentifying birth family health information or to facilitate contact or share identifying information with any person listed in subdivisions (1) through (6) of this subsection with the written consent of all parties to the contact or the sharing of information. Written consent of the biological parent is required if the biological parent is living at the time any party described in subdivisions (2) through (6) of this subsection seeks to contact or share identifying information with any other party described in subdivisions (2) through (6) of this subsection. Further, ~~a child placing agency licensed by the Department or a county department of social services~~an agency may agree to act as a confidential intermediary for the adoptive parents of a minor adoptee, or the guardian of a minor adoptee without appointment by the court pursuant to G.S. 48-9-105, to obtain and share nonidentifying birth family health information. An agency providing confidential intermediary services shall contact individuals in a manner reasonably calculated to prevent incidental disclosure of confidential information. An agency that agrees to provide confidential intermediary services may charge a reasonable fee for doing so, which fee must be pursuant to written agreement signed by the individual to be charged. The Division shall establish guidelines for confidential intermediary services.

(c) For purposes of this section only, the term 'family member' means a spouse, child, stepchild, parent, stepparent, grandparent, or grandchild.

(d) If in the provision of confidential intermediary services a child placing agency licensed by the Department or a county department of social services determines that the person who is the subject of the search is deceased, the agency may obtain a copy of the death certificate pursuant to G.S. 130A-93 and deliver it to the person who requested the services."

SECTION 4. G.S. 130A-93 is amended by adding a new subsection to read:

"(c2) A child placing agency licensed by the Department of Health and Human Services or a county department of social services acting as a confidential intermediary in accordance with G.S. 48-9-104 shall be entitled upon request to a certified copy of a death certificate."

SECTION 5. This act becomes effective October 1, 2009.

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	July 14, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1057	Abolish Certain Deficiency Judgments.	Representative Blue
HB 1058	Increase Statutory Homestead Exemption.	Representative Blue Representative Weiss
HB 1077	Venue/Municipalities in Multiple Districts.	Representative Jones Representative Wiley
HB 1261	Protect Our Kids/Cyber Bullying Misdemeanor.	Representative Parmon Representative Mackey

Reports will be heard from HB 578 and HB 1377

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II Committee
Tuesday, July 14, 2009, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 1057	Abolish Certain Deficiency Judgments.	Representative Blue
HB 1058	Increase Statutory Homestead Exemption.	Representative Blue Representative Weiss
HB 1077	Venue/Municipalities in Multiple Districts.	Representative Jones Representative Wiley
HB 1261	Protect Our Kids/Cyber Bullying Misdemeanor.	Representative Parmon Representative Mackey

Presentations

Other Business – Reports from Sub-Committees on HB 578 & HB 1377

Adjournment

SENATE JUDICIARY II COMMITTEE
Tuesday, July 14, 2009 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 10:00 AM on July 14, 2009, in Room 1124 of the Legislative Building with thirteen members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell introduced pages Alex Zuraff, Wes Fagg, Nicklous Ashburn, Caleb Hawking, Sarah Lindner, Sarah Blake, Rachel Adams, Kristin Crenshaw and Corinthia Lilley and thanked them for their assistance.

HB 1077 – (Venue/Municipalities in Multiple Districts.) Senator Vaughan moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Rep. Wiley explained the bill and she and Ms. Jennifer McGinnis, Staff Attorney, answered questions from Senators Jones and Bingham. Senator Bingham moved for a favorable report to the Proposed Committee Substitute, unfavorable to the original bill. All voted and the motion carried.

HB 1058 – (Increase Statutory Homestead Exemption.) Senator Forrester moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Jones presented an amendment and moved that it be adopted. Senator Blue accepted the amendment. All voted and the motion carried. Senator Blue explained the Proposed Committee Substitute as amended. Questions from Senators Goodall, Bingham, Forrester and East were answered by Senator Blue and Mr. William Brewer, Jr., Attorney. Mr. Al Ripley spoke on the bill. Senator Atwater moved for a favorable report to the Proposed Committee Substitute as amended, unfavorable to the original bill and rolled into a new committee substitute. All voted and the motion carried.

HB 1261 – (Protect Our Kids/Cyber Bullying Misdemeanor.) Senator Hartsell noted that no vote would be taken and the bill would be presented for discussion only. Senator Vaughan moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Vaughan presented a sub-committee report. Ms. Brenda Carter, Staff Attorney, explained the bill.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, July 14, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1058** Increase Statutory Homestead Exemption.

Draft Number:	11015
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1077** Venue/Municipalities in Multiple Districts.

Draft Number:	80488
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

HB 1058 – Sen. Blue will handle
HB 1077 – Sen. Atwater will handle

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 7-14-09

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mariah Wyatt	AOC
Tamra Fisher	AOC
EMILY GAUMORE	NCBA
Chad Barefoot	Rep. Stam
Jeff Shaw	SACS
Sarah Sours	WCSR
Wanza Ray	MWC
Daniel Baum	K&L GATES
Conor Brockett	NCSBA
Katherine Joyce	NCASA
Susan Harrison	WCPSS

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 7-14-09

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sarah Preston	ACLU-NC
Michael Gordon	ACLU-NC
Billy Brewer	Private attorney.
Al Ripley	NCJC
Brittany Farrell	NCFPC
Chris Kukla	CRL
DE Powell	AOC
Patrick A. Yancey	LLPP
Jeff Harris	LLPP
[illegible]	Hunton & Wms
Victoria Hawkins	Bone & Assoc.

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 7-14-09

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Emily Doyle	NCPAPA
Leslie Lundy	SOG-Daily Bulletin
Aimee Wall	UNC SOG
George Eppsteiner	UNC SOG
Wade Kolb, III	UNC SOG
~~SAM~~ Betty Turner	Bank of America
Jami Fitzgerald	Christian Action League
Dirk Colton	ally -
Paul K. Mengert	AMG, Inc.
Jim Stegall	U.C.P.S.

H 3

HOUSE BILL 1057*
Committee Substitute Favorable 4/30/09
Third Edition Engrossed 5/12/09

Short Title: Abolish Certain Deficiency Judgments. (Public)

Sponsors:

Referred to:

April 6, 2009

A BILL TO BE ENTITLED

AN ACT TO ABOLISH DEFICIENCY JUDGMENTS IN CERTAIN CASES WHERE THE MORTGAGE IS SECURED BY PRIMARY RESIDENCE.

The General Assembly of North Carolina enacts:

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

"**§ 45-21.38A. Deficiency judgments abolished where mortgage secured by primary residence and foreclosed under power of sale.**

In all sales of real property secured by a primary residence by mortgagees or trustees under powers of sale contained in any mortgage or deed of trust, the mortgagee or trustee or holder of the notes secured by such mortgage or deed of trust shall not be entitled to a deficiency judgment on account of such mortgage, deed of trust, or obligation secured by the same, if the defaulted mortgage loan was a rate spread loan as defined in G.S. 24-1.1F, or a nontraditional loan that features a negative amortization payment option. This provision shall not apply to Home Equity Lines of Credit, construction loans, or to bridge loans. This section shall not apply to a loan made by a natural person who makes no more than one loan in a 12-month period and is not in the business of lending."

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

"**§ 45-21.38B. Deficiency judgments abolished where mortgage secured by primary residence and made on or after January 1, 2010.**

In all sales of real property secured by a primary residence, the mortgagee or trustee or holder of the notes secured by such mortgage or deed of trust shall not be entitled to a deficiency judgment on account of such mortgage, deed of trust, or obligation secured by the same, if the defaulted mortgage loan was a rate spread loan as defined in G.S. 24-1.1F, or a nontraditional loan that features a negative amortization payment option. This provision shall not apply to Home Equity Lines of Credit, construction loans, or to bridge loans. This section applies regardless of whether the real property is sold under a power of sale or as a result of court action. This section applies to mortgages made on or after January 1, 2010. This section shall not apply to a loan made by a natural person who makes no more than one loan in a 12-month period and is not in the business of lending."

SECTION 3. Article 2B of Chapter 45 of the General Statutes is amended by adding a new section to read:

"**§ 45-21.38C. Severability.**

The provisions of this Article shall be severable, and if any phrase, clause, sentence, or provision is declared to be unconstitutional or otherwise invalid or is preempted by federal law or regulation, the validity of the remainder of this section shall not be affected thereby."

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

HOUSE BILL 1058*
Committee Substitute Favorable 5/12/09
Third Edition Engrossed 5/14/09

Short Title: Increase Statutory Homestead Exemption. (Public)

Sponsors:

Referred to:

April 6, 2009

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE STATUTORY HOMESTEAD EXEMPTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1C-1601(a) reads as rewritten:

"(a) Exempt property. – Each individual, resident of this State, who is a debtor is entitled to retain free of the enforcement of the claims of creditors:

(1) The debtor's aggregate interest, not to exceed ~~eighteen thousand five hundred dollars ($18,500)~~seventy-five thousand dollars ($75,000) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a ~~residence,~~residence or in a cooperative that owns property that the debtor or a dependent of the debtor uses as a ~~residence, or in a burial plot for the debtor or a dependent of the debtor; however, an unmarried debtor who is 65 years of age or older is entitled to retain an aggregate interest in the property not to exceed thirty-seven thousand dollars ($37,000) in value so long as the property was previously owned by the debtor as a tenant by the entireties or as a joint tenant with rights of survivorship and the former co-owner of the property is deceased.~~residence. In the case of a married couple owning property as tenants by the entirety, the total exemption for husband and wife is seventy five thousand dollars ($75,000).

(2) The debtor's aggregate interest in any property, not to exceed five thousand dollars ($5,000) in value of any unused exemption amount to which the debtor is entitled under subdivision (1) of this subsection.

(3) The debtor's interest, not to exceed three thousand five hundred dollars ($3,500) in value, in one motor vehicle.

(4) The debtor's aggregate interest, not to exceed five thousand dollars ($5,000) in value for the debtor plus one thousand dollars ($1,000) for each dependent of the debtor, not to exceed four thousand dollars ($4,000) total for dependents, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest, not to exceed two thousand dollars ($2,000) in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

(6) Life insurance as provided in Article X, Section 5 of the Constitution of North Carolina.

(7) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(8) Compensation for personal injury, including compensation from private disability policies or annuities, or compensation for the death of a person upon whom the debtor was dependent for support, but such compensation is not exempt from claims for funeral, legal, medical, dental, hospital, and health care charges related to the accident or injury giving rise to the compensation.

(9) Individual retirement plans as defined in the Internal Revenue Code and any plan treated in the same manner as an individual retirement plan under the Internal Revenue Code, including individual retirement accounts and Roth retirement accounts as described in section 408(a) and section 408A of the Internal Revenue Code, individual retirement annuities as described in section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in section 408(c) of the Internal Revenue Code.

(10) Funds in a college savings plan qualified under section 529 of the Internal Revenue Code, not to exceed a cumulative limit of twenty-five thousand dollars ($25,000), but excluding any funds placed in a college savings plan account within the preceding 12 months (except to the extent any of the contributions were made in the ordinary course of the debtor's financial affairs and were consistent with the debtor's past pattern of contributions) and only to the extent that the funds are for a child of the debtor and will actually be used for the child's college or university expenses.

(11) Retirement benefits under the retirement plans of other states and governmental units of other states, to the extent that these benefits are exempt under the laws of the state or governmental unit under which the benefit plan is established.

(12) Alimony, support, separate maintenance, and child support payments or funds that have been received or to which the debtor is entitled, to the extent the payments or funds are reasonably necessary for the support of the debtor or any dependent of the debtor.

(13) The debtor's aggregate interest, not to exceed three thousand dollars ($3,000) in value, in a burial plot for the debtor or a dependent of the debtor."

SECTION 2. This act becomes effective January 1, 2010, and applies to judgments and bankruptcy petitions filed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1058*

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

H1058-ASB-19 [v.2]

Comm. Sub. [YES]
Amends Title [NO]
H1058-CSSB-65 [v.1]

Date _____,2009

Senator Jones

moves to amend the bill on page 1, line 20,
by rewriting that line to read:

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

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1058*
Committee Substitute Favorable 5/12/09
Third Edition Engrossed 5/14/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1058-CSSB-65 [v.1]

7/10/2009 3:13:11 PM

Short Title: Increase Statutory Homestead Exemption. (Public)

Sponsors:

Referred to:

April 6, 2009

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE STATUTORY HOMESTEAD EXEMPTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1C-1601 reads as rewritten:

"**§ 1C-1601. What property exempt; waiver; exceptions.**

(a) Exempt property. – Each individual, resident of this State, who is a debtor is entitled to retain free of the enforcement of the claims of creditors:

(1) The debtor's aggregate interest, not to exceed ~~eighteen thousand five hundred dollars ($18,500)~~thirty-five thousand dollars ($35,000) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor; however, an unmarried debtor who is 65 years of age or older is entitled to retain an aggregate interest in the property not to exceed ~~thirty-seven thousand dollars ($37,000)~~sixty thousand dollars ($60,000) in value so long as the property was previously owned by the debtor as a tenant by the entireties or as a joint tenant with rights of survivorship and the former co-owner of the property is deceased.

...."

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

HOUSE BILL 1058:
Increase Statutory Homestead Exemption

2009-2010 General Assembly

Committee:	Senate Ref to Judiciary II. If fav, re-ref to Finance	**Date:**	July 14, 2009
Introduced by:	Representatives Blue and Weiss	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	Proposed Committee Substitute H1058-CSSB-65 [v.1] for the Third Edition		

SUMMARY: House Bill 1058 would increase the amount of the statutory homestead exemption, which protects a certain amount of a debtor's property from the debtor's creditors.

[As introduced, this bill was identical to S883, as introduced by Sen. Hartsell, which is currently in Senate Finance.]

CURRENT LAW: Current law provides that debtors may retain certain property free from the enforcement of creditors. One such statutory protection is the "homestead exemption", which protects the debtor's total interest in real property or personal property that the debtor uses as a residence, up to $18,500 in value. The statutory homestead exemption was originally established in 1981 in the amount of $7,500. It was increased to $10,000 in 1991 and $18,500 in 2005.

BILL ANALYSIS: House Bill 1058 would make the following changes to the homestead exemption statute:

- Increase from $18,500 to $35,000 the amount a debtor may retain free of the enforcement of claims of creditors of an interest in real property or personal property that the debtor or a dependent of the debtor uses as a residence.
- Increase from $37,000 to $60,000 the amount that an unmarried debtor who is 65 years of age or older may retain in an aggregate interest in the property so long as the property was previously owned by the debtor as a tenant by the entireties or as a joint tenant with rights of survivorship and the former co-owner of the property is deceased.

EFFECTIVE DATE: This act would become effective October 1, 2009.

H 2

HOUSE BILL 1077*
Committee Substitute Favorable 5/12/09

Short Title: Venue/Municipalities in Multiple Districts. (Public)

Sponsors:

Referred to:

April 6, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE VENUE RULES AND THE AUTHORITY OF MAGISTRATES FOR MUNICIPALITIES LYING IN FOUR OR MORE COUNTIES, EACH OF WHICH IS IN A DIFFERENT JUDICIAL DISTRICT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-199(c) reads as rewritten:

"(c) A district court judge sitting at a seat of court described in this section may, in criminal cases, conduct preliminary hearings and try misdemeanors arising within the corporate limits of the municipality plus the territory embraced within a distance of one mile in all directions therefrom.

If the corporate limits of the municipality extend into two or more counties, each of which is in a separate district court district, a district court judge assigned to sit at the seat of court has the same authority over criminal cases arising in the municipality and the territory embraced within a distance of one mile in all directions that he would have if the corporate limits of the municipality were solely located in a single district court district. Judges assigned to sit in such a municipality shall be assigned by the chief district court judge serving the district in which a majority of the voters of the municipality reside, but offenses arising in ~~the~~ a portion of the municipality in which ~~the~~ a minority of the voters reside shall not be disposed of in the municipality unless the chief district court judge for that district consents in writing to the disposition of criminal cases in the municipality. However, for charges brought by municipal law enforcement officers only, if the corporate limits of the municipality extend into four or more counties, each of which is in a separate district court district, offenses arising in a portion of the municipality in which a minority of the voters reside shall be disposed of in the portion of the municipality in which a majority of the voters reside without obtaining the consent of the chief district court judge for the district in which the offense occurred."

SECTION 2. G.S. 7A-293 reads as rewritten:

"**§ 7A-293. Special authority of a magistrate assigned to a municipality located in more than one county of a district court district.**

A magistrate assigned to an incorporated municipality, the boundaries of which lie in more than one county of a district court district, may, in criminal matters, exercise the powers granted by G.S. 7A-273 as if the corporate limits plus the territory embraced within a distance of one mile in all directions therefrom were located wholly within the magistrate's county of residence. Appeals from a magistrate exercising the authority granted by this section shall be taken in the district court in the county in which the offense was committed. A magistrate exercising the special authority granted by this section shall transmit all records, reports, and monies collected to the clerk of the superior court of the county in which the offense was committed. In addition, if a magistrate is assigned to an incorporated municipality, the

boundaries of which lie in two or more district court districts, the magistrate may exercise the powers described in this section as if ~~both~~ the counties were in the same district court district, if the clerks of superior court and the chief district court judges serving ~~both~~the districts in which the municipality is located agree in writing that the exercise of this special authority would promote the administration of justice in the municipality and in ~~both~~the districts. However, if a magistrate is assigned to an incorporated municipality, the boundaries of which lie in four or more counties, each of which is in a separate district court district, the magistrate may exercise the powers described in this section as if all the counties were in the same district court district, without the necessity of such an agreement between the clerks and judges of the affected counties, and the records, reports, and monies collected in connection with the exercise of that authority shall be transmitted to the clerk of the superior court district for which the municipality is a seat of court."

SECTION 3. G.S. 15A-131(c) reads as rewritten:

"(c) Except as otherwise provided in this subsection, venue for probable cause hearings and trial proceedings in cases within the original jurisdiction of the superior court lies in the county where the charged offense occurred. ~~If~~ Except as otherwise provided in this subsection, if the alleged offense is committed within the corporate limits of a municipality which is the seat of superior court and is located in more than one county, venue lies in the superior court which sits within that municipality, but upon timely objection of the defendant or the district attorney in the county in which the alleged offense occurred the case must be transferred to the county in which the alleged offense occurred. However, for charges brought by municipal law enforcement officers only, if the alleged offense is committed within the corporate limits of a municipality that extends into four or more counties, each of which is in a separate superior court district, offenses committed within the corporate limits of the municipality but in a superior court district other than the one for which the municipality is the seat of superior court shall be disposed of in the municipality with no allowance for objections by the defendant or the district attorney."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1077*
Committee Substitute Favorable 5/12/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1077-CSRI-39 [v.1]

6/29/2009 9:33:51 AM

Short Title: Venue/Municipalities in Multiple Districts. (Public)

Sponsors:

Referred to:

April 6, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE VENUE RULES AND THE AUTHORITY OF MAGISTRATES FOR MUNICIPALITIES LYING IN FOUR OR MORE COUNTIES, EACH OF WHICH IS IN A DIFFERENT JUDICIAL DISTRICT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-199(c) reads as rewritten:

"(c) A district court judge sitting at a seat of court described in this section may, in criminal cases, conduct preliminary hearings and try misdemeanors arising within the corporate limits of the municipality plus the territory embraced within a distance of one mile in all directions therefrom.

If the corporate limits of the municipality extend into two or more counties, each of which is in a separate district court district, a district court judge assigned to sit at the seat of court has the same authority over criminal cases arising in the municipality and the territory embraced within a distance of one mile in all directions that he would have if the corporate limits of the municipality were solely located in a single district court district. Judges assigned to sit in such a municipality shall be assigned by the chief district court judge serving the district in which a majority of the voters of the municipality reside, but offenses arising in ~~the~~ a portion of the municipality in which ~~the~~ a minority of the voters reside shall not be disposed of in the municipality unless the chief district court judge for that district consents in writing to the disposition of criminal cases in the municipality. However, for charges brought by municipal law enforcement officers only, if the corporate limits of the municipality extend into four or more counties, each of which is in a separate district court district, offenses arising in a portion of the municipality in which a minority of the voters reside shall be disposed of in the portion of the municipality in which a majority of the voters reside without obtaining the consent of the chief district court judge for the district in which the offense occurred."

SECTION 2. G.S. 7A-293 reads as rewritten:

"**§ 7A-293. Special authority of a magistrate assigned to a municipality located in more than one county of a district court district.**

A magistrate assigned to an incorporated municipality, the boundaries of which lie in more than one county of a district court district, may, in criminal matters, exercise the powers granted by G.S. 7A-273 as if the corporate limits plus the territory embraced within a distance of one mile in all directions therefrom were located wholly within the magistrate's county of residence. Appeals from a magistrate exercising the authority granted by this section shall be

taken in the district court in the county in which the offense was committed. A magistrate exercising the special authority granted by this section shall transmit all records, reports, and monies collected to the clerk of the superior court of the county in which the offense was committed. In addition, if a magistrate is assigned to an incorporated municipality, the boundaries of which lie in two or more district court districts, the magistrate may exercise the powers described in this section as if ~~both~~ the counties were in the same district court district, if the clerks of superior court and the chief district court judges serving ~~both~~the districts in which the municipality is located agree in writing that the exercise of this special authority would promote the administration of justice in the municipality and in ~~both~~the districts. However, if a magistrate is assigned to an incorporated municipality, the boundaries of which lie in four or more counties, each of which is in a separate district court district, the magistrate may exercise the powers described in this section as if all the counties were in the same district court district, without the necessity of such an agreement between the clerks and judges of the affected counties, and the records, reports, and monies collected in connection with the exercise of that authority shall be transmitted to the clerk of the superior court district for the county in which the offense was committed."

SECTION 3. G.S. 15A-131(c) reads as rewritten:

"(c) Except as otherwise provided in this subsection, venue for probable cause hearings and trial proceedings in cases within the original jurisdiction of the superior court lies in the county where the charged offense occurred. ~~If~~ Except as otherwise provided in this subsection, if the alleged offense is committed within the corporate limits of a municipality which is the seat of superior court and is located in more than one county, venue lies in the superior court which sits within that municipality, but upon timely objection of the defendant or the district attorney in the county in which the alleged offense occurred the case must be transferred to the county in which the alleged offense occurred. However, for charges brought by municipal law enforcement officers only, if the alleged offense is committed within the corporate limits of a municipality that extends into four or more counties, each of which is in a separate superior court district, offenses committed within the corporate limits of the municipality but in a superior court district other than the one for which the municipality is the seat of superior court shall be disposed of in the municipality with no allowance for objections by the defendant or the district attorney."

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

HOUSE BILL 1077:
Venue/Municipalities in Multiple Districts

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	July 14, 2009
Introduced by:	Reps. Wiley, Jones	**Prepared by:**	Jennifer McGinnis
Analysis of:	PCS to Second Edition H1077-CSRI-39		Committee Counsel

SUMMARY: House Bill 1077 amends the venue rules and the authority of magistrates for municipalities lying in four or more counties, each of which is in a different judicial district.

[As introduced, this bill was identical to S854, as introduced by Sen. Vaughan, which is currently in Senate Judiciary II.]

CHANGE MADE BY PCS: Modifies Section 2 to provide that the records, reports, and monies collected in connection with the magistrate's exercise of authority shall be transmitted to the **clerk of the superior court district for the county in which the offense was committed** (the previous edition of the bill provided that the records, reports, and monies would be transmitted to the clerk of the superior court district for which the municipality is a seat of court).

CURRENT LAW: North Carolina law currently makes provisions for the handling of criminal cases that occur in a municipality that is located in two counties which are in two different judicial districts by allowing the cases to be handled in the judicial district that has the majority of the voters in the municipality, with the written consent of the appropriate counterpart in the other judicial district. This is generally handled by standing agreements between the two judicial districts.

BILL ANALYSIS: House Bill 1077 amends the statutes relating to venue and the authorities of magistrates that currently apply to criminal cases within municipalities located in two counties and two judicial districts. The current law remains the same in its application to those municipalities located in two counties and two judicial districts.

House Bill 1077 adds language to the current law to make provisions for the handling of criminal cases in a municipality that is located in four or more counties, all of which are in different judicial districts.

Section 1 provides that with regard to venue for criminal matters in district court, the conduct of preliminary hearings and trial of misdemeanors, if a municipality is located in four or more counties, all of which are in different district court districts, criminal cases arising in the portions of the municipality where a minority of the voters reside shall be handled in the district court district where the majority of the voters in the municipality reside without obtaining the consent of the chief district court judge for the district in which the offense occurred.

Section 2 provides that if a municipality is located in four or more counties, all of which are in different district court districts, an assigned magistrate may exercise authority as if all the counties were in the same court district (an agreement between the clerks and judges of the affected counties to grant this special authority would not be necessary). The records, reports, and monies collected in connection with the magistrate's exercise of authority shall be transmitted to the clerk of the superior court district for the county in which the offense was committed.

Section 3 provides that with regard to venue for probable cause hearings and trial proceedings in cases within the original jurisdiction of the superior court, if a municipality is located in four or more counties, all of which are in different superior court districts, criminal cases arising in the portions of the municipality where a minority of the voters reside may be handled in the superior court district where

the majority of the voters in the municipality reside with no allowance for objections by the defendant or the district attorney.

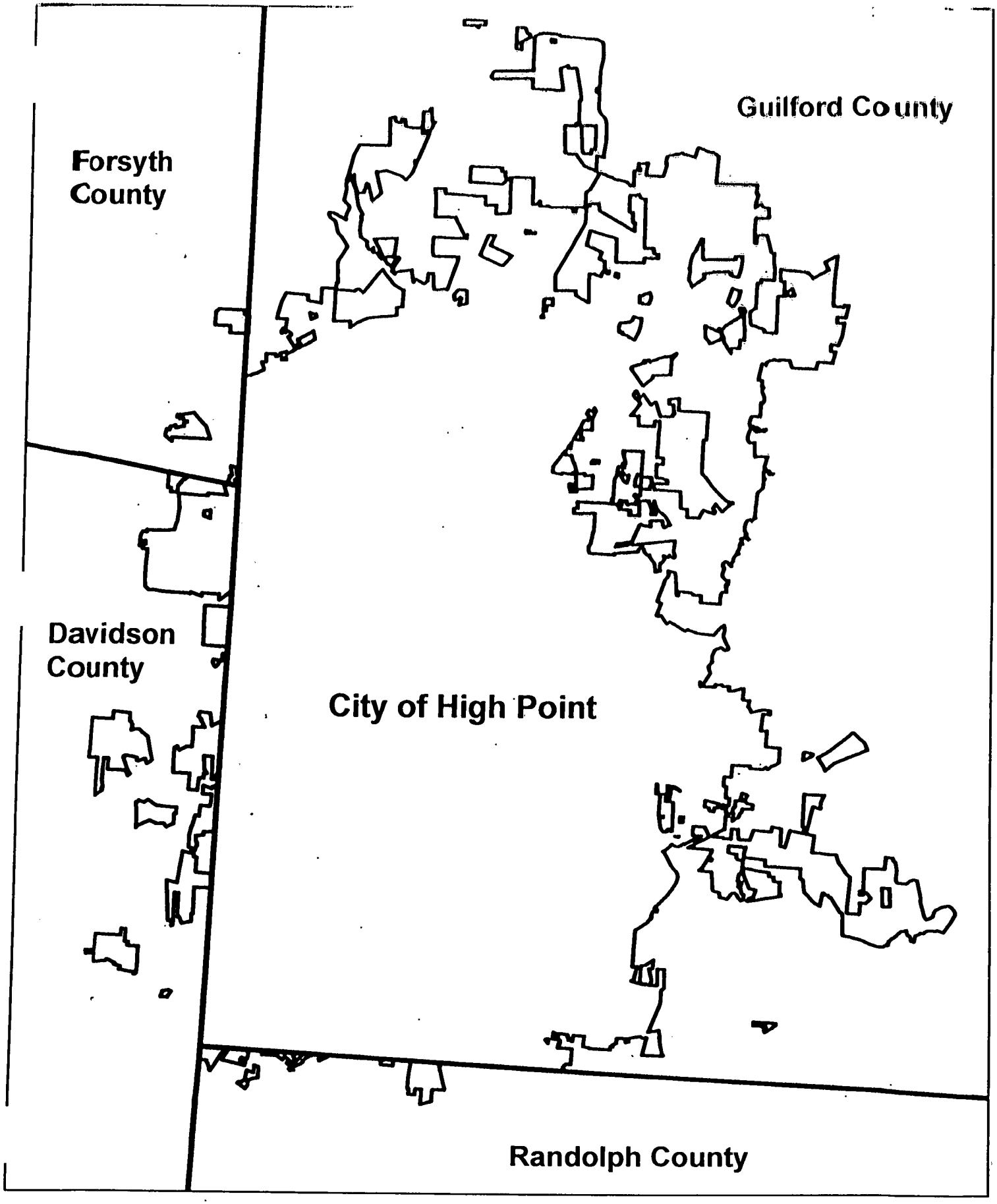
EFFECTIVE DATE: This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

BACKGROUND: Currently, the only municipality this Act would apply to is High Point.

Susan Sitze, Committee Counsel for House Ways and Means/Broadband Connectivity, and Steven Rose, Committee Counsel to House Judiciary III, substantially contributed to this summary.

H1077-SMRI-76(CSRI-39) v2

The Four Counties and the High Point, NC City Limits



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 1

HOUSE BILL 1261

Short Title:	Protect Our Kids/Cyber Bullying Misdemeanor.	(Public)
Sponsors:	Representatives Mackey, Parmon (Primary Sponsors); K. Alexander, Cotham, Fisher, Harrison, Lucas, Mobley, Pierce, Wainwright, Womble, and Wray.	
Referred to:	Science and Technology, if favorable, Judiciary III.	

April 9, 2009

A BILL TO BE ENTITLED

AN ACT PROTECTING CHILDREN OF THIS STATE BY MAKING CYBER BULLYING A CRIMINAL OFFENSE PUNISHABLE AS A CLASS 1 MISDEMEANOR.

The General Assembly of North Carolina enacts:

SECTION 1. Article 60 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-458.1. Cyber bullying; penalty.**

(a) Except as otherwise made unlawful by this Article, it shall be unlawful for any person to use a computer or computer network to do any of the following:

(1) Falsify one's identity in an Internet chat room, an electronic mail message, or an instant message with the intent to intimidate or torment a minor.

(2) Follow a minor online or into an Internet chat room with the intent to intimidate or torment a minor.

(3) Build a fake profile, a Web site, or pose as a minor in an Internet chat room, an electronic mail message, or an instant message with the intent to intimidate or torment a minor.

(4) Plant any statement, whether true or false, tending to provoke or that actually provokes, any third party to stalk or harass a minor.

(5) Post a real or doctored image of a minor on the Internet with the intent to embarrass, intimidate, or torment the minor or the minor's parent or guardian.

(6) Post or encourage others to post on the Internet private, personal, or sexual information pertaining to a minor with the intent to intimidate or torment the minor.

(7) Access, alter, or erase any computer network, computer data, computer program, or computer software, including breaking into a password protected account or stealing or otherwise accessing passwords, with the intent to embarrass, intimidate, or torment a minor or the minor's parent or guardian.

(8) Copy and disseminate, or cause to be made an unauthorized copy of any data pertaining to a minor for the purpose of intimidating or tormenting that minor (in any form, including, but not limited to, any printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network).

(9) Use a computer system to repeatedly communicate insults to, or about, a minor with the intent to intimidate or torment the minor or the minor's parent or guardian.

(10) Sign a minor up for a pornographic Internet site.

(11) Sign a minor up for electronic mailing lists, or to receive junk electronic messages and instant messages, without authorization, resulting in either (i) costs to the minor or to the minor's parent or guardian or (ii) intimidation or torment of the minor.

(b) Any person who violates this section shall be guilty of cyber bullying, which offense shall be punishable as a Class 1 misdemeanor."

SECTION 2. G.S. 14-453 is amended by adding new subdivisions to read:

"(7b) 'Internet chat room' means a computer service allowing two or more users to communicate with each other in real time.

(7c) 'Profile' means a configuration of user data required by a computer so that the user may access programs or services and have the desired functionality on that computer."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1261
PROPOSED SENATE COMMITTEE SUBSTITUTE H1261-CSRV-58 [v.5]

7/13/2009 4:08:37 PM

Short Title: Protect Our Kids/Cyber Bullying Misdemeanor. (Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT PROTECTING CHILDREN OF THIS STATE BY AMENDING THE CYBERSTALKING LAW TO INCLUDE THE OFFENSE OF CYBERBULLYING, AND BY PROVIDING FOR THE CONDITIONAL DISCHARGE AND EXPUNCTION OF RECORDS OF PERSONS WHO COMMIT THE OFFENSE OF CYBERSTALKING OR CYBERBULLYING WHILE UNDER THE AGE OF 18.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-196.3 reads as rewritten:

"**§ 14-196.3. ~~Cyberstalking.~~ Cyberstalking; cyberbullying.**

(a) The following definitions apply in this section:

(1) Electronic communication. – Any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature, transmitted in whole or in part by a wire, radio, computer, electromagnetic, photoelectric, or photo-optical system.

(2) Electronic mail. – The transmission of information or communication by the use of the Internet, a computer, a facsimile machine, a pager, a cellular telephone, a video recorder, or other electronic means sent to a person identified by a unique address or address number and received by that person.

(b) It is unlawful for a person to:

(1) Use in electronic mail or electronic communication any words or language threatening to inflict bodily harm to any person or to that person's child, sibling, spouse, or dependent, or physical injury to the property of any person, or for the purpose of extorting money or other things of value from any person.

(2) Electronically mail or electronically communicate to another repeatedly, whether or not conversation ensues, for the purpose of abusing, annoying, threatening, terrifying, ~~harassing, or embarrassing~~ or harassing any person.

(3) Electronically mail or electronically communicate to another and to knowingly make any false statement concerning death, injury, illness, disfigurement, indecent conduct, or criminal conduct of the person electronically mailed or of any member of the person's family or household with the intent to abuse, annoy, threaten, terrify, ~~harass, or embarrass.~~ or harass.

(4) Electronically mail, electronically communicate, post or encourage others to post on the Internet any of the following with the intent to abuse, annoy, threaten, terrify, or harass a minor or the minor's parent or guardian:
a. Private, personal, or sexual information pertaining to a minor.
b. A real or doctored image of a minor.
c. An unauthorized copy of any data pertaining to a minor (in any form, including, but not limited to, any printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network).

(5) Knowingly permit an electronic communication device under the person's control to be used for any purpose prohibited by this section.

(c) Any offense under this section committed by the use of electronic mail or electronic communication may be deemed to have been committed where the electronic mail or electronic communication was originally sent, originally received in this State, or first viewed by any person in this State.

(d) Any person over the age of 18 who, in violating the provisions of this section, knowingly targets a minor under the age of 16 shall be guilty of cyberbullying, which offense shall be punishable as a Class 1 misdemeanor. Any other person violating the provisions of this section shall be guilty of a Class 2 misdemeanor.

(e) This section does not apply to any peaceable, nonviolent, or nonthreatening activity intended to express political views or to provide lawful information to others. This section shall not be construed to impair any constitutionally protected activity, including speech, protest, or assembly.

(f) Whenever any person pleads guilty to or is guilty of an offense under this section, 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. Upon fulfillment of the terms and conditions of the probation provided for in this subsection, the court shall discharge the defendant and dismiss the proceedings against the defendant. Discharge and dismissal under this subsection 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. Upon discharge and dismissal pursuant to this subsection, 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. 15A-146."

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

HOUSE BILL 1261:
Protect Our Kids/Cyber Bullying Misdemeanor

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	July 13, 2009
Introduced by:	Reps. Mackey, Parmon	**Prepared by:**	Brenda J. Carter
Analysis of:	PCS to First Edition H1261-CSRV-58		Committee Counsel

SUMMARY: ***This proposed committee substitute for House Bill 1261 contains the recommendations of a subcommittee appointed to consider the bill. The substitute bill would amend the State's cyberstalking law, making it unlawful to electronically mail or electronically communicate certain information or images pertaining to a minor with the intent to abuse, annoy, threaten, terrify, or harass a minor or a minor's parents. Violation would be a Class 1 misdemeanor if the perpetrator is over the age of 18, and the victim is a minor under the age of 16; otherwise the offense would be a Class 2 misdemeanor. The bill would provide for the conditional discharge and expunction of records of persons who commit the offense while under the age of 18.***

CURRENT LAW: The offense of Cyberstalking is a Class 2 misdemeanor under G.S. 14-196.3, it is currently unlawful to do any of the following:

- use any words or language in electronic communication threatening to inflict bodily harm to any person, or to extort money or anything of value from another person
- electronically communicate with another repeatedly, for the purpose of abusing, annoying, threatening, harassing, or embarrassing any person
- electronically communicate to another and knowingly make any false statement concerning death, injury, illness, disfigurement, indecent conduct, or criminal conduct of the person electronically mailed or of any member of the person's family or household with the intent to abuse, annoy, threaten, terrify, harass, or embarrass.

BILL ANALYSIS: This proposed committee substitute for House Bill 1261 would amend the statute pertaining to cyberstalking, making it a Class 2 misdemeanor to do any of the following for the purpose of abusing, annoying, threatening, or harassing a minor, or the minor's parent or guardian:

- electronically mail or post a real or doctored image of a minor on the Internet
- electronically mail, post, or encourage others to post on the Internet private, personal, or sexual information pertaining to a minor
- electronically mail, post, or encourage others to post on the Internet an unauthorized copy of any data pertaining to a minor

The bill would provide that if the offender is over the age of 18, and the targeted victim is under the age of 16, violation of the statute would constitute cyberbullying and would be punishable as a Class 1 misdemeanor. The bill would also provide for the conditional discharge and expunction of records of persons who commit the offense of cyberstalking or cyberbullying while under the age of 18. The bill would amend the existing law on cyberstalking to eliminate behavior intended to "embarrass" a victim.

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

H1261-SMRV-113(CSRV-58) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1261
PROPOSED SENATE COMMITTEE SUBSTITUTE H1261-CSRV-48 [v.1]

6/8/2009 6:12:39 PM

Short Title: Protect Our Kids/Cyber Bullying Misdemeanor. (Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT PROTECTING CHILDREN OF THIS STATE BY MAKING CYBER BULLYING A CRIMINAL OFFENSE PUNISHABLE AS A CLASS 1 MISDEMEANOR.

The General Assembly of North Carolina enacts:

SECTION 1. Article 60 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-458.1. Cyber bullying; penalty.**

(a) Except as otherwise made unlawful by this Article, it shall be unlawful for any person to use a computer or computer network to do any of the following with the intent to intimidate or torment a minor:

(1) Falsify one's identity in an Internet chat room, an electronic mail message, or an instant message.

(2) Follow a minor online or into an Internet chat room.

(3) Build a fake profile or Web site, or pose as a minor in an Internet chat room, an electronic mail message, or an instant message.

(4) Post or encourage others to post on the Internet private, personal, or sexual information pertaining to a minor.

(5) Copy and disseminate, or cause to be made an unauthorized copy of any data pertaining to a minor (in any form, including, but not limited to, any printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network).

(b) Except as otherwise made unlawful by this Article, it shall be unlawful for any person to use a computer or computer network to do any of the following

(1) Plant any statement, whether true or false, tending to provoke or that actually provokes, any third party to stalk or harass a minor.

(2) Post a real or doctored image of a minor on the Internet with the intent to embarrass, intimidate, or torment the minor or the minor's parent or guardian.

(3) Access, alter, or erase any computer network, computer data, computer program, or computer software, including breaking into a password protected account or stealing or otherwise accessing passwords, with the intent to embarrass, intimidate, or torment a minor or the minor's parent or guardian.

(4) Repeatedly communicate insults to, or about, a minor with the intent to intimidate or torment the minor or the minor's parent or guardian.

(5) Sign up or register a minor for a pornographic Internet site.

(6) Sign up or register a minor for electronic mailing lists, or to receive junk electronic messages and instant messages, without authorization, resulting in either (i) costs to the minor or to the minor's parent or guardian or (ii) intimidation or torment of the minor.

(c) Any person who violates this section shall be guilty of cyber bullying, which offense shall be punishable as a Class 1 misdemeanor."

SECTION 2. G.S. 14-453 is amended by adding new subdivisions to read:

"(7b) 'Internet chat room' means a computer service allowing two or more users to communicate with each other in real time.

(7c) 'Profile' means a configuration of user data required by a computer so that the user may access programs or services and have the desired functionality on that computer."

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

HOUSE BILL 1261:
Protect Our Kids/Cyber Bullying Misdemeanor

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 8, 2009
Introduced by:	Reps. Mackey, Parmon	**Prepared by:**	Brenda J. Carter
Analysis of:	PCS to First Edition H1261-CSRV-48		Committee Counsel

SUMMARY: House Bill 1261 would create and define the criminal offense of cyber bullying, making it punishable as a Class 1 misdemeanor. This PCS makes some technical changes.

CURRENT LAW: The offense of Cyberstalking is a Class 2 misdemeanor under G.S. 14-196.3, it is currently unlawful to do any of the following:

- use any words or language in electronic communication threatening to inflict bodily harm to any person, or to extort money or anything of value from another person
- electronically communicate with another repeatedly, for the purpose of abusing, annoying, threatening, harassing, or embarrassing any person
- electronically communicate to another and knowingly make any false statement concerning death, injury, illness, disfigurement, indecent conduct, or criminal conduct of the person electronically mailed or of any member of the person's family or household with the intent to abuse, annoy, threaten, terrify, harass, or embarrass.

BILL ANALYSIS: House Bill 1261 would enact a new provision in Article 60 of Chapter 14 of the General Statutes (Computer Related Crime) creating the offense of cyber bullying and making it a Class 1 misdemeanor to use a computer or computer network to commit any of the following acts, when done for the purpose of intimidating or tormenting a minor, or with the intent to embarrass, intimidate, or torment the minor or the minor's parent or guardian:

- falsify one's identity in a chat room, electronic mail message, or instant message
- follow a minor online or into a chat room
- build a fake profile or a Website, or pose as a minor in an Internet chat room, an electronic mail message, or an instant message
- post a real or doctored image of a minor on the Internet
- post or encourage others to post on the Internet private, personal, or sexual information pertaining to a minor
- access, alter, or erase any computer network, computer data, computer program, or computer software, including breaking into a password protected account or stealing or otherwise accessing passwords
- repeatedly communicate insults to, or about, a minor
- copy and disseminate, or cause to be made an unauthorized copy of any data pertaining to a minor

The following acts would be unlawful, but would not require the same showing of purpose or intent:

- planting any statement that actually provokes or would tend to provoke any third party to stalk or harass a minor
- signing up or registering a minor for a pornographic Internet site
- signing up or registering for electronic mailing lists or to receive junk electronic messages and instant messages without authorization, resulting in either costs to the minor or to the minor's parent or guardian or intimidation or torment of the minor.

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

H1261-SMRV-94(CSRV-48) v2

H

HOUSE BILL 1261

Short Title:	Protect Our Kids/Cyber Bullying Misdemeanor.	(Public)
Sponsors:	Representatives Mackey, Parmon (Primary Sponsors); K. Alexander, Cotham, Fisher, Harrison, Lucas, Mobley, Pierce, Wainwright, Womble, and Wray.	
Referred to:	Science and Technology, if favorable, Judiciary III.	

April 9, 2009

A BILL TO BE ENTITLED

AN ACT PROTECTING CHILDREN OF THIS STATE BY MAKING CYBER BULLYING A CRIMINAL OFFENSE PUNISHABLE AS A CLASS 1 MISDEMEANOR.

The General Assembly of North Carolina enacts:

SECTION 1. Article 60 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-458.1. Cyber bullying; penalty.**

(a) Except as otherwise made unlawful by this Article, it shall be unlawful for any person to use a computer or computer network to do any of the following:

(1) Falsify one's identity in an Internet chat room, an electronic mail message, or an instant message with the intent to intimidate or torment a minor.

(2) Follow a minor online or into an Internet chat room with the intent to intimidate or torment a minor.

(3) Build a fake profile, a Web site, or pose as a minor in an Internet chat room, an electronic mail message, or an instant message with the intent to intimidate or torment a minor.

(4) Plant any statement, whether true or false, tending to provoke or that actually provokes, any third party to stalk or harass a minor.

(5) Post a real or doctored image of a minor on the Internet with the intent to embarrass, intimidate, or torment the minor or the minor's parent or guardian.

(6) Post or encourage others to post on the Internet private, personal, or sexual information pertaining to a minor with the intent to intimidate or torment the minor.

(7) Access, alter, or erase any computer network, computer data, computer program, or computer software, including breaking into a password protected account or stealing or otherwise accessing passwords, with the intent to embarrass, intimidate, or torment a minor or the minor's parent or guardian.

(8) Copy and disseminate, or cause to be made an unauthorized copy of any data pertaining to a minor for the purpose of intimidating or tormenting that minor (in any form, including, but not limited to, any printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network).

(9) Use a computer system to repeatedly communicate insults to, or about, a minor with the intent to intimidate or torment the minor or the minor's parent or guardian.

(10) Sign a minor up for a pornographic Internet site.

(11) Sign a minor up for electronic mailing lists, or to receive junk electronic messages and instant messages, without authorization, resulting in either (i) costs to the minor or to the minor's parent or guardian or (ii) intimidation or torment of the minor.

(b) Any person who violates this section shall be guilty of cyber bullying, which offense shall be punishable as a Class 1 misdemeanor."

SECTION 2. G.S. 14-453 is amended by adding new subdivisions to read:

"(7b) 'Internet chat room' means a computer service allowing two or more users to communicate with each other in real time.

(7c) 'Profile' means a configuration of user data required by a computer so that the user may access programs or services and have the desired functionality on that computer."

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

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	July 21, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 578	Partition Sales/Commrs., Sellers, Buyers.	Representative Bryant Representative Michaux, Jr. Representative Allen Representative Harrison
HB 1057	Abolish Certain Deficiency Judgments.	Representative Blue
HB 1261	Protect Our Kids/Cyber Bullying Misdemeanor.	Representative Parmon Representative Mackey
HB 1377	Taxpayer Optimization Act.	Representative Folwell Representative Brown Representative McElraft Representative Moore
HB 1447	Crime Stoppers Tips Are Confidential.	Representative Wiley
HB 1463	Expand Access/Confidential Intermediaries.	Representative Farmer-Butterfield Representative Dickson Representative Harrell Representative Wilkins, Jr.

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II Committee
Tuesday, July 21, 2009, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 578	Partition Sales/Commrs., Sellers, Buyers.	Representative Bryant Representative Michaux, Jr. Representative Allen Representative Harrison
HB 1057	Abolish Certain Deficiency Judgments.	Representative Blue
HB 1261	Protect Our Kids/Cyber Bullying Misdemeanor.	Representative Parmon Representative Mackey
HB 1377	Taxpayer Optimization Act.	Representative Folwell Representative Brown Representative McElraft Representative Moore
HB 1447	Crime Stoppers Tips Are Confidential.	Representative Wiley
HB 1463	Expand Access/Confidential Intermediaries.	Representative Farmer-Butterfield Representative Dickson Representative Harrell Representative Wilkins, Jr.

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE
Tuesday, July 21, 2009 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 10:00 AM on July 21, 2009, in Room 1124 of the Legislative Building with fourteen members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell recognized pages, Gray Johnston, Taylor Tutton, Lauren Harding, Jim Stirling, Chelsea Stang and Dakota Morgan and thanked them for their assistance.

Senator Hartsell noted that House Bills 1447 and 1463 would not be heard at this meeting.

HB 1057 – (Abolish Certain Deficiency Judgments.) Senator Apodaca moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Blue explained the bill. Mr. Al Ripley of the North Carolina Justice Center gave additional explanation. Mr. Paul Stocks, representing the North Carolina Bankers Association, spoke on the bill. Questions from Senators East, Goodall, Bingham and Allran were answered by Mr. Ripley and Senator Blue. Senator Queen moved for a favorable report of the Proposed Committee Substitute, unfavorable to the original bill. All voted and the motion carried.

HB 1377 – (Taxpayer Optimization Act.) Senator Queen, Chairman of the Sub-committee for the bill, reported that the Sub-committee will meet later this week.

HB 578 – (Partition Sales/Commrs., Seller, Buyers.) Senator Berger, Chairman of the Sub-committee for the bill, gave a report and explained the changes, and recommendations made by the Sub-committee. He then moved that the Proposed Committee Substitute be adopted for purposes of discussion. All voted and the motion carried. Representative Bryant gave additional explanation. Questions from Senators Goodall, Forrester, Allran, Dorsett, Apodaca and Vaughan were answered by Representative Bryant, Representative Allen, Senator Berger and Ms. Kory Goldsmith, Staff Attorney. Mr. Thomas Steele, Attorney, and Ms. Katherine B. Wilkerson, Attorney, spoke in opposition to the bill. Mr. Dick Taylor, representing Advocates for Justice, and Ms. Patricia Yancey, of Land Loss Prevention Project, spoke in favor of the bill. Senator Allran moved for a favorable report to the Proposed Committee Substitute, unfavorable to the original bill. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, July 21, 2009

Senator HARTSELL, 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) **578** Partition Sales/Commrs., Sellers, Buyers.

Draft Number:	70473
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1057** Abolish Certain Deficiency Judgments.

Draft Number:	50772
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

HB 578 – Sen. Atwater/Doug Berger will handle
HB 1057 – Sen. Blue

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — July 21, 2009
Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tammy Johnson	DHHS / DSS
JEFF HARRIS	LAND LOSS PREVENTION PROJECT
David Harris	Private Practice
Christopher Brook	Southern Coalition for Social Justice
Jessi Hays	NC Home Builders Assn.
Cindy Thomas	NC Assn of REALTORS
Amy Fullbright	Hunton & Williams
Brittany Farrell	NCFPC
Jami Fitzgerald	CAL
Penny Griffin	School of Gov.
David Farrell	Vand Block

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Daniel Baum	K&L Gates
Emily Gallimore	NCBA
Katherine Wilkerson	Ygrene & Petree NCBA
Kim Crouch	NCBA
Tom Steele, Jr	NC BA Real Property Section Wishart Norris Henninger & Pittman
Mariah West	ACC
Rob Schofield	NCJC
Anna Boyer	NCJC
Richard S. Chess	R. Chess & Associates
Dick Taylor	ACCAT
Brian Francis	Mecklenburg County

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Katherine Joyce	NCASA
Emily Doyle	NCPAPA
Conor Brockett	NCSBA
Christy Agner	DOA
Kelly Graham	NCAJ
Justin Sutton	NCAJ
Will Snydenine	CTNC
[illegible]	NMRS
Robt FABchak	Young Moore
Lori McArthur	

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 578
Committee Substitute Favorable 5/7/09
Committee Substitute #2 Favorable 5/12/09

Short Title: Partition Sales/Commrs., Sellers, Buyers. (Public)

Sponsors:

Referred to:

March 16, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE NOTICE OF RIGHT TO SEEK LEGAL COUNSEL AND CLARIFY NOTICE REQUIRED TO PARTIES WHO MAY BE UNKNOWN OR UNLOCATABLE IN A PARTITION PROCEEDING; TO CODIFY THE CURRENT PRACTICE OF GRANTING OWNERS CREDIT FOR THEIR EXISTING INTEREST IN LAND WHEN BIDDING ON A PARTITION SALE; TO PERMIT A COURT TO ORDER AN INDEPENDENT APPRAISAL IF REQUESTED AND PAID FOR BY A PARTY TO THE PARTITION WHO CHALLENGES THE AMOUNT BID IN A PARTITION SALE, AS RECOMMENDED BY THE PARTITION SALES STUDY COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 46 of the General Statutes is amended by adding a new section to read:

"**§ 46-2.1. Summons; notice.**

(a) In partition proceedings initiated under this Chapter, the period of time for answering a summons is provided in G.S. 1-394.

(b) Written notice shall be included in the petition in a manner reasonably calculated to make the respondent aware of the following:

(1) That the respondent has the right to seek the advice of an attorney and that free legal services may be available to the respondent by contacting Legal Aid of North Carolina or other legal services organizations.

(2) That pursuant to G.S. 6-21 the court has the authority, in its discretion, to order reasonable attorneys' fees to be paid as a part of the costs of the proceeding."

SECTION 2. G.S. 46-6 reads as rewritten:

"**§ 46-6. Unknown or unlocatable parties; ~~summons and~~ summons, notice, and representation.**

(a) If, upon the filing of a petition for partition, it be made to appear to the court by affidavit or otherwise that there are any persons interested in the premises whose names are unknown to and cannot after due diligence be ascertained by the petitioner, the court shall order notices to be given to all such persons by a publication of the petition, or of the substance thereof, with the order of the court thereon, in one or more newspapers to be designated in the order. The notice by publication shall include a description of the property which includes the street address, if any, or other common designation for the property, if any, and may include the legal description of the property.

(b) ~~If~~ Before or after such general notice by publication if any person interested in the premises and entitled to notice fails to appear, the court shall ~~in its discretion~~ appoint some

disinterested person to represent the owner of any shares in the property to be divided, the ownership of which is unknown or unlocatable and unrepresented."

SECTION 3. G.S. 46-28 reads as rewritten:

"**§ 46-28. Sale procedure.**

(a) The procedure for a partition sale shall be the same as is provided in Article 29A of Chapter 1 of the General ~~Statutes.~~ Statutes, except as provided herein.

(b) The commissioners shall certify to the court that at least 20 days prior to sale a copy of the notice of sale was sent by first class mail to the last known address of all petitioners and respondents who previously were served by personal delivery or by registered or certified mail. The commissioners shall also certify to the court that at least ten days prior to any resale pursuant to G.S. 46-28.1(e) a copy of the notice of resale was sent by first class mail to the last known address of all parties to the partition proceeding who have filed a written request with the court that they be given notice of any resale. An affidavit from the commissioners that copies of the notice of sale and resale were mailed to all parties entitled to notice in accordance with this section shall satisfy the certification requirement and shall also be deemed prima facie true. If after hearing it is proven that a party seeking to revoke the order of confirmation of a sale or subsequent resale was mailed notice as required by this section prior to the date of the sale or subsequent resale, then that party shall not prevail under the provisions of G.S. 46-28.1(a)(2)a. and b.

(c) Any cotenant who enters the high bid or offer at any sale of one hundred percent (100%) of the undivided interests in any parcel of real property shall receive a credit for the undivided interest the cotenant already owns therein and shall receive a corresponding reduction in the amount of the total purchase price owed after deducting the costs and fees associated with the sale and apportioning the costs and fees associated with the sale in accordance with the orders of the court. The high bid or offer shall be for one hundred percent (100%) of the undivided interests in the parcel of real property sold, and the credit and reduction shall be applied at the time of the closing of the cotenant's purchase of the real property. When jointly making the high bid or offer at the sale, two or more cotenants may receive at the closing an aggregate credit and reduction in the amount of the total purchase price representing the total of such cotenants' undivided interests in the real property. Any credits and reductions allowed by this subsection shall be further adjusted to reflect any court-ordered adjustments to the share(s) of the net sale proceeds of each of the cotenants entering the high bid or offer, including, but not limited to, equitable adjustments to the share(s) of the net sales proceeds due to a court finding of the lack of contribution of one or more cotenants to the payment of expenses of the real property."

SECTION 4. G.S. 46-28.1 reads as rewritten:

"**§ 46-28.1. Petition for revocation of confirmation order.**

(a) Notwithstanding G.S. 46-28 or any other provision of law, an order confirming the partition sale of real property shall not become final and effective until 15 days after entered. At any time before the confirmation order becomes final and effective, any party to the partition proceeding or the purchaser may petition the court to revoke its order of confirmation and to order the withdrawal of the purchaser's offer to purchase the property upon the following grounds:

(1) In the case of a purchaser, a lien remains unsatisfied on the property to be conveyed.

(2) In the case of any party to the partition proceeding:

a. Notice of the partition was not served on the petitioner for revocation as required by Rule 4 of the Rules of Civil Procedure; or

b. Notice of the sale was not mailed to the petitioner for revocation as required by G.S. 46-28(b); or

c. The amount bid or price offered is inadequate and inequitable and will result in irreparable damage to the owners of the real property.

In no event shall the confirmation order become final or effective during the pendency of a petition under this section. No upset bid shall be permitted after the entry of the confirmation order.

(b) The party petitioning for revocation shall deliver a copy of the petition to all parties required to be served under Rule 5 of G.S. 1A-1, and the officer or person designated to make such sale in the manner provided for service of process in Rule 4(j) of G.S. 1A-1. The court shall schedule a hearing on the petition within a reasonable time and shall cause a notice of the hearing to be served on the petitioner, the officer or person designated to make such a sale and all parties required to be served under Rule 5 of G.S. 1A-1.

(c) In the case of a petition brought under this section by a purchaser claiming the existence of an unsatisfied lien on the property to be conveyed, if the purchaser proves by a preponderance of the evidence that:

(1) A lien remains unsatisfied on the property to be conveyed; and
(2) The purchaser has not agreed in writing to assume the lien; and
(3) The lien will not be satisfied out of the proceeds of the sale; and
(4) The existence of the lien was not disclosed in the notice of sale of the property, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer.

The order of the court in revoking an order of confirmation under this section may not be introduced in any other proceeding to establish or deny the existence of a lien.

(d) In the case of a petition brought pursuant to this section by a party to the partition proceeding, if the court finds by a preponderance of the evidence that petitioner has proven a case pursuant to sub-subdivision (a)(2)a., b., or c. of ~~subsection (a)(2),~~ this section, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer.

(d1) In the case of a petition brought pursuant to sub-subdivision (a)(2)c. of this section, and when an independent appraisal of the property being sold has not been previously entered into evidence in the action, and upon the request of any party, the court may order an independent appraisal prepared by a real estate appraiser currently licensed by the North Carolina Appraisal Board and prepared in accordance with the Uniform Standards of Professional Appraisal Practice. The cost of an independent appraisal shall be borne by one or more of the parties requesting the appraisal in such proportions as they may agree. Before ruling on the petition brought pursuant to sub-subdivision (a)(2)c. of this section, the court may in its discretion require written evidence from the appraiser that the appraiser has been paid in full for the appraisal. If based on the appraisal and all of the evidence presented, the court finds the amount bid or price offered to be inadequate, inequitable, and resulting in irreparable damage to the owners, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's high bid or offer, and order the return to such purchaser of any money or security tendered by the purchaser pursuant to the high bid or offer.

(e) If the court revokes its order of confirmation under this section, the court shall order a resale. The procedure for a resale is the same as is provided for an original public sale under Article 29A of Chapter 1 of the General Statutes."

SECTION 5. This act becomes effective October 1, 2009, and applies to partition actions filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 578
Committee Substitute Favorable 5/7/09
Committee Substitute #2 Favorable 5/12/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H578-CSRC-43 [v.7]

7/6/2009 4:32:15 PM

Short Title: Partition Sales/Commrs., Sellers, Buyers. (Public)

Sponsors:

Referred to:

March 16, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY NOTICE REQUIRED TO PARTIES WHO MAY BE UNKNOWN OR UNLOCATABLE IN A PARTITION PROCEEDING; TO CODIFY THE CURRENT PRACTICE OF GRANTING OWNERS CREDIT FOR THEIR EXISTING INTEREST IN LAND WHEN BIDDING ON A PARTITION SALE; TO PERMIT A COURT TO ORDER AN INDEPENDENT APPRAISAL IF REQUESTED AND PAID FOR BY A PARTY TO THE PARTITION WHO CHALLENGES THE AMOUNT BID IN A PARTITION SALE, TO REVISE THE STANDARD FOR DETERMINING WHAT CONSTITUTES "SUBSTANTIAL INJURY" WITH REGARDS TO A PETITION FOR A SALE OF THE PROPERTY, AND TO PROVIDE FOR MEDIATION OF PARTITION DISPUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 46-6 reads as rewritten:

"**§ 46-6. Unknown or unlocatable parties; ~~summons and~~ summons, notice, and representation.**

(a) If, upon the filing of a petition for partition, it be made to appear to the court by affidavit or otherwise that there are any persons interested in the premises whose names are unknown to and cannot after due diligence be ascertained by the petitioner, the court shall order notices to be given to all such persons by a publication of the petition, or of the substance thereof, with the order of the court thereon, in one or more newspapers to be designated in the order. The notice by publication shall include a description of the property which includes the street address, if any, or other common designation for the property, if any, and may include the legal description of the property.

(b) ~~If~~ Before or after such general notice by publication if any person interested in the premises and entitled to notice fails to appear, the court shall ~~in its discretion~~ appoint some disinterested person to represent the owner of any shares in the property to be divided, the ownership of which is unknown or unlocatable and unrepresented."

SECTION 2. G.S. 46-22 reads as rewritten:

"**§ 46-22. Sale in lieu of partition.**

(a) Subject to G.S. 46-22.1(b), the ~~The~~ court shall order a sale of the property described in the petition, or of any part, only if it finds, by a preponderance of the evidence, that an actual

partition of the lands cannot be made without substantial injury to ~~any of~~ the interested ~~parties.~~parties taking into account the totality of the circumstances.

~~(b) "Substantial injury" means the fair market value of each share in an in-kind partition would be materially less than the share of each cotenant in the money equivalent that would be obtained from the sale of the whole, and if an in-kind division would result in material impairment of the cotenant's rights.~~

(b1) In determining whether a partition in kind of all the property or some of the property cannot be made without substantial injury, the court shall consider the following factors:

(1) Whether the property is able to be fairly and equitably divided, in whole or in part, between the party or parties seeking a partition by sale and those seeking to remain tenants in common;

(2) Whether a partition in-kind would apportion the property in such a way that the fair market value of the parcels resulting from the division would be materially less than the share of each cotenant in the money equivalent that would be obtained from the sale of the whole, based upon a valuation that takes into account the type of sale conditions under which the court-ordered sale would occur;

(3) Evidence of long-standing ownership by any individual owner as supplemented by the length of time of ownership within the chain of title of any person or persons to whom such a cotenant is or was related to by blood, marriage, or adoption;

(4) The use being made of the property by any of the owners and the degree to which this owner or owners would be harmed if they could not continue to use the property for these purposes;

(5) The degree to which the owners have contributed their pro rata share of the property taxes, insurance, and other carrying charges associated with maintaining ownership of the real property as well as the degree to which the owners have contributed to the physical improvement or the upkeep of the property, including any upkeep related to protecting the interests of the owners against any person who has no legal claim to the property but who attempts to use the property without the consent of the owners;

(6) Whether the substantial injury from an actual division to the parties requesting a sale outweighs the substantial injury to the parties opposing the sale; and

(7) Any other economic or noneconomic factors that the court finds appropriate to consider.

(b2) The court shall use the remedy of owelty where such remedy can aid in making a partition in kind occur without substantial injury to the parties.

(c) The court shall specifically find the facts supporting an order of sale of the property.

(d) The party seeking a sale of the property shall have the burden of proving substantial injury under the provisions of this section."

SECTION 3. Article 2 of Chapter 46 of the General Statutes is amended by adding a new section to read:

"**§ 46-22.1 Mediation.**

(a) Persons interested in the premises may agree at any time to mediation of a partition. A list of mediators certified by the Dispute Resolution Commission may be obtained from the clerk or from the Commission through the Administrative Office of the Courts.

(b) When a partition sale is requested, the court or the clerk may order mediation before considering whether to order a sale. The provisions of G.S. 7A-38.1 and G.S. 7A-38.3B shall apply."

SECTION 4. G.S. 46-28 reads as rewritten:

"**§ 46-28. Sale procedure.**

(a) The procedure for a partition sale shall be the same as is provided in Article 29A of Chapter 1 of the General ~~Statutes.~~ Statutes, except as provided herein.

(b) The commissioners shall certify to the court that at least 20 days prior to sale a copy of the notice of sale was sent by first class mail to the last known address of all petitioners and respondents who previously were served by personal delivery or by registered or certified mail. The commissioners shall also certify to the court that at least ten days prior to any resale pursuant to G.S. 46-28.1(e) a copy of the notice of resale was sent by first class mail to the last known address of all parties to the partition proceeding who have filed a written request with the court that they be given notice of any resale. An affidavit from the commissioners that copies of the notice of sale and resale were mailed to all parties entitled to notice in accordance with this section shall satisfy the certification requirement and shall also be deemed prima facie true. If after hearing it is proven that a party seeking to revoke the order of confirmation of a sale or subsequent resale was mailed notice as required by this section prior to the date of the sale or subsequent resale, then that party shall not prevail under the provisions of G.S. 46-28.1(a)(2)a. and b.

(c) Any cotenant who enters the high bid or offer at any sale of one hundred percent (100%) of the undivided interests in any parcel of real property shall receive a credit for the undivided interest the cotenant already owns therein and shall receive a corresponding reduction in the amount of the total purchase price owed after deducting the costs and fees associated with the sale and apportioning the costs and fees associated with the sale in accordance with the orders of the court. The high bid or offer shall be for one hundred percent (100%) of the undivided interests in the parcel of real property sold, and the credit and reduction shall be applied at the time of the closing of the cotenant's purchase of the real property. When jointly making the high bid or offer at the sale, two or more cotenants may receive at the closing an aggregate credit and reduction in the amount of the total purchase price representing the total of such cotenants' undivided interests in the real property. Any credits and reductions allowed by this subsection shall be further adjusted to reflect any court-ordered adjustments to the share(s) of the net sale proceeds of each of the cotenants entering the high bid or offer, including, but not limited to, equitable adjustments to the share(s) of the net sales proceeds due to a court finding of the lack of contribution of one or more cotenants to the payment of expenses of the real property."

SECTION 5. G.S. 46-28.1 reads as rewritten:

"**§ 46-28.1. Petition for revocation of confirmation order.**

(a) Notwithstanding G.S. 46-28 or any other provision of law, an order confirming the partition sale of real property shall not become final and effective until 15 days after entered. At any time before the confirmation order becomes final and effective, any party to the partition proceeding or the purchaser may petition the court to revoke its order of confirmation and to order the withdrawal of the purchaser's offer to purchase the property upon the following grounds:

(1) In the case of a purchaser, a lien remains unsatisfied on the property to be conveyed.

(2) In the case of any party to the partition proceeding:

a. Notice of the partition was not served on the petitioner for revocation as required by Rule 4 of the Rules of Civil Procedure; or

b. Notice of the sale was not mailed to the petitioner for revocation as required by G.S. 46-28(b); or

c. The amount bid or price offered is inadequate and inequitable and will result in irreparable damage to the owners of the real property.

In no event shall the confirmation order become final or effective during the pendency of a petition under this section. No upset bid shall be permitted after the entry of the confirmation order.

(b) The party petitioning for revocation shall deliver a copy of the petition to all parties required to be served under Rule 5 of G.S. 1A-1, and the officer or person designated to make such sale in the manner provided for service of process in Rule 4(j) of G.S. 1A-1. The court shall schedule a hearing on the petition within a reasonable time and shall cause a notice of the hearing to be served on the petitioner, the officer or person designated to make such a sale and all parties required to be served under Rule 5 of G.S. 1A-1.

(c) In the case of a petition brought under this section by a purchaser claiming the existence of an unsatisfied lien on the property to be conveyed, if the purchaser proves by a preponderance of the evidence that:

(1) A lien remains unsatisfied on the property to be conveyed; and
(2) The purchaser has not agreed in writing to assume the lien; and
(3) The lien will not be satisfied out of the proceeds of the sale; and
(4) The existence of the lien was not disclosed in the notice of sale of the property, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer.

The order of the court in revoking an order of confirmation under this section may not be introduced in any other proceeding to establish or deny the existence of a lien.

(d) In the case of a petition brought pursuant to this section by a party to the partition proceeding, if the court finds by a preponderance of the evidence that petitioner has proven a case pursuant to sub-subdivision (a)(2)a., b., or c. of ~~subsection (a)(2),~~ this section, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer.

(d1) In the case of a petition brought pursuant to sub-subdivision (a)(2)c. of this section, and when an independent appraisal of the property being sold has not been previously entered into evidence in the action, and upon the request of any party, the court may order an independent appraisal prepared by a real estate appraiser currently licensed by the North Carolina Appraisal Board and prepared in accordance with the Uniform Standards of Professional Appraisal Practice. The cost of an independent appraisal shall be borne by one or more of the parties requesting the appraisal in such proportions as they may agree. Before ruling on the petition brought pursuant to sub-subdivision (a)(2)c. of this section, the court may in its discretion require written evidence from the appraiser that the appraiser has been paid in full for the appraisal. If based on the appraisal and all of the evidence presented, the court finds the amount bid or price offered to be inadequate, inequitable, and resulting in irreparable damage to the owners, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's high bid or offer, and order the return to such purchaser of any money or security tendered by the purchaser pursuant to the high bid or offer.

(e) If the court revokes its order of confirmation under this section, the court shall order a resale. The procedure for a resale is the same as is provided for an original public sale under Article 29A of Chapter 1 of the General Statutes."

SECTION 6. This act becomes effective October 1, 2009, and applies to partition actions filed on or after that date.

HOUSE BILL 578:
Partition Sales/Commrs., Sellers, Buyers

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	July 21, 2009
Introduced by:	Reps. Bryant, Michaux, Allen, Harrison	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	PCS to Third Edition H578-CSRC-43		

SUMMARY: ***House Bill 578 would require that respondents in a partition proceeding be notified of their right to seek legal counsel, and would clarify the requirements for providing notice to unknown or unlocatable parties in a partition proceeding. It would also grant owners credit for their existing interest in the land when bidding on it in a partition sale, and would require the court to order an independent appraisal if requested and paid for by a party who challenges the amount bid in a partition sale. The PCS also amends the circumstances when a court must order a sale. It also amends the definition of "substantial injury" to include non-economic factors such as evidence of long-standing ownership by one or more individual owners and whether the substantial injury to the individuals requesting the sale outweighs the substantial injury to the parties opposing the sale.***

CURRENT LAW: To legally "partition" property means to bring a proceeding in court to force the physical division or sale of real property and in the event of sale to have the property or proceeds from sale of the property divided among co-owners of the property. Under the laws governing the partition of real property (Chapter 46 of the General Statutes), one or more persons claiming joint ownership in real property may petition the superior court for partition of the property. The court must order a sale of the property if it finds by a preponderance of the evidence that the actual partition of the property cannot be made without substantial injury to any of the interested parties. "Substantial injury" is defined as "the fair market value of each share in an in kind partition would be materially less than the share of each cotenant in the money equivalent that would be obtained from the sale of the whole, and if the in kind division would result in material impairment of the cotenant's rights." G.S. 46-22(b).

BILL ANALYSIS: **Section 1** of the bill would amend the statute concerning the notification of unknown parties to a partition proceeding. Under existing law, when the court determines that there are persons with an interest in the property whose names are unknown and cannot be ascertained by the petitioner, the court can order that notice be made by publication in a newspaper. The bill would require that notice by publication include a full description of the property, and require the court to appoint someone to represent any unknown or unlocatable parties.

Section 2 amends the definition of "substantial injury" (the standard a court must apply when deciding whether to order a sale). The court would order a sale if an in kind partition cannot be made without substantial injury to the interested parties (as opposed to "any of the interested parties") taking into account the totality of the circumstances. A court would consider the following when determining whether an in kind partition would cause substantial injury:

- Whether the property can be fairly and equitably divided between those seeking a sale and those seeking to remain tenants in common.
- Whether a partition in kind would cause the fair market value of the parcels to be materially less than the money equivalent from a sale, taking into consideration a court-ordered sale.

- Evidence of long-standing ownership by any individual owner as supplemented by the length of time of ownership within the chain of title of any person to whom the cotenant is related by blood, marriage or adoption.
- The use of the property by any owner and the harm to that owner caused by the loss of the use of the property.
- The degree to which the owners have contributed their pro rata share of the property taxes, insurance, and other charges related to the property.
- Whether the substantial injury from an actual division to the parties requesting the sale outweighs the substantial injury to the parties opposing the sale.
- Any other factor the courts finds appropriate to consider.

Section 3 states that the interested parties may enter into mediation to resolve the dispute prior to filing an action and that the clerk or the court may require the parties to attempt to mediate a settlement prior to ordering a sale.

Section 4 of the bill would amend the statute concerning the sale procedure for partition sales, to provide that any cotenant making an offer to purchase the entire parcel would receive credit for the value of his or her share and received a corresponding reduction in the amount owed after deducting the costs and fees associated with the sale. The bill would allow two or more cotenants to aggregate the credit for their interests.

Section 5 of the bill would amend the law pertaining to a petition for revocation of an order confirming the partition sale of real property by making a technical change, and by adding a new provision that would require the court to order an independent appraisal of the property upon request of the petitioner. If, based on the appraisal and other evidence, the court finds the sale price to be inadequate the court may revoke the order confirming the sale. The cost of the appraisal would be apportioned to all parties requesting it, and the court could require the parties to pay all or part of that cost prior to the appraisal.

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

H578-SMRC-72(CSRC-43) v1

ECONOMIC FACTORS & NON-ECONOMIC FACTORS – A STATE SUMMARY

Balancing tests -- **economic only, equitable jurisdiction to consider all factors, and a combination/hybrid** -- used in weighing whether tenancy in common property should be divided or sold.

ECONOMIC FACTORS TEST	ECONOMIC FACTORS PRIMARY, BUT OTHER FACTORS WEIGHED (HYBRID)	EQUITABLE JURISDICTION TO CONSIDER ALL FACTORS
A. States (5) wherein the <u>statutory law limits</u> the balancing test to <u>economic factors only</u>.	States (5) wherein the balancing test is limited primarily, but not solely, to economic factors.	States (32) wherein the courts are not limited by statute or case law from considering whatever equitable factors are appropriate.
1. Georgia* 2. North Carolina** 3. Ohio 4. Kentucky 5. Wyoming * In some circumstances, a Georgia court can deny partition altogether. ** Until the law was amended in 1985 changing the test to economic only, North Carolina's law was similar to laws in most of the 32 states listed in the last column of this summary.	1. Massachusetts 2. North Dakota* 3. Oregon** 4. South Carolina 5. Vermont*** *In North Dakota, in weighing division versus sale, the court also is to consider "the situation of the parties and their respective financial abilities ..." ** In Oregon, one appellate court narrowed the balancing test to economic only, but the state high court considered sentimental attachment to a lesser degree and noted that a court has the equitable power to deny partition altogether. *** In Vermont, while the primary test is economic, the high court recently upheld the forced transfer of the petitioner's interest to the respondents based on the protection of family property.	Alabama, Arizona, Arkansas, Connecticut, Delaware, Florida*, Hawaii, Illinois, Indiana, Iowa, Kansas*, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana*, Nevada, New Hampshire, New Jersey*, New Mexico, Oklahoma*, Pennsylvania, Rhode Island, South Dakota, Texas, Utah, Virginia, Washington, West Virginia * Courts in these states have said that their courts also have the power to deny partition altogether.
B. States (8) wherein the <u>courts have interpreted the partition statutes</u> to focus only on economic value. 1. Alaska 2. California (but sales "strongly disfavored") 3. Colorado 4. Idaho 5. Nebraska 6. New York (value lost must be "significant") 7. Tennessee 8. Wisconsin		

SOURCE: Based on research and data compiled by John Pollock, Facilitator, Heirs' Property Retention Coalition. Chart compiled by Patricia Yancey, Governmental Relations Consultant, Land Loss Prevention Project, Durham, NC. Chart produced July 2, 2009 and updated on July 5, 2009.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 3

HOUSE BILL 1057*
Committee Substitute Favorable 4/30/09
Third Edition Engrossed 5/12/09

Short Title: Abolish Certain Deficiency Judgments. (Public)

Sponsors:

Referred to:

April 6, 2009

A BILL TO BE ENTITLED

AN ACT TO ABOLISH DEFICIENCY JUDGMENTS IN CERTAIN CASES WHERE THE MORTGAGE IS SECURED BY PRIMARY RESIDENCE.

The General Assembly of North Carolina enacts:

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

"**§ 45-21.38A. Deficiency judgments abolished where mortgage secured by primary residence and foreclosed under power of sale.**

In all sales of real property secured by a primary residence by mortgagees or trustees under powers of sale contained in any mortgage or deed of trust, the mortgagee or trustee or holder of the notes secured by such mortgage or deed of trust shall not be entitled to a deficiency judgment on account of such mortgage, deed of trust, or obligation secured by the same, if the defaulted mortgage loan was a rate spread loan as defined in G.S. 24-1.1F, or a nontraditional loan that features a negative amortization payment option. This provision shall not apply to Home Equity Lines of Credit, construction loans, or to bridge loans. This section shall not apply to a loan made by a natural person who makes no more than one loan in a 12-month period and is not in the business of lending."

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

"**§ 45-21.38B. Deficiency judgments abolished where mortgage secured by primary residence and made on or after January 1, 2010.**

In all sales of real property secured by a primary residence, the mortgagee or trustee or holder of the notes secured by such mortgage or deed of trust shall not be entitled to a deficiency judgment on account of such mortgage, deed of trust, or obligation secured by the same, if the defaulted mortgage loan was a rate spread loan as defined in G.S. 24-1.1F, or a nontraditional loan that features a negative amortization payment option. This provision shall not apply to Home Equity Lines of Credit, construction loans, or to bridge loans. This section applies regardless of whether the real property is sold under a power of sale or as a result of court action. This section applies to mortgages made on or after January 1, 2010. This section shall not apply to a loan made by a natural person who makes no more than one loan in a 12-month period and is not in the business of lending."

SECTION 3. Article 2B of Chapter 45 of the General Statutes is amended by adding a new section to read:

"**§ 45-21.38C. Severability.**

The provisions of this Article shall be severable, and if any phrase, clause, sentence, or provision is declared to be unconstitutional or otherwise invalid or is preempted by federal law or regulation, the validity of the remainder of this section shall not be affected thereby."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1057*
Committee Substitute Favorable 4/30/09
Third Edition Engrossed 5/12/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1057-CSRI-44 [v.8]

7/20/2009 10:31:16 AM

Short Title: Abolish Certain Deficiency Judgments. (Public)

Sponsors:

Referred to:

April 6, 2009

A BILL TO BE ENTITLED

AN ACT TO ABOLISH DEFICIENCY JUDGMENTS IN CERTAIN CASES WHERE THE MORTGAGE IS SECURED BY PRIMARY RESIDENCE.

The General Assembly of North Carolina enacts:

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

"**§ 45-21.38A. Deficiency judgments abolished where mortgage secured by primary residence.**

(a) As used in this section, the term "nontraditional mortgage loan" means a loan in which all of the following apply:

(1) The borrower is a natural person.

(2) The debt is incurred by the borrower primarily for personal, family, or household purposes.

(3) The principal amount of the loan does not exceed the conforming loan size for a single family dwelling as established from time to time by Fannie Mae.

(4) The loan is secured by: (i) a security interest in a manufactured home, as defined in G.S. 143-145, in the State that is or will be occupied by the borrower as the borrower's principal dwelling; (ii) a mortgage or deed of trust on real property in the State upon which there is located an existing structure designed principally for occupancy of from one to four families that is or will be occupied by the borrower as the borrower's principal dwelling; or (iii) a mortgage or deed of trust on real property in the State upon which there is to be constructed using the loan proceeds a structure or structures designed principally for occupancy of from one to four families that, when completed, will be occupied by the borrower as the borrower's principal dwelling.

(5) The terms of the loan: (i) permit the borrower as a matter of right to defer payment of principal or interest; and (ii) allow or provide for the negative amortization of the loan balance.

(b) Except as provided in subdivision (6) of subsection (c) of this section, this section applies only to the following loans:

(1) A loan originated on or after January 1, 2005, that was at the time the loan was originated a rate spread home loan as defined in G.S. 24-1.1F.

(2) A loan secured by the borrower's principal dwelling, which loan was modified after January 1, 2005, and became at the time of such modification and as a consequence of such modification a rate spread home loan.

(3) A loan that was a nontraditional mortgage loan at the time the loan was originated.

(4) A loan secured by the borrower's principal dwelling, which loan was modified and became at the time of such modification and as a consequence of such modification a nontraditional mortgage loan.

(c) This section does not apply to any of the following:

(1) A home equity line of credit as defined in G.S. 45-81(a).

(2) A construction loan as defined in G.S. 24-10(c).

(3) A reverse mortgage as defined in G.S. 53-257 that complies with the provisions of Article 21 of Chapter 53 of the General Statutes.

(4) A bridge loan with a term of twelve months or less, such as a loan to purchase a new dwelling where the borrower plans to sell his or her current dwelling within twelve months.

(5) A loan made by a natural person who makes no more than one loan in a twelve-month period and is not in the business of lending.

(6) A loan secured by a subordinate lien on the borrower's principal dwelling, unless the loan was made contemporaneously with a rate spread home loan or a nontraditional mortgage loan that is subject to the provisions of this section.

(d) In addition to any statutory or common law prohibition against deficiency judgments, the following shall apply to the foreclosure of mortgages and deeds of trust that secure loans subject to this section:

(1) For mortgages and deeds of trust recorded before January 1, 2010, the holder of the obligation secured by the foreclosed mortgage or deed of trust shall not be entitled to any deficiency judgment against the borrower for any balance owing on such obligation if: (i) the real property encumbered by the lien of the mortgage or deed of trust being foreclosed was sold by a mortgagee or trustee under a power of sale contained in the mortgage or deed of trust; and (ii) the real property sold was, at the time the foreclosure proceeding was commenced, occupied by the borrower as the borrower's principal dwelling.

(2) For mortgages and deeds of trust recorded on or after January 1, 2010, the holder of the obligation secured by the foreclosed mortgage or deed of trust shall not be entitled to any deficiency judgment against the borrower for any balance owing on such obligation if: (i) the real property encumbered by the lien of the mortgage or deed of trust being foreclosed was sold as a consequence of a judicial proceeding or by a mortgagee or trustee under a power of sale contained in the mortgage or deed of trust; and (ii) the real property sold was, at the time the judicial or foreclosure proceeding was commenced, occupied by the borrower as the borrower's principal dwelling.

(e) The court may, in its discretion, award to the borrower the reasonable attorneys' fees actually incurred by the borrower in the defense of an action for deficiency if: (i) the borrower prevails in an action brought by the holder of the obligation secured by the foreclosed mortgage or deed of trust to recover a deficiency judgment following the foreclosure of a loan to which this section applies; and (ii) the court rules that the holder of the obligation secured by the foreclosed mortgage or deed of trust is not entitled to a deficiency judgment under the

provisions of this section,. The amount of attorneys' fees to be awarded shall be determined without regard to the provisions of the loan documents, the provisions of G.S. 6-21.2, or any statutory presumption as to the amount of such attorneys' fees."

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

"**§ 45-21.38C. Severability.**

The provisions of this Article shall be severable, and if any phrase, clause, sentence, or provision is declared to be unconstitutional or otherwise invalid or is preempted by federal law or regulation, the validity of the remainder of this Article shall not be affected thereby."

SECTION 3. This act becomes effective October 1, 2009, and applies to actions filed on or after that date.

HOUSE BILL 1057:
Abolish Certain Deficiency Judgments

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	July 14, 2009
Introduced by:	Rep. Blue	**Prepared by:**	Jennifer McGinnis
Analysis of:	PCS to Third Edition H1057-CSRI-44		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 1057 would abolish the ability of a mortgagee to obtain a deficiency judgment after foreclosure and sale of real property against the mortgagor in certain cases where the mortgage is secured by a primary residence.***

[As introduced, this bill was identical to S819, as introduced by Sen. Hartsell, which is currently in Senate Judiciary II.]

CHANGES MADE BY PCS:

- Reformatting of provisions.
- Several definitions clarified.
- New language added providing that a court, in its discretion, may award reasonable attorneys' fees to a borrower that successfully defends against a deficiency judgment brought in violation of the bill's provisions.
- New exemptions from applicability included for: (1) loans secured by a subordinate lien on the borrower's principal residence, unless that loan was made contemporaneously with a rate spread home loan or nontraditional mortgage loan; and (2) reverse mortgages.
- Other technical, clarifying, and conforming changes.

CURRENT LAW:

Under current law, a mortgagee creditor may recover a deficiency judgment against the mortgagor for the unpaid balance due on the mortgage debt after applying the amount realized at a foreclosure sale. The right of a mortgagee to obtain a deficiency judgment is subject to a number of exceptions, including the following: there may be a contract between the parties under which the mortgagee has waived the right to a deficiency judgment; an applicable statute of limitations time period might have expired, or the anti-deficiency statute [G.S. 45-21.38[1]] might be applicable.[2]

BILL ANALYSIS:

The PCS for House Bill 1057 would abolish the ability of a mortgagee or trustee to obtain a deficiency judgment in the sale of real property secured by a borrower's primary residence, if the defaulted mortgage loan was a rate spread home loan or a nontraditional mortgage loan.

A rate spread home loan is a residential mortgage loan with an annual percentage rate that is at least 3% greater than a U.S. Treasury security with a comparable maturity or at least 1.75% greater than the conventional mortgage rate on a first mortgage.

A nontraditional mortgage loan means a loan that allows a consumer to select a payment deferring satisfaction of principal or interest and that allows for negative amortization of the loan balance -- a loan that allows payments that do not cover the full amount of the interest due, and where the unpaid interest

[1]G.S. 45-21.38 provides that a seller of real property who takes a purchase money mortgage to secure the balance of the purchase price of the property is prohibited from obtaining a deficiency judgment on account of the mortgage.
[2]Webster's Real Estate Law in North Carolina, 5th Edition, §13-45.

is added to the principal balance of the loan. In such loans, rather than the principal balance decreasing as with standard amortization loans, the principal balance increases.

The PCS also provides: (i) that, a court, in its discretion, may award reasonable attorneys' fees to a borrower that successfully defends against a deficiency judgment brought in violation of the bill's provisions; and (ii) exemptions from applicability for several types of loans.

For mortgages or deed of trusts recorded before January 1, 2010, the new G.S. 45-21.38A(d)(1) would abolish deficiency judgments in foreclosures of a borrower's principal dwelling commenced under a power of sale clause contained in the mortgage or deed of trust.

For mortgages or deed of trusts recorded on or after January 1, 2010, the new G.S. 45-21.38A(d)(2) would abolish deficiency judgments in foreclosures of a borrower's principal dwelling commenced under a power of sale clause contained in the mortgage or deed of trust, as well to judicial foreclosures.

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

Karen Cochrane-Brown, counsel to House Judiciary II, substantially contributed to this summary.

H1057-SMRI-75(CSRI-44) v3

HOUSE BILL 1261

Short Title:	Protect Our Kids/Cyber Bullying Misdemeanor.	(Public)
Sponsors:	Representatives Mackey, Parmon (Primary Sponsors); K. Alexander, Cotham, Fisher, Harrison, Lucas, Mobley, Pierce, Wainwright, Womble, and Wray.	
Referred to:	Science and Technology, if favorable, Judiciary III.	

April 9, 2009

A BILL TO BE ENTITLED

AN ACT PROTECTING CHILDREN OF THIS STATE BY MAKING CYBER BULLYING A CRIMINAL OFFENSE PUNISHABLE AS A CLASS 1 MISDEMEANOR.

The General Assembly of North Carolina enacts:

SECTION 1. Article 60 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-458.1. Cyber bullying; penalty.**

(a) Except as otherwise made unlawful by this Article, it shall be unlawful for any person to use a computer or computer network to do any of the following:

(1) Falsify one's identity in an Internet chat room, an electronic mail message, or an instant message with the intent to intimidate or torment a minor.

(2) Follow a minor online or into an Internet chat room with the intent to intimidate or torment a minor.

(3) Build a fake profile, a Web site, or pose as a minor in an Internet chat room, an electronic mail message, or an instant message with the intent to intimidate or torment a minor.

(4) Plant any statement, whether true or false, tending to provoke or that actually provokes, any third party to stalk or harass a minor.

(5) Post a real or doctored image of a minor on the Internet with the intent to embarrass, intimidate, or torment the minor or the minor's parent or guardian.

(6) Post or encourage others to post on the Internet private, personal, or sexual information pertaining to a minor with the intent to intimidate or torment the minor.

(7) Access, alter, or erase any computer network, computer data, computer program, or computer software, including breaking into a password protected account or stealing or otherwise accessing passwords, with the intent to embarrass, intimidate, or torment a minor or the minor's parent or guardian.

(8) Copy and disseminate, or cause to be made an unauthorized copy of any data pertaining to a minor for the purpose of intimidating or tormenting that minor (in any form, including, but not limited to, any printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network).

(9) Use a computer system to repeatedly communicate insults to, or about, a minor with the intent to intimidate or torment the minor or the minor's parent or guardian.

(10) Sign a minor up for a pornographic Internet site.

(11) Sign a minor up for electronic mailing lists, or to receive junk electronic messages and instant messages, without authorization, resulting in either (i) costs to the minor or to the minor's parent or guardian or (ii) intimidation or torment of the minor.

(b) Any person who violates this section shall be guilty of cyber bullying, which offense shall be punishable as a Class 1 misdemeanor."

SECTION 2. G.S. 14-453 is amended by adding new subdivisions to read:

"(7b) 'Internet chat room' means a computer service allowing two or more users to communicate with each other in real time.

(7c) 'Profile' means a configuration of user data required by a computer so that the user may access programs or services and have the desired functionality on that computer."

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

HOUSE BILL 1377
Second Edition Engrossed 5/14/09

Short Title:	Taxpayer Optimization Act.	(Public)
Sponsors:	Representatives Folwell, McElraft, Brown, Moore (Primary Sponsors); and Starnes.	
Referred to:	State Government/State Personnel, if favorable, Judiciary II.	

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE CERTAIN SALES OF STATE PROPERTY SUBJECT TO UPSET BIDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 146-27 reads as rewritten:

"**§ 146-27. The role of the Department of Administration in sales, leases, and rentals.**

(a) General. – Every sale, lease, rental, or gift of land owned by the State or by any State agency shall be made by the Department of Administration and approved by the Governor and Council of State. A lease or rental of land owned by the State may not exceed a period of 99 years. The Department of Administration may initiate proceedings for sales, leases, rentals, and gifts of land owned by the State or by any State agency.

(b) Large Disposition. – If a proposed disposition is a sale or gift of land with an appraised value of at least twenty-five thousand dollars ($25,000), the sale or gift shall not be made until after consultation with the Joint Legislative Commission on Governmental Operations.

(b1) Upset Bids. – If a proposed disposition of land or other real property with a value of at least twenty-five thousand dollars ($25,000) is a sale or other transfer to a private entity that operates or is established to operate for profit, the proposed disposition shall be subject to upset bids, unless other, non-monetary consideration associated with the transaction has been made public. If other consideration is offered such that upset bids are not required, notice of the sale and other consideration shall be posted and published in a manner similar to that provided in G.S. 1-339.17. The Department of Administration shall adopt a procedure for upset bids that is based on the upset bid procedure set forth in Part 2 of Article 29A of Chapter 1 of the General Statutes.

(c) Expired effective September 1, 2007."

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

HOUSE BILL 1447
Committee Substitute Favorable 5/7/09
Third Edition Engrossed 5/13/09

Short Title: Crime Stoppers Tips Are Confidential. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE IDENTITY OF AN INDIVIDUAL WHO PROVIDES A TIP FOR AN UNSOLVED CASE THROUGH CRIME STOPPERS OR SIMILAR ORGANIZATIONS IS NOT A PUBLIC RECORD, TO PROVIDE THAT THE COMMUNICATION RECEIVED BY A CRIME STOPPERS ORGANIZATION IS NOT SUBJECT TO DISCOVERY OR ADMISSIBLE IN A COURT PROCEEDING, AND TO PROVIDE THAT A LAW ENFORCEMENT AGENCY HAS A DUTY TO MAINTAIN THE CONFIDENTIALITY OF A CRIME STOPPERS TIP.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 15A of the General Statutes is amended by adding a new Article to read:

"Article 47.

"Local Crime Stoppers Programs.

"**§ 15A-850. Local Crime Stoppers organizations; confidentiality.**

(a) Definition. – As used in this section, a "Crime Stoppers" organization or other similarly named organization means a private, nonprofit North Carolina corporation governed by a civilian volunteer board of directors that is operated on a local or statewide level that (i) offers anonymity to persons providing information to the organization, (ii) accepts and expends donations for cash rewards to persons who report to the organization information about alleged criminal activity and that the organization forwards to the appropriate law enforcement agency, and (iii) is established as a cooperative alliance among the news media, the community, and law enforcement officials.

(b) Prohibitions on Use of Crime Stoppers Tips.

(1) Evidence of a communication, and any information contained within a communication, from an anonymous source to a Crime Stoppers organization shall not be:

a. Relied upon, or considered by, a judicial official in determining whether probable cause exists to issue either an arrest or search warrant.

b. Admissible or subject to discovery in any court proceeding.

(2) Crime Stoppers tips may only be used to assist a law enforcement agency in directing its investigation of alleged criminal activity.

(c) Identity of Crime Stoppers Informant Is Not Public Record; Duty of Law Enforcement Agency to Maintain Confidentiality. – The identity of any individual providing information about a crime or criminal activity to a Crime Stoppers organization under a

promise of anonymity is not a public record as defined by G.S. 132-1 and shall not be disclosed. A law enforcement agency receiving information concerning alleged criminal activity from a Crime Stoppers organization shall maintain confidentiality pursuant to this section and pursuant to G.S. 132-1.4(h)."

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

HOUSE BILL 1463
Committee Substitute Favorable 5/5/09

Short Title: Expand Access/Confidential Intermediaries. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT ALLOWING ADULT BIOLOGICAL SIBLINGS OF ADULT ADOPTEES, ADULT BIOLOGICAL HALF SIBLINGS OF ADULT ADOPTEES, ADULT FAMILY MEMBERS OF DECEASED ADOPTEES, AND ADULT FAMILY MEMBERS OF DECEASED BIOLOGICAL PARENTS TO HAVE ACCESS TO CONFIDENTIAL INTERMEDIARY SERVICES UPON THE CONSENT OF THE PARTIES AND TO ALLOW AN AGENCY ACTING AS A CONFIDENTIAL INTERMEDIARY TO OBTAIN A COPY OF A DEATH CERTIFICATE OF THE PERSON WHO IS THE SUBJECT OF THE SEARCH AND DELIVER IT TO THE PERSON REQUESTING SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 48-1-101 reads as rewritten:

"**§ 48-1-101. Definitions.**

...

(5a) "Confidential intermediary" means a licensed adoption agency staff person who may act as a third party to facilitate ~~contact between an adult adoptee or the adult lineal descendant of a deceased adoptee and the biological parent.~~ the sharing of information authorized by G.S. 48-9-104.

...

~~(9a) "Lineal descendant of a deceased adoptee" means any person who descends from the direct line of the adoptee.~~

...."

SECTION 2. G.S. 48-9-101 reads as rewritten:

"**§ 48-9-101. ~~Certain terms~~ Records defined.**

~~(a)~~ For purposes of this Article, "records" means any petition, affidavit, consent or relinquishment, transcript or notes of testimony, deposition, power of attorney, report, decree, order, judgment, correspondence, document, invoice, receipt, certificate, or other printed, written, microfilmed or microfiched, video-taped or tape-recorded material or electronic data processing records regardless of physical form or characteristics pertaining to a proceeding for adoption under this Chapter.

~~(b) Notwithstanding G.S. 48-1-101, for purposes of this Article, "adult" means an individual who has attained 21 years of age.~~"

SECTION 3. G.S. 48-9-104 reads as rewritten:

"**§ 48-9-104. Release of identifying ~~information.~~information; confidential intermediary services.**

(a) Except as provided in this section or in G.S. 48-9-109(2) or (3), no person or entity shall release from any records retained and sealed under this Article the name, address, or other

information that reasonably could be expected to lead directly to the identity of an adoptee, an adoptive parent of an adoptee, an adoptee's parent at birth, or an individual who, but for the adoption, would be the adoptee's sibling or grandparent, except upon order of the court for cause pursuant to G.S. 48-9-105.

(b) A child placing agency licensed by the Department or a county department of social services may agree to act as a confidential intermediary for ~~a biological parent or adult adoptee or adult lineal descendant of a deceased adoptee, without appointment by the court pursuant to G.S. 48-9-105, in order to obtain and share nonidentifying birth family health information or facilitate contact or share identifying information with adult adoptees, adult lineal descendants of deceased adoptees, and biological parents with the written consent of all parties to the contact or the sharing of information.~~ any of the following:

(1) A biological parent.
(2) An adult adoptee.
(3) An adult biological sibling of an adult adoptee.
(4) An adult biological half sibling of an adult adoptee.
(5) An adult family member of a deceased biological parent.
(6) An adult family member of a deceased adoptee.

An agency may act as a confidential intermediary without appointment by the court pursuant to G.S. 48-9-105, in order to obtain and share nonidentifying birth family health information or to facilitate contact or share identifying information with any person listed in subdivisions (1) through (6) of this subsection with the written consent of all parties to the contact or the sharing of information. Written consent of the biological parent is required if the biological parent is living at the time any party described in subdivisions (2) through (6) of this subsection seeks to contact or share identifying information with any other party described in subdivisions (2) through (6) of this subsection. Further, ~~a child placing agency licensed by the Department or a county department of social services~~an agency may agree to act as a confidential intermediary for the adoptive parents of a minor adoptee, or the guardian of a minor adoptee without appointment by the court pursuant to G.S. 48-9-105, to obtain and share nonidentifying birth family health information. An agency providing confidential intermediary services shall contact individuals in a manner reasonably calculated to prevent incidental disclosure of confidential information. An agency that agrees to provide confidential intermediary services may charge a reasonable fee for doing so, which fee must be pursuant to written agreement signed by the individual to be charged. The Division shall establish guidelines for confidential intermediary services.

(c) For purposes of this section only, the term 'family member' means a spouse, child, stepchild, parent, stepparent, grandparent, or grandchild.

(d) If in the provision of confidential intermediary services a child placing agency licensed by the Department or a county department of social services determines that the person who is the subject of the search is deceased, the agency may obtain a copy of the death certificate pursuant to G.S. 130A-93 and deliver it to the person who requested the services."

SECTION 4. G.S. 130A-93 is amended by adding a new subsection to read:

"(c2) A child placing agency licensed by the Department of Health and Human Services or a county department of social services acting as a confidential intermediary in accordance with G.S. 48-9-104 shall be entitled upon request to a certified copy of a death certificate."

SECTION 5. This act becomes effective October 1, 2009.

Principal Clerk ____
Reading Clerk ____

Corrected Notice – HB 274 added

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	July 28, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 274	Rewrite Foreign Money Judgments Laws.	Representative Ross
HB 775	Alt. Testimony/Children and Adults with Disab.	Representative England, M.D. Representative Parmon Representative Alexander
HB 1261	Protect Our Kids/Cyber Bullying Misdemeanor.	Representative Parmon Representative Mackey
HB 1377	Taxpayer Optimization Act.	Representative Folwell Representative Brown Representative McElraft Representative Moore
HB 1447	Crime Stoppers Tips Are Confidential.	Representative Wiley
HB 1463	Expand Access/Confidential Intermediaries.	Representative Farmer-Butterfield Representative Dickson Representative Harrell Representative Wilkins, Jr.

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

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HB 1463	Expand Access/Confidential Intermediaries.	Representative Farmer-Butterfield Representative Dickson Representative Harrell Representative Wilkins, Jr.

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II Committee
Tuesday, July 28, 2009, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 274	Rewrite Foreign Money Judgments Laws.	Representative Ross
HB 775	Alt. Testimony/Children and Adults with Disab.	Representative England, M.D. Representative Parmon Representative Alexander
HB 1261	Protect Our Kids/Cyber Bullying Misdemeanor.	Representative Parmon Representative Mackey
HB 1377	Taxpayer Optimization Act.	Representative Folwell Representative Brown Representative McElraft Representative Moore
HB 1447	Crime Stoppers Tips Are Confidential.	Representative Wiley
HB 1463	Expand Access/Confidential Intermediaries.	Representative Farmer-Butterfield Representative Dickson Representative Harrell Representative Wilkins, Jr.

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE
Thursday, July 28, 2009 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 10:00 AM on July 28, 2009, in Room 1124 of the Legislative Building with fifteen members of the Committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell recognized pages Natalie Allison, Sarah Noble, Lee Vanney, John Kirby, Michael Tuck, Joseph Edwards and Hinson Neville and thanked them for their assistance.

HB 274 – (Rewrite Foreign Money Judgments Laws.) The bill will be continued.

HB 775 – (Alt. Testimony/Children and Adults with Disab.) Senator Jones moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Purcell explained the bill and answered questions from Senators Apodaca, Jones and Goodall. Judge Kimberly Taylor, former Superior Court Judge, spoke in favor of the bill. Senator Snow moved for a favorable report to the proposed committee substitute, unfavorable to the original bill. All voted and the motion carried.

HB 578 – (Partition Sales/Commrs., Sellers, Buyers.) Senator Vaughan moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Representative Bryant explained the proposal and noted that additional time was needed for work on the bill. Representative Bryant answered Senator Goodall's question. Senator Hartsell asked the Sub-committee to continue working on the bill. Sub-committee members are: Senator Berger, Chairman, Senators Vaughan, Atwater, Jones and Bingham. The Sub-Committee will report to the full committee at the Thursday meeting.

HB 1377 – (Taxpayer Optimization Act.) There was no report on this bill.

HB 1447 – (Crime Stoppers Tips Are Confidential.) Senator Allran reported that the bill was not ready.

HB 1463 – (Expand Access/Confidential Intermediaries.) Senator Vaughan reported that the Sub-Committee will meet again.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Wednesday, July 29, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

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

H.B. **775** Alt. Testimony/Children and Adults with Disab.

Draft Number:	30437
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

Sen. Purcell will handle

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — July 28, 2009
Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tammy Johnson	DHHS
Jeff Harris	LLPP
Patricia A. Yancey	LLPP
Kim Taylor	Lewis + Daggett
Annalies Pilph	DRNC
Staples Hughes	Appellate Defender
Todd Baker	NCAO
Cassandra White	NCAOC
Mariah West	NCAOC
Brittany Farrell	NCFPC
Conor Brockett	NCSBA

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Maureen Manell	Autism Society of NC
Katherine Joyce	NCASA
Ashley Vroom	NCASA
Floyd Lewis	General Statutes Commission
Emily Wilborne	TPG
Leslie Arnold	SOG-Daily Bulletin
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety
Kim Crouch	NCBA
David Ferrell	NCCTA
Daniel Baum	K+L GATES
Sarah Preston	ACLU-NC

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Christy Agner	DOA
Tim Walton	DOA
Steve Pleasant	DOA
[illegible]	WCPSS
Joe Stewart	NC Chamber

HOUSE BILL 274*

Short Title:	Rewrite Foreign Money Judgments Laws.	(Public)
Sponsors:	Representatives Ross; and Lucas.	
Referred to:	Judiciary I, if favorable, Commerce, Small Business, and Entrepreneurship.	

February 25, 2009

A BILL TO BE ENTITLED

AN ACT TO REWRITE THE LAW CONCERNING THE RECOGNITION OF FOREIGN MONEY JUDGMENTS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION .

The General Assembly of North Carolina enacts:

SECTION 1. Article 18 of Chapter 1C of the General Statutes is repealed.

SECTION 2. Chapter 1C of the General Statutes is amended by adding a new Article to read:

"Article 20.

"North Carolina Uniform Foreign-Country Money Judgments Recognition Act.

"**§ 1C-1850. Short title.**

This Article may be cited as the North Carolina Uniform Foreign-Country Money Judgments Recognition Act.

"**§ 1C-1851. Definitions.**

The following definitions apply in this Article:

(1) Foreign country. – A government other than:

a. The United States;

b. A state, district, commonwealth, territory, or insular possession of the United States; or

c. Any other government with regard to which the decision in this State as to whether to recognize a judgment of that government's courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution.

(2) Foreign-country judgment. – A judgment of a court of a foreign country.

"**§ 1C-1852. Applicability; saving clause.**

(a) Except as otherwise provided in subsection (b) of this section, this Article applies to a foreign-country judgment to the extent that the judgment:

(1) Grants or denies recovery of a sum of money; and

(2) Under the law of the foreign country where rendered, is final, conclusive, and enforceable.

(b) This Article does not apply to a foreign-country judgment, even if the judgment grants or denies recovery of a sum of money, to the extent that the judgment is:

(1) A judgment for taxes;

(2) A fine or other penalty; or

(3) A judgment for alimony, support, or maintenance in matrimonial or family matters.

(c) A party seeking recognition of a foreign-country judgment has the burden of establishing that this Article applies to the foreign-country judgment.

(d) This Article does not prevent the recognition under principles of comity or otherwise of a foreign-country judgment to which this Article does not apply.

"**§ 1C-1853. Standards for recognition and nonrecognition of foreign-country judgment.**

(a) Except as otherwise provided in this section, a court of this State shall recognize a foreign-country judgment to which this Article applies.

(b) A court of this State shall not recognize a foreign-country judgment if:

(1) The judgment was rendered under a judicial system that, taken as a whole, does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(2) The foreign court did not have personal jurisdiction over the defendant; or

(3) The foreign court did not have jurisdiction over the subject matter.

(c) If a court of this State finds that any of the following exist with respect to a foreign-country judgment for which recognition is sought, recognition of the judgment shall be denied unless the court determines, as a matter of law, that recognition would nevertheless be reasonable under the circumstances:

(1) The defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend.

(2) The judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case.

(3) The judgment, or the cause of action or claim for relief on which the judgment is based, is repugnant to the public policy of this State or of the United States.

(4) Reserved for future codification.

(5) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court.

(6) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.

(7) The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment.

(8) The specific proceeding in the foreign court leading to the judgment was fundamentally unfair.

(d) If a foreign-country judgment for which recognition is sought is otherwise entitled to recognition under this Article but conflicts with a prior final and conclusive judgment, a court of this State shall recognize the judgment for which recognition is sought unless the court determines that nonrecognition would nevertheless be reasonable under the circumstances.

(e) If a foreign-country judgment for which recognition is sought is otherwise entitled to recognition under this Article but conflicts with a subsequent final and conclusive judgment, a court of this State shall deny recognition of the judgment for which recognition is sought unless the court determines that recognition would nevertheless be reasonable under the circumstances.

(f) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (b) of this section exists.

(g) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (c) of this section exists. The party seeking recognition of the judgment has the burden of establishing that, as a matter of law, recognition would nevertheless be reasonable under the circumstances.

(h) A party resisting recognition of a foreign-country judgment under subsection (d) or (e) of this section has the burden of establishing that another final and conclusive judgment

exists and that the other judgment conflicts with the judgment for which recognition is sought. Under subsection (d) of this section, the party resisting recognition also has the burden of establishing that nonrecognition of the judgment for which recognition is sought would be reasonable under the circumstances. Under subsection (e) of this section, the party seeking recognition of the foreign-country judgment has the burden of establishing that recognition would be reasonable under the circumstances.

(i) When a court of this State rules on recognition of a foreign-country judgment, the court shall state the facts specially and state separately its conclusions of law.

"**§ 1C-1854. Personal jurisdiction.**

(a) A foreign-country judgment shall not be refused recognition for lack of personal jurisdiction if any of the following exist:

(1) The defendant was served with process personally in the foreign country.

(2) The defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant.

(3) The defendant, before the commencement of the proceeding, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved.

(4) The defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, the foreign country.

(5) The defendant had a business office in the foreign country and the proceeding in the foreign court involved a cause of action or claim for relief arising out of business done by the defendant through that office in the foreign country.

(6) The defendant operated a motor vehicle or airplane in the foreign country and the proceeding involved a cause of action or claim for relief arising out of that operation.

(7) There was any other basis for personal jurisdiction that would be consistent with the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

(b) The list of bases for personal jurisdiction in subsection (a) of this section is not exclusive. The courts of this State may recognize reasonable bases of personal jurisdiction other than those listed in subsection (a) of this section as sufficient to support a foreign-country judgment.

"**§ 1C-1855. Procedure for recognition and nonrecognition of foreign-country judgment.**

(a) If recognition of a foreign-country judgment is sought as an original matter, the issue of recognition shall be raised by filing an action seeking recognition of the foreign-country judgment.

(b) If recognition or nonrecognition of a foreign-country judgment is sought in some other action, the issue of recognition may be raised by complaint, counterclaim, cross-claim, or affirmative defense.

"**§ 1C-1856. Effect of recognition of foreign-country judgment.**

(a) If the court in a proceeding under G.S. 1C-1855 finds that the foreign-country judgment is entitled to recognition under this Article then, to the extent that the foreign-country judgment grants or denies recovery of a sum of money, the foreign-country judgment is:

(1) Conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this State would be conclusive; and

(2) Enforceable in the same manner and to the same extent as a judgment rendered in this State.

(b) Article 17 of this Chapter does not apply to the enforcement of foreign-country judgments recognized under this Article.

"**§ 1C-1857. Stay of proceedings pending appeal of foreign-country judgment.**

If a party establishes that an appeal from a foreign-country judgment is pending or will be taken, the court may stay any proceedings with regard to the foreign-country judgment until the appeal is concluded, the time for appeal expires without an appeal being taken, or the appellant has had sufficient time to prosecute the appeal and has failed to do so.

"**§ 1C-1858. Statute of limitations.**

An action to recognize a foreign-country judgment must be commenced within the earlier of the time during which the foreign-country judgment is effective in the foreign country or 10 years from the date that the foreign-country judgment became effective in the foreign country.

"**§ 1C-1859. Uniformity of interpretation.**

In applying and construing this Article, consideration may be given to promoting uniformity of interpretation with respect to its subject matter among states that enact it."

SECTION 3. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the official comments to the Uniform Foreign-Country Money Judgments Recognition Act and all explanatory comments of the drafters of this act as the Revisor deems appropriate.

SECTION 4. This act is effective October 1, 2009, and applies to all actions commenced on or after that date in which the issue of recognition of a foreign-country judgment is raised.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 4

HOUSE BILL 578

Committee Substitute Favorable 5/7/09
Committee Substitute #2 Favorable 5/12/09
Senate Judiciary II Committee Substitute Adopted 7/21/09

Short Title: Partition Sales/Commrs., Sellers, Buyers. (Public)

Sponsors:

Referred to:

March 16, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY NOTICE REQUIRED TO PARTIES WHO MAY BE UNKNOWN OR UNLOCATABLE IN A PARTITION PROCEEDING; TO CODIFY THE CURRENT PRACTICE OF GRANTING OWNERS CREDIT FOR THEIR EXISTING INTEREST IN LAND WHEN BIDDING ON A PARTITION SALE; TO PERMIT A COURT TO ORDER AN INDEPENDENT APPRAISAL IF REQUESTED AND PAID FOR BY A PARTY TO THE PARTITION WHO CHALLENGES THE AMOUNT BID IN A PARTITION SALE; TO REVISE THE STANDARD FOR DETERMINING WHAT CONSTITUTES "SUBSTANTIAL INJURY" WITH REGARDS TO A PETITION FOR A SALE OF THE PROPERTY; AND TO PROVIDE FOR MEDIATION OF PARTITION DISPUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 46-6 reads as rewritten:

"**§ 46-6. Unknown or unlocatable parties; ~~summons and~~ summons, notice, and representation.**

(a) If, upon the filing of a petition for partition, it be made to appear to the court by affidavit or otherwise that there are any persons interested in the premises whose names are unknown to and cannot after due diligence be ascertained by the petitioner, the court shall order notices to be given to all such persons by a publication of the petition, or of the substance thereof, with the order of the court thereon, in one or more newspapers to be designated in the order. The notice by publication shall include a description of the property which includes the street address, if any, or other common designation for the property, if any, and may include the legal description of the property.

(b) ~~If~~ Before or after such general notice by publication if any person interested in the premises and entitled to notice fails to appear, the court shall ~~in its discretion~~ appoint some disinterested person to represent the owner of any shares in the property to be divided, the ownership of which is unknown or unlocatable and unrepresented."

SECTION 2. G.S. 46-22 reads as rewritten:

"**§ 46-22. Sale in lieu of partition.**

(a) Subject to G.S. 46-22.1(b), the ~~The~~ court shall order a sale of the property described in the petition, or of any part, only if it finds, by a preponderance of the evidence, that an actual partition of the lands cannot be made without substantial injury to ~~any of~~ the interested ~~parties.~~parties taking into account the totality of the circumstances.

~~(b) "Substantial injury" means the fair market value of each share in an in-kind partition would be materially less than the share of each cotenant in the money equivalent that would be~~

~~obtained from the sale of the whole, and if an in-kind division would result in material impairment of the cotenant's rights.~~

(b1) In determining whether a partition in-kind of all the property or some of the property cannot be made without substantial injury, the court shall consider the following factors:

(1) Whether the property is able to be fairly and equitably divided, in whole or in part, between the party or parties seeking a partition by sale and those seeking to remain tenants in common;

(2) Whether a partition in-kind would apportion the property in such a way that the fair market value of the parcels resulting from the division would be materially less than the share of each cotenant in the money equivalent that would be obtained from the sale of the whole, based upon a valuation that takes into account the type of sale conditions under which the court-ordered sale would occur;

(3) Evidence of long-standing ownership by any individual owner as supplemented by the length of time of ownership within the chain of title of any person or persons to whom such a cotenant is or was related to by blood, marriage, or adoption;

(4) The use being made of the property by any of the owners and the degree to which this owner or owners would be harmed if they could not continue to use the property for these purposes;

(5) The degree to which the owners have contributed their pro rata share of the property taxes, insurance, and other carrying charges associated with maintaining ownership of the real property, as well as the degree to which the owners have contributed to the physical improvement or the upkeep of the property, including any upkeep related to protecting the interests of the owners against any person who has no legal claim to the property but who attempts to use the property without the consent of the owners;

(6) Whether the substantial injury from an actual division to the parties requesting a sale outweighs the substantial injury to the parties opposing the sale; and

(7) Any other economic or noneconomic factors that the court finds appropriate to consider.

(b2) The court shall use the remedy of owelty where such remedy can aid in making a partition in-kind occur without substantial injury to the parties.

(c) The court shall specifically find the facts supporting an order of sale of the property.

(d) The party seeking a sale of the property shall have the burden of proving substantial injury under the provisions of this section."

SECTION 3. Article 2 of Chapter 46 of the General Statutes is amended by adding a new section to read:

"**§ 46-22.1 Mediation.**

(a) Persons interested in the premises may agree at anytime to mediation of a partition. A list of mediators certified by the Dispute Resolution Commission may be obtained from the clerk or from the Commission through the Administrative Office of the Courts.

(b) When a partition sale is requested, the court or the clerk may order mediation before considering whether to order a sale. The provisions of G.S. 7A-38.1 and G.S. 7A-38.3B shall apply."

SECTION 4. G.S. 46-28 reads as rewritten:

"**§ 46-28. Sale procedure.**

(a) The procedure for a partition sale shall be the same as is provided in Article 29A of Chapter 1 of the General ~~Statutes.~~ Statutes, except as provided herein.

(b) The commissioners shall certify to the court that at least 20 days prior to sale a copy of the notice of sale was sent by first class mail to the last known address of all petitioners and respondents who previously were served by personal delivery or by registered or certified mail. The commissioners shall also certify to the court that at least ten days prior to any resale pursuant to G.S. 46-28.1(e) a copy of the notice of resale was sent by first class mail to the last known address of all parties to the partition proceeding who have filed a written request with the court that they be given notice of any resale. An affidavit from the commissioners that copies of the notice of sale and resale were mailed to all parties entitled to notice in accordance with this section shall satisfy the certification requirement and shall also be deemed prima facie true. If after hearing it is proven that a party seeking to revoke the order of confirmation of a sale or subsequent resale was mailed notice as required by this section prior to the date of the sale or subsequent resale, then that party shall not prevail under the provisions of G.S. 46-28.1(a)(2)a. and b.

(c) Any cotenant who enters the high bid or offer at any sale of one hundred percent (100%) of the undivided interests in any parcel of real property shall receive a credit for the undivided interest the cotenant already owns therein and shall receive a corresponding reduction in the amount of the total purchase price owed after deducting the costs and fees associated with the sale and apportioning the costs and fees associated with the sale in accordance with the orders of the court. The high bid or offer shall be for one hundred percent (100%) of the undivided interests in the parcel of real property sold, and the credit and reduction shall be applied at the time of the closing of the cotenant's purchase of the real property. When jointly making the high bid or offer at the sale, two or more cotenants may receive at the closing an aggregate credit and reduction in the amount of the total purchase price representing the total of such cotenants' undivided interests in the real property. Any credits and reductions allowed by this subsection shall be further adjusted to reflect any court-ordered adjustments to the share(s) of the net sale proceeds of each of the cotenants entering the high bid or offer, including, but not limited to, equitable adjustments to the share(s) of the net sales proceeds due to a court finding of the lack of contribution of one or more cotenants to the payment of expenses of the real property."

SECTION 5. G.S. 46-28.1 reads as rewritten:

"**§ 46-28.1. Petition for revocation of confirmation order.**

(a) Notwithstanding G.S. 46-28 or any other provision of law, an order confirming the partition sale of real property shall not become final and effective until 15 days after entered. At any time before the confirmation order becomes final and effective, any party to the partition proceeding or the purchaser may petition the court to revoke its order of confirmation and to order the withdrawal of the purchaser's offer to purchase the property upon the following grounds:

(1) In the case of a purchaser, a lien remains unsatisfied on the property to be conveyed.

(2) In the case of any party to the partition proceeding:

a. Notice of the partition was not served on the petitioner for revocation as required by Rule 4 of the Rules of Civil Procedure; or

b. Notice of the sale was not mailed to the petitioner for revocation as required by G.S. 46-28(b); or

c. The amount bid or price offered is inadequate and inequitable and will result in irreparable damage to the owners of the real property.

In no event shall the confirmation order become final or effective during the pendency of a petition under this section. No upset bid shall be permitted after the entry of the confirmation order.

(b) The party petitioning for revocation shall deliver a copy of the petition to all parties required to be served under Rule 5 of G.S. 1A-1, and the officer or person designated to make

such sale in the manner provided for service of process in Rule 4(j) of G.S. 1A-1. The court shall schedule a hearing on the petition within a reasonable time and shall cause a notice of the hearing to be served on the petitioner, the officer or person designated to make such a sale and all parties required to be served under Rule 5 of G.S. 1A-1.

(c) In the case of a petition brought under this section by a purchaser claiming the existence of an unsatisfied lien on the property to be conveyed, if the purchaser proves by a preponderance of the evidence that:

(1) A lien remains unsatisfied on the property to be conveyed; and
(2) The purchaser has not agreed in writing to assume the lien; and
(3) The lien will not be satisfied out of the proceeds of the sale; and
(4) The existence of the lien was not disclosed in the notice of sale of the property, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer.

The order of the court in revoking an order of confirmation under this section may not be introduced in any other proceeding to establish or deny the existence of a lien.

(d) In the case of a petition brought pursuant to this section by a party to the partition proceeding, if the court finds by a preponderance of the evidence that petitioner has proven a case pursuant to sub-subdivision (a)(2)a., b., or c. of ~~subsection (a)(2),~~ this section, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer.

(d1) In the case of a petition brought pursuant to sub-subdivision (a)(2)c. of this section, and when an independent appraisal of the property being sold has not been previously entered into evidence in the action, and upon the request of any party, the court may order an independent appraisal prepared by a real estate appraiser currently licensed by the North Carolina Appraisal Board and prepared in accordance with the Uniform Standards of Professional Appraisal Practice. The cost of an independent appraisal shall be borne by one or more of the parties requesting the appraisal in such proportions as they may agree. Before ruling on the petition brought pursuant to sub-subdivision (a)(2)c. of this section, the court may in its discretion require written evidence from the appraiser that the appraiser has been paid in full for the appraisal. If based on the appraisal and all of the evidence presented, the court finds the amount bid or price offered to be inadequate, inequitable, and resulting in irreparable damage to the owners, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's high bid or offer, and order the return to such purchaser of any money or security tendered by the purchaser pursuant to the high bid or offer.

(e) If the court revokes its order of confirmation under this section, the court shall order a resale. The procedure for a resale is the same as is provided for an original public sale under Article 29A of Chapter 1 of the General Statutes."

SECTION 6. This act becomes effective October 1, 2009, and applies to partition actions filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 578
Committee Substitute Favorable 5/7/09
Committee Substitute #2 Favorable 5/12/09
Senate Judiciary II Committee Substitute Adopted 7/21/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H578-CSRC-60 [v.1]

7/27/2009 7:33:08 PM

Short Title: Partition Sales/Commrs., Sellers, Buyers. (Public)

Sponsors:

Referred to:

March 16, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY NOTICE REQUIRED TO PARTIES WHO MAY BE UNKNOWN OR UNLOCATABLE IN A PARTITION PROCEEDING; TO CODIFY THE CURRENT PRACTICE OF GRANTING OWNERS CREDIT FOR THEIR EXISTING INTEREST IN LAND WHEN BIDDING ON A PARTITION SALE; TO PERMIT A COURT TO ORDER AN INDEPENDENT APPRAISAL IF REQUESTED AND PAID FOR BY A PARTY TO THE PARTITION WHO CHALLENGES THE AMOUNT BID IN A PARTITION SALE; TO REVISE THE STANDARD FOR DETERMINING WHAT CONSTITUTES "SUBSTANTIAL INJURY" WITH REGARDS TO A PETITION FOR A SALE OF THE PROPERTY; AND TO PROVIDE FOR MEDIATION OF PARTITION DISPUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 46-6 reads as rewritten:

"**§ 46-6. Unknown or unlocatable parties; ~~summons and~~ summons, notice, and representation.**

(a) If, upon the filing of a petition for partition, it be made to appear to the court by affidavit or otherwise that there are any persons interested in the premises whose names are unknown to and cannot after due diligence be ascertained by the petitioner, the court shall order notices to be given to all such persons by a publication of the petition, or of the substance thereof, with the order of the court thereon, in one or more newspapers to be designated in the order. The notice by publication shall include a description of the property which includes the street address, if any, or other common designation for the property, if any, and may include the legal description of the property.

(b) ~~If~~ Before or after such general notice by publication if any person interested in the premises and entitled to notice fails to appear, the court shall ~~in its discretion~~ appoint some disinterested person to represent the owner of any shares in the property to be divided, the ownership of which is unknown or unlocatable and unrepresented."

SECTION 2. G.S. 46-22 reads as rewritten:

"**§ 46-22. Sale in lieu of partition.**

(a) ~~The~~ Subject to G.S. 46-22.1(b), the court shall order a sale of the property described in the petition, or of any part, only if it finds, by a preponderance of the evidence, that an actual partition of the lands cannot be made without substantial injury to any of the interested parties.

(b) In determining ~~"Substantial~~ "substantial injury" the court shall consider all of the following:

(1) Whether ~~means~~ the fair market value of each share in an in-kind partition would be materially less than the share of each cotenant in the money equivalent that would be obtained from the sale of the ~~whole;~~whole.

(2) Whether a sale or ~~and if~~ an in-kind division would result in material impairment of the ~~cotenant's~~ cotenants' rights.

(3) Whether the substantial injury to the parties requesting the sale outweighs the substantial injury to the parties requesting an in-kind division or to remain tenants in common.

(b1) The court shall use the remedy of owelty where such remedy can aid in making a partition in-kind occur without substantial injury to the parties.

(c) The court shall specifically find the facts supporting an order of sale of the property.

(d) The party seeking a sale of the property shall have the burden of proving substantial injury under the provisions of this section."

SECTION 3. Article 2 of Chapter 46 of the General Statutes is amended by adding a new section to read:

"**§ 46-22.1 Mediation.**

(a) Persons interested in the premises may agree at anytime to mediation of a partition. A list of mediators certified by the Dispute Resolution Commission may be obtained from the clerk or from the Commission through the Administrative Office of the Courts.

(b) When a partition sale is requested, the court or the clerk may order mediation before considering whether to order a sale. The provisions of G.S. 7A-38.1 and G.S. 7A-38.3B shall apply."

SECTION 4. G.S. 46-28 reads as rewritten:

"**§ 46-28. Sale procedure.**

(a) The procedure for a partition sale shall be the same as is provided in Article 29A of Chapter 1 of the General ~~Statutes.~~ Statutes, except as provided herein.

(b) The commissioners shall certify to the court that at least 20 days prior to sale a copy of the notice of sale was sent by first class mail to the last known address of all petitioners and respondents who previously were served by personal delivery or by registered or certified mail. The commissioners shall also certify to the court that at least ten days prior to any resale pursuant to G.S. 46-28.1(e) a copy of the notice of resale was sent by first class mail to the last known address of all parties to the partition proceeding who have filed a written request with the court that they be given notice of any resale. An affidavit from the commissioners that copies of the notice of sale and resale were mailed to all parties entitled to notice in accordance with this section shall satisfy the certification requirement and shall also be deemed prima facie true. If after hearing it is proven that a party seeking to revoke the order of confirmation of a sale or subsequent resale was mailed notice as required by this section prior to the date of the sale or subsequent resale, then that party shall not prevail under the provisions of G.S. 46-28.1(a)(2)a. and b.

(c) Any cotenant who enters the high bid or offer at any sale of one hundred percent (100%) of the undivided interests in any parcel of real property shall receive a credit for the undivided interest the cotenant already owns therein and shall receive a corresponding reduction in the amount of the total purchase price owed after deducting the costs and fees associated with the sale and apportioning the costs and fees associated with the sale in accordance with the orders of the court. The high bid or offer shall be for one hundred percent (100%) of the undivided interests in the parcel of real property sold, and the credit and

reduction shall be applied at the time of the closing of the cotenant's purchase of the real property. When jointly making the high bid or offer at the sale, two or more cotenants may receive at the closing an aggregate credit and reduction in the amount of the total purchase price representing the total of such cotenants' undivided interests in the real property. Any credits and reductions allowed by this subsection shall be further adjusted to reflect any court-ordered adjustments to the share(s) of the net sale proceeds of each of the cotenants entering the high bid or offer, including, but not limited to, equitable adjustments to the share(s) of the net sales proceeds due to a court finding of the lack of contribution of one or more cotenants to the payment of expenses of the real property."

SECTION 5. G.S. 46-28.1 reads as rewritten:

"**§ 46-28.1. Petition for revocation of confirmation order.**

(a) Notwithstanding G.S. 46-28 or any other provision of law, an order confirming the partition sale of real property shall not become final and effective until 15 days after entered. At any time before the confirmation order becomes final and effective, any party to the partition proceeding or the purchaser may petition the court to revoke its order of confirmation and to order the withdrawal of the purchaser's offer to purchase the property upon the following grounds:

(1) In the case of a purchaser, a lien remains unsatisfied on the property to be conveyed.

(2) In the case of any party to the partition proceeding:

a. Notice of the partition was not served on the petitioner for revocation as required by Rule 4 of the Rules of Civil Procedure; or

b. Notice of the sale was not mailed to the petitioner for revocation as required by G.S. 46-28(b); or

c. The amount bid or price offered is inadequate and inequitable and will result in irreparable damage to the owners of the real property.

In no event shall the confirmation order become final or effective during the pendency of a petition under this section. No upset bid shall be permitted after the entry of the confirmation order.

(b) The party petitioning for revocation shall deliver a copy of the petition to all parties required to be served under Rule 5 of G.S. 1A-1, and the officer or person designated to make such sale in the manner provided for service of process in Rule 4(j) of G.S. 1A-1. The court shall schedule a hearing on the petition within a reasonable time and shall cause a notice of the hearing to be served on the petitioner, the officer or person designated to make such a sale and all parties required to be served under Rule 5 of G.S. 1A-1.

(c) In the case of a petition brought under this section by a purchaser claiming the existence of an unsatisfied lien on the property to be conveyed, if the purchaser proves by a preponderance of the evidence that:

(1) A lien remains unsatisfied on the property to be conveyed; and

(2) The purchaser has not agreed in writing to assume the lien; and

(3) The lien will not be satisfied out of the proceeds of the sale; and

(4) The existence of the lien was not disclosed in the notice of sale of the property, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer.

The order of the court in revoking an order of confirmation under this section may not be introduced in any other proceeding to establish or deny the existence of a lien.

(d) In the case of a petition brought pursuant to this section by a party to the partition proceeding, if the court finds by a preponderance of the evidence that petitioner has proven a case pursuant to sub-subdivision (a)(2)a., b., or c. of ~~subsection (a)(2),~~ this section, the court

may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer.

(d1) In the case of a petition brought pursuant to sub-subdivision (a)(2)c. of this section, and when an independent appraisal of the property being sold has not been previously entered into evidence in the action, and upon the request of any party, the court may order an independent appraisal prepared by a real estate appraiser currently licensed by the North Carolina Appraisal Board and prepared in accordance with the Uniform Standards of Professional Appraisal Practice. The cost of an independent appraisal shall be borne by one or more of the parties requesting the appraisal in such proportions as they may agree. Before ruling on the petition brought pursuant to sub-subdivision (a)(2)c. of this section, the court may in its discretion require written evidence from the appraiser that the appraiser has been paid in full for the appraisal. If based on the appraisal and all of the evidence presented, the court finds the amount bid or price offered to be inadequate, inequitable, and resulting in irreparable damage to the owners, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's high bid or offer, and order the return to such purchaser of any money or security tendered by the purchaser pursuant to the high bid or offer.

(e) If the court revokes its order of confirmation under this section, the court shall order a resale. The procedure for a resale is the same as is provided for an original public sale under Article 29A of Chapter 1 of the General Statutes."

SECTION 6. This act becomes effective October 1, 2009, and applies to partition actions filed on or after that date.

HOUSE BILL 578:
Partition Sales/Commrs., Sellers, Buyers

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	July 27, 2009
Introduced by:	Reps. Bryant, Michaux, Allen, Harrison	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	PCS to Fourth Edition H578-CSRC-60		

SUMMARY: House Bill 578 would require that respondents in a partition proceeding be notified of their right to seek legal counsel, and would clarify the requirements for providing notice to unknown or unlocatable parties in a partition proceeding. It would also grant owners credit for their existing interest in the land when bidding on it in a partition sale, and would require the court to order an independent appraisal if requested and paid for by a party who challenges the amount bid in a partition sale. The PCS amends the circumstances when a court must order a sale. The additional factor is whether the substantial injury of an in-kind partition to the individuals requesting the sale outweighs the substantial injury to the parties opposing the sale.

CURRENT LAW: To legally "partition" property means to bring a proceeding in court to force the physical division or sale of real property and in the event of sale to have the property or proceeds from sale of the property divided among co-owners of the property. Under the laws governing the partition of real property (Chapter 46 of the General Statutes), one or more persons claiming joint ownership in real property may petition the superior court for partition of the property. The court must order a sale of the property if it finds by a preponderance of the evidence that the actual partition of the property cannot be made without substantial injury to any of the interested parties. "Substantial injury" is defined as "the fair market value of each share in an in kind partition would be materially less than the share of each cotenant in the money equivalent that would be obtained from the sale of the whole, and if the in kind division would result in material impairment of the cotenant's rights." G.S. 46-22(b).

BILL ANALYSIS: **Section 1** of the bill would amend the statute concerning the notification of unknown parties to a partition proceeding. Under existing law, when the court determines that there are persons with an interest in the property whose names are unknown and cannot be ascertained by the petitioner, the court can order that notice be made by publication in a newspaper. The bill would require that notice by publication include a full description of the property, and require the court to appoint someone to represent any unknown or unlocatable parties.

Section 2 amends the definition of "substantial injury" (the standard a court must apply when deciding whether to order a sale). The court would order a sale if an in-kind partition cannot be made without substantial injury to any of the interested parties. A court would consider the following when determining whether an in kind partition would cause substantial injury:

- Whether the fair market value of each share in an in-kind partition would be materially less than the money equivalent from a sale of the whole.
- Whether a sale or an in-kind division would result in material impairment of the cotenants' rights.
- Whether the substantial injury to the individuals requesting the sale outweighs the substantial injury to the parties opposing the sale.

Section 3 states that the interested parties may enter into mediation to resolve the dispute prior to filing an action and that the clerk or the court may require the parties to attempt to mediate a settlement prior to ordering a sale.

Section 4 of the bill would amend the statute concerning the sale procedure for partition sales, to provide that any cotenant making an offer to purchase the entire parcel would receive credit for the value of his or her share and received a corresponding reduction in the amount owed after deducting the costs and fees associated with the sale. The bill would allow two or more cotenants to aggregate the credit for their interests.

Section 5 of the bill would amend the law pertaining to a petition for revocation of an order confirming the partition sale of real property by making a technical change, and by adding a new provision that would require the court to order an independent appraisal of the property upon request of the petitioner. If, based on the appraisal and other evidence, the court finds the sale price to be inadequate the court may revoke the order confirming the sale. The cost of the appraisal would be apportioned to all parties requesting it, and the court could require the parties to pay all or part of that cost prior to the appraisal.

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

H578-SMRC-73(CSRC-60) v2

HOUSE BILL 775*

Short Title:	Alt. Testimony/Children and Adults with Disab.	(Public)
Sponsors:	Representatives England, M. Alexander, Parmon (Primary Sponsors); Brisson, Faison, Harrison, Insko, Lucas, and Womble.	
Referred to:	Juvenile Justice, if favorable, Judiciary III.	

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR ALTERNATIVE MEANS OF TESTIMONY FOR CHILDREN AND ADULTS WITH DISABILITIES AS RECOMMENDED BY THE JOINT STUDY COMMITTEE ON AUTISM SPECTRUM DISORDER AND PUBLIC SAFETY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 6 of Chapter 8C of the General Statutes is amended by adding a new section to read:

"**Rule 616. Alternative testimony of children and developmentally disabled.**

(a) Closed Circuit Testimony Permitted. – When a witness is either (i) under the age of 16 or (ii) developmentally disabled or mentally retarded, the court may, on its own motion or at the request of a party, order that witness's testimony be taken by closed circuit television in any action, whether civil or criminal in nature.

(b) Finding of Emotional Harm Required in Criminal Actions. – Closed circuit testimony may be permitted in criminal actions only if the court finds that there is a substantial likelihood that the witness will suffer emotional harm such that the witness could not reasonably communicate with the finder of fact if required to testify in open court. Such a finding shall be based upon clear and convincing evidence, which may include expert testimony.

(c) Finding of Best Interests of Witness in Civil Actions. – Closed circuit testimony may be permitted in civil actions only if the court finds by a preponderance of the evidence that permitting the witness to testify by closed circuit television is necessary to serve the best interests of the witness or enable the witness to communicate with the finder of fact. In making this finding, the court shall consider:

(1) The nature of the proceeding;

(2) The age and maturity of the witness;

(3) The relationship of the witness to the parties in the proceeding;

(4) The nature and degree of emotional trauma that the witness may suffer in testifying; and

(5) Any other relevant factor.

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

(1) Closed circuit testimony. – Transmission of witness testimony by closed circuit television which enables the defendant to observe and view the testimony and provides, by any appropriate electronic means, the defendant's right to assistance of counsel, including the right to immediate and direct communication with counsel during cross-examination.

(2) Developmentally disabled. – A person with a severe, chronic disability which:

a. Is attributable to a mental or physical impairment or combination of mental and physical impairments, including cerebral palsy, epilepsy, autism, or other neurological conditions;

b. Is manifested before the person attains age 22, unless the disability is caused by a traumatic head injury and is manifested after age 22;

c. Is likely to continue indefinitely;

d. Results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, capacity for independent living, learning, mobility, self-direction and economic self-sufficiency; and

e. Reflects the person's need for a combination and sequence of special interdisciplinary or generic care, treatment, or other services which are of a lifelong or extended duration and are individually planned and coordinated; or

f. When applied to children from birth through four years of age, may be evidenced as a developmental delay.

(3) Mentally retarded. – A person with significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before age 22."

SECTION 2. This act becomes effective December 1, 2009, and applies to any testimony given on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 775*
PROPOSED SENATE COMMITTEE SUBSTITUTE H775-CSSB-74 [v.6]

7/27/2009 5:10:41 PM

Short Title: Alt. Testimony/Children and Adults with Disab. (Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR ALTERNATIVE MEANS OF TESTIMONY FOR PERSONS WITH DEVELOPMENTAL DISABILITIES AND PERSONS WITH MENTAL RETARDATION, AS RECOMMENDED BY THE JOINT STUDY COMMITTEE ON AUTISM SPECTRUM DISORDER AND PUBLIC SAFETY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 6 of Chapter 8C of the General Statutes is amended by adding a new section to read:

"**Rule 616. Alternative testimony of witnesses with developmental disabilities or mental retardation in civil cases and special proceedings.**

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

(1) The definitions set out in G.S. 122C-3.

(2) "Remote testimony" means a method by which a witness testifies outside of an open forum and outside of the physical presence of a party or parties.

(b) Remote Testimony Authorized. – A person with a developmental disability or a person with mental retardation who is competent to testify may testify by remote testimony in a civil proceeding or special proceeding if the court determines by clear and convincing evidence that the witness would suffer serious emotional distress from testifying in the presence of a named party or parties or from testifying in an open forum and that the ability of the witness to communicate with the trier of fact would be impaired by testifying in the presence of a named party or parties or from testifying in an open forum.

(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. The hearing shall be recorded unless recordation is waived by all parties. The presence of the witness is not required at the hearing unless so ordered by the presiding judge.

(d) Order. – An order allowing or disallowing the use of remote testimony shall state the findings and conclusions of law that support the court's determination. An order allowing the use of remote testimony shall also do all of the following:

(1) State the method by which the witness 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 witness during testimony.

(3) State any special conditions necessary to facilitate the cross-examination of the witness.

(4) State any condition or limitation upon the participation of individuals in the presence of the witness during the testimony.

(5) State any other conditions necessary for taking or presenting testimony.

(e) Testimony. – The method of remote testimony shall allow the trier of fact and all parties to observe the demeanor of the witness as the witness testifies in a similar manner as if the witness were testifying in the open forum. Except as provided in this section, the court shall ensure that the counsel for all parties are physically present where the witness testifies and have a full and fair opportunity for examination and cross-examination of the witness. In a proceeding where a party is representing itself, the court may limit or deny the party from being physically present during testimony if the court finds that the witness would suffer serious emotional distress from testifying in the presence of the party. A party may waive the right to have counsel physically present where the witness testifies.

(f) Nonexclusive Procedure and Standard. – Nothing in this section shall prohibit the use or application of any other method or procedure authorized or required by law for the introduction into evidence of statements or testimony of a person with a developmental disability or a person with mental retardation."

SECTION 2. Article 73 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1225.2. Witnesses with developmental disabilities or mental retardation; remote testimony.**

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

(1) The definitions set out in G.S. 122C-3.

(2) "Remote testimony" means a method by which a witness testifies outside of an open forum and outside of the physical presence of a party or parties.

(b) Remote Testimony Authorized. – A person with a developmental disability or a person with mental retardation who is competent to testify may testify by remote testimony in a prosecution of a person charged with violating a criminal law of this State and in 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 if the court determines by clear and convincing evidence that the witness would suffer serious emotional distress from testifying in the presence of the defendant and that the ability of the witness to communicate with the trier of fact would be impaired by testifying in the presence of the defendant.

(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. The hearing shall be recorded unless recordation is waived by all parties. The presence of the witness is not required at the hearing unless so ordered by the presiding judge.

(d) Order. – An order allowing or disallowing the use of remote testimony shall state the findings and conclusions of law that support the court's determination. An order allowing the use of remote testimony shall also do all of the following:

(1) State the method by which the witness 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 witness during testimony.

(3) State any special conditions necessary to facilitate the cross-examination of the witness.

(4) State any condition or limitation upon the participation of individuals in the presence of the witness during the testimony.

(5) State any other conditions necessary for taking or presenting testimony.

(e) Testimony. – The method of remote testimony shall allow the trier of fact and all parties to observe the demeanor of the witness as the witness testifies in a similar manner as if

the witness were testifying in the open forum. The court shall ensure that the counsel for all parties, except a pro se defendant, are physically present where the witness testifies and have a full and fair opportunity for examination and cross-examination of the witness. The court shall ensure that the defendant or juvenile respondent has the ability to communicate privately with defense counsel during the remote testimony. A party may waive the right to have counsel physically present where the witness testifies. 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 prohibit the use or application of any other method or procedure authorized or required by law for the introduction into evidence of statements or testimony of a person with a developmental disability or a person with mental retardation."

SECTION 3. 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 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 abrogate any judicial rulings that prohibit a psychological evaluation of an unwilling witness.

HOUSE BILL 775:
Alt. Testimony/Children and Adults with Disab

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	July 28 2009
Introduced by:	Representatives England, M. Alexander, and Parmon	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	Proposed Committee Substitute H775-CSSB-74 [v.5] to the First Edition		

SUMMARY: ***House Bill 775 would provide alternative procedures for taking the testimony of persons with developmental disabilities and persons with mental retardation. This bill is a recommendation of the Joint Study Committee on Autism Spectrum Disorder and Public Safety.***

[As introduced, this bill was identical to S241, as introduced by Sen. Purcell, which is currently in Senate Judiciary I.]

BACKGROUND:

The Confrontation Clause of the Sixth Amendment to the United States Constitution provides that "in all criminal prosecutions, the accused shall enjoy the right...to be confronted with the witnesses against him." A similar right is set out in Article 1, Section 23 of the NC Constitution, which provides that "In all criminal prosecutions, every person charged with crime has the right...to confront the accusers and witnesses with other testimony." In 1990, the U.S. Supreme Court ruled that testimony by closed circuit television would not necessarily violate that right under certain conditions. In Maryland v. Craig, 497 U.S. 836 (1990), the United States Supreme Court upheld a Maryland statute permitting the use of one-way closed circuit testimony for a child witness alleged to be the victim of child abuse when the trial court had determined that the testimony by the child victim in the courtroom would result in the child suffering emotional distress such that the child could not reasonably communicate.

North Carolina courts have addressed the issue of remote child testimony in the case of State v. Stradford, 119 N.C. App 654 (1995), holding that such testimony was allowable under certain circumstances. In Stradford, two minor children, the alleged victims of sexual abuse, were permitted to testify via closed circuit television due to the children's probable inability to communicate if forced to testify in defendant's presence. The Court of Appeals held that such testimony was permissible and did not violate the Confrontation Clause because the remote testimony preserved the essence of effective communication, as the child witnesses (1) testified under oath (2) were subject to full cross-examination, and (3) were able to be observed by the judge and defendant as they testified.

Nine states provide statutorily for alternative testimony by adults with disabilities under certain circumstances.

CURRENT LAW:

In North Carolina, certain proceedings in criminal matters may be conducted by audio and video transmission in which the parties can see and hear each other, including:

A hearing to determine the need to continue custody of a juvenile.

- Showing of probable cause through the oral testimony under oath or affirmation presented by a sworn law enforcement officer to the issuing official.

- A proceeding for initial appearance in a noncapital case, between the magistrate or other authorized judicial official and the defendant.
- First appearance before a district court judge.
- A proceeding to determine, modify, or revoke conditions of pretrial release in a noncapital case.
- Arraignment in a noncapital case.

BILL ANALYSIS:

House Bill 775 would amend the North Carolina Rules of Evidence, which govern proceedings in the courts of this State. The bill would authorize the court to permit remote testimony in any civil or criminal action when the witness is a person with a developmental disability or a person with mental retardation. The definitions of "developmental disability" and "mental retardation" are the same as those set out in Chapter 122C of the General Statutes (Mental Health). For a person with a developmental disability or a person with mental retardation, testimony would be taken remotely (generally by closed circuit television), which enables the defendant to observe and view the testimony, and which provides the defendant's right to assistance of counsel.

Criminal Actions – Remote testimony would be permitted in criminal actions only if the court finds, based on clear and convincing evidence, that the ability of the witness to communicate with the trier of fact would be impaired and the witness would suffer serious emotional distress from testifying in the presence of the defendant. The "clear and convincing evidence" requirement means that the evidence must be sufficient to prove that it is highly probable or probably certain that the witness would suffer emotional harm from testifying in open court.

Civil Actions – Remote testimony would be permitted in civil actions if the court determines by clear and convincing evidence that the ability of the witness to communicate with the trier of fact would be impaired and the witness would suffer serious emotional distress from testifying in the presence of a named party or parties or from testifying in an open forum. The "clear and convincing evidence" requirement means that the evidence must be sufficient to prove that it is highly probable or probably certain that the witness would suffer emotional harm from testifying in open court.

EFFECTIVE DATE:

The bill would become effective December 1, 2009 and apply to hearings or trials held on or after that date.

Brenda Carter, Susan Sitze, and Wendy Graff, Staff Attorneys, contributed substantially to this summary.

HOUSE BILL 1261

Short Title:	Protect Our Kids/Cyber Bullying Misdemeanor.	(Public)
Sponsors:	Representatives Mackey, Parmon (Primary Sponsors); K. Alexander, Cotham, Fisher, Harrison, Lucas, Mobley, Pierce, Wainwright, Womble, and Wray.	
Referred to:	Science and Technology, if favorable, Judiciary III.	

April 9, 2009

A BILL TO BE ENTITLED

AN ACT PROTECTING CHILDREN OF THIS STATE BY MAKING CYBER BULLYING A CRIMINAL OFFENSE PUNISHABLE AS A CLASS 1 MISDEMEANOR.

The General Assembly of North Carolina enacts:

SECTION 1. Article 60 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-458.1. Cyber bullying; penalty.**

(a) Except as otherwise made unlawful by this Article, it shall be unlawful for any person to use a computer or computer network to do any of the following:

(1) Falsify one's identity in an Internet chat room, an electronic mail message, or an instant message with the intent to intimidate or torment a minor.

(2) Follow a minor online or into an Internet chat room with the intent to intimidate or torment a minor.

(3) Build a fake profile, a Web site, or pose as a minor in an Internet chat room, an electronic mail message, or an instant message with the intent to intimidate or torment a minor.

(4) Plant any statement, whether true or false, tending to provoke or that actually provokes, any third party to stalk or harass a minor.

(5) Post a real or doctored image of a minor on the Internet with the intent to embarrass, intimidate, or torment the minor or the minor's parent or guardian.

(6) Post or encourage others to post on the Internet private, personal, or sexual information pertaining to a minor with the intent to intimidate or torment the minor.

(7) Access, alter, or erase any computer network, computer data, computer program, or computer software, including breaking into a password protected account or stealing or otherwise accessing passwords, with the intent to embarrass, intimidate, or torment a minor or the minor's parent or guardian.

(8) Copy and disseminate, or cause to be made an unauthorized copy of any data pertaining to a minor for the purpose of intimidating or tormenting that minor (in any form, including, but not limited to, any printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network).

(9) Use a computer system to repeatedly communicate insults to, or about, a minor with the intent to intimidate or torment the minor or the minor's parent or guardian.

(10) Sign a minor up for a pornographic Internet site.

(11) Sign a minor up for electronic mailing lists, or to receive junk electronic messages and instant messages, without authorization, resulting in either (i) costs to the minor or to the minor's parent or guardian or (ii) intimidation or torment of the minor.

(b) Any person who violates this section shall be guilty of cyber bullying, which offense shall be punishable as a Class 1 misdemeanor."

SECTION 2. G.S. 14-453 is amended by adding new subdivisions to read:

"(7b) 'Internet chat room' means a computer service allowing two or more users to communicate with each other in real time.

(7c) 'Profile' means a configuration of user data required by a computer so that the user may access programs or services and have the desired functionality on that computer."

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

HOUSE BILL 1377
Second Edition Engrossed 5/14/09

Short Title:	Taxpayer Optimization Act.	(Public)
Sponsors:	Representatives Folwell, McElraft, Brown, Moore (Primary Sponsors); and Starnes.	
Referred to:	State Government/State Personnel, if favorable, Judiciary II.	

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE CERTAIN SALES OF STATE PROPERTY SUBJECT TO UPSET BIDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 146-27 reads as rewritten:

"**§ 146-27. The role of the Department of Administration in sales, leases, and rentals.**

(a) General. – Every sale, lease, rental, or gift of land owned by the State or by any State agency shall be made by the Department of Administration and approved by the Governor and Council of State. A lease or rental of land owned by the State may not exceed a period of 99 years. The Department of Administration may initiate proceedings for sales, leases, rentals, and gifts of land owned by the State or by any State agency.

(b) Large Disposition. – If a proposed disposition is a sale or gift of land with an appraised value of at least twenty-five thousand dollars ($25,000), the sale or gift shall not be made until after consultation with the Joint Legislative Commission on Governmental Operations.

(b1) Upset Bids. – If a proposed disposition of land or other real property with a value of at least twenty-five thousand dollars ($25,000) is a sale or other transfer to a private entity that operates or is established to operate for profit, the proposed disposition shall be subject to upset bids, unless other, non-monetary consideration associated with the transaction has been made public. If other consideration is offered such that upset bids are not required, notice of the sale and other consideration shall be posted and published in a manner similar to that provided in G.S. 1-339.17. The Department of Administration shall adopt a procedure for upset bids that is based on the upset bid procedure set forth in Part 2 of Article 29A of Chapter 1 of the General Statutes.

(c) Expired effective September 1, 2007."

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

HOUSE BILL 1447
Committee Substitute Favorable 5/7/09
Third Edition Engrossed 5/13/09

Short Title: Crime Stoppers Tips Are Confidential. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE IDENTITY OF AN INDIVIDUAL WHO PROVIDES A TIP FOR AN UNSOLVED CASE THROUGH CRIME STOPPERS OR SIMILAR ORGANIZATIONS IS NOT A PUBLIC RECORD, TO PROVIDE THAT THE COMMUNICATION RECEIVED BY A CRIME STOPPERS ORGANIZATION IS NOT SUBJECT TO DISCOVERY OR ADMISSIBLE IN A COURT PROCEEDING, AND TO PROVIDE THAT A LAW ENFORCEMENT AGENCY HAS A DUTY TO MAINTAIN THE CONFIDENTIALITY OF A CRIME STOPPERS TIP.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 15A of the General Statutes is amended by adding a new Article to read:

"Article 47.

"Local Crime Stoppers Programs.

"**§ 15A-850. Local Crime Stoppers organizations; confidentiality.**

(a) Definition. – As used in this section, a "Crime Stoppers" organization or other similarly named organization means a private, nonprofit North Carolina corporation governed by a civilian volunteer board of directors that is operated on a local or statewide level that (i) offers anonymity to persons providing information to the organization, (ii) accepts and expends donations for cash rewards to persons who report to the organization information about alleged criminal activity and that the organization forwards to the appropriate law enforcement agency, and (iii) is established as a cooperative alliance among the news media, the community, and law enforcement officials.

(b) Prohibitions on Use of Crime Stoppers Tips.

(1) Evidence of a communication, and any information contained within a communication, from an anonymous source to a Crime Stoppers organization shall not be:

a. Relied upon, or considered by, a judicial official in determining whether probable cause exists to issue either an arrest or search warrant.

b. Admissible or subject to discovery in any court proceeding.

(2) Crime Stoppers tips may only be used to assist a law enforcement agency in directing its investigation of alleged criminal activity.

(c) Identity of Crime Stoppers Informant Is Not Public Record; Duty of Law Enforcement Agency to Maintain Confidentiality. – The identity of any individual providing information about a crime or criminal activity to a Crime Stoppers organization under a

promise of anonymity is not a public record as defined by G.S. 132-1 and shall not be disclosed. A law enforcement agency receiving information concerning alleged criminal activity from a Crime Stoppers organization shall maintain confidentiality pursuant to this section and pursuant to G.S. 132-1.4(h)."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

HOUSE BILL 1463
Committee Substitute Favorable 5/5/09

Short Title: Expand Access/Confidential Intermediaries. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT ALLOWING ADULT BIOLOGICAL SIBLINGS OF ADULT ADOPTEES, ADULT BIOLOGICAL HALF SIBLINGS OF ADULT ADOPTEES, ADULT FAMILY MEMBERS OF DECEASED ADOPTEES, AND ADULT FAMILY MEMBERS OF DECEASED BIOLOGICAL PARENTS TO HAVE ACCESS TO CONFIDENTIAL INTERMEDIARY SERVICES UPON THE CONSENT OF THE PARTIES AND TO ALLOW AN AGENCY ACTING AS A CONFIDENTIAL INTERMEDIARY TO OBTAIN A COPY OF A DEATH CERTIFICATE OF THE PERSON WHO IS THE SUBJECT OF THE SEARCH AND DELIVER IT TO THE PERSON REQUESTING SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 48-1-101 reads as rewritten:

"**§ 48-1-101. Definitions.**

...

(5a) "Confidential intermediary" means a licensed adoption agency staff person who may act as a third party to facilitate ~~contact between an adult adoptee or the adult lineal descendant of a deceased adoptee and the biological parent.~~ the sharing of information authorized by G.S. 48-9-104.

...

~~(9a) "Lineal descendant of a deceased adoptee" means any person who descends from the direct line of the adoptee.~~

...."

SECTION 2. G.S. 48-9-101 reads as rewritten:

"**§ 48-9-101. ~~Certain terms~~ Records defined.**

~~(a)~~ For purposes of this Article, "records" means any petition, affidavit, consent or relinquishment, transcript or notes of testimony, deposition, power of attorney, report, decree, order, judgment, correspondence, document, invoice, receipt, certificate, or other printed, written, microfilmed or microfiched, video-taped or tape-recorded material or electronic data processing records regardless of physical form or characteristics pertaining to a proceeding for adoption under this Chapter.

~~(b) Notwithstanding G.S. 48-1-101, for purposes of this Article, "adult" means an individual who has attained 21 years of age.~~"

SECTION 3. G.S. 48-9-104 reads as rewritten:

"**§ 48-9-104. Release of identifying ~~information.~~information; confidential intermediary services.**

(a) Except as provided in this section or in G.S. 48-9-109(2) or (3), no person or entity shall release from any records retained and sealed under this Article the name, address, or other

information that reasonably could be expected to lead directly to the identity of an adoptee, an adoptive parent of an adoptee, an adoptee's parent at birth, or an individual who, but for the adoption, would be the adoptee's sibling or grandparent, except upon order of the court for cause pursuant to G.S. 48-9-105.

(b) A child placing agency licensed by the Department or a county department of social services may agree to act as a confidential intermediary for ~~a biological parent or adult adoptee or adult lineal descendant of a deceased adoptee, without appointment by the court pursuant to G.S. 48-9-105, in order to obtain and share nonidentifying birth family health information or facilitate contact or share identifying information with adult adoptees, adult lineal descendants of deceased adoptees, and biological parents with the written consent of all parties to the contact or the sharing of information.~~ any of the following:

(1) A biological parent.

(2) An adult adoptee.

(3) An adult biological sibling of an adult adoptee.

(4) An adult biological half sibling of an adult adoptee.

(5) An adult family member of a deceased biological parent.

(6) An adult family member of a deceased adoptee.

An agency may act as a confidential intermediary without appointment by the court pursuant to G.S. 48-9-105, in order to obtain and share nonidentifying birth family health information or to facilitate contact or share identifying information with any person listed in subdivisions (1) through (6) of this subsection with the written consent of all parties to the contact or the sharing of information. Written consent of the biological parent is required if the biological parent is living at the time any party described in subdivisions (2) through (6) of this subsection seeks to contact or share identifying information with any other party described in subdivisions (2) through (6) of this subsection. Further, ~~a child placing agency licensed by the Department or a county department of social services~~an agency may agree to act as a confidential intermediary for the adoptive parents of a minor adoptee, or the guardian of a minor adoptee without appointment by the court pursuant to G.S. 48-9-105, to obtain and share nonidentifying birth family health information. An agency providing confidential intermediary services shall contact individuals in a manner reasonably calculated to prevent incidental disclosure of confidential information. An agency that agrees to provide confidential intermediary services may charge a reasonable fee for doing so, which fee must be pursuant to written agreement signed by the individual to be charged. The Division shall establish guidelines for confidential intermediary services.

(c) For purposes of this section only, the term 'family member' means a spouse, child, stepchild, parent, stepparent, grandparent, or grandchild.

(d) If in the provision of confidential intermediary services a child placing agency licensed by the Department or a county department of social services determines that the person who is the subject of the search is deceased, the agency may obtain a copy of the death certificate pursuant to G.S. 130A-93 and deliver it to the person who requested the services."

SECTION 4. G.S. 130A-93 is amended by adding a new subsection to read:

"(c2) A child placing agency licensed by the Department of Health and Human Services or a county department of social services acting as a confidential intermediary in accordance with G.S. 48-9-104 shall be entitled upon request to a certified copy of a death certificate."

SECTION 5. This act becomes effective October 1, 2009.

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	July 30, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 274	Rewrite Foreign Money Judgments Laws.	Representative Ross
HB 578	Partition Sales/Commrs., Sellers, Buyers.	Representative Bryant Representative Michaux, Jr. Representative Allen Representative Harrison
HB 1261	Protect Our Kids/Cyber Bullying Misdemeanor.	Representative Parmon Representative Mackey
HB 1377	Taxpayer Optimization Act.	Representative Folwell Representative Brown Representative McElraft Representative Moore
HB 1447	Crime Stoppers Tips Are Confidential.	Representative Wiley
HB 1463	Expand Access/Confidential Intermediaries.	Representative Farmer-Butterfield Representative Dickson Representative Harrell Representative Wilkins, Jr.

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II Committee
Thursday, July 30, 2009, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 274	Rewrite Foreign Money Judgments Laws.	Representative Ross
HB 578	Partition Sales/Commrs., Sellers, Buyers.	Representative Bryant Representative Michaux, Jr. Representative Allen Representative Harrison
HB 1261	Protect Our Kids/Cyber Bullying Misdemeanor.	Representative Parmon Representative Mackey
HB 1377	Taxpayer Optimization Act.	Representative Folwell Representative Brown Representative McElraft Representative Moore
HB 1447	Crime Stoppers Tips Are Confidential.	Representative Wiley
HB 1463	Expand Access/Confidential Intermediaries.	Representative Farmer-Butterfield Representative Dickson Representative Harrell Representative Wilkins, Jr.

Presentations

Other Business

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Corrected Report
Monday, August 03, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

H.B.(SCS #1) **578** Partition Sales/Commrs., Sellers, Buyers.

Draft Number:	80497
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

Senator Atwater/Doug Berger will handle

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Monday, August 03, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **578** Partition Sales/Commrs., Sellers, Buyers.

Draft Number:	80497
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

Senator Atwater/Doug Berger will handle

SENATE JUDICIARY II COMMITTEE
Thursday, July 30, 2009 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 10:00 AM on July 30, 2009, in Room 1124 of the Legislative Building with fourteen members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell recognized pages Ian Wahrenbrock, Sarah Noble, Michael Tuck, Cody Lesack, Latosha Bell, Taylor Wallace, Alec Ashely, Brad Bowman and Roger Caudle and thanked them for their assistance.

HB 274 – (Rewrite Foreign Money Judgments Laws.) A Proposed Committee Substitute was distributed but no action was taken.

HB 1447 – (Crime Stoppers Tips Are Confidential.) Senator Allran, Chairman of the Sub-Committee, reported that Representative Wiley wished to have the bill carried over to the Short Session.

HB 578 – (Partition Sales/Commrs., Buyers.) Senator Jones moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Berger, Chairman of the Sub-Committee, explained the bill and gave a committee report. Representative Bryant spoke on the bill. Mr. Pete Powell, Counsel for the Administrative Office of the Courts, spoke on the bill. Questions from Senators Dannelly, Goodall, Swindell and Allran were answered by Mr. Powell. Mr. Tom Steele, Attorney, representing the Property Section of the Bar Association, gave additional information on the bill. Questions from Senators Atwater, Jones, Berger and Allran were answered by Mr. Steele. Senator Berger moved for a favorable report of the Proposed Committee Substitute, unfavorable to the original bill. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — July 30, 2009
Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
JEFF HARRIS	LLPP
Patrick A. Yancey	LLPP
Brittany Farrell	NCFPC
Rob Schofield	NCPN
Mark Watt	NCAOC
[illegible]	AOC
Katherine Walker	Lynch & Eatman-NCBA
Tom Steele, Jr	NCBA Wishart Norris
Sarah Poeston	ACLU-NC
Kim Crouch	NCBA
CASSANDRA WHITE	NCAOC

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Marion Walters	CCPS
Cindy Thomas	NCAR
Daniel Baum	K+L Gates
Will Snyderwine	CTNC
Debra DeCamillis	UNC. IOG
Kelly Graham	NCAJ
Doug Heaw	Williams Mullen
Ashley Vroom	NCASA
Erin Johnson	Student
Tammy Johnson	DHHS
Rita Harris	Commerce Dept

HOUSE BILL 274*

Short Title:	Rewrite Foreign Money Judgments Laws.	(Public)
Sponsors:	Representatives Ross; and Lucas.	
Referred to:	Judiciary I, if favorable, Commerce, Small Business, and Entrepreneurship.	

February 25, 2009

A BILL TO BE ENTITLED

AN ACT TO REWRITE THE LAW CONCERNING THE RECOGNITION OF FOREIGN MONEY JUDGMENTS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 18 of Chapter 1C of the General Statutes is repealed.

SECTION 2. Chapter 1C of the General Statutes is amended by adding a new Article to read:

"Article 20.

"North Carolina Uniform Foreign-Country Money Judgments Recognition Act.

"**§ 1C-1850. Short title.**

This Article may be cited as the North Carolina Uniform Foreign-Country Money Judgments Recognition Act.

"**§ 1C-1851. Definitions.**

The following definitions apply in this Article:

(1) Foreign country. – A government other than:

a. The United States;

b. A state, district, commonwealth, territory, or insular possession of the United States; or

c. Any other government with regard to which the decision in this State as to whether to recognize a judgment of that government's courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution.

(2) Foreign-country judgment. – A judgment of a court of a foreign country.

"**§ 1C-1852. Applicability; saving clause.**

(a) Except as otherwise provided in subsection (b) of this section, this Article applies to a foreign-country judgment to the extent that the judgment:

(1) Grants or denies recovery of a sum of money; and

(2) Under the law of the foreign country where rendered, is final, conclusive, and enforceable.

(b) This Article does not apply to a foreign-country judgment, even if the judgment grants or denies recovery of a sum of money, to the extent that the judgment is:

(1) A judgment for taxes;

(2) A fine or other penalty; or

(3) A judgment for alimony, support, or maintenance in matrimonial or family matters.

(c) A party seeking recognition of a foreign-country judgment has the burden of establishing that this Article applies to the foreign-country judgment.

(d) This Article does not prevent the recognition under principles of comity or otherwise of a foreign-country judgment to which this Article does not apply.

"**§ 1C-1853. Standards for recognition and nonrecognition of foreign-country judgment.**

(a) Except as otherwise provided in this section, a court of this State shall recognize a foreign-country judgment to which this Article applies.

(b) A court of this State shall not recognize a foreign-country judgment if:

(1) The judgment was rendered under a judicial system that, taken as a whole, does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(2) The foreign court did not have personal jurisdiction over the defendant; or

(3) The foreign court did not have jurisdiction over the subject matter.

(c) If a court of this State finds that any of the following exist with respect to a foreign-country judgment for which recognition is sought, recognition of the judgment shall be denied unless the court determines, as a matter of law, that recognition would nevertheless be reasonable under the circumstances:

(1) The defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend.

(2) The judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case.

(3) The judgment, or the cause of action or claim for relief on which the judgment is based, is repugnant to the public policy of this State or of the United States.

(4) Reserved for future codification.

(5) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court.

(6) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.

(7) The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment.

(8) The specific proceeding in the foreign court leading to the judgment was fundamentally unfair.

(d) If a foreign-country judgment for which recognition is sought is otherwise entitled to recognition under this Article but conflicts with a prior final and conclusive judgment, a court of this State shall recognize the judgment for which recognition is sought unless the court determines that nonrecognition would nevertheless be reasonable under the circumstances.

(e) If a foreign-country judgment for which recognition is sought is otherwise entitled to recognition under this Article but conflicts with a subsequent final and conclusive judgment, a court of this State shall deny recognition of the judgment for which recognition is sought unless the court determines that recognition would nevertheless be reasonable under the circumstances.

(f) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (b) of this section exists.

(g) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (c) of this section exists. The party seeking recognition of the judgment has the burden of establishing that, as a matter of law, recognition would nevertheless be reasonable under the circumstances.

(h) A party resisting recognition of a foreign-country judgment under subsection (d) or (e) of this section has the burden of establishing that another final and conclusive judgment

exists and that the other judgment conflicts with the judgment for which recognition is sought. Under subsection (d) of this section, the party resisting recognition also has the burden of establishing that nonrecognition of the judgment for which recognition is sought would be reasonable under the circumstances. Under subsection (e) of this section, the party seeking recognition of the foreign-country judgment has the burden of establishing that recognition would be reasonable under the circumstances.

(i) When a court of this State rules on recognition of a foreign-country judgment, the court shall state the facts specially and state separately its conclusions of law.

"**§ 1C-1854. Personal jurisdiction.**

(a) A foreign-country judgment shall not be refused recognition for lack of personal jurisdiction if any of the following exist:

(1) The defendant was served with process personally in the foreign country.

(2) The defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant.

(3) The defendant, before the commencement of the proceeding, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved.

(4) The defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, the foreign country.

(5) The defendant had a business office in the foreign country and the proceeding in the foreign court involved a cause of action or claim for relief arising out of business done by the defendant through that office in the foreign country.

(6) The defendant operated a motor vehicle or airplane in the foreign country and the proceeding involved a cause of action or claim for relief arising out of that operation.

(7) There was any other basis for personal jurisdiction that would be consistent with the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

(b) The list of bases for personal jurisdiction in subsection (a) of this section is not exclusive. The courts of this State may recognize reasonable bases of personal jurisdiction other than those listed in subsection (a) of this section as sufficient to support a foreign-country judgment.

"**§ 1C-1855. Procedure for recognition and nonrecognition of foreign-country judgment.**

(a) If recognition of a foreign-country judgment is sought as an original matter, the issue of recognition shall be raised by filing an action seeking recognition of the foreign-country judgment.

(b) If recognition or nonrecognition of a foreign-country judgment is sought in some other action, the issue of recognition may be raised by complaint, counterclaim, cross-claim, or affirmative defense.

"**§ 1C-1856. Effect of recognition of foreign-country judgment.**

(a) If the court in a proceeding under G.S. 1C-1855 finds that the foreign-country judgment is entitled to recognition under this Article then, to the extent that the foreign-country judgment grants or denies recovery of a sum of money, the foreign-country judgment is:

(1) Conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this State would be conclusive; and

(2) Enforceable in the same manner and to the same extent as a judgment rendered in this State.

(b) Article 17 of this Chapter does not apply to the enforcement of foreign-country judgments recognized under this Article.

"**§ 1C-1857. Stay of proceedings pending appeal of foreign-country judgment.**

If a party establishes that an appeal from a foreign-country judgment is pending or will be taken, the court may stay any proceedings with regard to the foreign-country judgment until the appeal is concluded, the time for appeal expires without an appeal being taken, or the appellant has had sufficient time to prosecute the appeal and has failed to do so.

"**§ 1C-1858. Statute of limitations.**

An action to recognize a foreign-country judgment must be commenced within the earlier of the time during which the foreign-country judgment is effective in the foreign country or 10 years from the date that the foreign-country judgment became effective in the foreign country.

"**§ 1C-1859. Uniformity of interpretation.**

In applying and construing this Article, consideration may be given to promoting uniformity of interpretation with respect to its subject matter among states that enact it."

SECTION 3. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the official comments to the Uniform Foreign-Country Money Judgments Recognition Act and all explanatory comments of the drafters of this act as the Revisor deems appropriate.

SECTION 4. This act is effective October 1, 2009, and applies to all actions commenced on or after that date in which the issue of recognition of a foreign-country judgment is raised.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 274*
PROPOSED SENATE COMMITTEE SUBSTITUTE H274-CSTC-57 [v.4]

7/30/2009 9:58:06 AM

Short Title: Clarifying Changes to State Law. (Public)

Sponsors:

Referred to:

February 25, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CLARIFYING CHANGES TO THE GENERAL STATUTES AND SESSION LAWS.

The General Assembly of North Carolina enacts:

SECTION A. G.S. 20-309(a) reads as rewritten:

"(a) No motor vehicle shall be registered in this State unless the owner at the time of registration ~~has~~ provides proof of financial responsibility for the operation of such motor vehicle, as provided in this Article. The owner of each motor vehicle registered in this State shall maintain financial responsibility continuously throughout the period of registration."

SECTION B.(a) Section 7.(b) of S.L. 2009-16 reads as rewritten:

"**SECTION 7.(b)** The Task Force shall consist of 15 members, appointed as follows:

(1) Six members by the ~~General Assembly upon the recommendation of the~~Speaker of the House of Representatives, three of whom shall be members of the House of Representatives, one shall be a public schoolteacher, one shall be a State or covered local government retiree other than a retired public schoolteacher, and one at-large. Of the three legislators appointed to the Task Force, one shall be a member of the minority party.

(2) Six members by the ~~General Assembly upon the recommendation of the~~President Pro Tempore of the Senate, three of whom shall be members of the Senate, one shall be a State employee who is not a public schoolteacher, one shall be a retired State public school employee, and one at-large. Of the three legislators appointed to the Task Force, one shall be a member of the minority party.

(3) One member by the Governor with expertise in the business of health insurance or in administering health care services other than an insurance company or third-party administrator or contractor of the Plan.

(4) The chair of the Board of Trustees of the State Health Plan or the chair's designee.

(5) The Commissioner of Insurance or the Commissioner's designee."

SECTION B.(b) Effective December 31, 2010, Part 7 of S.L. 2009-16, as amended by Section R.(a) of this act, is repealed.

SECTION C.(a) G.S. 164-14 reads as rewritten:

"**§ 164-14. Membership; appointments; terms; vacancies.**

(a) The Commission shall consist of ~~12~~14 members, who shall be appointed as follows:

(1) One member, by the president of the North Carolina State Bar;
(2) One member, by the General Statutes Commission;
(3) One member, by the dean of the school of law of the University of North Carolina;
(4) One member, by the dean of the school of law of Duke University;
(5) One member, by the dean of the school of law of Wake Forest University;
(6) One member, by the Speaker of the House of Representatives of each General Assembly from the membership of the House;
(7) One member, by the President Pro Tempore of the Senate of each General Assembly from the membership of the Senate;
(8) Two members, by the Governor;
(9) One member, by the dean of the school of law of North Carolina Central University;
(10) One member by the president of the North Carolina Bar Association;
(11) One member, by the dean of the school of law of Campbell University.
(12) One member, by the dean of the school of law of Elon University.
(13) One member, by the dean of the Charlotte School of Law (NC), Inc.

(b) Appointments of original members of the Commission made by the president of the North Carolina State Bar, the president of the North Carolina Bar Association, and the deans of the schools of law of Duke University, the University of North Carolina, and Wake Forest University shall be for one year. Appointments of original members of the Commission made by the Speaker of the House of Representatives, the President of the Senate, and the Governor shall be for two years.

(c) After the appointment of the original members of the Commission, appointments by the president of the North Carolina State Bar, the General Statutes Commission, and the deans of the schools of law of North Carolina Central University, Duke University, Elon University, the University of North Carolina, and Wake Forest University shall be made in the even-numbered years, and appointments made by the Speaker of the House of Representatives, the President Pro Tempore of the Senate, president of the North Carolina Bar Association, the ~~dean~~ deans of the School of Law of Campbell University and the Charlotte School of Law (NC), Inc., and the Governor shall be made in the odd-numbered years. Such appointments shall be made for two-year terms beginning June first of the year when such appointments are to become effective and expiring May 31 two years thereafter. All such appointments shall be made not later than May 31 of the year when such appointments are to become effective.

(d) If any appointment provided for by this section is not made prior to June first of the year when it should become effective, a vacancy shall exist with respect thereto, and the vacancy shall then be filled by appointment by the Governor. If any member of the Commission dies or resigns during the term for which he was appointed, his successor for the unexpired term shall be appointed by the person who made the original appointment, as provided in G.S. 164-14, or by the successor of such person; and if such vacancy is not filled within 30 days after the vacancy occurs, it shall then be filled by appointment by the Governor. In any case where an appointment authorized to be made by G.S. 164-14(c) has not been made on or before July 31 of the year in which it was due to be made, a vacancy shall exist with respect to that appointment and the General Statutes Commission at its next meeting shall by majority vote fill the vacancy by appointment.

(e) All appointments shall be reported to the secretary of the Commission.

(f) Notwithstanding the expiration of the term of the appointment, the terms of members of the General Statutes Commission shall continue until the appointment of a successor has been made and reported to the secretary of the Commission."

SECTION C.(b) The initial appointment by the dean of the school of law for Elon University shall be for the term ending May 31, 2010. The initial appointment by the dean of the Charlotte School of Law (NC), Inc., shall be for the term ending May 31, 2011.

SECTION D. G.S. 15A-544.4(e) reads as rewritten:

"(e) ~~Notice under this section shall be mailed not later than the thirtieth day after the date on which the forfeiture is entered~~. Notice under this section shall be mailed not later than the thirtieth day after the date on which the defendant fails to appear as required and a call and fail is ordered. If notice under this section is not given within the prescribed time, the forfeiture shall not become a final judgment and shall not be enforced or reported to the Department of Insurance."

SECTION XX. Except as otherwise provided, this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 4

HOUSE BILL 578

Committee Substitute Favorable 5/7/09
Committee Substitute #2 Favorable 5/12/09
Senate Judiciary II Committee Substitute Adopted 7/21/09

Short Title: Partition Sales/Commrs., Sellers, Buyers. (Public)

Sponsors:

Referred to:

March 16, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY NOTICE REQUIRED TO PARTIES WHO MAY BE UNKNOWN OR UNLOCATABLE IN A PARTITION PROCEEDING; TO CODIFY THE CURRENT PRACTICE OF GRANTING OWNERS CREDIT FOR THEIR EXISTING INTEREST IN LAND WHEN BIDDING ON A PARTITION SALE; TO PERMIT A COURT TO ORDER AN INDEPENDENT APPRAISAL IF REQUESTED AND PAID FOR BY A PARTY TO THE PARTITION WHO CHALLENGES THE AMOUNT BID IN A PARTITION SALE; TO REVISE THE STANDARD FOR DETERMINING WHAT CONSTITUTES "SUBSTANTIAL INJURY" WITH REGARDS TO A PETITION FOR A SALE OF THE PROPERTY; AND TO PROVIDE FOR MEDIATION OF PARTITION DISPUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 46-6 reads as rewritten:

"**§ 46-6. Unknown or unlocatable parties; ~~summons and~~ summons, notice, and representation.**

(a) If, upon the filing of a petition for partition, it be made to appear to the court by affidavit or otherwise that there are any persons interested in the premises whose names are unknown to and cannot after due diligence be ascertained by the petitioner, the court shall order notices to be given to all such persons by a publication of the petition, or of the substance thereof, with the order of the court thereon, in one or more newspapers to be designated in the order. The notice by publication shall include a description of the property which includes the street address, if any, or other common designation for the property, if any, and may include the legal description of the property.

(b) ~~If~~ Before or after such general notice by publication if any person interested in the premises and entitled to notice fails to appear, the court shall ~~in its discretion~~ appoint some disinterested person to represent the owner of any shares in the property to be divided, the ownership of which is unknown or unlocatable and unrepresented."

SECTION 2. G.S. 46-22 reads as rewritten:

"**§ 46-22. Sale in lieu of partition.**

(a) Subject to G.S. 46-22.1(b), the ~~The~~ court shall order a sale of the property described in the petition, or of any part, only if it finds, by a preponderance of the evidence, that an actual partition of the lands cannot be made without substantial injury to ~~any of~~ the interested ~~parties.~~parties taking into account the totality of the circumstances.

~~(b) "Substantial injury" means the fair market value of each share in an in-kind partition would be materially less than the share of each cotenant in the money equivalent that would be~~

~~obtained from the sale of the whole, and if an in-kind division would result in material impairment of the cotenant's rights.~~

(b1) In determining whether a partition in-kind of all the property or some of the property cannot be made without substantial injury, the court shall consider the following factors:

(1) Whether the property is able to be fairly and equitably divided, in whole or in part, between the party or parties seeking a partition by sale and those seeking to remain tenants in common;

(2) Whether a partition in-kind would apportion the property in such a way that the fair market value of the parcels resulting from the division would be materially less than the share of each cotenant in the money equivalent that would be obtained from the sale of the whole, based upon a valuation that takes into account the type of sale conditions under which the court-ordered sale would occur;

(3) Evidence of long-standing ownership by any individual owner as supplemented by the length of time of ownership within the chain of title of any person or persons to whom such a cotenant is or was related to by blood, marriage, or adoption;

(4) The use being made of the property by any of the owners and the degree to which this owner or owners would be harmed if they could not continue to use the property for these purposes;

(5) The degree to which the owners have contributed their pro rata share of the property taxes, insurance, and other carrying charges associated with maintaining ownership of the real property, as well as the degree to which the owners have contributed to the physical improvement or the upkeep of the property, including any upkeep related to protecting the interests of the owners against any person who has no legal claim to the property but who attempts to use the property without the consent of the owners;

(6) Whether the substantial injury from an actual division to the parties requesting a sale outweighs the substantial injury to the parties opposing the sale; and

(7) Any other economic or noneconomic factors that the court finds appropriate to consider.

(b2) The court shall use the remedy of owelty where such remedy can aid in making a partition in-kind occur without substantial injury to the parties.

(c) The court shall specifically find the facts supporting an order of sale of the property.

(d) The party seeking a sale of the property shall have the burden of proving substantial injury under the provisions of this section."

SECTION 3. Article 2 of Chapter 46 of the General Statutes is amended by adding a new section to read:

"**§ 46-22.1 Mediation.**

(a) Persons interested in the premises may agree at anytime to mediation of a partition. A list of mediators certified by the Dispute Resolution Commission may be obtained from the clerk or from the Commission through the Administrative Office of the Courts.

(b) When a partition sale is requested, the court or the clerk may order mediation before considering whether to order a sale. The provisions of G.S. 7A-38.1 and G.S. 7A-38.3B shall apply."

SECTION 4. G.S. 46-28 reads as rewritten:

"**§ 46-28. Sale procedure.**

(a) The procedure for a partition sale shall be the same as is provided in Article 29A of Chapter 1 of the General ~~Statutes.~~ Statutes, except as provided herein.

(b) The commissioners shall certify to the court that at least 20 days prior to sale a copy of the notice of sale was sent by first class mail to the last known address of all petitioners and respondents who previously were served by personal delivery or by registered or certified mail. The commissioners shall also certify to the court that at least ten days prior to any resale pursuant to G.S. 46-28.1(e) a copy of the notice of resale was sent by first class mail to the last known address of all parties to the partition proceeding who have filed a written request with the court that they be given notice of any resale. An affidavit from the commissioners that copies of the notice of sale and resale were mailed to all parties entitled to notice in accordance with this section shall satisfy the certification requirement and shall also be deemed prima facie true. If after hearing it is proven that a party seeking to revoke the order of confirmation of a sale or subsequent resale was mailed notice as required by this section prior to the date of the sale or subsequent resale, then that party shall not prevail under the provisions of G.S. 46-28.1(a)(2)a. and b.

(c) Any cotenant who enters the high bid or offer at any sale of one hundred percent (100%) of the undivided interests in any parcel of real property shall receive a credit for the undivided interest the cotenant already owns therein and shall receive a corresponding reduction in the amount of the total purchase price owed after deducting the costs and fees associated with the sale and apportioning the costs and fees associated with the sale in accordance with the orders of the court. The high bid or offer shall be for one hundred percent (100%) of the undivided interests in the parcel of real property sold, and the credit and reduction shall be applied at the time of the closing of the cotenant's purchase of the real property. When jointly making the high bid or offer at the sale, two or more cotenants may receive at the closing an aggregate credit and reduction in the amount of the total purchase price representing the total of such cotenants' undivided interests in the real property. Any credits and reductions allowed by this subsection shall be further adjusted to reflect any court-ordered adjustments to the share(s) of the net sale proceeds of each of the cotenants entering the high bid or offer, including, but not limited to, equitable adjustments to the share(s) of the net sales proceeds due to a court finding of the lack of contribution of one or more cotenants to the payment of expenses of the real property."

SECTION 5. G.S. 46-28.1 reads as rewritten:

"**§ 46-28.1. Petition for revocation of confirmation order.**

(a) Notwithstanding G.S. 46-28 or any other provision of law, an order confirming the partition sale of real property shall not become final and effective until 15 days after entered. At any time before the confirmation order becomes final and effective, any party to the partition proceeding or the purchaser may petition the court to revoke its order of confirmation and to order the withdrawal of the purchaser's offer to purchase the property upon the following grounds:

(1) In the case of a purchaser, a lien remains unsatisfied on the property to be conveyed.

(2) In the case of any party to the partition proceeding:

a. Notice of the partition was not served on the petitioner for revocation as required by Rule 4 of the Rules of Civil Procedure; or

b. Notice of the sale was not mailed to the petitioner for revocation as required by G.S. 46-28(b); or

c. The amount bid or price offered is inadequate and inequitable and will result in irreparable damage to the owners of the real property.

In no event shall the confirmation order become final or effective during the pendency of a petition under this section. No upset bid shall be permitted after the entry of the confirmation order.

(b) The party petitioning for revocation shall deliver a copy of the petition to all parties required to be served under Rule 5 of G.S. 1A-1, and the officer or person designated to make

such sale in the manner provided for service of process in Rule 4(j) of G.S. 1A-1. The court shall schedule a hearing on the petition within a reasonable time and shall cause a notice of the hearing to be served on the petitioner, the officer or person designated to make such a sale and all parties required to be served under Rule 5 of G.S. 1A-1.

(c) In the case of a petition brought under this section by a purchaser claiming the existence of an unsatisfied lien on the property to be conveyed, if the purchaser proves by a preponderance of the evidence that:

(1) A lien remains unsatisfied on the property to be conveyed; and
(2) The purchaser has not agreed in writing to assume the lien; and
(3) The lien will not be satisfied out of the proceeds of the sale; and
(4) The existence of the lien was not disclosed in the notice of sale of the property, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer.

The order of the court in revoking an order of confirmation under this section may not be introduced in any other proceeding to establish or deny the existence of a lien.

(d) In the case of a petition brought pursuant to this section by a party to the partition proceeding, if the court finds by a preponderance of the evidence that petitioner has proven a case pursuant to sub-subdivision (a)(2)a., b., or c. of ~~subsection (a)(2), this section,~~ the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer.

(d1) In the case of a petition brought pursuant to sub-subdivision (a)(2)c. of this section, and when an independent appraisal of the property being sold has not been previously entered into evidence in the action, and upon the request of any party, the court may order an independent appraisal prepared by a real estate appraiser currently licensed by the North Carolina Appraisal Board and prepared in accordance with the Uniform Standards of Professional Appraisal Practice. The cost of an independent appraisal shall be borne by one or more of the parties requesting the appraisal in such proportions as they may agree. Before ruling on the petition brought pursuant to sub-subdivision (a)(2)c. of this section, the court may in its discretion require written evidence from the appraiser that the appraiser has been paid in full for the appraisal. If based on the appraisal and all of the evidence presented, the court finds the amount bid or price offered to be inadequate, inequitable, and resulting in irreparable damage to the owners, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's high bid or offer, and order the return to such purchaser of any money or security tendered by the purchaser pursuant to the high bid or offer.

(e) If the court revokes its order of confirmation under this section, the court shall order a resale. The procedure for a resale is the same as is provided for an original public sale under Article 29A of Chapter 1 of the General Statutes."

SECTION 6. This act becomes effective October 1, 2009, and applies to partition actions filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 578
Committee Substitute Favorable 5/7/09
Committee Substitute #2 Favorable 5/12/09
Senate Judiciary II Committee Substitute Adopted 7/21/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H578-CSRC-62 [v.1]

7/29/2009 8:11:24 PM

Short Title: Partition Sales/Commrs., Sellers, Buyers. (Public)

Sponsors:

Referred to:

March 16, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY NOTICE REQUIRED TO PARTIES WHO MAY BE UNKNOWN OR UNLOCATABLE IN A PARTITION PROCEEDING; TO CODIFY THE CURRENT PRACTICE OF GRANTING OWNERS CREDIT FOR THEIR EXISTING INTEREST IN LAND WHEN BIDDING ON A PARTITION SALE; TO PERMIT A COURT TO ORDER AN INDEPENDENT APPRAISAL IF REQUESTED AND PAID FOR BY A PARTY TO THE PARTITION WHO CHALLENGES THE AMOUNT BID IN A PARTITION SALE; TO REVISE THE STANDARD FOR DETERMINING WHAT CONSTITUTES "SUBSTANTIAL INJURY" WITH REGARDS TO A PETITION FOR A SALE OF THE PROPERTY; AND TO PROVIDE FOR MEDIATION OF PARTITION DISPUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 46-6 reads as rewritten:

"**§ 46-6. Unknown or unlocatable parties; ~~summons and~~ summons, notice, and representation.**

(a) If, upon the filing of a petition for partition, it be made to appear to the court by affidavit or otherwise that there are any persons interested in the premises whose names are unknown to and cannot after due diligence be ascertained by the petitioner, the court shall order notices to be given to all such persons by a publication of the petition, or of the substance thereof, with the order of the court thereon, in one or more newspapers to be designated in the order. The notice by publication shall include a description of the property which includes the street address, if any, or other common designation for the property, if any, and may include the legal description of the property.

(b) ~~If~~ Before or after such general notice by publication if any person interested in the premises and entitled to notice fails to appear, the court shall ~~in its discretion~~ appoint some disinterested person to represent the owner of any shares in the property to be divided, the ownership of which is unknown or unlocatable and unrepresented."

SECTION 2. G.S. 46-22 reads as rewritten:

"**§ 46-22. Sale in lieu of partition.**

(a) ~~The~~ Subject to G.S. 46-22.1(b), the court shall order a sale of the property described in the petition, or of any part, only if it finds, by a preponderance of the evidence, that an actual partition of the lands cannot be made without substantial injury to any of the interested parties.

(b) ~~"Substantial injury" means the fair market value of each share in an in-kind partition would be materially less than the share of each cotenant in the money equivalent that would be obtained from the sale of the whole, and if an in-kind division would result in material impairment of the cotenant's rights.~~In determining "substantial injury" the court shall consider the following:

(1) Whether the fair market value of each cotenant's share in an actual division of the property would be materially less than the amount each cotenant would receive from the sale of the whole.

(2) Whether a sale or an in-kind division would result in material impairment of any cotenants' rights.

(b1) The court, in its discretion, shall consider the remedy of owelty where such remedy can aid in making a partition in-kind occur without substantial injury to the parties.

(c) The court shall make specific finding of fact and conclusions of law ~~specifically find the facts~~ supporting an order of sale of the property.

(d) The party seeking a sale of the property shall have the burden of proving substantial injury under the provisions of this section."

SECTION 3. Article 2 of Chapter 46 of the General Statutes is amended by adding a new section to read:

"**§ 46-22.1 Mediation.**

(a) Persons interested in the premises may agree at anytime to mediation of a partition. A list of mediators certified by the Dispute Resolution Commission may be obtained from the clerk or from the Commission through the Administrative Office of the Courts.

(b) When a partition sale is requested, the court or the clerk may order mediation before considering whether to order a sale. The provisions of G.S. 7A-38.1 and G.S. 7A-38.3B shall apply."

SECTION 4. G.S. 46-28 reads as rewritten:

"**§ 46-28. Sale procedure.**

(a) The procedure for a partition sale shall be the same as is provided in Article 29A of Chapter 1 of the General ~~Statutes.~~ Statutes, except as provided herein.

(b) The commissioners shall certify to the court that at least 20 days prior to sale a copy of the notice of sale was sent by first class mail to the last known address of all petitioners and respondents who previously were served by personal delivery or by registered or certified mail. The commissioners shall also certify to the court that at least ten days prior to any resale pursuant to G.S. 46-28.1(e) a copy of the notice of resale was sent by first class mail to the last known address of all parties to the partition proceeding who have filed a written request with the court that they be given notice of any resale. An affidavit from the commissioners that copies of the notice of sale and resale were mailed to all parties entitled to notice in accordance with this section shall satisfy the certification requirement and shall also be deemed prima facie true. If after hearing it is proven that a party seeking to revoke the order of confirmation of a sale or subsequent resale was mailed notice as required by this section prior to the date of the sale or subsequent resale, then that party shall not prevail under the provisions of G.S. 46-28.1(a)(2)a. and b.

(c) Any cotenant who enters the high bid or offer at any sale of one hundred percent (100%) of the undivided interests in any parcel of real property shall receive a credit for the undivided interest the cotenant already owns therein and shall receive a corresponding reduction in the amount of the total purchase price owed after deducting the costs and fees associated with the sale and apportioning the costs and fees associated with the sale in accordance with the orders of the court. The high bid or offer shall be for one hundred percent

(100%) of the undivided interests in the parcel of real property sold, and the credit and reduction shall be applied at the time of the closing of the cotenant's purchase of the real property. When jointly making the high bid or offer at the sale, two or more cotenants may receive at the closing an aggregate credit and reduction in the amount of the total purchase price representing the total of such cotenants' undivided interests in the real property. Any credits and reductions allowed by this subsection shall be further adjusted to reflect any court-ordered adjustments to the share(s) of the net sale proceeds of each of the cotenants entering the high bid or offer, including, but not limited to, equitable adjustments to the share(s) of the net sales proceeds due to a court finding of the lack of contribution of one or more cotenants to the payment of expenses of the real property."

SECTION 5. G.S. 46-28.1 reads as rewritten:

"**§ 46-28.1. Petition for revocation of confirmation order.**

(a) Notwithstanding G.S. 46-28 or any other provision of law, an order confirming the partition sale of real property shall not become final and effective until 15 days after entered. At any time before the confirmation order becomes final and effective, any party to the partition proceeding or the purchaser may petition the court to revoke its order of confirmation and to order the withdrawal of the purchaser's offer to purchase the property upon the following grounds:

(1) In the case of a purchaser, a lien remains unsatisfied on the property to be conveyed.

(2) In the case of any party to the partition proceeding:

a. Notice of the partition was not served on the petitioner for revocation as required by Rule 4 of the Rules of Civil Procedure; or

b. Notice of the sale was not mailed to the petitioner for revocation as required by G.S. 46-28(b); or

c. The amount bid or price offered is inadequate and inequitable and will result in irreparable damage to the owners of the real property.

In no event shall the confirmation order become final or effective during the pendency of a petition under this section. No upset bid shall be permitted after the entry of the confirmation order.

(b) The party petitioning for revocation shall deliver a copy of the petition to all parties required to be served under Rule 5 of G.S. 1A-1, and the officer or person designated to make such sale in the manner provided for service of process in Rule 4(j) of G.S. 1A-1. The court shall schedule a hearing on the petition within a reasonable time and shall cause a notice of the hearing to be served on the petitioner, the officer or person designated to make such a sale and all parties required to be served under Rule 5 of G.S. 1A-1.

(c) In the case of a petition brought under this section by a purchaser claiming the existence of an unsatisfied lien on the property to be conveyed, if the purchaser proves by a preponderance of the evidence that:

(1) A lien remains unsatisfied on the property to be conveyed; and

(2) The purchaser has not agreed in writing to assume the lien; and

(3) The lien will not be satisfied out of the proceeds of the sale; and

(4) The existence of the lien was not disclosed in the notice of sale of the property, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer.

The order of the court in revoking an order of confirmation under this section may not be introduced in any other proceeding to establish or deny the existence of a lien.

(d) In the case of a petition brought pursuant to this section by a party to the partition proceeding, if the court finds by a preponderance of the evidence that petitioner has proven a case pursuant to sub-subdivision (a)(2)a., b., or c. of ~~subsection (a)(2),~~ this section, the court

may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer.

(d1) In the case of a petition brought pursuant to sub-subdivision (a)(2)c. of this section, and when an independent appraisal of the property being sold has not been previously entered into evidence in the action, and upon the request of any party, the court may order an independent appraisal prepared by a real estate appraiser currently licensed by the North Carolina Appraisal Board and prepared in accordance with the Uniform Standards of Professional Appraisal Practice. The cost of an independent appraisal shall be borne by one or more of the parties requesting the appraisal in such proportions as they may agree. Before ruling on the petition brought pursuant to sub-subdivision (a)(2)c. of this section, the court may in its discretion require written evidence from the appraiser that the appraiser has been paid in full for the appraisal. If based on the appraisal and all of the evidence presented, the court finds the amount bid or price offered to be inadequate, inequitable, and resulting in irreparable damage to the owners, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's high bid or offer, and order the return to such purchaser of any money or security tendered by the purchaser pursuant to the high bid or offer.

(e) If the court revokes its order of confirmation under this section, the court shall order a resale. The procedure for a resale is the same as is provided for an original public sale under Article 29A of Chapter 1 of the General Statutes."

SECTION 6. This act becomes effective October 1, 2009, and applies to partition actions filed on or after that date.

HOUSE BILL 578:
Partition Sales/Commrs., Sellers, Buyers

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	July 29, 2009
Introduced by:	Reps. Bryant, Michaux, Allen, Harrison	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	PCS to Fourth Edition H578-CSRC-62		

SUMMARY: House Bill 578 would require that respondents in a partition proceeding be notified of their right to seek legal counsel, and would clarify the requirements for providing notice to unknown or unlocatable parties in a partition proceeding. It would also grant owners credit for their existing interest in the land when bidding on it in a partition sale, and would require the court to order an independent appraisal if requested and paid for by a party who challenges the amount bid in a partition sale. The PCS clarifies when a court must order a sale instead of an actual partition.

CURRENT LAW: To legally "partition" property means to bring a proceeding in court to force the physical division or sale of real property and in the event of sale to have the property or proceeds from sale of the property divided among co-owners of the property. Under the laws governing the partition of real property (Chapter 46 of the General Statutes), one or more persons claiming joint ownership in real property may petition the superior court for partition of the property. The court must order a sale of the property if it finds by a preponderance of the evidence that the actual partition of the property cannot be made without substantial injury to any of the interested parties. "Substantial injury" is defined as "the fair market value of each share in an in kind partition would be materially less than the share of each cotenant in the money equivalent that would be obtained from the sale of the whole, and if the in kind division would result in material impairment of the cotenant's rights." G.S. 46-22(b).

BILL ANALYSIS: **Section 1** of the bill would amend the statute concerning the notification of unknown parties to a partition proceeding. Under existing law, when the court determines that there are persons with an interest in the property whose names are unknown and cannot be ascertained by the petitioner, the court can order that notice be made by publication in a newspaper. The bill would require that notice by publication include a full description of the property, and require the court to appoint someone to represent any unknown or unlocatable parties.

Section 2 slightly modifies G.S. 46-22(b) regarding the circumstances when a court may order a sale. In determining whether "substantial injury" would occur, the court shall consider:

- Whether the fair market value of each cotenant's share in an actual division of the property would be materially less than the amount each cotenant would receive from a sale of the whole.
- Whether a sale or an in-kind division would result in material impairment of the cotenants' rights.

The court may, in its discretion, consider the remedy of owelty if it would aid in making an in-kind partition without substantial injury to the parties.

Section 3 states that the interested parties may enter into mediation to resolve the dispute prior to filing an action and that the clerk or the court may require the parties to attempt to mediate a settlement prior to ordering a sale.

Section 4 of the bill would amend the statute concerning the sale procedure for partition sales, to provide that any cotenant making an offer to purchase the entire parcel would receive credit for the

value of his or her share and received a corresponding reduction in the amount owed after deducting the costs and fees associated with the sale. The bill would allow two or more cotenants to aggregate the credit for their interests.

Section 5 of the bill would amend the law pertaining to a petition for revocation of an order confirming the partition sale of real property by making a technical change, and by adding a new provision that would require the court to order an independent appraisal of the property upon request of the petitioner. If, based on the appraisal and other evidence, the court finds the sale price to be inadequate the court may revoke the order confirming the sale. The cost of the appraisal would be apportioned to all parties requesting it, and the court could require the parties to pay all or part of that cost prior to the appraisal.

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

H578-SMRC-74(CSRC-62) v1

ECONOMIC FACTORS & NON-ECONOMIC FACTORS – A STATE SUMMARY

Balancing tests -- **economic only, equitable jurisdiction to consider all factors, and a combination/hybrid** -- used in weighing whether tenancy in common property should be divided or sold.

ECONOMIC FACTORS TEST	ECONOMIC FACTORS PRIMARY, BUT OTHER FACTORS WEIGHED (HYBRID)	EQUITABLE JURISDICTION TO CONSIDER ALL FACTORS
A. States (5) wherein the statutory law limits the balancing test to economic factors only.	States (5) wherein the balancing test is limited primarily, but not solely, to economic factors.	States (32) wherein the courts are not limited by statute or case law from considering whatever equitable factors are appropriate.
1. Georgia* 2. North Carolina** 3. Ohio 4. Kentucky 5. Wyoming * In some circumstances, a Georgia court can deny partition altogether. ** Until the law was amended in 1985 changing the test to economic only, North Carolina's law was similar to laws in most of the 32 states listed in the last column of this summary.	1. Massachusetts 2. North Dakota* 3. Oregon** 4. South Carolina 5. Vermont*** *In North Dakota, in weighing division versus sale, the court also is to consider "the situation of the parties and their respective financial abilities ..." ** In Oregon, one appellate court narrowed the balancing test to economic only, but the state high court considered sentimental attachment to a lesser degree and noted that a court has the equitable power to deny partition altogether. *** In Vermont, while the primary test is economic, the high court recently upheld the forced transfer of the petitioner's interest to the respondents based on the protection of family property.	Alabama, Arizona, Arkansas, Connecticut, Delaware, Florida*, Hawaii, Illinois, Indiana, Iowa, Kansas*, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana*, Nevada, New Hampshire, New Jersey*, New Mexico, Oklahoma*, Pennsylvania, Rhode Island, South Dakota, Texas, Utah, Virginia, Washington, West Virginia * Courts in these states have said that their courts also have the power to deny partition altogether.
B. States (8) wherein the courts have interpreted the partition statutes to focus only on economic value. 1. Alaska 2. California (but sales "strongly disfavored") 3. Colorado 4. Idaho 5. Nebraska 6. New York (value lost must be "significant") 7. Tennessee 8. Wisconsin		

SOURCE: Based on research and data compiled by John Pollock, Facilitator, Heirs' Property Retention Coalition. Chart compiled by Patricia Yancey, Governmental Relations Consultant, Land Loss Prevention Project, Durham, NC. Chart produced July 2, 2009 and updated on July 5, 2009.

HOUSE BILL 1261

Short Title:	Protect Our Kids/Cyber Bullying Misdemeanor.	(Public)
Sponsors:	Representatives Mackey, Parmon (Primary Sponsors); K. Alexander, Cotham, Fisher, Harrison, Lucas, Mobley, Pierce, Wainwright, Womble, and Wray.	
Referred to:	Science and Technology, if favorable, Judiciary III.	

April 9, 2009

A BILL TO BE ENTITLED

AN ACT PROTECTING CHILDREN OF THIS STATE BY MAKING CYBER BULLYING A CRIMINAL OFFENSE PUNISHABLE AS A CLASS 1 MISDEMEANOR.

The General Assembly of North Carolina enacts:

SECTION 1. Article 60 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-458.1. Cyber bullying; penalty.**

(a) Except as otherwise made unlawful by this Article, it shall be unlawful for any person to use a computer or computer network to do any of the following:

(1) Falsify one's identity in an Internet chat room, an electronic mail message, or an instant message with the intent to intimidate or torment a minor.

(2) Follow a minor online or into an Internet chat room with the intent to intimidate or torment a minor.

(3) Build a fake profile, a Web site, or pose as a minor in an Internet chat room, an electronic mail message, or an instant message with the intent to intimidate or torment a minor.

(4) Plant any statement, whether true or false, tending to provoke or that actually provokes, any third party to stalk or harass a minor.

(5) Post a real or doctored image of a minor on the Internet with the intent to embarrass, intimidate, or torment the minor or the minor's parent or guardian.

(6) Post or encourage others to post on the Internet private, personal, or sexual information pertaining to a minor with the intent to intimidate or torment the minor.

(7) Access, alter, or erase any computer network, computer data, computer program, or computer software, including breaking into a password protected account or stealing or otherwise accessing passwords, with the intent to embarrass, intimidate, or torment a minor or the minor's parent or guardian.

(8) Copy and disseminate, or cause to be made an unauthorized copy of any data pertaining to a minor for the purpose of intimidating or tormenting that minor (in any form, including, but not limited to, any printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network).

(9) Use a computer system to repeatedly communicate insults to, or about, a minor with the intent to intimidate or torment the minor or the minor's parent or guardian.

(10) Sign a minor up for a pornographic Internet site.

(11) Sign a minor up for electronic mailing lists, or to receive junk electronic messages and instant messages, without authorization, resulting in either (i) costs to the minor or to the minor's parent or guardian or (ii) intimidation or torment of the minor.

(b) Any person who violates this section shall be guilty of cyber bullying, which offense shall be punishable as a Class 1 misdemeanor."

SECTION 2. G.S. 14-453 is amended by adding new subdivisions to read:

"(7b) 'Internet chat room' means a computer service allowing two or more users to communicate with each other in real time.

(7c) 'Profile' means a configuration of user data required by a computer so that the user may access programs or services and have the desired functionality on that computer."

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

HOUSE BILL 1377
Second Edition Engrossed 5/14/09

Short Title:	Taxpayer Optimization Act.	(Public)
Sponsors:	Representatives Folwell, McElraft, Brown, Moore (Primary Sponsors); and Starnes.	
Referred to:	State Government/State Personnel, if favorable, Judiciary II.	

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE CERTAIN SALES OF STATE PROPERTY SUBJECT TO UPSET BIDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 146-27 reads as rewritten:

"**§ 146-27. The role of the Department of Administration in sales, leases, and rentals.**

(a) General. – Every sale, lease, rental, or gift of land owned by the State or by any State agency shall be made by the Department of Administration and approved by the Governor and Council of State. A lease or rental of land owned by the State may not exceed a period of 99 years. The Department of Administration may initiate proceedings for sales, leases, rentals, and gifts of land owned by the State or by any State agency.

(b) Large Disposition. – If a proposed disposition is a sale or gift of land with an appraised value of at least twenty-five thousand dollars ($25,000), the sale or gift shall not be made until after consultation with the Joint Legislative Commission on Governmental Operations.

(b1) Upset Bids. – If a proposed disposition of land or other real property with a value of at least twenty-five thousand dollars ($25,000) is a sale or other transfer to a private entity that operates or is established to operate for profit, the proposed disposition shall be subject to upset bids, unless other, non-monetary consideration associated with the transaction has been made public. If other consideration is offered such that upset bids are not required, notice of the sale and other consideration shall be posted and published in a manner similar to that provided in G.S. 1-339.17. The Department of Administration shall adopt a procedure for upset bids that is based on the upset bid procedure set forth in Part 2 of Article 29A of Chapter 1 of the General Statutes.

(c) Expired effective September 1, 2007."

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

HOUSE BILL 1447

Committee Substitute Favorable 5/7/09
Third Edition Engrossed 5/13/09

Short Title: Crime Stoppers Tips Are Confidential. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE IDENTITY OF AN INDIVIDUAL WHO PROVIDES A TIP FOR AN UNSOLVED CASE THROUGH CRIME STOPPERS OR SIMILAR ORGANIZATIONS IS NOT A PUBLIC RECORD, TO PROVIDE THAT THE COMMUNICATION RECEIVED BY A CRIME STOPPERS ORGANIZATION IS NOT SUBJECT TO DISCOVERY OR ADMISSIBLE IN A COURT PROCEEDING, AND TO PROVIDE THAT A LAW ENFORCEMENT AGENCY HAS A DUTY TO MAINTAIN THE CONFIDENTIALITY OF A CRIME STOPPERS TIP.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 15A of the General Statutes is amended by adding a new Article to read:

"Article 47.

"Local Crime Stoppers Programs.

"**§ 15A-850. Local Crime Stoppers organizations; confidentiality.**

(a) Definition. – As used in this section, a "Crime Stoppers" organization or other similarly named organization means a private, nonprofit North Carolina corporation governed by a civilian volunteer board of directors that is operated on a local or statewide level that (i) offers anonymity to persons providing information to the organization, (ii) accepts and expends donations for cash rewards to persons who report to the organization information about alleged criminal activity and that the organization forwards to the appropriate law enforcement agency, and (iii) is established as a cooperative alliance among the news media, the community, and law enforcement officials.

(b) Prohibitions on Use of Crime Stoppers Tips.

(1) Evidence of a communication, and any information contained within a communication, from an anonymous source to a Crime Stoppers organization shall not be:

a. Relied upon, or considered by, a judicial official in determining whether probable cause exists to issue either an arrest or search warrant.

b. Admissible or subject to discovery in any court proceeding.

(2) Crime Stoppers tips may only be used to assist a law enforcement agency in directing its investigation of alleged criminal activity.

(c) Identity of Crime Stoppers Informant Is Not Public Record; Duty of Law Enforcement Agency to Maintain Confidentiality. – The identity of any individual providing information about a crime or criminal activity to a Crime Stoppers organization under a

promise of anonymity is not a public record as defined by G.S. 132-1 and shall not be disclosed. A law enforcement agency receiving information concerning alleged criminal activity from a Crime Stoppers organization shall maintain confidentiality pursuant to this section and pursuant to G.S. 132-1.4(h)."

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

HOUSE BILL 1463
Committee Substitute Favorable 5/5/09

Short Title: Expand Access/Confidential Intermediaries. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT ALLOWING ADULT BIOLOGICAL SIBLINGS OF ADULT ADOPTEES, ADULT BIOLOGICAL HALF SIBLINGS OF ADULT ADOPTEES, ADULT FAMILY MEMBERS OF DECEASED ADOPTEES, AND ADULT FAMILY MEMBERS OF DECEASED BIOLOGICAL PARENTS TO HAVE ACCESS TO CONFIDENTIAL INTERMEDIARY SERVICES UPON THE CONSENT OF THE PARTIES AND TO ALLOW AN AGENCY ACTING AS A CONFIDENTIAL INTERMEDIARY TO OBTAIN A COPY OF A DEATH CERTIFICATE OF THE PERSON WHO IS THE SUBJECT OF THE SEARCH AND DELIVER IT TO THE PERSON REQUESTING SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 48-1-101 reads as rewritten:

"**§ 48-1-101. Definitions.**

...

(5a) "Confidential intermediary" means a licensed adoption agency staff person who may act as a third party to facilitate ~~contact between an adult adoptee or the adult lineal descendant of a deceased adoptee and the biological parent.~~ the sharing of information authorized by G.S. 48-9-104.

...

~~(9a) "Lineal descendant of a deceased adoptee" means any person who descends from the direct line of the adoptee.~~

...."

SECTION 2. G.S. 48-9-101 reads as rewritten:

"**§ 48-9-101. ~~Certain terms~~ Records defined.**

~~(a)~~ For purposes of this Article, "records" means any petition, affidavit, consent or relinquishment, transcript or notes of testimony, deposition, power of attorney, report, decree, order, judgment, correspondence, document, invoice, receipt, certificate, or other printed, written, microfilmed or microfiched, video-taped or tape-recorded material or electronic data processing records regardless of physical form or characteristics pertaining to a proceeding for adoption under this Chapter.

~~(b) Notwithstanding G.S. 48-1-101, for purposes of this Article, "adult" means an individual who has attained 21 years of age.~~"

SECTION 3. G.S. 48-9-104 reads as rewritten:

"**§ 48-9-104. Release of identifying ~~information.~~information; confidential intermediary services.**

(a) Except as provided in this section or in G.S. 48-9-109(2) or (3), no person or entity shall release from any records retained and sealed under this Article the name, address, or other

information that reasonably could be expected to lead directly to the identity of an adoptee, an adoptive parent of an adoptee, an adoptee's parent at birth, or an individual who, but for the adoption, would be the adoptee's sibling or grandparent, except upon order of the court for cause pursuant to G.S. 48-9-105.

(b) A child placing agency licensed by the Department or a county department of social services may agree to act as a confidential intermediary for ~~a biological parent or adult adoptee or adult lineal descendant of a deceased adoptee, without appointment by the court pursuant to G.S. 48-9-105, in order to obtain and share nonidentifying birth family health information or facilitate contact or share identifying information with adult adoptees, adult lineal descendants of deceased adoptees, and biological parents with the written consent of all parties to the contact or the sharing of information.~~ any of the following:

(1) A biological parent.
(2) An adult adoptee.
(3) An adult biological sibling of an adult adoptee.
(4) An adult biological half sibling of an adult adoptee.
(5) An adult family member of a deceased biological parent.
(6) An adult family member of a deceased adoptee.

An agency may act as a confidential intermediary without appointment by the court pursuant to G.S. 48-9-105, in order to obtain and share nonidentifying birth family health information or to facilitate contact or share identifying information with any person listed in subdivisions (1) through (6) of this subsection with the written consent of all parties to the contact or the sharing of information. Written consent of the biological parent is required if the biological parent is living at the time any party described in subdivisions (2) through (6) of this subsection seeks to contact or share identifying information with any other party described in subdivisions (2) through (6) of this subsection. Further, ~~a child placing agency licensed by the Department or a county department of social services~~an agency may agree to act as a confidential intermediary for the adoptive parents of a minor adoptee, or the guardian of a minor adoptee without appointment by the court pursuant to G.S. 48-9-105, to obtain and share nonidentifying birth family health information. An agency providing confidential intermediary services shall contact individuals in a manner reasonably calculated to prevent incidental disclosure of confidential information. An agency that agrees to provide confidential intermediary services may charge a reasonable fee for doing so, which fee must be pursuant to written agreement signed by the individual to be charged. The Division shall establish guidelines for confidential intermediary services.

(c) For purposes of this section only, the term 'family member' means a spouse, child, stepchild, parent, stepparent, grandparent, or grandchild.

(d) If in the provision of confidential intermediary services a child placing agency licensed by the Department or a county department of social services determines that the person who is the subject of the search is deceased, the agency may obtain a copy of the death certificate pursuant to G.S. 130A-93 and deliver it to the person who requested the services."

SECTION 4. G.S. 130A-93 is amended by adding a new subsection to read:

"(c2) A child placing agency licensed by the Department of Health and Human Services or a county department of social services acting as a confidential intermediary in accordance with G.S. 48-9-104 shall be entitled upon request to a certified copy of a death certificate."

SECTION 5. This act becomes effective October 1, 2009.

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	August 6, 2009	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 274	Rewrite Foreign Money Judgments Laws.	Representative Ross
HB 889	Struc. Settlement Annuities/Ins. Guar. Assn.	Representative Faison Representative Blue Representative Love, Sr. Representative Haire
HB 1117	Sex Offender Can't Drive Bus with Children.	Representative Tucker
HB 1261	Protect Our Kids/Cyber Bullying Misdemeanor.	Representative Parmon Representative Mackey
HB 1377	Taxpayer Optimization Act.	Representative Folwell Representative Brown Representative McElraft Representative Moore
HB 1463	Expand Access/Confidential Intermediaries.	Representative Farmer-Butterfield Representative Dickson Representative Harrell Representative Wilkins, Jr.

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II Committee
Thursday, August 6, 2009, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 274	Rewrite Foreign Money Judgments Laws.	Representative Ross
HB 889	Struc. Settlement Annuities/Ins. Guar. Assn.	Representative Faison Representative Blue Representative Love, Sr. Representative Haire
HB 1117	Sex Offender Can't Drive Bus with Children.	Representative Tucker
HB 1261	Protect Our Kids/Cyber Bullying Misdemeanor.	Representative Parmon Representative Mackey
HB 1377	Taxpayer Optimization Act.	Representative Folwell Representative Brown Representative McElraft Representative Moore
HB 1463	Expand Access/Confidential Intermediaries.	Representative Farmer-Butterfield Representative Dickson Representative Harrell Representative Wilkins, Jr.

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE
Thursday, August 6, 2009 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 10:00 AM on August 6, 2009, in Room 1124 of the Legislative Building with thirteen members of the committee present. Senator Jones, Vice Chairman, presided.

Senator Jones introduced pages Sloan Walters, Sawyer Waltern, Elizabeth Rogers, Daniel Smith, Yates Parrish and Walt Whitehurst and thanked them for their assistance.

HB 889 – (Struc. Settlement Annuities/Ins. Guar. Assn.) The original bill was changed to (Change Penalty for Misd. Death by Vehicle.) Senator Vaughan moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Representative Barnhart explained the bill and answered Senator Allran's question. Senator Berger gave additional information. Ms. Marbeth Holmes, citizen, spoke in favor of the bill. Senator Dorsett moved for a favorable report to the Proposed Committee Substitute, unfavorable to the original bill. All voted and the motion carried.

HB 1117 – (Sex Offender Can't Drive Bus with Children.) Representative Tucker explained the bill. Senator Dannelly moved for a favorable report with a referral to Rules.

HB 1261 – (Protect Our Kids/Cyber Bullying Misdemeanor.) Senator Vaughan gave a Sub-Committee report and moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Representative Mackey explained the bill. Senator Berger moved for a favorable report to the Proposed Committee Substitute, unfavorable to the original bill. All voted and the motion carried.

HB 1377 – (Taxpayer Optimization Act.) Representative Folwell explained the Proposed Committee Substitute. No action was taken on the bill.

HB 1463 – (Expand Access/Confidential Intermediaries.) Senator Vaughan, who chaired the Sub-Committee, reported that they were returning the same Proposed Committee Substitute to the full committee and moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Representative Dickson explained the bill. Senator Berger and Ms. Brittany J. Farrell, with the North Carolina Family Policy Council, spoke in opposition to the bill. Mr. Brinton D. Wright, Attorney, spoke in favor of the bill. Representative Dickson answered questions from Senators Dannelly. Senators Jacumin, Queen and Apodaca spoke on the bill. Senator Vaughan moved for a favorable report to the Proposed Committee Substitute, unfavorable to the original bill. All voted and the motion carried on a roll call vote of six to five.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Thursday, August 06, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **1117** Sex Offender Can't Drive Bus with Children.
Sequential Referral: None
Recommended Referral: Rules and Operations of the Senate

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

H.B. **1261** Protect Our Kids/Cyber Bullying Misdemeanor.
Draft Number: 70482
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1463** Expand Access/Confidential Intermediaries.
Draft Number: 50792
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 3

Committee Clerk Comments:

HB 1117 - Senator Vaughan will handle on Floor
HB 1261 - Senator Hartsell
HB 1463 - Senator Hartsell

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Thursday, August 06, 2009

Senator HARTSELL, 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) **889** Struc. Settlement Annuities/Ins. Guar. Assn.

Draft Number:	50783
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

Senator Doug Berger will handle

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

August 6, 2009
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Brinton Wright	Children's Home Society of NC - Greensboro
Edith Vatta	Children's Home Society of NC
Brittany Farrell	NCFPC
James Orenn	Franklin Co.
Sarah Preston	ACLU-NC
Ashley Vroom	NCASA
[signature]	AOC
Tammy Johnson	DHHS
Derek Graham	DPI
[signature]	UCPSS
[signature]	NCASA

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Christy Agner	Dept. of Admin.
Betsy Vetter	American Heart Assn
Ashley Bell	American Cancer Society
Rose Williams	NCDOT
Jason Cooney	GSO Partnership
Marlene Sanford	TREBIC
Conar Brockett	NCSBA
Rod Malone	Tharrington Smith, LLP

HOUSE BILL 274*

Short Title:	Rewrite Foreign Money Judgments Laws.	(Public)
Sponsors:	Representatives Ross; and Lucas.	
Referred to:	Judiciary I, if favorable, Commerce, Small Business, and Entrepreneurship.	

February 25, 2009

A BILL TO BE ENTITLED

AN ACT TO REWRITE THE LAW CONCERNING THE RECOGNITION OF FOREIGN MONEY JUDGMENTS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 18 of Chapter 1C of the General Statutes is repealed.

SECTION 2. Chapter 1C of the General Statutes is amended by adding a new Article to read:

"Article 20.

"North Carolina Uniform Foreign-Country Money Judgments Recognition Act.

"**§ 1C-1850. Short title.**

This Article may be cited as the North Carolina Uniform Foreign-Country Money Judgments Recognition Act.

"**§ 1C-1851. Definitions.**

The following definitions apply in this Article:

(1) Foreign country. – A government other than:

a. The United States;

b. A state, district, commonwealth, territory, or insular possession of the United States; or

c. Any other government with regard to which the decision in this State as to whether to recognize a judgment of that government's courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution.

(2) Foreign-country judgment. – A judgment of a court of a foreign country.

"**§ 1C-1852. Applicability; saving clause.**

(a) Except as otherwise provided in subsection (b) of this section, this Article applies to a foreign-country judgment to the extent that the judgment:

(1) Grants or denies recovery of a sum of money; and

(2) Under the law of the foreign country where rendered, is final, conclusive, and enforceable.

(b) This Article does not apply to a foreign-country judgment, even if the judgment grants or denies recovery of a sum of money, to the extent that the judgment is:

(1) A judgment for taxes;

(2) A fine or other penalty; or

(3) A judgment for alimony, support, or maintenance in matrimonial or family matters.

(c) A party seeking recognition of a foreign-country judgment has the burden of establishing that this Article applies to the foreign-country judgment.

(d) This Article does not prevent the recognition under principles of comity or otherwise of a foreign-country judgment to which this Article does not apply.

"**§ 1C-1853. Standards for recognition and nonrecognition of foreign-country judgment.**

(a) Except as otherwise provided in this section, a court of this State shall recognize a foreign-country judgment to which this Article applies.

(b) A court of this State shall not recognize a foreign-country judgment if:

(1) The judgment was rendered under a judicial system that, taken as a whole, does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(2) The foreign court did not have personal jurisdiction over the defendant; or

(3) The foreign court did not have jurisdiction over the subject matter.

(c) If a court of this State finds that any of the following exist with respect to a foreign-country judgment for which recognition is sought, recognition of the judgment shall be denied unless the court determines, as a matter of law, that recognition would nevertheless be reasonable under the circumstances:

(1) The defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend.

(2) The judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case.

(3) The judgment, or the cause of action or claim for relief on which the judgment is based, is repugnant to the public policy of this State or of the United States.

(4) Reserved for future codification.

(5) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court.

(6) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.

(7) The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment.

(8) The specific proceeding in the foreign court leading to the judgment was fundamentally unfair.

(d) If a foreign-country judgment for which recognition is sought is otherwise entitled to recognition under this Article but conflicts with a prior final and conclusive judgment, a court of this State shall recognize the judgment for which recognition is sought unless the court determines that nonrecognition would nevertheless be reasonable under the circumstances.

(e) If a foreign-country judgment for which recognition is sought is otherwise entitled to recognition under this Article but conflicts with a subsequent final and conclusive judgment, a court of this State shall deny recognition of the judgment for which recognition is sought unless the court determines that recognition would nevertheless be reasonable under the circumstances.

(f) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (b) of this section exists.

(g) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (c) of this section exists. The party seeking recognition of the judgment has the burden of establishing that, as a matter of law, recognition would nevertheless be reasonable under the circumstances.

(h) A party resisting recognition of a foreign-country judgment under subsection (d) or (e) of this section has the burden of establishing that another final and conclusive judgment

exists and that the other judgment conflicts with the judgment for which recognition is sought. Under subsection (d) of this section, the party resisting recognition also has the burden of establishing that nonrecognition of the judgment for which recognition is sought would be reasonable under the circumstances. Under subsection (e) of this section, the party seeking recognition of the foreign-country judgment has the burden of establishing that recognition would be reasonable under the circumstances.

(i) When a court of this State rules on recognition of a foreign-country judgment, the court shall state the facts specially and state separately its conclusions of law.

"**§ 1C-1854. Personal jurisdiction.**

(a) A foreign-country judgment shall not be refused recognition for lack of personal jurisdiction if any of the following exist:

(1) The defendant was served with process personally in the foreign country.

(2) The defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant.

(3) The defendant, before the commencement of the proceeding, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved.

(4) The defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, the foreign country.

(5) The defendant had a business office in the foreign country and the proceeding in the foreign court involved a cause of action or claim for relief arising out of business done by the defendant through that office in the foreign country.

(6) The defendant operated a motor vehicle or airplane in the foreign country and the proceeding involved a cause of action or claim for relief arising out of that operation.

(7) There was any other basis for personal jurisdiction that would be consistent with the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

(b) The list of bases for personal jurisdiction in subsection (a) of this section is not exclusive. The courts of this State may recognize reasonable bases of personal jurisdiction other than those listed in subsection (a) of this section as sufficient to support a foreign-country judgment.

"**§ 1C-1855. Procedure for recognition and nonrecognition of foreign-country judgment.**

(a) If recognition of a foreign-country judgment is sought as an original matter, the issue of recognition shall be raised by filing an action seeking recognition of the foreign-country judgment.

(b) If recognition or nonrecognition of a foreign-country judgment is sought in some other action, the issue of recognition may be raised by complaint, counterclaim, cross-claim, or affirmative defense.

"**§ 1C-1856. Effect of recognition of foreign-country judgment.**

(a) If the court in a proceeding under G.S. 1C-1855 finds that the foreign-country judgment is entitled to recognition under this Article then, to the extent that the foreign-country judgment grants or denies recovery of a sum of money, the foreign-country judgment is:

(1) Conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this State would be conclusive; and

(2) Enforceable in the same manner and to the same extent as a judgment rendered in this State.

(b) Article 17 of this Chapter does not apply to the enforcement of foreign-country judgments recognized under this Article.

"**§ 1C-1857. Stay of proceedings pending appeal of foreign-country judgment.**

If a party establishes that an appeal from a foreign-country judgment is pending or will be taken, the court may stay any proceedings with regard to the foreign-country judgment until the appeal is concluded, the time for appeal expires without an appeal being taken, or the appellant has had sufficient time to prosecute the appeal and has failed to do so.

"**§ 1C-1858. Statute of limitations.**

An action to recognize a foreign-country judgment must be commenced within the earlier of the time during which the foreign-country judgment is effective in the foreign country or 10 years from the date that the foreign-country judgment became effective in the foreign country.

"**§ 1C-1859. Uniformity of interpretation.**

In applying and construing this Article, consideration may be given to promoting uniformity of interpretation with respect to its subject matter among states that enact it."

SECTION 3. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the official comments to the Uniform Foreign-Country Money Judgments Recognition Act and all explanatory comments of the drafters of this act as the Revisor deems appropriate.

SECTION 4. This act is effective October 1, 2009, and applies to all actions commenced on or after that date in which the issue of recognition of a foreign-country judgment is raised.

HOUSE BILL 889*
Committee Substitute Favorable 4/13/09
Committee Substitute #2 Favorable 5/4/09

Short Title: Struc. Settlement Annuities/Ins. Guar. Assn. (Public)

Sponsors:

Referred to:

March 31, 2009

A BILL TO BE ENTITLED

AN ACT TO EXPAND COVERAGE UNDER THE INSURANCE GUARANTY ASSOCIATION WITH RESPECT TO STRUCTURED SETTLEMENT ANNUITIES FOR MATTERS INVOLVING PERSONAL INJURY OR ILLNESS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-62-16 is amended by adding a new subdivision to read:

"(17a) 'Structured settlement annuities' means any contracts or certificates for annuities issued to fund, in whole or in part, a settlement agreement for a matter involving personal injury or illness, including any settlement agreement permitted under Chapter 97 of the General Statutes."

SECTION 2. G.S. 58-62-21(a) reads as rewritten:

"**§ 58-62-21. Coverage and limitations.**

(a) This Article provides coverage for the policies and contracts specified in subsection (b) of this section:

(1) To persons other than persons specified in subdivisions (3) and (4) of this subsection who, regardless of where they reside (except for nonresident certificate holders under group policies), are the beneficiaries, assignees, or payees of the persons covered under subdivision (2) of this ~~subsection, and~~ subsection;

(2) To persons other than persons specified in subdivisions (3) and (4) of this subsection who are owners or certificate holders under the policies, or in the case of unallocated annuity contracts to the persons who are the contract holders, and who are residents of this State, or who are not residents of this State, but only under all of the following conditions: (i) the insurers that issued the policies are domiciled in this State; (ii) the insurers never held a license in the states in which the persons reside; (iii) the states have associations similar to the association created by this Article; and (iv) the persons are not eligible for coverage by the ~~associations~~ associations;

(3) To persons who are payees (or beneficiaries of payees if the payees are deceased) under structured settlement annuities if the payees are residents of this State, regardless of where the contract owners of the structured settlement annuities reside; and

(4) To persons who are payees (or beneficiaries of payees if the payees are deceased) under structured settlement annuities if the payees are not residents of this State, but only if all of the following conditions are met:

a. The contract owners of the structured settlement annuities are residents of this State or, if not residents of this State, (i) the insurers that issued the structured settlement annuities are domiciled in this State and (ii) the state in which the contract owners reside has an association similar to the Association created by this Article; and

b. Neither the payees (or beneficiaries of payees if the payees are deceased) nor the contract owners of the structured settlement annuities are eligible for coverage by an association of the state in which the payees or contract owners reside."

SECTION 3. G.S. 58-62-21(d) reads as rewritten:

"(d) The benefits for which the Association is liable do not, in any event, exceed the lesser of:

...

(4) With respect to any one contract holder covered by any unallocated annuity contract not included in subdivision (3) of this subsection, five million dollars ($5,000,000) in benefits, regardless of the number of such contracts held by that contract ~~holder.~~ holder; or

(5) With respect to any one contract holder of a structured settlement annuity, one million dollars ($1,000,000) for all benefits, including cash values."

SECTION 4. G.S. 58-62-21(e) reads as rewritten:

"(e) In no event is the Association liable to expend more than ~~three hundred thousand dollars ($300,000)~~ five hundred thousand dollars ($500,000) in the aggregate with respect to any one individual under this section. This subsection does not apply to structured settlement annuities."

SECTION 5. This act is effective when it becomes law and applies to claims submitted to the Insurance Guaranty Association on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 889*
Committee Substitute Favorable 4/13/09
Committee Substitute #2 Favorable 5/4/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H889-PCS50783-RC-64

Short Title: Change Penalty for Misd. Death by Vehicle. (Public)

Sponsors:

Referred to:

March 31, 2009

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR MISDEMEANOR DEATH BY MOTOR VEHICLE FROM A CLASS 1 MISDEMEANOR TO A CLASS A1 MISDEMEANOR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-141.4(b) reads as rewritten:

"(b) Punishments. – Unless the conduct is covered under some other provision of law providing greater punishment, the following classifications apply to the offenses set forth in this section:

(1) Aggravated felony death by vehicle is a Class D felony.
(2) Felony death by vehicle is a Class E felony.
(3) Aggravated felony serious injury by vehicle is a Class E felony.
(4) Felony serious injury by vehicle is a Class F felony.
(5) Misdemeanor death by vehicle is a Class ~~1~~ A1 misdemeanor."

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

HOUSE BILL 889:
Change Penalty for Misd. Death by Vehicle

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	August 5, 2009
Introduced by:	Reps. Haire, Love, Blue, Faison	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	PCS to Third Edition H889-CSRC-64		

SUMMARY: ***The Proposed Committee Substitute to HB889 would increase the penalty for misdemeanor death by vehicle from a Class 1 misdemeanor to a Class A1 misdemeanor.***

CURRENT LAW: A person is guilty of misdemeanor death by vehicle if the person unintentionally kills another living human being while committing a violation of any state law or local ordinance applying to the operation and use of a vehicle or to the regulation of traffic (other than impaired driving) and the commission of the offense is the proximate cause of death. The penalty for this offense is a Class 1 misdemeanor with a presumptive mandatory minimum sentence for an individual with no prior offenses is 1-45 days of community punishment.

BILL ANALYSIS: The Proposed Committee Substitute to HB889 would increase the penalty for misdemeanor death by vehicle from a Class 1 misdemeanor to a Class A1 misdemeanor. The presumptive mandatory minimum sentence for an individual with no prior offenses would be 1-60 days of community, intermediate or active punishment.

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

§ 20-141.4. Felony and misdemeanor death by vehicle; felony serious injury by vehicle; aggravated offenses; repeat felony death by vehicle.

. . .

(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.

. .

(b) Punishments. – Unless the conduct is covered under some other provision of law providing greater punishment, the following classifications apply to the offenses set forth in this section:

(1) Aggravated felony death by vehicle is a Class D felony.

(2) Felony death by vehicle is a Class E felony.

(3) Aggravated felony serious injury by vehicle is a Class E felony.

(4) Felony serious injury by vehicle is a Class F felony.

(5) Misdemeanor death by vehicle is a Class 1 misdemeanor.

HOUSE BILL 1117

Short Title:	Sex Offender Can't Drive Bus with Children.	(Public)
Sponsors:	Representatives Tucker; Faison, Justice, Justus, McLawhorn, Parmon, Starnes, and Wray.	
Referred to:	Transportation, if favorable, Judiciary II.	

April 7, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE DIVISION OF MOTOR VEHICLES SHALL NOT ISSUE OR RENEW COMMERCIAL DRIVERS LICENSES WITH ENDORSEMENTS THAT QUALIFY A PERSON TO DRIVE A COMMERCIAL PASSENGER VEHICLE OR SCHOOL BUS FOR ANYONE REQUIRED TO REGISTER UNDER THE SEX OFFENDER AND PUBLIC PROTECTION REGISTRATION PROGRAMS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.19. Commercial drivers license restrictions.**

(a) The Division of Motor Vehicles, in compliance with G.S. 20-37.14A, shall not issue or renew a commercial drivers license with a P or S endorsement to any person required to register under this Article.

(b) The Division of Motor Vehicles, in compliance with G.S. 20-37.13(f) shall not issue a commercial driver learner's permit with a P or S endorsement to any person required to register under this Article.

(c) A person who is convicted of a violation that requires registration under Article 27A of Chapter 14 of the General Statutes is disqualified under G.S. 20-17.4 from driving a commercial motor vehicle that requires a commercial drivers license with a P or S endorsement for the period of time during which the person is required to maintain registration under Article 27A of Chapter 14 of the General Statutes.

(d) A person who drives a commercial passenger vehicle or a school bus and who does not have a commercial drivers license with a P or S endorsement because the person was convicted of a violation that requires registration under Article 27A of Chapter 14 of the General Statutes shall be punished as provided by G.S. 20-27.1."

SECTION 2. G.S. 20-17.4 is amended by adding a new subsection to read:

"(n) Disqualification for Conviction of Criminal Offense That Requires Registration Under the Sex Offender and Public Protection Registration Programs. – Effective December 1, 2009, except as otherwise provided by this subsection, a person convicted of a violation that requires registration under Article 27A of Chapter 14 of the General Statutes is disqualified from driving a commercial motor vehicle that requires a commercial drivers license with a P or S endorsement for the period of time during which the person is required to maintain registration under Article 27A of Chapter 14 of the General Statutes. If a person who is registered pursuant to Article 27A of Chapter 14 of the General Statutes on December 1, 2009, also has a valid commercial drivers license with a P or S endorsement that was issued on or before December 1, 2009, then the person is not disqualified under this subsection until that

license expires, provided the person does not commit a subsequent offense that requires registration under Article 27A of Chapter 14 of the General Statutes."

SECTION 3. Article 2 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-17.9. Revocation of commercial drivers license with a P or S endorsement upon conviction of certain offenses.**

The Division shall revoke the commercial drivers license with a P or S endorsement of any person convicted of any offense on or after December 1, 2009, that requires registration under Article 27A of Chapter 14 of the General Statutes. The person may apply for the issuance of a new commercial drivers license pursuant to this Chapter, but, pursuant to G.S. 20-17.4, shall remain disqualified from obtaining a commercial drivers license with a P or S endorsement for the period of time during which the person is required to maintain registration."

SECTION 4. Article 2 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-27.1. Unlawful for sex offender to drive commercial passenger vehicle or school bus without appropriate commercial license or while disqualified.**

A person who drives a commercial passenger vehicle or a school bus and who does not have a valid commercial drivers license with a P or S endorsement because the person was convicted of a violation that requires registration under Article 27A of Chapter 14 of the General Statutes is guilty of a Class F felony."

SECTION 5. G.S. 20-37.13 is amended by adding a new subsection to read:

"(f) Notwithstanding subsection (e) of this section, a commercial driver learner's permit with a P or S endorsement shall not be issued to any person who is required to register under Article 27A of Chapter 14 of the General Statutes."

SECTION 6. Article 2C of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-37.14A. Prohibit issuance or renewal of certain categories of commercial drivers licenses to sex offenders.**

(a) Effective December 1, 2009, the Division shall not issue or renew a commercial drivers license with a P or S endorsement to any person who is required to register under Article 27A of Chapter 14 of the General Statutes.

(b) The Division shall not issue a commercial drivers license with a P or S endorsement to an applicant until the Division has searched both the statewide registry and the National Sex Offender Public Registry to determine if the person is currently registered as a sex offender in North Carolina or another state.

(1) If the Division finds that the person is currently registered as a sex offender in either North Carolina or another state, the Division, in compliance with subsection (a) of this section, shall not issue a commercial drivers license with a P or S endorsement to the person.

(2) If the Division is unable to access either the statewide registry or all of the states' information contained in the National Sex Offender Public Registry, but the person is otherwise qualified to obtain a commercial drivers license with a P or S endorsement, then the Division shall issue the commercial drivers license with the P or S endorsement but shall first require the person to sign an affidavit stating that the person does not appear on either the statewide registry or the National Sex Offender Public Registry. The Division shall search the statewide registry and the National Sex Offender Public Registry for the person within a reasonable time after access to the statewide registry or the National Sex Offender Public Registry is restored. If the person does appear in either registry, the person is in violation of this section, and the Division shall immediately cancel the commercial drivers

license and shall promptly notify the sheriff of the county where the person resides of the offense.

(3) Any person denied a commercial license with a P or S endorsement or who is disqualified from driving a commercial motor vehicle that requires a commercial drivers license with a P or S endorsement by the Division pursuant to this subsection shall have a right to file a petition within 30 days thereafter for a hearing in the matter, in the superior court of the county where the person resides, or to the resident judge of the district or judge holding the court of that district, or special or emergency judge holding a court in such district. The court or judge is vested with jurisdiction to hear the petition, and it shall be the duty of the judge or court to set the matter for hearing upon 30 days' written notice to the Division, and thereupon to take testimony and examine into the facts of the case and to determine whether the petitioner is entitled to a commercial drivers license with a P or S endorsement under the provisions of this subsection.

(c) Any person who makes a false affidavit, or who knowingly swears or affirms falsely, to any matter or thing required by the terms of this section to be affirmed to or sworn is guilty of a Class I felony."

SECTION 7. This act becomes effective December 1, 2009. This act applies to persons whose initial registration under Article 27A of Chapter 14 of the General Statutes occurs on or after December 1, 2009, and to persons who are registered under Article 27A of Chapter 14 of the General Statutes prior to December 1, 2009, and continue to be registered on or after December 1, 2009. The criminal penalties enacted by this act apply to offenses occurring on or after December 1, 2009.

HOUSE BILL 1117:
Sex Offender Can't Drive Bus with Children

2009-2010 General Assembly

Committee:	House Appropriations Subcommittee on Transportation	**Date:**	July 30, 2009
Introduced by:	Rep. Tucker	**Prepared by:**	Ryan Blackledge Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 1117 would prohibit a registered sex offender[1] from obtaining or renewing a commercial drivers license with a P or S endorsement[2], and would make it a Class F felony[3] to operate a commercial passenger vehicle or school bus without a commercial drivers license with a P or S endorsement because the person is a registered sex offender.

BILL ANALYSIS: House Bill 1117 would prohibit sex offenders from operating commercial passenger vehicles or school buses by amending the law as follows:

- Effective December 1, 2009, DMV would be prohibited from issuing or renewing a CDL, or issuing a commercial learner's permit, with a P or S endorsement to a person registered under the sex offender and public protection registry.
- Effective December 1, 2009, anyone convicted of a registerable offense would be disqualified from driving a commercial motor vehicle that requires a CDL with a P or S endorsement for as long as that person is required to be registered.
- Any person who is on the registry and who has a valid CDL with a P or S endorsement on December 1, 2009, would not be disqualified until the license expires, as long as the person does not commit a subsequent registerable offense.
- DMV would be required to revoke the CDL with P or S endorsement of any person convicted of a registerable offense on or after December 1, 2009. The person would be able to apply for a new CDL but would continue to be disqualified from obtaining a P or S endorsement.
- Any person who operates a commercial passenger vehicle or school bus and does not have a CDL with P or S endorsement because of a conviction of a registerable offense would be guilty of a Class F felony.

EFFECTIVE DATE: The act would be effective December 1, 2009, and would apply to persons registering under the sex offender and public protection registry on or after that date and persons who were registered before that date and continue to be registered on or after that date. The criminal penalties enacted under this act would apply to offenses occurring on or after December 1, 2009.

**This summary was substantially contributed to by Wendy Ray Graf, House Transportation Committee Counsel.*

H1117-SMME-2(e1) v2

[1] "Sexually violent offenses" for which an individual may have to register are listed in G.S. 14-208.6(5).

[2] A P endorsement on a commercial drivers license allows for the operation of vehicles carrying 16 or more passengers. An additional S endorsement allows for the operation of school buses. *See* G.S. 20-4.01(3d)c.1. and G.S. 20-37.16.

[3] A Class F felony is punishable by as few as 10 months at Level I (mitigated) and as many as 49 month at Level VI (aggrevated) under the North Carolina sentencing guidelines. *See* G.S. 15A-1340.17.

HOUSE BILL 1261

Short Title:	Protect Our Kids/Cyber Bullying Misdemeanor.	(Public)
Sponsors:	Representatives Mackey, Parmon (Primary Sponsors); K. Alexander, Cotham, Fisher, Harrison, Lucas, Mobley, Pierce, Wainwright, Womble, and Wray.	
Referred to:	Science and Technology, if favorable, Judiciary III.	

April 9, 2009

A BILL TO BE ENTITLED

AN ACT PROTECTING CHILDREN OF THIS STATE BY MAKING CYBER BULLYING A CRIMINAL OFFENSE PUNISHABLE AS A CLASS 1 MISDEMEANOR.

The General Assembly of North Carolina enacts:

SECTION 1. Article 60 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-458.1. Cyber bullying; penalty.**

(a) Except as otherwise made unlawful by this Article, it shall be unlawful for any person to use a computer or computer network to do any of the following:

(1) Falsify one's identity in an Internet chat room, an electronic mail message, or an instant message with the intent to intimidate or torment a minor.

(2) Follow a minor online or into an Internet chat room with the intent to intimidate or torment a minor.

(3) Build a fake profile, a Web site, or pose as a minor in an Internet chat room, an electronic mail message, or an instant message with the intent to intimidate or torment a minor.

(4) Plant any statement, whether true or false, tending to provoke or that actually provokes, any third party to stalk or harass a minor.

(5) Post a real or doctored image of a minor on the Internet with the intent to embarrass, intimidate, or torment the minor or the minor's parent or guardian.

(6) Post or encourage others to post on the Internet private, personal, or sexual information pertaining to a minor with the intent to intimidate or torment the minor.

(7) Access, alter, or erase any computer network, computer data, computer program, or computer software, including breaking into a password protected account or stealing or otherwise accessing passwords, with the intent to embarrass, intimidate, or torment a minor or the minor's parent or guardian.

(8) Copy and disseminate, or cause to be made an unauthorized copy of any data pertaining to a minor for the purpose of intimidating or tormenting that minor (in any form, including, but not limited to, any printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network).

(9) Use a computer system to repeatedly communicate insults to, or about, a minor with the intent to intimidate or torment the minor or the minor's parent or guardian.

(10) Sign a minor up for a pornographic Internet site.

(11) Sign a minor up for electronic mailing lists, or to receive junk electronic messages and instant messages, without authorization, resulting in either (i) costs to the minor or to the minor's parent or guardian or (ii) intimidation or torment of the minor.

(b) Any person who violates this section shall be guilty of cyber bullying, which offense shall be punishable as a Class 1 misdemeanor."

SECTION 2. G.S. 14-453 is amended by adding new subdivisions to read:

"(7b) 'Internet chat room' means a computer service allowing two or more users to communicate with each other in real time.

(7c) 'Profile' means a configuration of user data required by a computer so that the user may access programs or services and have the desired functionality on that computer."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1261
PROPOSED SENATE COMMITTEE SUBSTITUTE H1261-CSRV-59 [v.5]

8/6/2009 9:20:57 AM

Short Title: Protect Our Kids/Cyber Bullying Misdemeanor. (Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT PROTECTING CHILDREN OF THIS STATE BY MAKING CYBER BULLYING A CRIMINAL OFFENSE PUNISHABLE AS A MISDEMEANOR.

The General Assembly of North Carolina enacts:

SECTION 1. Article 60 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-458.1. Cyber bullying; penalty.**

(a) Except as otherwise made unlawful by this Article, it shall be unlawful for any person to use a computer or computer network to do any of the following:

(1) With the intent to intimidate or torment a minor:

a. Build a fake profile or Web site;

b. Pose as a minor in:

1. An Internet chat room;

2. An electronic mail message; or

3. An instant message;

c. Follow a minor online or into an Internet chat room; or

d. Post or encourage others to post on the Internet private, personal, or sexual information pertaining to a minor.

(2) With the intent to intimidate, or torment a minor or the minor's parent or guardian:

a. Post a real or doctored image of a minor on the Internet;

b. Access, alter, or erase any computer network, computer data, computer program, or computer software, including breaking into a password protected account or stealing or otherwise accessing passwords; or

c. Use a computer system for repeated, continuing, or sustained electronic communications, including electronic mail or other transmissions, to a minor.

(3) Plant any statement, whether true or false, tending to provoke or that actually provokes any third party to stalk or harass a minor.

(4) Copy and disseminate, or cause to be made an unauthorized copy of any data pertaining to a minor for the purpose of intimidating or tormenting that minor (in any form, including, but not limited to, any printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network).

(5) Sign a minor up for a pornographic Internet site.

(6) Without authorization of the minor or the minor's parent or guardian, sign a minor up for electronic mailing lists, or to receive junk electronic messages and instant messages, resulting in intimidation or torment of the minor.

(b) Any person who violates this section shall be guilty of cyber bullying, which offense shall be punishable as a Class 1 misdemeanor if the defendant is 18 years of age or older at the time the offense is committed. If the defendant is under the age of 18 at the time the offense is committed, the offense shall be punishable as a Class 2 misdemeanor.

(c) Whenever any person pleads guilty to or is guilty of an offense under this section, 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. Upon fulfillment of the terms and conditions of the probation provided for in this subsection, the court shall discharge the defendant and dismiss the proceedings against the defendant. Discharge and dismissal under this subsection 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. Upon discharge and dismissal pursuant to this subsection, 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. 15A-146."

SECTION 2. G.S. 14-453 is amended by adding new subdivisions to read:

"(7b) 'Internet chat room' means a computer service allowing two or more users to communicate with each other in real time.

(7c) 'Profile' means a configuration of user data required by a computer so that the user may access programs or services and have the desired functionality on that computer."

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

HOUSE BILL 1261:
Protect Our Kids/Cyber Bullying Misdemeanor

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	August 5, 2009
Introduced by:	Reps. Mackey, Parmon	**Prepared by:**	Brenda J. Carter
Analysis of:	PCS to First Edition H1261-CSRV-59		Committee Counsel

SUMMARY: ***This proposed committee substitute for House Bill 1261 would create and define the criminal offense of cyber bullying, making it punishable as a Class 1 misdemeanor if the defendant is 18 years of age or older at the time the offense is committed. If the offender is under the age of 18 at the time the offense is committed, the offense would be punishable as a Class2 misdemeanor, subject to deferral and dismissal under specified conditions.***

CURRENT LAW: Under G.S. 14-196.3, it is a Class 2 misdemeanor to do any of the following:

- use any words or language in electronic communication threatening to inflict bodily harm to any person, or to extort money or anything of value from another person
- electronically communicate with another repeatedly, for the purpose of abusing, annoying, threatening, harassing, or embarrassing any person
- electronically communicate to another and knowingly make any false statement concerning death, injury, illness, disfigurement, indecent conduct, or criminal conduct of the person electronically mailed or of any member of the person's family or household with the intent to abuse, annoy, threaten, terrify, harass, or embarrass.

BILL ANALYSIS: Section 1 of the bill would enact a new provision in Article 60 of Chapter 14 of the General Statutes (Computer Related Crime), creating the offense of cyber bullying. The bill would prohibit the use of a computer or computer network to commit any of the following acts, when done for the purpose of intimidating or tormenting a minor, or in some cases, the minor's parent or guardian:

- build a fake profile or a Website, or pose as a minor in an Internet chat room, an electronic mail message, or an instant message
- follow a minor online or into a chat room
- post or encourage others to post on the Internet private, personal, or sexual information pertaining to a minor
- post a real or doctored image of a minor on the Internet
- access, alter, or erase any computer network, computer data, computer program, or computer software, including breaking into a password protected account or stealing or otherwise accessing passwords
- use a computer system for repeated, continuing, or sustained electronic communication to a minor

The following acts would also be unlawful:

- planting any statement that actually provokes or would tend to provoke any third party to stalk or harass a minor

- copying and disseminating, or cause to be made an unauthorized copy of any data pertaining to a minor
- signing a minor up for a pornographic Internet site
- signing a minor up for electronic mailing lists or to receive junk electronic messages and instant messages without authorization, resulting in intimidation or torment of the minor.

The bill would also provide for the conditional discharge and expunction of records of persons who commit the offense of cyber bullying while under the age of 18.

Section 2 of the bill defines the terms "Internet chat room" and "profile" as used in the bill.

EFFECTIVE DATE: The bill would become effective December 1, 2009 and apply to offenses committed on or after that date.

H1261-SMRV-117(CSRV-59) v1

HOUSE BILL 1377
Second Edition Engrossed 5/14/09

Short Title:	Taxpayer Optimization Act.	(Public)
Sponsors:	Representatives Folwell, McElraft, Brown, Moore (Primary Sponsors); and Starnes.	
Referred to:	State Government/State Personnel, if favorable, Judiciary II.	

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE CERTAIN SALES OF STATE PROPERTY SUBJECT TO UPSET BIDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 146-27 reads as rewritten:

"**§ 146-27. The role of the Department of Administration in sales, leases, and rentals.**

(a) General. – Every sale, lease, rental, or gift of land owned by the State or by any State agency shall be made by the Department of Administration and approved by the Governor and Council of State. A lease or rental of land owned by the State may not exceed a period of 99 years. The Department of Administration may initiate proceedings for sales, leases, rentals, and gifts of land owned by the State or by any State agency.

(b) Large Disposition. – If a proposed disposition is a sale or gift of land with an appraised value of at least twenty-five thousand dollars ($25,000), the sale or gift shall not be made until after consultation with the Joint Legislative Commission on Governmental Operations.

(b1) Upset Bids. – If a proposed disposition of land or other real property with a value of at least twenty-five thousand dollars ($25,000) is a sale or other transfer to a private entity that operates or is established to operate for profit, the proposed disposition shall be subject to upset bids, unless other, non-monetary consideration associated with the transaction has been made public. If other consideration is offered such that upset bids are not required, notice of the sale and other consideration shall be posted and published in a manner similar to that provided in G.S. 1-339.17. The Department of Administration shall adopt a procedure for upset bids that is based on the upset bid procedure set forth in Part 2 of Article 29A of Chapter 1 of the General Statutes.

(c) Expired effective September 1, 2007."

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

HOUSE BILL 1463
Committee Substitute Favorable 5/5/09

Short Title: Expand Access/Confidential Intermediaries. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT ALLOWING ADULT BIOLOGICAL SIBLINGS OF ADULT ADOPTEES, ADULT BIOLOGICAL HALF SIBLINGS OF ADULT ADOPTEES, ADULT FAMILY MEMBERS OF DECEASED ADOPTEES, AND ADULT FAMILY MEMBERS OF DECEASED BIOLOGICAL PARENTS TO HAVE ACCESS TO CONFIDENTIAL INTERMEDIARY SERVICES UPON THE CONSENT OF THE PARTIES AND TO ALLOW AN AGENCY ACTING AS A CONFIDENTIAL INTERMEDIARY TO OBTAIN A COPY OF A DEATH CERTIFICATE OF THE PERSON WHO IS THE SUBJECT OF THE SEARCH AND DELIVER IT TO THE PERSON REQUESTING SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 48-1-101 reads as rewritten:

"**§ 48-1-101. Definitions.**

...

(5a) "Confidential intermediary" means a licensed adoption agency staff person who may act as a third party to facilitate ~~contact between an adult adoptee or the adult lineal descendant of a deceased adoptee and the biological parent.~~ the sharing of information authorized by G.S. 48-9-104.

...

~~(9a) "Lineal descendant of a deceased adoptee" means any person who descends from the direct line of the adoptee.~~

...."

SECTION 2. G.S. 48-9-101 reads as rewritten:

"**§ 48-9-101. ~~Certain terms~~ Records defined.**

~~(a)~~ For purposes of this Article, "records" means any petition, affidavit, consent or relinquishment, transcript or notes of testimony, deposition, power of attorney, report, decree, order, judgment, correspondence, document, invoice, receipt, certificate, or other printed, written, microfilmed or microfiched, video-taped or tape-recorded material or electronic data processing records regardless of physical form or characteristics pertaining to a proceeding for adoption under this Chapter.

~~(b) Notwithstanding G.S. 48-1-101, for purposes of this Article, "adult" means an individual who has attained 21 years of age.~~"

SECTION 3. G.S. 48-9-104 reads as rewritten:

"**§ 48-9-104. Release of identifying ~~information.~~information; confidential intermediary services.**

(a) Except as provided in this section or in G.S. 48-9-109(2) or (3), no person or entity shall release from any records retained and sealed under this Article the name, address, or other

information that reasonably could be expected to lead directly to the identity of an adoptee, an adoptive parent of an adoptee, an adoptee's parent at birth, or an individual who, but for the adoption, would be the adoptee's sibling or grandparent, except upon order of the court for cause pursuant to G.S. 48-9-105.

(b) A child placing agency licensed by the Department or a county department of social services may agree to act as a confidential intermediary for ~~a biological parent or adult adoptee or adult lineal descendant of a deceased adoptee, without appointment by the court pursuant to G.S. 48-9-105, in order to obtain and share nonidentifying birth family health information or facilitate contact or share identifying information with adult adoptees, adult lineal descendants of deceased adoptees, and biological parents with the written consent of all parties to the contact or the sharing of information.~~ any of the following:

(1) A biological parent.

(2) An adult adoptee.

(3) An adult biological sibling of an adult adoptee.

(4) An adult biological half sibling of an adult adoptee.

(5) An adult family member of a deceased biological parent.

(6) An adult family member of a deceased adoptee.

An agency may act as a confidential intermediary without appointment by the court pursuant to G.S. 48-9-105, in order to obtain and share nonidentifying birth family health information or to facilitate contact or share identifying information with any person listed in subdivisions (1) through (6) of this subsection with the written consent of all parties to the contact or the sharing of information. Written consent of the biological parent is required if the biological parent is living at the time any party described in subdivisions (2) through (6) of this subsection seeks to contact or share identifying information with any other party described in subdivisions (2) through (6) of this subsection. Further, ~~a child placing agency licensed by the Department or a county department of social services~~an agency may agree to act as a confidential intermediary for the adoptive parents of a minor adoptee, or the guardian of a minor adoptee without appointment by the court pursuant to G.S. 48-9-105, to obtain and share nonidentifying birth family health information. An agency providing confidential intermediary services shall contact individuals in a manner reasonably calculated to prevent incidental disclosure of confidential information. An agency that agrees to provide confidential intermediary services may charge a reasonable fee for doing so, which fee must be pursuant to written agreement signed by the individual to be charged. The Division shall establish guidelines for confidential intermediary services.

(c) For purposes of this section only, the term 'family member' means a spouse, child, stepchild, parent, stepparent, grandparent, or grandchild.

(d) If in the provision of confidential intermediary services a child placing agency licensed by the Department or a county department of social services determines that the person who is the subject of the search is deceased, the agency may obtain a copy of the death certificate pursuant to G.S. 130A-93 and deliver it to the person who requested the services."

SECTION 4. G.S. 130A-93 is amended by adding a new subsection to read:

"(c2) A child placing agency licensed by the Department of Health and Human Services or a county department of social services acting as a confidential intermediary in accordance with G.S. 48-9-104 shall be entitled upon request to a certified copy of a death certificate."

SECTION 5. This act becomes effective October 1, 2009.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1463
Committee Substitute Favorable 5/5/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1463-CSRV-57 [v.2]

7/6/2009 7:45:33 PM

Short Title: Expand Access/Confidential Intermediaries. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT ALLOWING ADULT BIOLOGICAL SIBLINGS OF ADULT ADOPTEES, ADULT BIOLOGICAL HALF SIBLINGS OF ADULT ADOPTEES, ADULT FAMILY MEMBERS OF DECEASED ADOPTEES, AND ADULT FAMILY MEMBERS OF DECEASED BIOLOGICAL PARENTS TO HAVE ACCESS TO CONFIDENTIAL INTERMEDIARY SERVICES UPON THE CONSENT OF THE PARTIES, AND ALLOWING AN AGENCY ACTING AS A CONFIDENTIAL INTERMEDIARY TO OBTAIN A COPY OF A DEATH CERTIFICATE OF THE PERSON WHO IS THE SUBJECT OF THE SEARCH AND DELIVER IT TO THE PERSON REQUESTING SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 48-1-101 reads as rewritten:

"**§ 48-1-101. Definitions.**

...

(5a) "Confidential intermediary" means ~~a licensed adoption agency staff person who~~ an agency that may act as a third party to facilitate ~~contact between an adult adoptee or the adult lineal descendant of a deceased adoptee and the biological parent.~~ the sharing of information authorized by G.S. 48-9-104.

...

~~(9a) "Lineal descendant of a deceased adoptee" means any person who descends from the direct line of the adoptee.~~

...."

SECTION 2. G.S. 48-9-101 reads as rewritten:

"**§ 48-9-101. ~~Certain terms~~ Records defined.**

~~(a)~~ For purposes of this Article, "records" means any petition, affidavit, consent or relinquishment, transcript or notes of testimony, deposition, power of attorney, report, decree, order, judgment, correspondence, document, invoice, receipt, certificate, or other printed, written, microfilmed or microfiched, video-taped or tape-recorded material or electronic data processing records regardless of physical form or characteristics pertaining to a proceeding for adoption under this Chapter.

~~(b) Notwithstanding G.S. 48-1-101, for purposes of this Article, "adult" means an individual who has attained 21 years of age.~~"

SECTION 3. G.S. 48-9-104 reads as rewritten:

"§ 48-9-104. Release of identifying ~~information.~~information; confidential intermediary services.

(a) Except as provided in this section or in G.S. 48-9-109(2) or (3), no person or entity shall release from any records retained and sealed under this Article the name, address, or other information that reasonably could be expected to lead directly to the identity of an adoptee, an adoptive parent of an adoptee, an adoptee's parent at birth, or an individual who, but for the adoption, would be the adoptee's sibling or grandparent, except upon order of the court for cause pursuant to G.S. 48-9-105.

(b) A child placing agency licensed by the Department or a county department of social services may agree to act as a confidential intermediary for ~~a biological parent or adult adoptee or adult lineal descendant of a deceased adoptee, without appointment by the court pursuant to G.S. 48-9-105, in order to obtain and share nonidentifying birth family health information or facilitate contact or share identifying information with adult adoptees, adult lineal descendants of deceased adoptees, and biological parents with the written consent of all parties to the contact or the sharing of information.~~ any of the following:

(1) A biological parent.
(2) An adult adoptee.
(3) An adult biological sibling of an adult adoptee.
(4) An adult biological half sibling of an adult adoptee.
(5) An adult family member of a deceased biological parent.
(6) An adult family member of a deceased adoptee.

In order to obtain and share nonidentifying birth family health information, to facilitate contact, or to share identifying information with any person listed in subdivisions (1) through (6) of this subsection, an agency may act as a confidential intermediary without appointment by the court pursuant to G.S. 48-9-105 and with the written consent of all parties to the contact or the sharing of information. Written consent of the biological parent is required if the biological parent is living at the time any party described in subdivisions (2) through (6) of this subsection seeks to contact or share identifying information with any other party described in subdivisions (2) through (6) of this subsection. Further, ~~a child placing agency licensed by the Department or a county department of social services~~ an agency may agree to act as a confidential intermediary for the adoptive parents of a minor adoptee or the guardian of a minor adoptee, without appointment by the court pursuant to G.S. 48-9-105, to obtain and share nonidentifying birth family health information. An agency providing confidential intermediary services shall contact individuals in a manner reasonably calculated to prevent incidental disclosure of confidential information. An agency that agrees to provide confidential intermediary services may charge a reasonable fee for doing so, which fee must be pursuant to written agreement signed by the individual to be charged. The Division shall establish guidelines for confidential intermediary services.

(c) For purposes of this section only, the term 'family member' means a spouse, child, stepchild, parent, stepparent, grandparent, or grandchild.

(d) If an agency providing confidential intermediary services determines that the person who is the subject of the search is deceased, the agency may obtain a copy of the death certificate pursuant to G.S. 130A-93 and deliver it to the person who requested the services."

SECTION 4. G.S. 130A-93 is amended by adding a new subsection to read:

"(c2) An agency acting as a confidential intermediary in accordance with G.S. 48-9-104 shall be entitled to a certified copy of a death certificate upon request."

SECTION 5. This act becomes effective October 1, 2009.

HOUSE BILL 1463:
Expand Access/Confidential Intermediaries

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	July 6, 2009
Introduced by:	Reps. Dickson, Wilkins, Harrell, Farmer-Butterfield	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	PCS to Second Edition H1463-CSRV-57		

SUMMARY: ***House Bill 1463 would allow adult full and half siblings of adult adoptees, and adult family members of deceased adoptees or deceased biological parents, to have access to confidential intermediary services from an adoption agency for facilitation of contact or to obtain identifying adoption information. The bill would also allow an agency acting as a confidential intermediary to obtain a copy of a death certificate of the person who is the subject of the search and deliver it to the person requesting services. This proposed committee substitute makes technical changes.***

CURRENT LAW: Currently, NC adoption records are closed. The law provides that, with certain exceptions, no one may release a record that would lead directly to the identity of an adoptee, an adoptive parent of an adoptee, an adoptee's parent at birth, or an adoptee's birth sibling or grandparent. Exceptions are available through a court order, through voluntary consent, or through the services of a confidential intermediary. A confidential intermediary must be a staff person of a licensed adoption agency. The confidential intermediary may facilitate contact, release nonidentifying medical information, or release identifying information without a court order to any of the following:

- Adult adoptees.
- Adult lineal descendants of deceased adoptees.
- Biological parents.

To facilitate contact or share the information, the confidential intermediary must have written consent of all parties.

BILL ANALYSIS:

Section 1 – Definition of "confidential intermediary." This section would amend the definition of "confidential intermediary" to define the term as an agency (licensed child placing agency or a county department of social services) that may act as a third party to facilitate the sharing of information authorized by G.S. 48-9-104 (which is rewritten in Section 3 of the bill). This section of the bill would also delete the definition of "lineal descendant of a deceased adoptee".

Section 2 – Definition of "adult." This section would delete the provision that defined "adult" as someone 21 or older for purposes of the provisions relating to the use of confidential intermediaries. The would mean that the general definition of "adult" in G.S. 48-1-101 would apply, which says an adult is 18 or older, or a person under 18 who is either married or legally emancipated.

Section 3 – New Categories of People Added. This section would amend the list of people authorized to use confidential intermediary services to include the following:

- An adult biological sibling of an adult adoptee.
- An adult biological half sibling of an adult adoptee.
- An adult family member of a deceased biological parent.

- An adult family member of a deceased adoptee.

For purposes of this section, "family member" would mean spouse, child, stepchild, parent, stepparent, grandparent, or grandchild.

If the biological parent is living, written consent of the biological parent is required before contact with or sharing of identifying information between any other parties.

If a confidential intermediary determines that the person who is the subject of the search is deceased, the agency may obtain a copy of the death certificate and deliver it to the person who requested the services.

Section 4 – Access to Death Certificate. This section would amend the statute related to access to vital records to authorize agencies providing confidential intermediary services to obtain a copy of the death certificate.

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

BACKGROUND: House Bill 1463 is a combination of two bills recommended by the House Select Committee on Adoptee Birth Certificates in its interim report to the 2008 Short Session. A similar bill passed the House in 2008, but did not reach the floor of the Senate for a vote.

Susan Sitze and William Gilkeson, Staff Attorneys in the Research Division, contributed significantly to this summary.

H1463-SMRV-110(CSRV-57) v3

My name is Rob and I am an adoptee who recently used the Confidential Intermediary Program with much success. I regret that I cannot testify before you in person. For personal and private reasons, I have not informed my adoptive family of my participation in the program, and therefore wish to remain anonymous.

Though I am now well into adulthood, I have known my whole life that I am adopted. My adoptive parents made sure that I knew as much as possible about the circumstances regarding my birth parents and how I came to be with my family. However, there was not much information available. As a result of being raised in a loving and wonderful home, being adopted was no big deal to me and I never developed a burning desire to find out more.

Over the years, a natural curiosity about my birth parents did begin to emerge, and with the advent of the Internet, I was able to do occasional web searches from time to time to try and learn more. At the time, North Carolina's laws were some of the most restrictive in the nation, and I resigned myself to never knowing the full truth about my birth parents and my genealogy.

One day in the fall of 2008, my curiosity once again reared its head and this time, I learned about North Carolina's new Confidential Intermediary Program via a simple web search.

A few phone calls and forms later, I had officially started the process to authorize my county social services office to open my sealed records and try to locate and contact my birth parents on my behalf.

I was very fortunate in that both birth parents were found, and both agreed to swap contact information with me. A mere three weeks passed between filing my notarized paperwork and actually meeting my birth mother in person. A few weeks after that, I repeated the process with my birth father.

My mantra throughout the process was – "be open to anything, but expect nothing." It served me well through a very exciting time. For the first time ever, I had the opportunity to see who I really look like. I had the chance to learn about my extended genealogy. And I had a front-row seat for the nature versus nuture debate. So many of my traits, habits and even sayings, are things that I share with my birth parents.

I was also fortunate that both birth parents are still alive, doing well, and are people that I can basically relate to and build a relationship with. I've been careful to not assume intimacy just because we share genes. However, I can honestly say that we are all growing together and enjoy each other's company.

My birth mother lives in my hometown and we see each other a couple of times per month for lunch. My birth father is from my hometown, but moved out of state several years ago. I have visited his home and have welcomed him as a guest in my home.

I do not know that any of us will ultimately consider ourselves as "family" per se – but thanks to the Confidential Intermediary Program, I have been able to answer several questions about my roots and make two very good friends in my birth parents.

I would like to urge the Committee to continue support for this vital and important program. The genius of it all is the fact that a perfect compromise is reached that guarantees the privacy of all parties, while giving adoptees an avenue to try and have many of life's basic questions answered.

Hopefully, future state budgets in better economic times can include more funding to help counties publicize the program. A lucky web search wound up providing me with the answers I sought. However, not everyone is as fortunate as I am. The Confidential Intermediary Program is a vital resource that the public needs to know more about.

Thank you!

tp://news.aol.com/article/brothers-john-mellinger-and-dan-newburn/602990

Brothers Reunited After 70 Years

(Aug. 4) - Two brothers separated as infants have been reunited after 70 years — thanks to Facebook.

John Mellinger, of Spokane, Wash., had known since boyhood that he was adopted. When he was in his 40s, he tried to trace his birth parents. He was able to track down an aunt — who told him that he had a brother. But then his search stalled.

Around 30 years later, Mellinger told **The Spokesman-Review** newspaper, he got an e-mail through Facebook from "a fella named Dan Newburn. It says, 'John, I think I might be your older brother.'"

Mellinger, now 70, and Newburn, 71, from Las Vegas, were just 9 months and 20 months old when their teenage mother gave them up for adoption. Their father had left the family. The little boys were placed in the Children's Home Society in Boise, Idaho, and adopted separately.

During his search, Mellinger had asked the Children's Home Society for information, but officials would not give him any information on siblings. But he left a note in his file, leaving his contact information just in case anyone tried to reach him.

Newburn told the newspaper he only started to look for information about his birth family recently because he was curious about medical history. The Idaho state records office put him in touch with the Children's Home Society — where Mellinger had left his information.

Newburn did an Internet search, found Mellinger on Facebook and sent him an e-mail.

"I went on Facebook and saw his picture, and oh, boy, there was no doubt about it," Mellinger told The Spokesman-Review. "He was my brother."

The two men began talking through the Internet and in July, Newburn traveled to Spokane to see his little brother for the first time in seven decades.

"I'm absolutely convinced this was a God thing," Newburn told the newspaper. "In three days I found out I had ... a younger brother, I talked to him, saw him on the Internet. It was just kind of like — wow."

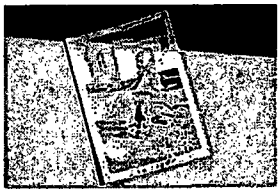
Get the full story from The Spokesman-Review.

THE SPOKESMAN-REVIEW July 23, 2009 in City

After 70 years, brothers find each other online

Shawn Vestal | Shawnv@Spokesman.Com, (509) 459-5431

Tags: Dan Newburn John Mellinger Jr. reunion



Dan Newburn as a child in Twin Falls, Idaho, in 1940. Courtesy of Dan Newburn

For nearly 30 years, John Mellinger Jr. knew that he had a brother. He just didn't know who – or where – he was. Then, in the space of two weeks, that changed. First came the e-mail, Mellinger said, from "a fella named Dan Newburn. It says, 'John, I think I might be your older brother.' "

They became friends on Facebook. They started talking daily using the Internet phone service Skype. They noted the family resemblance, the similar noses. They sorted out the family history.

Finally, on Wednesday, Mellinger and Newburn met face to face in Mellinger's Spokane home – a reunion some 70 years in the making.

"How very cool," Newburn said as he walked up to embrace his brother on the front step of Mellinger's north Spokane home. "Hi, little brother."

It was the first time the brothers were together since 1939, when, at 9 months and 20 months old, they were placed in the Children's Home Society in Boise by their teenage mother. Later adopted by separate families, the brothers' lives diverged.

Mellinger, 70, worked for years as a police officer in Baltimore, then changed course and moved back to the Northwest, where he ran a barbershop in Hillyard until his retirement.

Newburn, 71, worked as a pastor, journalist and photographer in Las Vegas, where he still keeps busy with various projects.

The men plan to spend the next couple of days together, visiting, going out to dinner and catching up.

"I'm excited, but I don't think it's really sunk in yet," Mellinger said, telling Newburn, "I recognize you and accept you as my brother, but it hasn't really snapped in."

Newburn said that for most of his life, he wasn't overly curious about his biological roots – unlike Mellinger, who tried to investigate his background in 1980 with limited success. But now that Newburn has found Mellinger, along with a half-brother and two half-sisters, he said it has enriched his life.

"All of a sudden, I had a sense of being connected like I never had before," he said. "I found a kinship."

A dead end

The men's mother was 17 when she had Newburn; their father was 32. He was a salesman and she was a waitress, and their marriage was brief, Newburn said. Their dad left them, though many of the details are murky.

"It sounded like our father, when he drank, he was a mean drunk," Newburn said. "I felt like she didn't want to put us in harm's way."

The boys went into the Children's Home Society, a Boise orphanage that has become a

children's services agency.

Mellinger was adopted by a Boise family. His father was an administrator with the Social Security Administration, and the family moved to Baltimore in 1954. He had known he was adopted since he was 9. In his 40s, he decided to seek out information about his birth parents, driven partly by the desire to know more about his medical history.

When Mellinger approached the Children's Home Society, he found the names of his parents, but nothing about a brother. Later, he found an aunt in Pocatello, Idaho, who told him he had a brother. But when he went back to the home society, they would tell him nothing.

He left a note in his file, saying if anyone inquired about him, they could get in touch with him.

"So I let that go," he said.

Facebook friends

Newburn, meanwhile, had spent his childhood with a family in southern Idaho, later moving to California, where they lived in Los Angeles and Vista.

He hadn't been particularly driven to learn about his birth parents, he said. Like Mellinger, he'd had a happy experience with his adoptive family, and curiosity about his medical history pressed him to investigate his past.

That was two weeks ago. He called an official with the Idaho state records office, and soon was connected with the Children's Home Society. Within a day, he heard back.

"She said, 'I've opened your file. You have a brother named John Forrest Mellinger Jr. who's been trying to get ahold of you,' " Newburn said.

Newburn got online and searched for Mellinger, whose Facebook account popped up. Newburn also has an account on the social networking site, so he sent his brother a message and a friend request.

Back in Spokane, Mellinger found an e-mail alerting him to the request.

"I went on Facebook and saw his picture, and oh, boy, there was no doubt about it," Mellinger said. "He was my brother."

Finally face to face

For a couple of guys in their 70s, the brothers are pretty tech-savvy. They immediately began talking daily over the Internet, planning their face-to-face reunion. While Newburn was flying into Spokane Wednesday morning, Mellinger checked the progress of his flight.

When the plane landed, Mellinger sent him a text message: "Welcome to Spokane."

Mellinger and his wife, Linda, were waiting on the concrete front step of their home when Newburn pulled up in a rental car with his wife, Liz. The two men embraced and then went inside, where they sat down and began chatting about their lives.

"I'm absolutely convinced this was a God thing," Newburn said. "In three days I found out I had ... a younger brother, I talked to him, saw him on the Internet. It was just kind of like – wow."

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NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES
Division of Social Services

NON-IDENTIFYING BACKGROUND INFORMATION

To Biological Parent: Please complete the blanks below as thoroughly as you can. This information will be given to the adoptive parents to be shared with your child at an appropriate time. This, along with the medical information, will be of utmost value to your child in learning about his/her genetic roots.

CHILD'S BIRTH HISTORY		
Date of birth	Weight at birth	Length at birth
Time of birth	Day of birth	Nationality
Race	General physical appearance	

CHARACTERISTICS OF BIOLOGICAL PARENT

INDICATE: BIRTH MOTHER _____
BIRTH FATHER _____

1. Age (in years): _____ Race _____ Nationality _____

   Ethnic Background: _____

   What is your height? _____ What is your average weight? _____

4. What is the color of your eyes? _____

5. Complexion: Fair _____ Medium _____ Olive _____ Dark _____

6. Are you: Small boned _____ Medium boned _____ Big boned _____

7. Are you right handed or left handed? _____

8. What is the color of your hair? _____

9. Is it naturally curly or straight? _____

10. Is it fine or thick? _____

11. Do you like to wear it long or short? _____

12. Do you wear glasses or contacts? _____ At what age did you start wearing them? _____

    Are you near-sighted or far-sighted? _____

13. Did you ever wear orthodontic braces? _____ If so, why did you need them? _____

    Do you have an allergic reaction to anything? (Specify) _____

    _____

15. Have you ever had a complexion problem? _____ If so, what? _____

16. What are your hobbies and interests? _____

_____

17. What are your favorite foods and drinks? _____

18. What is your favorite color? _____ Your favorite season? _____

Your favorite holiday? _____

19. Education (highest grade completed): _____ Scholastic Performance: _____

20. Favorite subjects: _____

21. Were you involved in any extracurricular activities? If so, what are they? _____

_____

22. Special talents: _____

23. Religious preference: _____

24. Occupation: _____

25. Military Service: Yes _____ No _____ Indicate branch: _____

26. Marital Status: _____

Age and sex of other children: _____

28. Were you or anyone in your family adopted? Yes _____ No _____ If yes, who? _____

29. Why are you placing child for adoption? _____

_____

30. Are you interested in future contact with the child? _____

31. Have you ever been arrested? Yes _____ No _____ If yes, explain: _____

_____

32. What was your relationship with the natural father/mother of the child? (i.e., living together, dating steadily, casual acquaintance, married, etc.) _____

33. Other reasonably available non-identifying information (i.e. birth marks, scars) _____

Personality Description: (Check all that apply)

_____ Aggressive	_____ Friendly	_____ Nervous	_____ Self-confident	_____ Stubborn
_____ Calm	_____ Happy	_____ Outgoing	_____ Serious	_____ Temperamental
_____ Emotional	_____ Irresponsible	_____ Rebellious	_____ Shy	_____ Unhappy
_____ Easygoing	_____ Independent	_____ Worrisome	_____ Other	

IV.	CHILD'S GRANDFATHER	CHILD'S GRANDMOTHER
Age: (If deceased, state age and cause		

of death)		
Race/Ethnic		
Height[Weight		
Hair/eye color		
Build/complexion		
Right/left handed		
Hobbies, talents and interests		
Occupation		
Nationality		
Ethnic background: (Hispanic, etc.)		
Race: (Black, White, etc.)		
Education		
Military Service		
Religion		

CHILD'S AUNTS AND UNCLES			
	1) Brother ☐ Sister ☐	2) Brother ☐ Sister ☐	3) Brother ☐ Sister ☐
Age: (If deceased, state age and cause of death)			
Race/Ethnic			
Height[Weight			
Hair/eye color			
Build/complexion			
Right/left handed			
Hobbies, talents and interests			
Occupation			
ationality			
hnic background: (Hispanic, etc.)			
Race: (Black, White, etc.)			
Education			
Military Service			
Religion			

Special Comments to Child:

INSTRUCTIONS: One copy of this form is to be given to the adoptive parents prior to placement of a minor child for adoption; one copy is to be filed with the Petition for Adoption to be forwarded by the Clerk of Superior Court to the Division of Social Services, State Department of Health and Human Services; and one copy is to be retained in the agency's file. In agency adoptions, the certification page shall not be provided to the adoptive parent(s) if it contains the name of a birth parent or birth parent's relative.

family services

July 27, 2009

To: Senate Subcommittee Members

RE: Expansion of Confidential Intermediary Bill

My name is Rebecca Nagaishi and I have been employed for Family Services, Inc., 1200 S. Broad Street, Winston-Salem, NC for 31 years, working in the area of adoption. I am a NC Licensed Clinical Social Worker and a NC Licensed Marital and Family Therapist and have worked with adoptive parents, birth parents, and adopted individuals of all ages since 1978. The majority of my work at this time is with families around post-adoption issues, including Confidential Intermediary Services.

Family Services, Inc. was established in 1905 and has been working with adoption since the 1940's. The agency is a NC licensed private child-placing agency and was one of the founding members of the Coalition of Licensed Private Adoption Agencies (COLPAA).

Because Family Services has been working in adoption for over 70 years, I have had the privilege of working with numerous birth families and adopted adults who are seeking to know more about their birth family members. I have also experienced the changes that have come to our work with birth parents as the laws have changed to allow more openness in the adoption process. One of the arguments against open records has been that birth parents would opt for an abortion if they knew that their child would one day be able to contact them. I have found the opposite to be true. As I work with pregnant women who are considering their options, the reality of having a child and never knowing anything about their future turns many women away from the thought of adoption at all. Thinking about an abortion is easier as they would not "wonder" all their life about their child out there somewhere. The Evan Donaldson Institute's research also states that "the reality is, in states with open records laws, there are fewer abortions, not more, and the number of adoptions increase. For example, in Oregon -- one of six states that has re-established access to birth records for adopted people since 1996 -- abortions have declined since the law went into effect, at a rate similar to that in England and Wales when adoption records were opened, the study found. Adoption rates also increased in Oregon. In Kansas and Alaska, which have always provided people with access to original birth certificates, the abortion rate is lower than the national rate, and the adoption rate is also higher than it is nationally, the study noted."

I understand that a contact veto is being considered for birth parents to sign at either the time of placement or as they are contacted as adults. One of my concerns about a contact veto is the pure mechanics of what agency would track these vetoes and who will fund that. In adoptions today, birth parents currently complete the DSS 5102 which asks if they want contact in the future. Every birth parent that Family Services works with checks yes to that item. How they will feel 21 years from now, however, will be impacted by their life

United Way

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experiences and how their adoption decision is handled by those important in their life. Since January, 2008, when the Confidential Intermediary law went into effect, I have worked with over 50 adopted adults and birth parents hoping for contact with each other. I have contacted birth mothers and birth fathers, ages ranging from 50's to early 90's, and although at times caught by surprise with my call, all but two have responded favorably to the request for updated medical information and some form of contact. The times that we have found that a birth parent was deceased have been heartbreaking for those searching. I have a number of adopted adults currently going through the court process asking for the agency to be able to contact another relative, however depending on the County, this can be a cumbersome process. The Assistant Clerk of Court, who often rules on these petitions, has no specialized training about adoption. They usually make their decision based on the recommendation of the agency. The Confidential Intermediary law recognized the special expertise of licensed adoption agency staff when it delegated responsibility for this process to those agencies. It makes sense to allow agencies to use their knowledge and expertise to continue that process with other relatives, should a birth mother be deceased.

More than anything, I would like for the committee members to understand that the Confidential Intermediary law has given us the ability to assist women and men in healing from decisions made decades ago, in a different time and place.

Thank you.

Rebecca Nazark

REPRESENTATIVE MARGARET H. DICKSON
NORTH CAROLINA HOUSE OF REPRESENTATIVES
44TH DISTRICT

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QUESTIONS AND ANSWERS ON HB 1463

Q-1 What is a confidential intermediary?

A-1 A confidential intermediary is a licensed adoption agency or county department of social services that may without a court order:

1. contact an adult adoptee on behalf of a biological parent, or
2. contact a biological parent on behalf of an adult adoptee or a lineal descendant of an adult adoptee.

Q-2 How would HB 1463 change the confidential intermediary law?

A-2 There would be 6 changes. The bill would:

1. add members of the adoptee's biological family who could use confidential intermediary services;
2. add members of a deceased adoptee's family who could use confidential intermediary services;
3. require the adoptee's biological parent's written permission for any confidential intermediary contact between the biological family and adoptive family;
4. require that "an agency providing confidential intermediary services shall contact individuals in a manner reasonably calculated to prevent incidental disclosure of confidential information";
5. allow contact between the biological family and the adoptee through the confidential intermediary program if the biological parent is deceased.
6. allow a confidential intermediary to obtain and deliver a copy of the death certificate of a deceased biological parent to a person entitled to use confidential intermediary services.

Q-3 Who would the proposed changes benefit?

A-3 The changes would primarily benefit persons who were adopted as infants through agencies and whose biological parents have since died.

Q-4 ***What about the biological mother's privacy?***

A-4 So long as the biological mother is alive, there will not be any confidential intermediary contact between her family and the adoptee or the adoptee's adopted family without her written permission.

Q-5 ***What about the biological mother's privacy after she dies?***

Q-5 The bill places the needs of the living adoptee and his or her living biological and adopted family members ahead of the privacy interests of deceased persons.

Q-6 ***What about a biological mother's unadopted children who may not have been told that the biological mother had a child whom she placed for adoption before they were born?***

A-6 Contact with unadopted children is subject to the confidential intermediary obtaining the biological mother's written permission as long as the biological mother is alive. If she is no longer living, then it is likely that the adoptee will be in his or her 50's or 60's or older and any unadopted biological siblings will be in their 40's or 50's or older. The contact would be made by a professional social worker who can help the unadopted sibling deal with discovering both a new biological sibling and a previously unknown chapter in their mutual biological parent's early life.

Q-7 ***What if the adoptee was the product of rape or incest?***

A-7 That information would be part of the non-identifying information to which the adoptee is entitled under present law. The number of agency adoptions of infants who were the product of rape incest, *and* in which the fact of the rape or incest was disclosed to the agency but remained undisclosed within the biological family, *and* in which the biological parent has died, *and* in which the adoptee is not discouraged from contacting the surviving members of the biological family by the circumstances of his or her conception, is likely to be very small. Under the guidance of the confidential intermediary, the adoptee would not necessarily choose to inform the biological family of any allegation of rape or incest (although keeping the secret of rape or incest after the death of the biological mother only serves to protect the perpetrator from his own crime).

Q-8 ***Would a pregnant mother be more likely to choose abortion over adoption if the bill were passed?***

A-8 No. Her decision will be driven by concerns much more immediate than the possibility that a hypothetical later child of a hypothetical later marriage might learn about the adoptee sometime after her death.

SENATE JUDICIARY II COMMITTEE
Thursday, August 6, 2009 at 3:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 3:00 PM on August 6, 2009, in the Senate Chamber of the Legislative Building with seven members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

HB 274 – Clarifying Changes to State Law.) Senator Vaughan moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Vaughan presented an amendment and moved that it be adopted. All voted and the motion carried. Senator Vaughan then moved for a favorable report to the Proposed Committee Substitute as amended, unfavorable to the original bill. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 274*
PROPOSED SENATE COMMITTEE SUBSTITUTE H274-CSSQ-79 [v.7]

Short Title: Clarifying Changes to State Law. (Public)

Sponsors:

Referred to:

February 25, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CLARIFYING CHANGES TO THE GENERAL STATUTES AND SESSION LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-544.4(e) reads as rewritten:

"(e) ~~Notice under this section shall be mailed not later than the thirtieth day after the date on which the forfeiture is entered.~~ Notice under this section shall be mailed not later than the 30th day after the date on which the defendant fails to appear as required and a call and fail is ordered. If notice under this section is not given within the prescribed time, the forfeiture shall not become a final judgment and shall not be enforced or reported to the Department of Insurance."

SECTION 2.(a) G.S. 20-71.4 is amended by adding a new subsection to read:

"(e) The provisions of this section shall not apply to a State agency that assists the United States Department of Defense with purchasing, transferring, or titling a vehicle to another State agency, a unit of local government, a volunteer fire department, or a volunteer rescue squad."

SECTION 2.(b) G.S. 20-73(b)(2), as enacted by S.L. 2009-81, reads as rewritten:

"(2) A State agency that assists the United States Department of Defense ~~in purchasing or transferring~~with purchasing, transferring, or titling a vehicle to another State agency, a unit of local government, a volunteer fire department, or a volunteer rescue squad."

SECTION 2.(c) G.S. 20-305.1 is amended by adding a new subsection to read:

"(f2) The provisions of subsection (d) and (e) of this section shall not apply to a State agency that assists the United States Department of Defense with purchasing, transferring, or titling a vehicle to another State agency, a unit of local government, a volunteer fire department, or a volunteer rescue squad."

SECTION 2.(d) G.S. 20-347(d) reads as rewritten:

"(d) The provisions of this disclosure statement section shall not apply to the following transfers:

(1) A vehicle having a gross vehicle weight rating of more than 16,000 ~~pounds;~~pounds.

(2) A vehicle that is not ~~self-propelled;~~self-propelled.

(2a) A vehicle sold directly by the manufacturer to any agency of the United States in conformity with contractual ~~specifications;~~specifications.

(3) A vehicle that is 10 years old or ~~older; or~~older.
(4) A new vehicle prior to its first transfer for purposes other than resale.
(5) A vehicle that is transferred by a State agency that assists the United States Department of Defense with purchasing, transferring, or titling a vehicle to another State agency, a unit of local government, a volunteer fire department, or a volunteer rescue squad."

SECTION 2.(e) G.S. 105-187.3 is amended by adding a new subsection to read:

"(b1) Retail Value of Transferred Department of Defense Vehicles. – The retail value of a vehicle for which a certificate of title is issued because of a transfer by a State agency that assists the United States Department of Defense with purchasing, transferring, or titling a vehicle to another State agency, a unit of local government, a volunteer fire department, or a volunteer rescue squad is the sales price paid by the State agency, unit of local government, volunteer fire department, or volunteer rescue squad."

SECTION 3. G.S. 20-130.1 is amended by adding a new subsection to read:

"(c1) The provisions of subsection (c) of this section do not apply to the possession and installation of an inoperable blue light on a vehicle that is inspected by and registered with the Department of Motor Vehicles as a specially constructed vehicle and that is used primarily for participation in shows, exhibitions, parades or holiday/weekend activities, and not for general daily transportation. For purposes of this subsection, 'inoperable blue light' means a blue-colored lamp housing or cover that does not contain a lamp or other mechanism having the ability to produce or emit illumination."

SECTION 3.1 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~~10 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 3.2 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 4. G.S. 20-309(a) reads as rewritten:

"(a) No motor vehicle shall be registered in this State unless the owner at the time of registration ~~has~~ provides proof of financial responsibility for the operation of such motor vehicle, as provided in this Article. The owner of each motor vehicle registered in this State shall maintain financial responsibility continuously throughout the period of registration."

SECTION 5. G.S. 75-63(g1), as enacted by S.L. 2009-355, reads as rewritten:

"(g1) A consumer reporting agency need not meet the time requirements provided in this section, only for such time as the occurrences prevent compliance, if any of the following occurrences apply:

(1) The consumer fails to meet the requirements of subsection (d) or (j) of this section.

(2) The consumer reporting agency's ability to remove, place, temporarily lift, or lift with respect to a specific party the security freeze is prevented by any of the following:

a. An act of God, including fire, earthquakes, hurricanes, storms, or similar natural disaster or phenomena.

b. Unauthorized or illegal acts by a third party, including terrorism, sabotage, riot, vandalism, labor strikes or disputes disrupting operations, or similar occurrences.

c. Operational interruption, including electrical failure, unanticipated delay in equipment or replacement part delivery, computer hardware or software failures inhibiting response time, or similar disruption.

d. Governmental action, including emergency orders or regulations, judicial or law enforcement action, or similar directives.

e. Regularly scheduled maintenance, during other than normal business hours, of, or updates to, the consumer reporting agency's systems.

f. Commercially reasonable maintenance of, or repair to, the consumer reporting agency's systems that is unexpected or unscheduled.

g. Receipt of a ~~removal~~ request outside of normal business hours."

SECTION 5.1. G.S. 105-40(7a) reads as rewritten:

"(7a) All exhibitions, performances, and entertainments promoted and managed by 'a nonprofit arts organization.' This exemption does not apply to athletic events. A 'nonprofit arts organization' is an organization that meets both of the following requirements:

a. It is exempt from income tax under G.S. 105-130.11(a)(3).

b. Its primary purpose is to ~~offer choral and theatrical performances.~~ create, produce, present or support music, dance, theatre, literature, or visual arts."

SECTION 6.(a) G.S. 130A-492(8e), as enacted by S.L. 2009-27, read as rewritten:

"(8e) "Restaurant" – A food ~~and~~ or lodging establishment that prepares and serves drink or food as regulated by the Commission pursuant to Part 6 of Article 8 of this Chapter."

SECTION 6.(b) Section 3 of S.L. 2009-27 reads as rewritten:

"**SECTION 3.** This act is effective when it becomes law. The Commission for Public Health may adopt rules to implement Parts 1A, 1B, and 1C of Article 23 of Chapter 130A of the General Statutes, as enacted by this act, on and after the date this act becomes law provided that such rules shall not become effective before January 2, 2010."

SECTION 7. G.S. 143B-434.1(c)(6) reads as rewritten:

"(6) The Chairperson of the Travel and Tourism ~~Coalition.~~Coalition or the Chairperson's designee."

SECTION 8.(a) G.S. 164-14 reads as rewritten:

"**§ 164-14. Membership; appointments; terms; vacancies.**

(a) The Commission shall consist of ~~12~~14 members, who shall be appointed as follows:

(1) One member, by the president of the North Carolina State Bar;

(2) One member, by the General Statutes Commission;

(3) One member, by the dean of the school of law of the University of North Carolina;

(4) One member, by the dean of the school of law of Duke University;

(5) One member, by the dean of the school of law of Wake Forest University;

(6) One member, by the Speaker of the House of Representatives of each General Assembly from the membership of the House;

(7) One member, by the President Pro Tempore of the Senate of each General Assembly from the membership of the Senate;

(8) Two members, by the Governor;

(9) One member, by the dean of the school of law of North Carolina Central University;

(10) One member by the president of the North Carolina Bar Association;

(11) One member, by the dean of the school of law of Campbell University.

(12) One member, by the dean of the school of law of Elon University.

(13) One member, by the dean of the Charlotte School of Law (NC), Inc.

(b) Appointments of original members of the Commission made by the president of the North Carolina State Bar, the president of the North Carolina Bar Association, and the deans of the schools of law of Duke University, the University of North Carolina, and Wake Forest University shall be for one year. Appointments of original members of the Commission made by the Speaker of the House of Representatives, the President of the Senate, and the Governor shall be for two years.

(c) After the appointment of the original members of the Commission, appointments by the president of the North Carolina State Bar, the General Statutes Commission, and the deans of the schools of law of North Carolina Central University, Duke University, Elon University, the University of North Carolina, and Wake Forest University shall be made in the even-numbered years, and appointments made by the Speaker of the House of Representatives, the President Pro Tempore of the Senate, president of the North Carolina Bar Association, the ~~dean~~ deans of the School of Law of Campbell University and the Charlotte School of Law (NC), Inc., and the Governor shall be made in the odd-numbered years. Such appointments shall be made for two-year terms beginning June first of the year when such appointments are to become effective and expiring May 31 two years thereafter. All such appointments shall be made not later than May 31 of the year when such appointments are to become effective.

(d) If any appointment provided for by this section is not made prior to June first of the year when it should become effective, a vacancy shall exist with respect thereto, and the vacancy shall then be filled by appointment by the Governor. If any member of the Commission dies or resigns during the term for which he was appointed, his successor for the unexpired term shall be appointed by the person who made the original appointment, as provided in G.S. 164-14, or by the successor of such person; and if such vacancy is not filled within 30 days after the vacancy occurs, it shall then be filled by appointment by the Governor.

In any case where an appointment authorized to be made by G.S. 164-14(c) has not been made on or before July 31 of the year in which it was due to be made, a vacancy shall exist with respect to that appointment and the General Statutes Commission at its next meeting shall by majority vote fill the vacancy by appointment.

(e) All appointments shall be reported to the secretary of the Commission.

(f) Notwithstanding the expiration of the term of the appointment, the terms of members of the General Statutes Commission shall continue until the appointment of a successor has been made and reported to the secretary of the Commission."

SECTION 8.(b) The initial appointment by the dean of the school of law for Elon University shall be for the term ending May 31, 2010. The initial appointment by the dean of the Charlotte School of Law (NC), Inc., shall be for the term ending May 31, 2011.

SECTION 9. Section 5 of S.L. 2007-532 reads as rewritten:

"**SECTION 5.** Notwithstanding G.S. 143C-9-3(b) and G.S. 147-86.30, of the funds credited to the Health Trust Account from the Master Settlement Agreement pursuant to ~~Section 6(2) of S.L. 1992~~Section 6(3) of S.L. 1999-2 during the 2008-2009 fiscal year, the sum of five million dollars ($5,000,000) for the 2008-2009 fiscal year shall be transferred from the Department of State Treasurer, Budget Code 23460 (Health and Wellness Trust Fund) to the ~~State Controller to be deposited in Nontax Budget Code 19978 (Intra State transfers) to support General Fund appropriations by the 2007 General Assembly, Regular Session 2008, for operations and claims of the~~ North Carolina Health Insurance Risk Pool, as enacted by this act."

SECTION 10.(a) Section 16.6 of S.L. 2007-550, as amended by Section 7 of S.L. 2008-208, as amended by Section 11.4 of S.L. 2008-198, reads as rewritten:

"**SECTION 16.6.(a)** Part 2E of Article 9 of Chapter 130A of the General Statutes, as enacted by Section 16.1(a) of this act, becomes effective as follows:

(1) G.S. 130A-309.90 becomes effective ~~1 January~~July 1, 2010.
(2) G.S. 130A-309.91 becomes effective ~~1 January~~ July 1, 2010.
(3) G.S. 130A-309.92 becomes effective ~~1 January~~ July 1, 2010.
(4) G.S. 130A-309.93(a) becomes effective ~~1 January~~ July 1, 2010.
(5) G.S. 130A-309.93(b) becomes effective ~~1 January~~ July 1, 2010.
(6) G.S. 130A-309.93(c) becomes effective ~~1 January~~ July 1, 2010.
(7) G.S. 130A-309.93(d) becomes effective ~~1 January~~ July 1, 2010.
(8) G.S. 130A-309.93(e) becomes effective ~~1 January~~ July 1, 2010.
(9) G.S. 130A-309.93(f) becomes effective ~~1 January~~ July 1, 2010.
(10) G.S. 130A-309.93(g) becomes effective ~~1 February~~ February 1, 2011.
(10a) G.S. 130A-309.93A(a) through (f) become effective ~~1 January~~ July 1, 2010.
(10b) G.S. 130A-309.93A(g) becomes effective ~~1 October~~October 1, 2011.
(10c) G.S. 130A-309.93B becomes effective ~~1 January~~ July 1, 2010.
(11) G.S. 130A-309.94 becomes effective ~~1 January~~ July 1, 2010.
(12) G.S. 130A-309.95(1) becomes effective ~~1 January~~ July 1, 2010.
(13) G.S. 130A-309.95(2) becomes effective ~~1 January~~ July 1, 2010.
(14) G.S. 130A-309.95(3) becomes effective ~~1 January~~ July 1, 2010.
(14a) G.S. 130A-309.95(4) becomes effective July 1, 2010.
(15) G.S. 130A-309.96 becomes effective ~~1 January~~ July 1, 2010.
(16) G.S. 130A-309.97 becomes effective ~~1 January~~ July 1, 2010.
(17) G.S. 130A-309.98 becomes effective ~~15 January~~ January 15, 2011.

SECTION 16.6.(b) Section 16.2 of this act becomes effective ~~1 January~~ July 1, 2010. Sections 16.3 and 16.4 of this act become effective ~~1 January~~ January 1, 2011. Section 16.5 of this act becomes effective ~~1 July~~ July 1, 2010. Subsection (b) of Section 16.1 of this act, Section 16.6 of this act, and any other provision of Section 16 of this act for which an effective date is not specified become effective ~~1 January~~ July 1, 2010."

SECTION 10(b). Section 8 of S.L. 2008-208 reads as rewritten:

"**SECTION 8.** Sections ~~3, 4, and 5~~3 and 4 of this act become effective ~~1 January~~ January 1, 2011. The remainder of this act becomes effective July 1, 2010. ~~The remainder of this act is effective when it becomes law.~~"

SECTION 11. Except as otherwise provided, this act is effective when it becomes law.

HOUSE BILL 274:
Clarifying Changes to State Law

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	August 6, 2009
Introduced by:	Rep. Ross	**Prepared by:**	Shawn Parker
Analysis of:	PCS to First Edition H274-CSSQ-79		Legislative Analyst

BILL ANALYSIS:

Section 1: G.S. 15A-544.4 currently requires notice of forfeiture of bail bonds to be mailed no later than 30 days after the day forfeiture is entered. Section 1 would amend subsection (e) of G.S. 15A-544.4 by requiring that notice of the forfeiture be mailed no later than the 30th day after the date on which the defendant failed to appear as required and a call and fail is ordered.

Section 2: S.L. 2009-81 provides exemptions related to titling and taxes for State agencies facilitating the transfer of vehicles provided by the Department of Defense to emergency response units, local law enforcement, and fire departments. Section 2.(b) would clarify the exemption from titling requirements for State agencies facilitating such transfers. Sections 2.(a), (c), and (d) would exempt State agencies facilitating such transfers from the requirements to disclose damage to a vehicle under G.S. 20-71.4, liability for transportation damages and damage/repair disclosure required by G.S. 20-305.1(d) and (e), and mileage disclosure requirements required by G.S. 20-347(d). Section 2.(e) would add a new subsection providing that, for purposes of the highway use tax, the retail value of a motor vehicle transferred under this program is the sales price paid by the State agency, unit of local government, volunteer fire department, or volunteer rescue squad.

Section 3 would create an exception to the prohibition on blue lights on non-law enforcement vehicles to permit the use of inoperable blue lights on specially constructed vehicles not used for general daily transportation.

Section 3.1 would 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 from three to ten days after receiving the request.

Section 3.2 would clarify 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.

Section 4 would clarify that an owner must provide proof of financial responsibility for the operation of a motor vehicle at the time of registration.

Section 5 would delete the term "removal" from G.S. 75-63(g1)(2)g. so the after business hours exception applies to all requests relating to security freezes governed by the subsection, not just a specific request for removal.

Section 5.1 would expand the definition of a nonprofit arts organization for tax exemption purposes by requiring that the primary purpose of the organization include creating, producing, presenting, or supporting music, dance, theatre, literature, or visual arts.

Section 6(a) would replace the term "and" with the term "or" to clarify that a restaurant would not have to be both a food establishment and a lodging establishment to fall under the provisions of Article 23 of Chapter 130A.

Section 6(b) would authorize the Commission for Public Health to adopt rules to implement Article 23 of Chapter 130A so long as the rules are not effective prior to January 2, 2010.

Section 7 would amend the membership of the North Carolina Travel and Tourism Board to provide that the Chairperson of the Travel and Tourism Coalition may appoint a designee to serve on the Board in place of the Chairperson.

Section 8(a)&(b) would expand the membership of the General Statutes Commission from 12 to 14 members by adding an appointment by the dean of Elon University School of Law in even-numbered years, and an appointment by the dean of the Charlotte School of Law (NC), Inc. in odd-numbered years. Currently, the dean

of each of the 5 other laws schools in North Carolina (UNC, Duke, Wake Forest, N.C. Central, and Campbell) appoints one member to the Commission.

Section 9: Section 5 of S.L. 2007-532 directed the transfer of five million dollars from the Health and Wellness Trust Fund to the State Controller to support appropriations made for operations and claims of the North Carolina High Risk Pool. Section 9 would direct the transfer to be allocated directly to the North Carolina High Risk Pool and corrects a incorrect cross reference.

Section 10 would delay the effective dates applicable to provisions enacted in 2007 and 2008 that require manufacturers of computer equipment and televisions to collect and recycle these items until July 1, 2010. Most of these provisions are currently scheduled to come into effect on January 1, 2010.

Section 11 Except as otherwise provided, the act is effective when it becomes law.

H274-SMSQ-134(CSSQ-79) v3

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 274*

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

H274-ARR-74 [v.1]

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

Date _____,2009

Representative _____

moves to amend the bill on page , line ,
by adding a new section to read:

"**SECTION .** If House Bill 908 of the 2009 General Assembly is enacted, G.S. 163-85(c)(10) as enacted by that bill is rewritten to read:

'(10) That the person ~~presenting himself to vote~~ is not who he or she represents himself or herself to be.'"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Thursday, August 06, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

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

H.B. **274** Rewrite Foreign Money Judgments Laws.

Draft Number:	50795
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

Senator Hartsell will handle

SENATE JUDICIARY II COMMITTEE
Thursday, August 7, 2009 at 2:40 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 2:40 PM on August 7, 2009, in the Senate Chamber of the Legislative Building with ten members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

HB 191 – (General Statutes Comm. Technical Corrections.) Senator Snow moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Hartsell explained the bill. Senator Snow moved for a favorable report to the Proposed Committee Substitute, unfavorable to the original bill. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

HOUSE BILL 191*

Short Title:	General Statutes Comm. Technical Corrections.	(Public)
Sponsors:	Representatives Ross; E. Floyd and Lucas.	
Referred to:	Judiciary I.	

February 18, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS IN THE GENERAL STATUTES AS REQUESTED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-318.2 reads as rewritten:

"**§ 14-318.2. Child abuse a ~~Class 1~~ misdemeanor.**

(a) Any parent of a child less than 16 years of age, or any other person providing care to or supervision of such child, who inflicts physical injury, or who allows physical injury to be inflicted, or who creates or allows to be created a substantial risk of physical injury, upon or to such child by other than accidental means is guilty of the Class A1 misdemeanor of child abuse.

(b) The Class A1 misdemeanor of child abuse is an offense additional to other civil and criminal provisions and is not intended to repeal or preclude any other sanctions or remedies.

(c) A parent who abandons an infant less than seven days of age pursuant to G.S. 14-322.3 shall not be prosecuted under this section for any acts or omissions related to the care of that infant."

SECTION 2. G.S. 14-404(g) reads as rewritten:

"(g) An applicant shall not be ineligible to receive a permit under ~~subsection (4) of subsection (c)~~ subdivision (c)(4) of this section because of involuntary commitment to mental health services if the individual's rights have been restored under G.S. 122C-54.1."

SECTION 3. G.S. 144-3 reads as rewritten:

"**§ 144-3. Flags to be displayed on public buildings and institutions.**

The board of trustees or managers of the several State institutions and public buildings shall provide a North Carolina flag, of such dimensions and material as they may deem best, and the same shall be displayed from a staff upon the top of each and every such building, at all times except during inclement weather, and upon the death of any State officer or any prominent citizen the flag shall be put at ~~half-mast~~ half-staff until the burial of such person has taken place."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 191*
PROPOSED SENATE COMMITTEE SUBSTITUTE H191-CSTD-80 [v.1]

8/7/2009 1:50:14 PM

Short Title: General Statutes Clarifying Correction. (Public)

Sponsors:

Referred to:

February 18, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE A CLARIFYING CHANGE TO THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-130.1 is amended by adding a new subsection to read:

"(c1) The provisions of subsection (c) of this section do not apply to the possession and installation of an inoperable blue light on a vehicle that is inspected by and registered with the Department of Motor Vehicles as a specially constructed vehicle and that is used primarily for participation in shows, exhibitions, parades, or holiday/weekend activities, and not for general daily transportation. For purposes of this subsection, 'inoperable blue light' means a blue-colored lamp housing or cover that does not contain a lamp or other mechanism having the ability to produce or emit illumination."

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

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Friday, August 07, 2009

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

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

H.B. **191** General Statutes Comm. Technical Corrections.

Draft Number:	50798
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

MEMBERSHIP

Senate Judiciary II Committee
2009-2010 Biennium

Senator Fletcher Hartsell, Chairman
Room 518, LOB
733-7223

Senator Austin Allran, Vice Chair
Room 516, LOB
733-5876

Senator Ed Jones, Vice Chair
Room 623, LOB
733-3032

Senator Don Vaughan, Vice Chair
Room 622, LOB
733-5856

Senator Tom Apodaca
Room 1127, LB
733-5745

Senator Bob Atwater
Room 312 A, LOB
715-3036

Senator Doug Berger
Room 526, LOB
715-8363

Senator Stan Bingham
Room 2117, LB
733-5665

Senator Julia Boseman
Room 309, LOB
715-2525

Senator Charlie Dannelly
Room 2010, LB
733-5955

Senator Katie Dorsett
Room 2106, LB
715-3042

Senator Don East
Room 1120, LB
733-5743

Senator James Forrester
Room 1129, LB
715-3050

Senator Eddie Goodall
Room 332, LOB
733-7659

Senator Jim Jacumin
Room 1113, LB
715-7823

Senator Joe Sam Queen
Room 1117, LB
733-3460

Senator John Snow
Room 2111, LB
733-5875

Senator A. B. Swindell
Room 629, LOB
715-3030

Committee Assistant:

Gerry Johnson

Research Staff:

Brenda Carter
Kory Goldsmith
Jeffery Hudson
Jennifer McGinnis

2009-2010 Biennium

Leg. Day: H-151/S-148

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H0008	Pierce	PROHIBIT CELL PHONES IN PRISON.	*S	Re-ref Com On Appropriations/ Base Budget	03-12-09	04-01-09
0009	Pierce	NO TEXTING WHILE DRIVING.	*SR	Ch. SL 2009-135	04-20-09	05-19-09
H0022=	Weiss	ENHANCE YOUTH EMPLOYMENT PROTECTIONS.	*SR	Ch. SL 2009-139	03-24-09	05-27-09
H0023=	Weiss	STRENGTHEN CHILD LABOR VIOLATION PENALTIES.	*SR	Ch. SL 2009-351	03-24-09	04-06-09
H0043	Glazier	SCHOOL BD. MEMBERS/ FAILURE TO DISCHARGE DUTY.	SR	Ch. SL 2009-107	03-03-09	05-28-09
H0085	Burr	INCREASE RAFFLE PRIZE LIMIT.	*SR	Ch. SL 2009-49	03-26-09	05-26-09
H0144=	Farmer-Butterfie	SPECIAL CARE DENTISTRY COLLABORATION.	*S	Pres. To Gov. 7/9/ 2010	06-22-10	07-01-10
H0191=	Ross	GENERAL STATUTES CLARIFYING CORRECTION.	*SR	Ch. SL 2009-526	05-07-09	08-07-09
H0266	E. Floyd	USE OF DEADLY FORCE BY LEO/COLLECT & PUBLISH.	*SR	Ch. SL 2009-106	05-20-09	06-02-09
H0274=	Ross	CLARIFYING CHANGES TO STATE LAW.	*SR	Ch. SL 2009-550	03-24-09	08-06-09
H0312	Hurley	INCREASE SPOUSAL YEAR'S ALLOWANCE/ CONFORM LNG.	*SR	Ch. SL 2009-183	04-27-09	06-11-09
H0388	Earle	CAMPAIGN DISCLOSURE.	*S	Ref To Com On Judiciary II	05-14-09	
)440	Folwell	THE NICHOLAS ADKINS SCHOOL BUS SAFETY ACT.	*SR	Ch. SL 2009-147	04-13-09	05-27-09
H0473	Hurley	MAGISTRATE CAN CARRY GUN IN COURTHOUSE.	*SR	Ch. SL 2009-513	03-31-09	06-02-09
H0559	E. Warren	CERTAIN NOTARIAL ACTS VALIDATED..	*SR	Ch. SL 2009-358	04-16-09	06-09-09
H0578	Bryant	PARTITION SALES/ COMMRS., SELLERS, BUYERS.	*SR	Ch. SL 2009-512	05-19-09	07-21-09
H0578	Bryant	PARTITION SALES/ COMMRS., SELLERS, BUYERS.	*SR	Ch. SL 2009-512	07-27-09	08-03-09
H0581=	Bryant	PARTITION SALES/ EXTEND REPORT & ANSWER TIMES.	*SR	Ch. SL 2009-362	04-15-09	06-30-09
H0615	Martin	BUSINESS TRUSTS.	*SR	Ch. SL 2009-174	05-14-09	06-11-09
H0616=	Allen	OFFENSE FOR PORTABLE TOILETS/PUMPER TRUCKS.	*SR	Ch. SL 2009-37	04-30-09	05-19-09
H0620=	Ross	WILL/UNIF. PRINCIPAL AND INCOME ACT CHANGES	*S	Pres. To Gov. 7/9/ 2010	06-03-10	06-08-10
H0629	Sutton	SMALL CLAIMS COURT/ TRIALS.	*SR	Ch. SL 2009-359	04-21-09	06-22-09
H0630	Sutton	SUMMARY EJECTMENT/ TRIALS.	*SR	Ch. SL 2009-246	04-21-09	06-18-09
H0686	Tucker	MODERNIZE DO NOT CALL	*SR	Ch. SL 2009-122	04-16-09	06-02-09

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		NOTICE PROCEDURES.				
H0722	Hilton	PARAPHERNALIA CONTROL ACT.	*SR	Ch. SL 2009-205	05-20-09	06-09-09
0765	Stam	REVISE ELECTIVE SHARE STATUTES.	*SR	Ch. SL 2009-368	04-13-09	06-30-09
H0775=	England	ALT. TESTIMONY/ CHILDREN AND ADULTS WITH DISAB.	*SR	Ch. SL 2009-514	05-14-09	07-29-09
H0794	Martin	SUBSTITUTION OF TRUSTEES.	*SR	Ch. SL 2009-176	05-20-09	06-11-09
H0799	Rhyne	UNEQUAL SHARES/ JOINT TENANCY SURVIVORSHIP.	*SR	Ch. SL 2009-268	05-04-09	06-15-09
H0800	Ross	RENUNCIATION AMENDMENTS.	*SR	Ch. SL 2009-48	04-16-09	05-19-09
H0859	Guice	AMEND CONCEALED HANDGUN PERMIT LAWS.	*S	Pres. To Gov. 7/ 10/2010	05-12-10	06-03-10
H0859	Guice	AMEND CONCEALED HANDGUN PERMIT LAWS.	*S	Pres. To Gov. 7/ 10/2010	06-15-10	07-01-10
H0885	Ross	TARGETED PICKETING.	*SR	Ch. SL 2009-300	05-19-09	06-18-09
H0889=	Haire	CHANGE PENALTY FOR MISD. DEATH BY VEHICLE.	*SR	Ch. SL 2009-528	08-03-09	08-06-09
H0960	Glazier	SANITARY DISTRICT QUICK TAKE.	*SR	Ch. SL 2009-85	05-19-09	05-28-09
H1037	Glazier	PERMIT ACCESS TO CAPITAL DEFENDANTS.	SR	Ch. SL 2009-91	04-30-09	05-28-09
H1039	Glazier	GUILTY PLEA FORM REVISIONS.	*SR	Ch. SL 2009-86	04-30-09	05-28-09
H1057=	Blue	ABOLISH CERTAIN DEFICIENCY JUDGMENTS.	*SR	Ch. SL 2009-441	05-14-09	07-21-09
1058=	Blue	INCREASE STATUTORY HOMESTEAD EXEMPTION.	*SR	Ch. SL 2009-417	05-19-09	07-14-09
1077=	Wiley	VENUE/MUNICIPALITIES IN MULTIPLE DISTRICTS.	*SR	Ch. SL 2009-398	05-19-09	07-14-09
H1091	Rhyne	CLARIFY ACTION FOR DIVORCE/INCOMPETENT SPOUSE.	SR	Ch. SL 2009-224	05-05-09	06-18-09
H1098	Frye	PROTECT SEARCH AND RESCUE ANIMAL.	*SR	Ch. SL 2009-460	05-19-09	07-02-09
H1109	Hill	STATE FAIRGROUNDS SPECIAL POLICE/MUTUAL AID.	SR	Ch. SL 2009-94	05-20-09	06-02-09
H1112	Goodwin	AMEND BIRTH REGISTRATION REQUIREMENTS.	*SR	Ch. SL 2009-285	05-20-09	06-17-09
H1117	Tucker	SEX OFFENDER CAN'T DRIVE BUS WITH CHILDREN.	SR	Ch. SL 2009-491	08-04-09	08-06-09
H1132	Hilton	RENEW CONCEALED CARRY PERMIT/30 DAY LIMIT.	*SR	Ch. SL 2009-307	05-19-09	06-08-09
H1168	Glazier	TITLE PROTECTION/ SOCIAL WORKERS.	*SR	Ch. SL 2009-88	05-20-09	05-28-09
H1189	Insko	DHHS/TRACKING OUTPATIENT COMMITMENTS.-AB	*SR	Ch. SL 2009-315	06-24-09	07-07-09
H1261	Mackey	PROTECT OUR KIDS/	*SR	Ch. SL 2009-551	05-19-09	08-06-09

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2009-2010 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		CYBER BULLYING MISDEMEANOR.				
1272	Goodwin	TECHNICAL/CLARIFYING CHANGES/JUVENILE CODE.	SR	Ch. SL 2009-38	05-07-09	05-19-09
1299	Rapp	VIRTUAL VISITATION/ FAMILY LAW.	*SR	Ch. SL 2009-314	05-20-09	07-07-09
H1327	Folwell	SCHOOLS NOTIFIED OF CRIM. INTELL. INFO.	*SR	Ch. SL 2009-93	05-20-09	05-28-09
H1347	Mobley	CHIEF COURT COUNSELOR DELEGATION.	*SR	Ch. SL 2009-320	05-20-09	06-29-09
H1368	Love	AMEND FUTURE ADVANCES STATUTES.	*SR	Ch. SL 2009-197	05-20-09	06-11-09
H1377	Folwell	SAFE SCHOOLS ACT.	*S	Pres. To Gov. 7/9/ 2010	05-20-09	07-06-10
H1390	Mackey	WILLS/BEQUESTS TO DRAFTING ATTORNEY.	*SR	Ch. SL 2009-182	05-20-09	06-11-09
H1438	Spear	VIDEOCONFERENCE TECH. IN COURT PROCEEDINGS.	SR	Ch. SL 2009-270	05-20-09	06-29-09
H1447	Wiley	CRIME STOPPERS TIPS ARE CONFIDENTIAL.	*S	Ref To Com On Judiciary II	05-20-09	
H1449	Weiss	JUVENILE CODE REVISIONS.	*SR	Ch. SL 2009-311	05-20-09	07-02-09
H1463	Dickson	EXPAND ACCESS/ CONFIDENTIAL INTERMEDIARIES.	*S	Pres. To Gov. 7/8/ 2010	05-07-09	08-06-09
H1463	Dickson	EXPAND ACCESS/ CONFIDENTIAL INTERMEDIARIES.	*S	Pres. To Gov. 7/8/ 2010	05-12-10	06-22-10
H1717=	R. Warren	MODERNIZATION OF THE STATE ABC SYSTEM.	*S	Pres. To Gov. 7/9/ 2010	06-23-10	06-29-10
1736	Burr	LOCAL DELINQUENT SEWER FEES.	*SR	Ch. SL 2010-59	06-29-10	07-01-10
H1740=	Ross	GENERAL STATUTES COMM. TECHNICAL CORRECTIONS.	*S	Ref To Com On Judiciary II	07-08-10	
H1753=	Underhill	SCHOOL BUS RAILROAD CROSSING EXCEPTION.	SR	Ch. SL 2010-20	06-15-10	06-22-10
H1762=	McLawhorn	DOMESTIC VIOLENCE TRAINING FOR JUDGES.	S	Pres. To Gov. 7/8/ 2010	06-23-10	07-01-10
S0007	Julia Boseman	ALLOW HUNTING ON SUNDAY.	S	Ref To Com On Judiciary II	01-29-09	
$ S0012	**Charlie S. Danne**	**BAN MOBILE PHONE USE WHILE DRIVING.**	***S**	**Re-ref Com On Appropriations/ Base Budget**	**05-11-09**	**07-01-10**
S0022=	James Forrester	BAN TEXTING WHILE DRIVING.	*S	Re-ref Com On Appropriations/ Base Budget	02-03-09	04-01-09
S0044	Eleanor Kinnaird	APPEALS OF QUASI-JUDICIAL LAND-USE DECISIONS.	*SR	Ch. SL 2009-421	02-04-09	05-06-09
S0074	Ed Jones	INCREASE PENALTY/2ND DEGREE MURDER.	S	Re-ref Com On Appropriations/ Base Budget	02-05-09	04-06-09
S0094	Tony Foriest	FELONY TO ASSAULT PROBATION/PAROLE OFFICER.	S	Re-ref Com On Appropriations/ Base Budget	02-10-09	05-05-09

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
S0096=	Stan Bingham	NO "TEXTING" WHILE DRIVING.	S	Ref To Com On Judiciary II	02-11-09	
0127=	Fletcher L. Hart	PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS.	*SR	Ch. SL 2009-8	02-12-09	02-25-09
0131	Don Vaughan	PENALTY FOR DWI CONVICTION/BAC .20 OR HIGHER.	*S	Re-ref Com On Appropriations/ Base Budget	02-12-09	03-30-09
S0138	William R. Purce	SALVIA DIVINORUM UNLAWFUL.	*SR	Ch. SL 2009-538	02-12-09	04-29-09
S0140	John Snow	PROTECT VICTIMS/DV SHELTERS.	*SR	Ch. SL 2010-5	02-12-09	03-03-09
S0143	John Snow	CONTINUE CHILD SUPP./ 21 YRS/COLLEGE STUDENTS.	S	Ref to the Com on Juvenile Justice, if favorable, Judiciary III	02-12-09	05-07-09
S0144	John Snow	AMEND INNOCENCE INQUIRY COMMISSION.	*S	Pres. To Gov. 7/ 10/2010	02-12-09	03-30-09
S0178	Larry Shaw	REPEAL BAN G.S. 95-98.	S	Ref To Com On Judiciary II	02-17-09	
S0220=	Fletcher L. Hart	GENERAL STATUTES COMM. TECHNICAL CORRECTIONS.	*SR	Ch. SL 2009-570	02-19-09	05-07-09
S0241=	William R. Purce	ALT. TESTIMONY/ CHILDREN AND ADULTS WITH DISAB.	S	Re-ref Com On Judiciary I	02-19-09	05-20-09
S0262	Doug Berger	EXPUNCTIONS/PURGE ONLINE DATABASES.	*SR	Ch. SL 2009-510	02-23-09	03-30-09
S0277=	Doug Berger	STRENGTHEN CHILD LABOR VIOLATION PENALTIES.	S	Ref To Com On Judiciary II	02-24-09	
0285=	Fletcher L. Hart	REWRITE FOREIGN MONEY JUDGMENTS LAWS.	SR	Ch. SL 2009-325	02-25-09	03-30-09
0307	Ed Jones	REGULATE OWNERSHIP & USE OF CERTAIN REPTILES.	*SR	Ch. SL 2009-344	02-25-09	03-30-09
S0372	Julia Boseman	CLARIFICATION OF NUISANCE ABATEMENT LAWS.	*S	Re-ref Com On Judiciary III	03-04-09	05-12-09
S0380	Charlie S. Danne	COLLECTION OF DATA/ DMV REPORTS.	*S	Re-ref Com On Judiciary III	03-04-09	03-19-09
$ S0403	**Doug Berger**	**VICTIMS COMPENSATION AMENDMENT.**	***S**	**Re-ref Com On Appropriations/ Base Budget**	**03-05-09**	**04-06-09**
S0454	John Snow	DOT/FIBER-OPTIC CABLE.	S	Ref To Com On Judiciary II	03-09-09	
S0481	Fletcher L. Hart	TRUSTEE'S POWER TO APPOINT TO OTHER TRUST.	*SR	Ch. SL 2009-318	03-10-09	04-15-09
S0482	Fletcher L. Hart	CLARIFICATIONS TO TRUST CODE.	*SR	Ch. SL 2009-222	03-10-09	04-15-09
S0483	Fletcher L. Hart	CLARIFY JUDICIAL CREATION OF TRUST.	SR	Ch. SL 2009-267	03-10-09	04-15-09
S0567=	Fletcher L. Hart	RESPONSIBLE INDIVIDUALS LIST/ ABUSE & NEGLECT.	*SR	Ch. SL 2010-90	06-02-10	06-08-10
S0584=	John Snow	AMEND PRIVATE	*SR	Ch. SL 2009-328	03-12-09	04-20-09

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		PROTECTIVE SERVICES ACT.				
0589	Larry Shaw	PLAN TO ELIMINATE MANDATORY MIN. SENTENCES.	S	Ref To Com On Judiciary II	03-16-09	
S0612=	Bob Atwater	PARTITION SALES/ EXTEND REPORT & ANSWER TIMES.	S	Re-ref Com On Judiciary II	03-17-09	05-12-09
S0612=	Bob Atwater	PARTITION SALES/ EXTEND REPORT & ANSWER TIMES.	S	Re-ref Com On Judiciary II	05-13-09	
S0613=	Bob Atwater	PARTITION SALES/ COMMRS., SELLERS, BUYERS.	S	Ref To Com On Judiciary II	03-17-09	
S0614=	Bob Atwater	PARTITION SALES/ NOTICE, CREDIT, APPRAISAL.	S	Ref To Com On Judiciary II	03-17-09	
S0617=	Fletcher L. Hart	STALKING LAW CONFORMING CHANGES.	SR	Ch. SL 2009-58	03-17-09	03-31-09
S0639	Doug Berger	CLARIFY WC CLAIM DEADLINE/INS. GUARANTY ASSN.	S	Ref To Com On Judiciary II	03-18-09	
S0643	A. B Swindell	AMEND DRUG EXAM REGULATION.	*SR	Ch. SL 2009-535	03-18-09	05-05-09
$ S0693=	**Katie G. Dorsett**	**PUBLIC GUARDIANSHIP/ TRAINING/EDUCATION.**	**S**	**Ref To Com On Judiciary II**	**03-24-09**	
S0709	Austin M. Allran	HOME IMPROVEMENT FRAUD.	*S	Re-ref Com On Judiciary III	03-24-09	05-04-09
S0710	Austin M. Allran	FALSE PRETENSES/ INCREASE SOME PENALTIES.	S	Re-ref Com On Appropriations/ Base Budget	03-24-09	04-30-09
0714=	Doug Berger	OFFENSE FOR PORTABLE TOILETS/PUMPER TRUCKS.	S	Re-ref Com On Appropriations/ Base Budget	03-24-09	03-31-09
S0807	Ed Jones	PUBLIC SAFETY REGISTRATION.	*S	Ref to the Com on Wildlife Resources, if favorable, Finance	03-25-09	06-08-09
S0819=	Fletcher L. Hart	ABOLISH CERTAIN DEFICIENCY JUDGMENTS.	S	Ref To Com On Judiciary II	03-25-09	
S0836=	Charles W. Alber	OIL SPILL LIABILITY, RESPONSE, & PREPAREDNESS	*S	Pres. To Gov. 7/9/ 2010	06-29-10	07-08-10
S0843	Charles W. Alber	NONDISCRIMINATION IN STATE EMPLOYMENT.	S	Ref To Com On Judiciary II	03-25-09	
S0850	Don Vaughan	LIENS/CONDOMINIUMS AND PLANNED COMMUNITIES.	S	Ref To Com On Judiciary II	03-25-09	
S0851=	Don Vaughan	SUPERVISION OF CERTAIN DEFENDANTS.	*SR	Ch. SL 2009-452	03-25-09	04-16-09
S0852	Don Vaughan	ALCOHOL SCREENING DEVICE TEST RESULTS.	S	Ref To Com On Judiciary II	03-25-09	
S0853	Don Vaughan	MOTION FOR APPROPRIATE RELIEF/ NEW REQUIREMENT.	*SR	Ch. SL 2009-517	03-25-09	04-21-09
S0854=	Don Vaughan	VENUE/MUNICIPALITIES	S	Ref To Com On	03-25-09	

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		IN MULTIPLE DISTRICTS.		Judiciary II		
S0866=	David W. Hoyle	RETIRING OF STATE FLAGS.	*S	Pres. To Gov. 7/2/ 2010	06-22-10	06-29-10
0880	Bob Atwater	CERTIFICATES OF REHABILITATION.	S	Ref To Com On Judiciary II	03-26-09	
S0884	Fletcher L. Hart	CIG SAF AMEND/DHHS ELEC. SUPERVISION.	*SR	Ch. SL 2009-490	03-26-09	05-11-09
S0925	Tom Apodaca	MISREPRESENTATION OF BOTTLED NC SPRING WATER.	S	Ref to the Com on Agriculture, if favorable, Judiciary I	03-26-09	04-29-09
S0926	Tom Apodaca	MISBRANDING OF BOTTLED NC SPRING WATER.	S	Ref To Com On Judiciary II	03-26-09	
S0928	Doug Berger	THE CASTLE DOCTRINE.	*S	Ref to the Com on Judiciary I, if favorable, Ways and Means/ Broadband Connectivity, if favorable, Appropriations	03-26-09	05-12-09
S0929	Doug Berger	NO SET ASIDE OF BOND FORFEIT/ACTUAL NOTICE.	*SR	Ch. SL 2009-437	03-26-09	05-11-09
S0930	Doug Berger	WORKERS' COMP/ FIREFIGHTER OCCUPAT'L DISEASES.	S	Ref To Com On Judiciary II	03-26-09	
S0967	Fletcher L. Hart	CREATION OF YADKIN RIVER TRUST.	*SF	Failed 2nd Reading	03-26-09	04-15-09
S0969	Joe Sam Queen	AMEND PURPOSE/CHILD PLACING/CHILD CARE LAWS.	*SR	Ch. SL 2009-408	03-26-09	05-06-09
S0978	Stan Bingham	FIREARMS QUALIFY SITES/EXPAND COMMSN. POWERS.	*SR	Ch. SL 2009-546	04-01-09	05-12-09
S0987	Malcolm Graham	SAFE STORAGE OF FIREARMS.	S	Ref To Com On Judiciary II	03-26-09	
S1007=	David W. Hoyle	AMEND HOME INSPECTOR LICENSURE LAWS.	*SR	Ch. SL 2009-509	03-26-09	05-11-09
S1013	Doug Berger	CITIZENS' RIGHT TO KNOW ACT/PRETRIAL RELEASE.	S	Ref To Com On Judiciary II	03-26-09	
S1031	Katie G. Dorsett	LIMIT NECESSITIES DOCTRINE/HEALTH CARE DEBT.	S	Ref To Com On Judiciary II	03-31-09	
S1062	Julia Boseman	STRENGTHEN DOM. VIO. PROTECTIVE ORDERS/ PETS.	*SR	Ch. SL 2009-425	03-31-09	05-06-09
S1062	Julia Boseman	STRENGTHEN DOM. VIO. PROTECTIVE ORDERS/ PETS.	*SR	Ch. SL 2009-425	05-11-09	05-12-09
S1076	John Snow	MODIFY CRIM. JUSTICE PARTNERSHIP PROGRAM.	*SR	Ch. SL 2009-349	03-31-09	05-05-09
S1076	John Snow	MODIFY CRIM. JUSTICE PARTNERSHIP PROGRAM.	*SR	Ch. SL 2009-349	05-06-09	05-07-09
S1077	John Snow	REMOVE E-NC SUNSET.	*S	Ref To Com On	03-31-09	05-05-09

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2009-2010 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
				Rules and Operations of the Senate		
1077	John Snow	REMOVE E-NC SUNSET.	*S	Ref To Com On Rules and Operations of the Senate	05-06-09	05-07-09
S1078	John Snow	DELAY BOND/ PROBATIONER ARRESTED FOR FELONY.	*SR	Ch. SL 2009-412	03-31-09	04-29-09
S1082	John Snow	JUVENILE RECORDS/ PROBATION RISK ASSESSMENT.	*S	Ref to the Com on Juvenile Justice, if favorable, Judiciary III	03-31-09	04-20-09
S1087=	John Snow	CONTINUOUS ALCOHOL MONITORING SYSTEMS.	S	Re-ref Com On Judiciary I	03-31-09	04-20-09
S1089	John Snow	LOW-RISK PROBATIONERS MAY BE UNSUPERVISED.	*SR	Ch. SL 2009-275	03-31-09	05-07-09
S1090	John Snow	AMEND CIVIL PROCEDURE RULE 4.	S	Ref To Com On Judiciary II	03-31-09	
S1091	John Snow	CLARIFY WT. MEASUREMENT/METH TRAFFICKING.	*SR	Ch. SL 2009-463	03-31-09	04-30-09
S1112=	Don Vaughan	MODERNIZATION OF THE STATE ABC SYSTEM.	S	Ref To Com On Judiciary II	05-13-10	
S1115=	Jean Preston	CARTERET SCHOOLS MAY ADMINISTER OATH.	*SR	Ch. SL 2010-74	06-23-10	06-29-10
S1130=	Steve Goss	ASHE FOX TRAPPING/ GREENE HUNTING.	*S	Re-ref Com On Wildlife Resources	05-13-10	06-07-10
S1164=	Fletcher L. Hart	EXTEND GSC STUDIES.	*S	Re-ref Com On Rules, Calendar, and Operations of the House	05-18-10	06-07-10
S1165=	Fletcher L. Hart	GENERAL STATUTES COMM. TECHNICAL CORRECTIONS.	*S	Pres. To Gov. 7/ 10/2010	05-18-10	07-01-10
S1180=	Fletcher L. Hart	IMPLEMENT GENDER NEUTRAL TERMS.	S	Ref To Com On Judiciary II	05-18-10	
S1213=	Daniel G. Clodfe	AMEND STATE PURCHASES & CONTRACTS LAWS.	*S	Pres. To Gov. 7/9/ 2010	05-19-10	06-16-10
S1436	John Snow	GRAHAM COUNTY RELIEF.	S	Ref To Com On Judiciary II	05-27-10	
S1445=	Don Davis	GOLDSBORO-WAYNE MUNICIPAL AIRPORT/ CHANGES.	*SR	Ch. SL 2010-76	05-27-10	06-10-10

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Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	June 3, 2010	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 1130	Ashe Fox Trapping.	Senator Goss
SB 1164	Extend GSC Study/Refs. to Military Org.	Senator Hartsell
SB 1180	Implement Gender Neutral Terms.	Senator Hartsell

Senator Fletcher L. Hartsell, Jr., Chair

SENATE JUDICIARY II COMMITTEE
Thursday, June 3, 2010 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 10:00 AM on June 3, 2010, in Room 1124 of the Legislative Building with fourteen committee members present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell introduced pages Lauren Broadwell, Ellen Laws, Lizzy Thomas and Jayne Langmeyer and thanked them for their service.

SB 1130 – Ashe Fox Trapping - Senator Atwater moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Goss was recognized to explain the bill. Senator Snow moved for a favorable report for the Proposed Committee Substitute, unfavorable to the original bill. All voted and the motion carried.

SB 1164 - Extend GSC Study/Refs. To Military Org. - As this bill was being presented by Senator Hartsell, Senator Jones presided. Senator Hartsell explained the bill. Senator Dannelly moved for a favorable report. All voted and the motion carried.

SB 1180 - Implement Gender Neutral Terms. Senator Jones continued to preside. Senator East moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Hartsell explained the bill. Senator Hartsell and Ms. Bly Hall of the General Statutes Commission answered questions from Senators Jones, Jacumin, Atwater, Allran, Dannelly and Snow. After much discussion, Senator Hartsell withdrew the bill.

There being no further business, Senator Hartsell adjourned the meeting.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Monday, June 07, 2010

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **1164** Extend GSC Study/Refs. to Military Org.
Sequential Referral: None
Recommended Referral: None

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

S.B. **1130** Ashe Fox Trapping.
Draft Number: PCS 35462
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comments:

Senate Judiciary II Committee
Thursday, June 3, 2010, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 1130	Ashe Fox Trapping.	Senator Goss
SB 1164	Extend GSC Study/Refs. to Military Org.	Senator Hartsell
SB 1180	Implement Gender Neutral Terms.	Senator Hartsell

Presentations

Other Business

Adjournment

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

June 3, 2010
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mike Mann	NCTA
Brian Dempsey	MWC
P. Bry Hall	General Statutes Commission
Floyd Lewis	General Statutes Commission
Khiry Bright	Intern
Sarah Clapp	NCWRC
Colleen Olfenbuttel	NCWRC
Aaron Dancy	Sen. Intern
Todd Barlow	NC Advocates for Justice
Jim Blackburn	Association of County Commissioners
Daniel Boone	Boone

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
SEAN KERNS	Blue Cross, Blue Shield NC
PATRICK GETTEN	BLUE CROSS BLUE SHIELD NC
Mark Fleming	BCBSNC
Rose Williams	NCDOJ
Mark Payne	BCBSNC
Tom BEAN	NCSEA

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 1130*

Short Title:	Ashe Fox Trapping.	(Local)
Sponsors:	Senator Goss.	
Referred to:	Judiciary II.	

May 13, 2010

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW AUTHORIZING THE TRAPPING AND SALE OF FOXES IN ASHE COUNTY AND TO REMOVE THE SUNSET ON THAT LAW.

The General Assembly of North Carolina enacts:

SECTION 1. S.L. 2007-51 reads as rewritten:

"**SECTION 1.** Notwithstanding any other provision of law, there is an open season for taking foxes by trapping from ~~November 7~~ November 1 through ~~February 12~~ February 28 of each year. During this season, all leghold traps set on dry land with solid anchor shall have at least three swivels in the trap chain, and no leghold traps larger than size one and one-half may be used.

SECTION 2. A season bag limit of 10 applies in the aggregate to all foxes taken during the trapping season established in this act.

SECTION 3. The Wildlife Resources Commission shall provide for the sale of foxes taken lawfully pursuant to this act and pursuant to former G.S. 113-111, as retained to the extent of its application to Ashe County pursuant to G.S. 113-133.1(e).

SECTION 4. This act applies only to Ashe County.

SECTION 5. This act becomes effective ~~October 1, 2007, and expires on September 30, 2010.~~ October 1, 2007."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1130*
PROPOSED COMMITTEE SUBSTITUTE S1130-CSSB-90 [v.1]

6/2/2010 4:40:38 PM

Short Title: Ashe Fox Trapping. (Local)

Sponsors:

Referred to:

May 13, 2010

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW AUTHORIZING THE TRAPPING AND SALE OF FOXES IN ASHE COUNTY AND TO REMOVE THE SUNSET ON THAT LAW.

The General Assembly of North Carolina enacts:

SECTION 1. S.L. 2007-51 reads as rewritten:

"**SECTION 1.** Notwithstanding any other provision of law, there is an open season for taking foxes by trapping from ~~November 7~~ November 1 through ~~February 12~~ February 28 of each year. ~~During this season, all leghold traps set on dry land with solid anchor shall have at least three swivels in the trap chain, and no leghold traps larger than size one and one-half may be used.~~

SECTION 2. A season bag limit of 10 applies in the aggregate to all foxes taken during the trapping season established in this act.

SECTION 3. The Wildlife Resources Commission shall provide for the sale of foxes taken lawfully pursuant to this act and pursuant to former G.S. 113-111, as retained to the extent of its application to Ashe County pursuant to G.S. 113-133.1(e).

SECTION 4. This act applies only to Ashe County.

SECTION 5. This act becomes effective ~~October 1, 2007, and expires on September 30, 2010.~~ October 1, 2007."

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

SENATE BILL 1130: Ashe Fox Trapping

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 3, 2010
Introduced by:	Senator Goss	**Prepared by:**	Jeff Hudson
Analysis of:	PCS to First Edition S1130-CSSB-90 [v.1]		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 1120 would extend the season for fox trapping in Ashe County from November 7 through February 12 of each year to November 1 through February 28 of each year; remove specific requirements for traps that could be used to take foxes in Ashe County; and remove the sunset on the law that established the fox trapping season for Ashe County.***

CURRENT LAW: Under current law, there is an open season for taking foxes by trapping in Ashe County from November 7 through February 12 of each year. The current law applicable to Ashe County also provides specific requirements for traps that could be used to take foxes, establishes a season bag limit of 10 foxes, and directs the Wildlife Resources Commission to provide for the sale of foxes taken during the season. This law is scheduled to expire September 30, 2010.

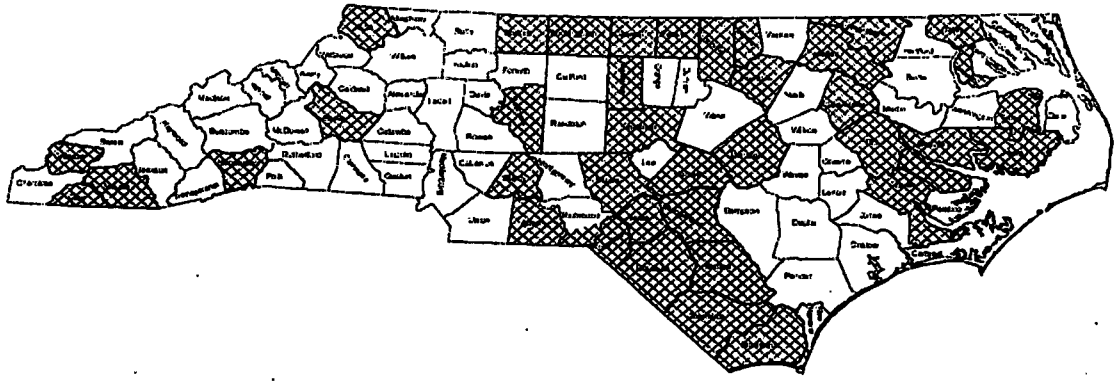
The trapping season in Ashe County for animals other than foxes and beaver is November 1 through February 28. The types of traps that may be used to take foxes and other fur-bearing animals is generally regulated by G.S. 113-291.6.

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 1120 (PCS) would extend the fox trapping season in Ashe County to November 1 through February 28. It would also remove specific requirements on traps that could be used to take foxes and remove the sunset from the session law establishing the Ashe County fox trapping season.

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

BACKGROUND: More information on fox trapping seasons for different counties, including the map below, can be found at: http://www.ncwildlife.org/Regs/documents/fox_seasons_dates.pdf

Counties with Fox Trapping Seasons
(See general listing for stipulations pertaining to each county.)



All counties and areas with fox trapping seasons

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 1164*

Short Title:	Extend GSC Study/Refs. to Military Org.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II.	

May 18, 2010

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE STUDY OF WAYS TO ENSURE THAT THE GENERAL STATUTES PROPERLY AND UNIFORMLY REFER TO FEDERAL AND STATE MILITARY ORGANIZATIONS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2 of Session Law 2009-281 reads as rewritten:

"**SECTION 2.** The General Statutes Commission shall study and recommend to the ~~2010~~2011 Regular Session of the ~~2009~~2011 General Assembly ways to ensure that the General Statutes properly and uniformly refer to federal or state military organizations. These may include a single term that will include all organizations that compose the reserve components of the armed forces. The recommendations may include 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."

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

State of North Carolina
General Statutes
Commission

9001 Mail Service Center
RALEIGH, NORTH CAROLINA
27699-9001

MEMORANDUM
June 1, 2010

TO: Senate Judiciary II Committee
FROM: General Statutes Commission
RE: **Senate Bill 1164 (Extend GSC Study/Refs. to Military Org.)**

Section 2 of Session Law 2009-281 (House Bill 632, Capitalize National Guard/GSC Study) directs the General Statutes Commission to study and recommend to the 2010 regular session of the 2009 General Assembly ways to ensure that the General Statutes properly and uniformly refer to federal and State military organizations. The Commission has determined that more time is needed to conduct the study because there are many more references, including unclear references, to military organizations in the General Statutes than had been anticipated. Therefore, this bill allows the Commission to make its recommendations to the 2011 regular session of the 2011 General Assembly rather than the current session of the General Assembly. The bill is effective when it becomes law.

SENATE BILL 1180*

Short Title:	Implement Gender Neutral Terms.	(Public)
Sponsors:	Senators Hartsell; and Stevens.	
Referred to:	Judiciary II.	

May 18, 2010

A BILL TO BE ENTITLED

AN ACT TO SUBSTITUTE GENDER NEUTRAL TERMS FOR "BUSINESSMAN," "CREWMAN," "ENLISTED MAN," "PER MAN," "POLICEMAN," "WORKMAN," AND, AS APPROPRIATE, REFERENCES TO "MAN" WHERE "MAN" IS USED TO REFER TO A GENERIC HUMAN BEING AND NOT TO A MALE INDIVIDUAL, AND TO MAKE TECHNICAL CORRECTIONS IN THE SECTIONS BEING AMENDED.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 54B-66(c) reads as rewritten:

"(c) In addition to any of the other penalties or remedies provided by this Article, the willful omission, making, or concurrence in making or publishing a written report, exhibit, or entry in a financial statement on the books of the association, which contains a material statement known to be false shall be deemed to be a Class 1 misdemeanor. For purposes of this section, "material" shall mean "so substantial and important as to influence a reasonable and prudent ~~businessman~~ business person or investor."

SECTION 1.(b) G.S. 54C-79(c) reads as rewritten:

"(c) In addition to any of the other penalties or remedies provided by this Article, the willful omission, making, or concurrence in making or publishing a written report, exhibit, or entry in a financial statement on the books of the association, which contains a material statement known to be false is deemed to be a Class 1 misdemeanor. For purposes of this section, "material" shall mean "so substantial and important as to influence a reasonable and prudent ~~businessman~~ business person or investor."

SECTION 2. G.S. 105-113.81(b) reads as rewritten:

"(b) Sales to Oceangoing Vessels. – Wholesalers and importers of malt beverages and wine are not required to remit excise taxes on malt beverages and wine sold and delivered for use on oceangoing vessels. An oceangoing vessel is a ship that plies the high seas in interstate or foreign commerce, in the transport of freight or passengers, or both, for hire exclusively. To qualify for this exemption the beverages shall be delivered to an officer or agent of the vessel for use on that vessel. Sales made to officers, agents, ~~crewmen,~~crew members, or passengers for their personal use are not exempt."

SECTION 3. G.S. 127A-152 reads as rewritten:

"**§ 127A-152. Placing name on muster roll wrongfully.**

If any officer of the militia of the State shall knowingly or willfully place, or cause to be placed, on any muster roll the name of any person not regularly or lawfully enlisted, or the name of any enlisted ~~man~~ person who is dead or who has been discharged, transferred, or has lost membership for any cause whatsoever, or who has been convicted of any infamous crime, ~~he~~ the officer shall be guilty of a Class 1 misdemeanor."

SECTION 4. G.S. 113-28 reads as rewritten:

"**§ 113-28. Reimbursement of government for expense of emergency conservation work.**

When and if, upon the sale of State lands or its products, the Secretary determines that the State has derived a direct profit as a result of work on the land sold, or on land the products of which are sold, done or to be done, under a project carried on pursuant to an act of Congress entitled, "An act for the relief of unemployment through the performance of useful public work, and for other ~~purposes"~~purposes," approved March 31, 1933, one half of such profit from such sale of land, or one half the proceeds of the sale of such products, or such lesser amount as may be sufficient, shall be applied to or toward reimbursing the United States government for moneys expended by it under such act, for the work so done, to the extent and at the rate of one dollar ($1.00) per ~~man~~ person per day, for the time spent in such work, but not exceeding in the aggregate three dollars ($3.00) per acre. The Secretary shall fix and determine the amount of such profit or proceeds. Such one-half part of such proceeds or profits, as the case may be, shall be retained by the Department, or paid over to it by any other authorized agency making the sale, to be so retained by such Department until the account of the United States government, with respect to such sale, becomes liquidated. Upon completion of the sale, the Department is hereby authorized to settle with the proper federal authority an account fixing the amount due the United States government and to pay over to it the amount so fixed. The unexpended remainder, if any, of such one-half part of such profit or proceeds shall then be paid over or applied by said Department as now authorized and directed by law. This section shall not be construed to authorize the sale of State lands or products, but applies only to a sale now or hereafter authorized by other provisions of law. This section is enacted to procure a continuance of the emergency conservation work within the State, under such act of Congress."

SECTION 5.(a) G.S. 106-65.24 (1) and (7) read as rewritten:

"**§ 106-65.24. Definitions.**

As used in this Article:

(1) "Animal" means all vertebrate and invertebrate species, including but not limited to ~~man~~ humans and other mammals, birds, fish, and shellfish.

....

(7) "Device" means any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than ~~man~~ humans and other than bacteria, virus, or other microorganism on or in living ~~man~~ humans or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.

...."

SECTION 5.(b) G.S. 106-65.45 reads as rewritten:

"**§ 106-65.45. Authority of the Board to adopt regulations.**

The Board of Agriculture is hereby authorized to adopt regulations to implement and carry out the purposes of this Article so as to protect the environment from detrimental importation, rearing, sale, and/or release of insects, parasites, predators and other biological organisms in North Carolina, and to protect organisms that are beneficial to ~~man~~ people and/or ~~his~~ their environment. No viable biological organism shall be brought into North Carolina, reared, collected, propagated or offered for sale or released except under such conditions as are prescribed by regulations adopted under the provisions of this Article."

SECTION 5.(c) G.S. 106-121(5), (6), and (8) read as rewritten:

"**§ 106-121. Definitions and general consideration.**

For the purpose of this Article:

...

(5) The term "device," except when used in subdivision (15) of this section and in G.S. 106-122, subdivision (10), 106-130, subdivision (6), 106-134, subdivision (3) and 106-137, subdivision (3) means instruments, apparatus

and contrivances, including their components, parts and accessories, intended

a. For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in ~~man~~ humans or other animals; or

b. To affect the structure or any function of the body of ~~man~~ humans or other animals.

(6) The term "drug" means

a. Articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and

b. Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in ~~man~~ humans or other animals; and

c. Articles (other than food) intended to affect the structure or any function of the body of ~~man~~ humans or other animals; and

d. Articles intended for use as a component of any article specified in paragraphs ~~a, b or c;~~a., b., or c.; but does not include devices or their components, parts, or accessories.

...

(8) The term "food" means

a. Articles used for food or drink for ~~man~~ humans or other animals,

b. Chewing gum, and

c. Articles used for components of any such article."

SECTION 5.(d) The introductory language to G.S. 106-134.1(a) reads as rewritten:

"(a) A drug intended for use by ~~man which:~~humans that:".

SECTION 5.(e) G.S. 106-193 reads as rewritten:

"**§ 106-193. Unwholesome products not classified; health officer notified.**

Any person employed, licensed, or designated shall neither classify nor certify as to the grade or other classification of any farm product which, in ~~his~~ that person's judgment, is unwholesome or unfit for food of ~~man~~ humans or other ~~animal~~ animals. If, in the performance of ~~his~~ official duties, ~~he~~ that person discovers any farm product which is unwholesome or unfit for food of ~~man~~ humans or for other ~~animal~~ animals for which it is intended, ~~he~~ the person shall promptly report the fact to a health officer of the State or of any county or municipality thereof."

SECTION 5.(f) G.S. 106-305 reads as rewritten:

"**§ 106-305. Proclamation of infected feedstuff quarantine.**

Upon the recommendation of the Commissioner of Agriculture, it shall be lawful for the Governor to issue ~~his~~ a proclamation forbidding the importation into this State of any feedstuff or any other article or material dangerous to livestock and poultry as a carrier of infectious or contagious disease from any area outside the State. This shall also include any and all materials imported for manufacturing purposes or for any other use, which have been tested by any state or federal agency competent to make such tests and found to contain living infectious and contagious organisms known to be injurious to the health of ~~man,~~humans, livestock and poultry."

SECTION 5.(g) G.S. 106-338 reads as rewritten:

"**§ 106-338. Quarantine; removal or sale; sale and use of milk.**

The owner or owners of an animal affected with tuberculosis shall keep ~~said~~ the animal isolated and quarantined in such a manner as to prevent the spread of the disease to the other animals or ~~man.~~to humans. ~~Said~~The affected animals must not be moved from the place where quarantined or sold, or otherwise disposed of except upon permission of the State Veterinarian,

and then only in accordance with ~~his~~ the State Veterinarian's instructions. The milk from ~~said~~ the affected animals must not be sold, and if used shall be first boiled or properly pasteurized."

SECTION 5.(h) G.S. 106-549.81(1) reads as rewritten:

"(1) "Animal" means any member of the animal kingdom except ~~man.~~ a human."

SECTION 5.(i) G.S. 106-707 reads as rewritten:

"**§ 106-707. Short title and purpose.**

This Article shall be known as "The North Carolina Biologics Law of 1981." The purpose of the law is to provide for the production and sale of biologics for the prevention or treatment of disease in animals other than ~~man~~ humans and to establish controls for the sale and use of biologics in North Carolina."

SECTION 5.(j) G.S. 106-708(1) and (2) read as rewritten:

"**§ 106-708. Definitions.**

For purposes of this Article, the following words, terms and phrases are defined as follows:

(1) "Animal" means all birds and mammals, other than ~~man,~~ humans, to which biologics may be administered.

(2) "Biologics" means preparations made from living organisms and their products, including serums, vaccines, ~~antigens~~antigens, and antitoxins ~~which~~that are used for the treatment or prevention of diseases in animals other than humans, or in the diagnosis of diseases.

...."

SECTION 5.(k) G.S. 113A-3 reads as rewritten:

"**§ 113A-3. Declaration of State environmental policy.**

The General Assembly of North Carolina, recognizing the profound influence of ~~man's~~ human activity on the natural environment, and desiring, in its role as trustee for future generations, to assure that an environment of high quality will be maintained for the health and well-being of all, declares that it shall be the continuing policy of the State of North Carolina to conserve and protect its natural resources and to create and maintain conditions under which ~~man~~ human beings and nature can exist in productive harmony. Further, it shall be the policy of the State to seek, for all of its citizens, safe, healthful, productive and aesthetically pleasing surroundings; to attain the widest range of beneficial uses of the environment without degradation, risk to health or safety; and to preserve the important historic and cultural elements of our common inheritance."

SECTION 5.(l) G.S. 143-444 reads as rewritten:

"**§ 143-444. Determinations.**

The Board is authorized:

(1) To declare as a pest any form of plant or animal life or virus which is injurious to plants, ~~man,~~humans, domestic animals, articles, or substances;

(2) To determine whether pesticides are highly toxic to ~~man;~~humans; and

(3) To determine standards of coloring or discoloring for pesticides, and to subject pesticides to the requirements of G.S. 143-443(a)(4)."

SECTION 6.(a) G.S. 113-315.34(d) reads as rewritten:

"(d) The Secretary of Commerce is authorized to appoint such number of employees of the Authority as ~~he~~the Secretary may think proper as special ~~policemen,~~police officers, who, when so appointed, shall have within the jurisdiction of the Authority all the powers of ~~policemen~~police officers of incorporated towns. Special ~~policemen~~police officers may arrest persons who violate State law or a rule adopted by the Authority. Employees appointed as such special ~~policemen~~police officers shall take the general oath of office prescribed by G.S. 11-11."

SECTION 6.(b) G.S. 143B-461(d) reads as rewritten:

"(d) The Executive Director of the Authority is authorized to appoint such number of employees of the Authority as ~~he~~the Executive Director may think proper as special ~~policemen,~~ police officers, who, when so appointed, shall have all the powers of ~~policemen~~ police officers

of incorporated towns. Such ~~policemen~~ police officers shall have the power of arrest of persons committing violations of State law or any reasonable rules, regulations and ordinances lawfully adopted by the Authority as herein authorized. Employees appointed as such special ~~policemen~~ police officers shall take the general oath of office prescribed by G.S. 11-11."

SECTION 6.(c) G.S. 160A-285 reads as rewritten:

"**§ 160A-285. Powers and duties of policemen.**

As a peace officer, a ~~policeman~~ police officer shall have within the corporate limits of the city all of the powers invested in law-enforcement officers by statute or common law. ~~He~~ The police officer shall also have power to serve all civil and criminal process that may be directed to ~~him~~ that officer by any officer of the General Court of Justice and may enforce the ordinances and regulations of the city as the council may direct."

SECTION 6.(d) G.S. 160A-286 reads as rewritten:

"**§ 160A-286. Extraterritorial jurisdiction of ~~policemen.~~ police officers.**

In addition to their authority within the corporate limits, city ~~policemen~~ police officers shall have all the powers invested in law-enforcement officers by statute or common law within one mile of the corporate limits of the city, and on all property owned by or leased to the city wherever located.

Any police officer pursuing an offender outside the corporate limits or extraterritorial jurisdiction of the city shall be entitled to all of the privileges, immunities, and benefits to which ~~he~~ the officer would be entitled if acting within the city, including coverage under the workers' compensation laws."

SECTION 6.(e) The terms "policeman" and "policemen" are changed to "police officer" and "police officers", in G.S. 20-125, 20-130, 105-367, 120-32.2, 160A-281, and 160A-284.

SECTION 7.(a) G.S. 23-10(2) reads as rewritten:

"(2) Wages due to ~~workmen,~~workers, clerks, traveling or city ~~salesmen,~~ salespersons, or servants, which have been earned within three months before registration of said deed of trust or deed of assignment, and".

SECTION 7.(b) G.S. 95-110.3 reads as rewritten:

"**§ 95-110.3. Definitions.**

(a) The term "Commissioner" shall mean the North Carolina Commissioner of Labor or ~~his~~ the Commissioner's authorized representative.

...

(f) The term "inclined stairway chair lift" shall mean a hoisting and lowering mechanism with one or more chairs or a platform for one or more wheelchairs installed on a stairway for the purpose of transporting a ~~physically disabled person.~~ person who is physically disabled.

(g) The term "inclined or vertical wheelchair lift" shall mean a powered platform-elevating device used to transport a ~~physically disabled person~~ person who is physically disabled and in a wheelchair.

(h) The term "manlift" shall mean platforms or brackets and accompanying handholds, mounted on, or attached to, an endless belt operating vertically in one direction only and being supported by, and driven through, pulleys at the top and bottom and intended primarily for the conveyance of persons.

...

(n) The term "special equipment" shall mean any permanently or semi-permanently located device, manually or power-operated, used for moving or lifting person or persons and materials but not considered as an elevator, escalator, dumbwaiter, moving walk, personnel hoist, inclined stairway chair lift, inclined or vertical wheelchair lift, or manlift. Special equipment shall include, but not be limited to, manhoists, lift bridges, elevators which are used

only for handling building materials and ~~workmen~~ workers during construction, and stage and orchestra lifts."

SECTION 7.(c) G.S. 163-278.6(12) reads as rewritten:

"(12) The term "labor union" means any union, organization, combination or association of employees or ~~workmen~~ workers 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 of the General Statutes applies."

SECTION 8. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1180*
PROPOSED COMMITTEE SUBSTITUTE S1180-CSRV-63 [v.1]

6/1/2010 4:47:46 PM

Short Title: Implement Gender Neutral Terms. (Public)

Sponsors:

Referred to:

May 18, 2010

A BILL TO BE ENTITLED

AN ACT TO SUBSTITUTE GENDER NEUTRAL TERMS FOR "BUSINESSMAN," "CREWMAN," "ENLISTED MAN," "POLICEMAN," "WORKMAN," AND, AS APPROPRIATE, REFERENCES TO "MAN" WHERE "MAN" IS USED TO REFER TO A GENERIC HUMAN BEING AND NOT TO A MALE INDIVIDUAL, TO REPEAL AN OBSOLETE STATUTE AND TO MAKE TECHNICAL CORRECTIONS IN THE SECTIONS BEING AMENDED, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 54B-66(c) reads as rewritten:

"(c) In addition to any of the other penalties or remedies provided by this Article, the willful omission, making, or concurrence in making or publishing a written report, exhibit, or entry in a financial statement on the books of the association, which contains a material statement known to be false shall be deemed to be a Class 1 misdemeanor. For purposes of this section, "material" shall mean "so substantial and important as to influence a reasonable and prudent ~~businessman~~ business person or investor."

SECTION 1.(b) G.S. 54C-79(c) reads as rewritten:

"(c) In addition to any of the other penalties or remedies provided by this Article, the willful omission, making, or concurrence in making or publishing a written report, exhibit, or entry in a financial statement on the books of the association, which contains a material statement known to be false is deemed to be a Class 1 misdemeanor. For purposes of this section, "material" shall mean "so substantial and important as to influence a reasonable and prudent ~~businessman~~ business person or investor."

SECTION 2. G.S. 105-113.81(b) reads as rewritten:

"(b) Sales to Oceangoing Vessels. – Wholesalers and importers of malt beverages and wine are not required to remit excise taxes on malt beverages and wine sold and delivered for use on oceangoing vessels. An oceangoing vessel is a ship that plies the high seas in interstate or foreign commerce, in the transport of freight or passengers, or both, for hire exclusively. To qualify for this exemption the beverages shall be delivered to an officer or agent of the vessel for use on that vessel. Sales made to officers, agents, ~~crewmen,~~crew members, or passengers for their personal use are not exempt."

SECTION 3. G.S. 127A-152 reads as rewritten:

"**§ 127A-152. Placing name on muster roll wrongfully.**

If any officer of the militia of the State shall knowingly or willfully place, or cause to be placed, on any muster roll the name of any person not regularly or lawfully enlisted, or the name of any enlisted ~~man~~ person who is dead or who has been discharged, transferred, or has lost membership for any cause whatsoever, or who has been convicted of any infamous crime, ~~he~~ the officer shall be guilty of a Class 1 misdemeanor."

SECTION 4. G.S. 113-28 is repealed.

SECTION 5.(a) G.S. 106-65.24 (1) and (7) read as rewritten:

"**§ 106-65.24. Definitions.**

As used in this Article:

(1) "Animal" means all vertebrate and invertebrate species, including but not limited to ~~man~~ humans and other mammals, birds, fish, and shellfish.

...

(7) "Device" means any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than ~~man~~ humans and other than bacteria, virus, or other microorganism on or in living ~~man~~ humans or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.

...."

SECTION 5.(b) G.S. 106-65.45 reads as rewritten:

"**§ 106-65.45. Authority of the Board to adopt regulations.**

The Board of Agriculture is hereby authorized to adopt regulations to implement and carry out the purposes of this Article so as to protect the environment from detrimental importation, rearing, sale, and/or release of insects, parasites, predators and other biological organisms in North Carolina, and to protect organisms that are beneficial to ~~man~~ people and/or ~~his~~ their environment. No viable biological organism shall be brought into North Carolina, reared, collected, propagated or offered for sale or released except under such conditions as are prescribed by regulations adopted under the provisions of this Article."

SECTION 5.(c) G.S. 106-121(5), (6), and (8) read as rewritten:

"**§ 106-121. Definitions and general consideration.**

For the purpose of this Article:

...

(5) The term "device," except when used in subdivision (15) of this section and in G.S. 106-122, subdivision (10), 106-130, subdivision (6), 106-134, subdivision (3) and 106-137, subdivision (3) means instruments, apparatus and contrivances, including their components, parts and accessories, intended

a. For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in ~~man~~ humans or other animals; or

b. To affect the structure or any function of the body of ~~man~~ humans or other animals.

(6) The term "drug" means

a. Articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and

b. Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in ~~man~~ humans or other animals; and

c. Articles (other than food) intended to affect the structure or any function of the body of ~~man~~ humans or other animals; and

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Upon the recommendation of the Commissioner of Agriculture, it shall be lawful for the Governor to issue ~~his~~ a proclamation forbidding the importation into this State of any feedstuff or any other article or material dangerous to livestock and poultry as a carrier of infectious or contagious disease from any area outside the State. This shall also include any and all materials imported for manufacturing purposes or for any other use, which have been tested by any state or federal agency competent to make such tests and found to contain living infectious and contagious organisms known to be injurious to the health of ~~man,~~humans, livestock and poultry."

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The owner or owners of an animal affected with tuberculosis shall keep ~~said~~ the animal isolated and quarantined in such a manner as to prevent the spread of the disease to the other animals or ~~man.~~to humans. ~~Said~~The affected animals must not be moved from the place where quarantined or sold, or otherwise disposed of except upon permission of the State Veterinarian, and then only in accordance with ~~his~~ the State Veterinarian's instructions. The milk from ~~said~~ the affected animals must not be sold, and if used shall be first boiled or properly pasteurized."

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SECTION 5.(j) G.S. 106-708(1) and (2) read as rewritten:

"**§ 106-708. Definitions.**

For purposes of this Article, the following words, terms and phrases are defined as follows:

(1) "Animal" means all birds and mammals, other than ~~man,~~ humans, to which biologics may be administered.

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The General Assembly of North Carolina, recognizing the profound influence of ~~man's~~ human activity on the natural environment, and desiring, in its role as trustee for future generations, to assure that an environment of high quality will be maintained for the health and well-being of all, declares that it shall be the continuing policy of the State of North Carolina to conserve and protect its natural resources and to create and maintain conditions under which ~~man~~ human beings and nature can exist in productive harmony. Further, it shall be the policy of the State to seek, for all of its citizens, safe, healthful, productive and aesthetically pleasing surroundings; to attain the widest range of beneficial uses of the environment without degradation, risk to health or safety; and to preserve the important historic and cultural elements of our common inheritance."

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"**§ 143-444. Determinations.**

The Board is authorized:

(1) To declare as a pest any form of plant or animal life or virus which is injurious to plants, ~~man~~,humans, domestic animals, articles, or substances;

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"(d) The Executive Director of the Authority is authorized to appoint such number of employees of the Authority as ~~he~~the Executive Director may think proper as special ~~policemen~~, police officers, who, when so appointed, shall have all the powers of ~~policemen~~ police officers of incorporated towns. Such ~~policemen~~ police officers shall have the power of arrest of persons committing violations of State law or any reasonable rules, regulations and ordinances lawfully adopted by the Authority as herein authorized. Employees appointed as such special ~~policemen~~ police officers shall take the general oath of office prescribed by G.S. 11-11."

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"**§ 160A-285. Powers and duties of policemen.**

As a peace officer, a ~~policeman~~ police officer shall have within the corporate limits of the city all of the powers invested in law-enforcement officers by statute or common law. ~~He~~ The police officer shall also have power to serve all civil and criminal process that may be directed to ~~him~~ that officer by any officer of the General Court of Justice and may enforce the ordinances and regulations of the city as the council may direct."

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In addition to their authority within the corporate limits, city ~~policemen~~ police officers shall have all the powers invested in law-enforcement officers by statute or common law within one

mile of the corporate limits of the city, and on all property owned by or leased to the city wherever located.

Any police officer pursuing an offender outside the corporate limits or extraterritorial jurisdiction of the city shall be entitled to all of the privileges, immunities, and benefits to which ~~he~~ the officer would be entitled if acting within the city, including coverage under the workers' compensation laws."

SECTION 6.(e) The terms "policeman" and "policemen" are changed to "police officer" and "police officers", in G.S. 20-125, 20-130.1, 105-367, 120-32.2, 160A-281, and 160A-284.

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"(2) Wages due to ~~workmen,~~workers, clerks, traveling or city ~~salesmen,~~ salespersons, or servants, which have been earned within three months before registration of said deed of trust or deed of assignment, and".

SECTION 7.(b) G.S. 95-110.3 reads as rewritten:

"**§ 95-110.3. Definitions.**

(a) The term "Commissioner" shall mean the North Carolina Commissioner of Labor or ~~his~~ the Commissioner's authorized representative.

...

(f) The term "inclined stairway chair lift" shall mean a hoisting and lowering mechanism with one or more chairs or a platform for one or more wheelchairs installed on a stairway for the purpose of transporting a ~~physically disabled person.~~ person who is physically disabled.

(g) The term "inclined or vertical wheelchair lift" shall mean a powered platform-elevating device used to transport a ~~physically disabled person~~ person who is physically disabled and in a wheelchair.

(h) The term "manlift" shall mean platforms or brackets and accompanying handholds, mounted on, or attached to, an endless belt operating vertically in one direction only and being supported by, and driven through, pulleys at the top and bottom and intended primarily for the conveyance of persons.

...

(n) The term "special equipment" shall mean any permanently or semi-permanently located device, manually or power-operated, used for moving or lifting person or persons and materials but not considered as an elevator, escalator, dumbwaiter, moving walk, personnel hoist, inclined stairway chair lift, inclined or vertical wheelchair lift, or manlift. Special equipment shall include, but not be limited to, manhoists, lift bridges, elevators which are used only for handling building materials and ~~workmen~~ workers during construction, and stage and orchestra lifts."

SECTION 7.(c) G.S. 163-278.6(12) reads as rewritten:

"(12) The term "labor union" means any union, organization, combination or association of employees or ~~workmen~~ workers 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 of the General Statutes applies."

SECTION 8. This act is effective when it becomes law.

State of North Carolina
General Statutes
Commission

9001 Mail Service Center
RALEIGH, NORTH CAROLINA
27699-9001

MEMORANDUM
June 1, 2010

TO: Senate Judiciary II Committee
FROM: General Statutes Commission
RE: **Senate Bill 1180 (Implement Gender Neutral Terms)**

General Comments

Session Law 2009-273, among other things, requires the General Statutes Commission to study and recommend to the General Assembly changes needed to make the General Statutes gender neutral. Although the Commission believes the main concern was the use of the third person singular masculine pronoun as a universal pronoun, the study charge is broad enough to include identifying and replacing terms such as "workman," etc. The Commission turned to the list in the General Assembly's drafting manual to identify terms of this type.

This bill identifies places in the statutes where the following terms from the drafting manual's list appear and replaces these terms with gender neutral alternatives suggested in the drafting manual as follows:

Old Term	New Term
businessman	business person
crewman	crew member
enlisted man	enlisted person
policeman	police officer
workman	worker

The bill also deals with two other terms in the drafting manual's list, although the treatment differs from that suggested in the drafting manual:

- For "man," the bill substitutes "humans," "human," "human beings," or "people" in places where "man" is used to refer to human beings generally and not to a male individual.
- The term "per man" appears only once in an obsolete statute, and the bill repeals the statute rather than amending it to make it gender neutral.

As of the date of this memorandum, the Commission is still reviewing statutes that contain other terms in the drafting manual's list.

The bill also makes other gender neutral, technical, and stylistic amendments, where appropriate, as noted below, in the statutes being amended.

Specific Comments

Section 1. Subsections (a) and (b) amend G.S. 54B-66(c) and G.S. 54C-79(c), respectively, to replace "businessman" with "business person."

Section 2. This section amends G.S. 105-113.81(b) to replace "crewmen" with "crew members."

Section 3. This section amends G.S. 127A-152 to replace "enlisted man" with "enlisted person" and to replace a reference to "he" with the actual antecedent noun, "the officer."

Section 4. This section repeals G.S. 113-28, which has become obsolete. It allowed the State to reimburse the federal government at the rate of $ 1 "per man" per day, under conditions and limits described in the statute, for work done under "an act of Congress entitled, 'An act for the relief of unemployment through the performance of useful public work, and for other purposes' approved March 31, 1933." All parts of the federal act cited have been repealed.

Section 5. Subsections 5(a) through (l) amend various sections of the General Statutes to substitute an alternative term for references to "man" when used as a general term for all humans. In most of these instances, the proposed alternative term is "humans" rather than the drafting manual's suggested alternatives, "person" and "individual," because the drafting manual's suggested alternatives did not fit the context of these statutes.

Specifically, Subsections 5(a), (c), (d), (e), (f), (g), (i), (j), and (l) replace references to "man" with "humans" in G.S. 106-65.24(1) and (7), 106-121(5), (6), and (8), 106-134.1(a), 106-193, 106-305, 106-338, 106-707, 106-708(1) and (2), and 143-444, respectively.

In addition, Subsection 5(c) corrects the form of a citation in G.S. 106-121(6). Subsections 5(d) and 5(j) correct pronouns ("which" to "that") in G.S. 106-134.1(a) and G.S. 106-708(2), respectively, and Subsection 5(j) adds a comma after the next-to-last term in a list in G.S. 106-708(2) in keeping with current style. Subsection 5(e) makes various additional gender-neutral changes to G.S. 106-193. In the first sentence, Subsection 5(e) replaces "his" with "that person's" in the phrase "Any person . . . which, in his judgment . . . ." In the second sentence, Subsection 5(e) deletes the "his" in "performance of his official duties" and replaces "he" (two instances) with "that person" (first instance) and "the person" (second instance) (the antecedent is "[a]ny person"). Subsection 5(f) replaces "his" with "a" in the phrase "the Governor to issue his proclamation" in the first sentence of G.S. 106-305. Subsection 5(g) replaces "the State Veterinarian . . . his instructions" with "the State Veterinarian . . . the State Veterinarian's instructions" in G.S. 106-338 and also makes a stylistic update to eliminate "said" by changing "said animal" to "the animal" and, in two places, "said animals" to "the affected animals."

Subsection 5(b) amends G.S. 106-65.45 to replace "beneficial to man and/or his environment" with "beneficial to people and/or their environment."

Subsection 5(h) amends G.S. 106-549.81(1) to replace "man" with "a human." "[H]uman" in the singular was used here to parallel "member."

Subsection 5(k) amends G.S. 113A-3 to replace "influence of man's activity" with "influence of human activity" and "under which man and nature" with "under which human beings and nature."

Section 6. Subsections 6(a) through (e) amend various sections of the General Statutes to replace "policeman" and "policemen" with "police officer" and "police officers," respectively.

The statutes amended are: G.S. 113-315.34, 143B-461, 160A-285, 160A-286, 20-125, 20-130.1, 105-367, 120-32.2, 160A-281, and 160A-284.

Subsection 6(a) also amends G.S. 113-315.34(d) to make an additional gender neutral change by replacing "he" with "the Secretary" where the reference is to the Secretary of Commerce. Subsection 6(b) similarly amends G.S. 143B-461(d) to replace "he" with "the Executive Director." Subsection 6(c) amends G.S. 160A-285 to replace "He . . . to him", when referring to "a police officer", with "The police officer . . . to that officer." Subsection 6(d) amends G.S. 160A-286 to change "Any officer . . . he . . ." to "Any police officer . . . the officer."

Section 7. Subsections 7(a) through (c) amend G.S. 23-10(2), 95-110.3(n), and 163-278.6(12), respectively, to replace "workmen" with "workers."

In addition, Subsection 7(a) replaces "salesmen" with "salespersons" in G.S. 23-10(2). Although "salesman" is not in the drafting manual's list, the Commission noted that "salesman" is also a term that tends to be replaced with a gender neutral equivalent in modern writing. Subsection 7(b) makes two additional changes in G.S. 95-110.3. It replaces "his" with "the Commissioner's" in the phrase "the North Carolina Commissioner of Labor or his authorized representative" in G.S. 95-110.3(a), and in G.S. 95-110.3(f) and (g), it replaces "physically disabled person" with "person who is physically disabled" pursuant to another study the Commission was directed to make (by S.L. 2009-264 (People First)). The Commission noted the term "manlift" in G.S. 95-110.3(h) but, since this term appears to be a technical term, decided not to suggest a replacement at this time. In G.S. 163-278.6(12), Subsection 7(c) adds the phrase "of the General Statutes" to follow the reference to "Chapter 95" to clarify which Chapter 95 was intended.

Section 8. This section provides that the bill becomes effective when it becomes law.

SECTION ___. G.S. 113-28 reads as rewritten:

"§ 113-28. Reimbursement of government for expense of emergency conservation work.

When and if, upon the sale of State lands or its products, the Secretary determines that the State has derived a direct profit as a result of work on the land sold, or on land the products of which are sold, done or to be done, under a project carried on pursuant to an act of Congress entitled, "An act for the relief of unemployment through the performance of useful public work, and for other ~~purposes"~~ purposes," approved March 31, 1933, one half of such profit from such sale of land, or one half the proceeds of the sale of such products, or such lesser amount as may be sufficient, shall be applied to or toward reimbursing the United States government for moneys expended by it under such act, for the work so done, to the extent and at the rate of one dollar ($1.00) per ~~man~~ person per day, for the time spent in such work, but not exceeding in the aggregate three dollars ($3.00) per acre. The Secretary shall fix and determine the amount of such profit or proceeds. Such one-half part of such proceeds or profits, as the case may be, shall be retained by the Department, or paid over to it by any other authorized agency making the sale, to be so retained by such Department until the account of the United States government, with respect to such sale, becomes liquidated. Upon completion of the sale, the Department is hereby authorized to settle with the proper federal authority an account fixing the amount due the United States government and to pay over to it the amount so fixed. The unexpended remainder, if any, of such one-half part of such profit or proceeds shall then be paid over or applied by said Department as now authorized and directed by law. This section shall not be construed to authorize the sale of State lands or products, but applies only to a sale now or hereafter authorized by other provisions of law. This section is enacted to procure a continuance of the emergency conservation work within the State, under such act of Congress."

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	June 8, 2010	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 620	Stalking Law Conforming Changes.	Representative Ross Representative Wiley
SB 567 4th edition	Promote Electricity Demand Reduction.// Responsible Individuals List/Abuse & Neglect	Senator Hartsell

Senator Fletcher L. Hartsell, Jr., Chair

SENATE JUDICIARY II COMMITTEE
Tuesday, June 8, 2010 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 10:00 AM on June 8, 2010, in Room 1124 of the Legislative Building with ten members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell introduced pages Regina Parker, Miller Clark, Eliza Stoughton, Emma Park, Sara Worth Hodges, Kenslee Daughtridge, Olivia Roberson, Mary Romm and Andres Ainolhayat and thanked them for their service. Also, students from the UNC Chapel Hill Law School attended the meeting and were introduced, along with their program advisor, Ms. Janine Zanin. The students are serving as externs in various judiciary capacities during the summer.

HB 620 – Stalking Law Conforming Changes. - Senator Forrester moved to adopt the Proposed Committee Substitute for purposes of discussion. As Senator Hartsell was presenting the bill, Senator Jones presided. Senator Hartsell explained the bill and then recognized Ms. Kim Crouch and Ms. Elizabeth Arias, representing the Bar Association, Ms. Arias gave additional explanation of the bill. Senator Jacumin's question was answered by Senator Hartsell. Sen. Atwater moved for a favorable report to the Proposed Committee Substitute, unfavorable to the original bill. All voted and the motion carried.

SB 567 – Responsible Individuals List/Abuse & Neglect. - Senator Hartsell explained the bill. Mr. Jeff Hudson, Staff Attorney, gave additional explanation. Mr. Kevin Kelly representing Social Services, spoke on the bill and answered questions from Senators East, Dorsett, and Snow. Ms. Angenette Stephenson, Assistant Attorney General, representing Social Services, spoke on the bill. Senator Queen moved that the Committee not concur. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Committee Assistant

Senate Judiciary II Committee
Tuesday, June 8, 2010, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 620	Stalking Law Conforming Changes.	Representative Ross Representative Wiley
SB 567	Responsible Individuals List/Abuse & Neglect.	Senator Hartsell

Presentations

Other Business

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, June 08, 2010

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO CONCURRENCE

S.B.(HCS #1) **567** Responsible Individuals List/Abuse & Neglect.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, June 08, 2010

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

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

H.B. **620** Stalking Law Conforming Changes.

Draft Number:	30510
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:
Senator Hartsell will handle on the floor

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — June 8, 2010
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Janine Zanin	UNC Law School CB #3380 Chapel Hill, NC 27599
Kara Murphy	UNC Law school
Tristan Routh	UNC Law School
Justin Puleo	UNC Law
Melissa Abrams	NCCN
Sarah Simon	UNC Law
[signature]	YAP
BRIAN DEMPSEY	NWC
[signature]	Intern

VISITOR REGISTRATION SHEET

SENATE J-IF — 6-8-10

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Angie Stephenson	DOJ; on behalf of DHHR/DSS
Kevin Kelley	Division of Social Services
Tammy Johnson	Division of Social Services
Kay Emanuel	UNC School of Government
PAIGE WORSHAM	SCHOOL OF GOVERNMENT
Christine Wunsche	SOG/Daily Bulletin
Adya Baker	DOJ; State Agencies
LIZ ARIAS	Womble Carlyle
Kim Crouch	NCBA
Katherine Zachrich	COA extern, Judge Calabria
Ilary Blackwood	COA extern, Geer

VISITOR REGISTRATION SHEET

June 8, 2010

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Katherine Asaro	UNC Law Extern, UNC GA
Amy Poe	UNC Law Extern, COA - Judge Steelman
Erin Edwards	UNC Law Extern; UNC Office of Clinical Trials
Jennie Ruth Graves	UNC School of Law Extern - Judge Stephens
Brittany Farrell	NCFPC
Colleen Kochanek	Kochanek Law Group
Kim McLeod	CFSA - NC
TARA FIELDS	CFSA - NC

HOUSE BILL 620*

Short Title:	Stalking Law Conforming Changes.	(Public)
Sponsors:	Representatives Ross, Wiley (Primary Sponsors); E. Floyd, Harrison, Insko, Lucas, and Underhill.	
Referred to:	Judiciary I.	

March 17, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE CONFORMING CORRECTIONS RELATED TO THE REPEALED STALKING STATUTE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-415.12(b)(8) reads as rewritten:

"(8) Is or has been adjudicated guilty of or received a prayer for judgment continued or suspended sentence for one or more crimes of violence constituting a misdemeanor, including but not limited to, a violation of a misdemeanor under Article 8 of Chapter 14 of the General Statutes, or a violation of a misdemeanor under G.S. 14-225.2, 14-226.1, 14-258.1, 14-269.2, 14-269.3, 14-269.4, 14-269.6, 14-276.1, 14-277, 14-277.1, 14-277.2, ~~14-277.3,~~ 14-277.3A, 14-281.1, 14-283, 14-288.2, 14-288.4(a)(1) or (2), 14-288.6, 14-288.9, 14-288.12, 14-288.13, 14-288.14, 14-318.2, 14-415.21(b), ~~or 14-415.26(d).~~ 14-415.26(d), or former G.S. 14-277.3."

SECTION 2. G.S. 15A-266.4(b)(3) reads as rewritten:

"(3) G.S. 14-277.3A or former G.S. 14-277.3 – Stalking."

SECTION 3. G.S. 15A-830(a)(7) reads as rewritten:

"(7) Victim. – A person against whom there is probable cause to believe one of the following crimes was committed:

a. A Class A, B1, B2, C, D, or E felony.

b. A Class F felony if it is a violation of one of the following: G.S. 14-16.6(b); 14-16.6(c); 14-18; 14-32.1(e); 14-32.2(b)(3); 14-32.3(a); 14-32.4; 14-34.2; 14-34.6(c); 14-41; 14-43.3; 14-43.11; 14-190.17; 14-190.19; 14-202.1; ~~14-277.3;~~ 14-277.3A; 14-288.9; ~~or 20-138.5.~~ 20-138.5; or former G.S. 14-277.3.

c. A Class G felony if it is a violation of one of the following: G.S. 14-32.3(b); 14-51; 14-58; 14-87.1; or 20-141.4.

d. A Class H felony if it is a violation of one of the following: G.S. 14-32.3(a); 14-32.3(c); ~~14-33.2,~~ 14-33.2; 14-277.3A; or former G.S. 14-277.3.

e. A Class I felony if it is a violation of one of the following: G.S. 14-32.3(b); 14-34.6(b); or 14-190.17A.

f. An attempt of any of the felonies listed in this subdivision if the attempted felony is punishable as a felony.

g. Any of the following misdemeanor offenses when the offense is committed between persons who have a personal relationship as defined in G.S. 50B-1(b): G.S. 14-33(c)(1); 14-33(c)(2); 14-33(a); 14-34; 14-134.3; 14-277.3A; or former G.S. 14-277.3.

h. Any violation of a valid protective order under G.S. 50B-4.1."

SECTION 4. G.S. 15C-2(12) reads as rewritten:

"(12) Victim of stalking. – An individual against whom stalking, as described in ~~G.S. 14-277.3,~~ former G.S. 14-277.3 for acts occurring before December 1, 2008, or G.S. 14-277.3A for acts occurring on or after December 1, 2008, has been committed."

SECTION 5. G.S. 50B-1(a)(2) reads as rewritten:

"(2) Placing the aggrieved party or a member of the aggrieved party's family or household in fear of imminent serious bodily injury or continued harassment, as defined in G.S. ~~14-277.3,~~ 14-277.3A, that rises to such a level as to inflict substantial emotional distress; or".

SECTION 6. G.S. 50C-1(6) reads as rewritten:

"(6) Stalking. – On more than one occasion, following or otherwise harassing, as defined in G.S. ~~14-277.3(c),~~ 14-277.3A(b)(2), another person without legal purpose with the intent to do any of the following:

a. Place the person in reasonable fear either for the person's safety or the safety of the person's immediate family or close personal associates.

b. Cause that person to suffer substantial emotional distress by placing that person in fear of death, bodily injury, or continued harassment and that in fact causes that person substantial emotional distress."

SECTION 7. G.S. 95-260(3)b. reads as rewritten:

"b. Willfully, and on more than one occasion, following, being in the presence of, or otherwise harassing, as defined in G.S. ~~14-277.3,~~ 14-277.3A, without legal purpose and with the intent to place the employee in reasonable fear for the employee's safety."

SECTION 8. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 620*
PROPOSED SENATE COMMITTEE SUBSTITUTE H620-CSRC-67 [v.4]

6/7/2010 7:01:47 PM

Short Title: Will/Unif. Principal and Income Act Changes. (Public)

Sponsors:

Referred to:

March 17, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE STATUTES CONCERNING BEQUESTS OR DEVISES IN A WILL TO THE ATTORNEY WHO DRAFTED THE WILL, AND TO MAKE REVISIONS TO THE UNIFORM PRINCIPAL AND INCOME ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 31-4.1 is repealed.

SECTION 2. G.S. 31-4.2 is repealed.

SECTION 3. G.S. 37A-4-409 reads as rewritten:

"**§ 37A-4-409. Deferred compensation, annuities, and similar payments.**

(a) In this ~~section, "payment"~~ section:

(1) "Payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the ~~payer, including a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.~~ payer. For purposes of subsections (d), (d1), (d2), and (d3) of this section, the term also includes any payment from any separate fund, regardless of the reason for the payment.

(2) "Separate fund" includes a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

(b) To the extent that a payment is characterized as ~~interest or a dividend~~ interest, a dividend, or a payment made in lieu of interest or a dividend, a trustee shall allocate ~~it~~ the payment to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(c) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income ten percent (10%) of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire

payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

(d) ~~If, to obtain an estate tax marital deduction for a trust, a trustee shall allocate more of a payment to income than provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction.~~ Except as otherwise provided in subsection (d1) of this section, subsections (d2) and (d3) of this section apply, and subsections (b) and (c) of this section do not apply, in determining the allocation of a payment from a separate fund to:

(1) A trust to which an election to qualify for a marital deduction under section 2056(b)(7) of the Internal Revenue Code has been made, or

(2) A trust that qualifies for the marital deduction under section 2056(b)(5) of the Internal Revenue Code.

(d1) Subsections (d), (d2) and (d3) of this section do not apply if and to the extent that the series of payments would, without the application of subsection (d) of this section, qualify for the marital deduction under section 2056(b)(7)(C) of the Internal Revenue Code.

(d2) A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to this section. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute the internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent that the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.

(d3) If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal four percent (4%) of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under section 7520 of the Internal Revenue Code for the month preceding the accounting period for which the computation is made.

(e) This section does not apply to payments to which G.S. 37A-4-410 applies."

SECTION 4. G.S. 37A-5-505 reads as rewritten:

"**§ 37A-5-505. Income taxes.**

(a) A tax required to be paid by a trustee based on receipts allocated to income shall be paid from income.

(b) A tax required to be paid by a trustee based on receipts allocated to principal shall be paid from principal, even if the tax is called an income tax by the taxing authority.

(c) A tax required to be paid by a trustee on the trust's share of an entity's taxable income shall be ~~paid proportionately:~~paid:

(1) From income to the extent that receipts from the entity are only allocated to income; ~~and~~

(2) From principal to the extent ~~that:~~

~~a.~~ ~~Receipts~~ receipts from the entity are only allocated to ~~principal; and~~

~~b. The trust's share of the entity's taxable income exceeds the total receipts described in subdivision (1) and sub-subdivision (2)a. of this subsection.~~principal;

(3) Proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal; and

(4) From principal to the extent that the tax exceeds the total receipts from the entity.

(d) ~~For purposes of this section, receipts allocated to principal or income shall be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax~~ After applying subsections (a) through (c) of this section, the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary."

SECTION 5. Sections 1, 2, and 5 of this act are effective July 1, 2010. The failure of an attorney to comply with either the affidavit requirement under G.S. 31-4.1 or the drafting disclosure requirement of G.S. 31-4.2 does not invalidate a will or a codicil. The remainder of the act becomes effective January 1, 2011.

HOUSE BILL 620:
Will/Unif. Principal and Income Act Changes

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 7, 2010
Introduced by:	Reps. Ross, Wiley	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	PCS to First Edition H620-CSRC-67		

SUMMARY: ***Sections 1 and 2 of the Proposed Committee Substitute to HB620 repeal provisions enacted in 2009 that: (1) prohibit an attorney from drafting a will that makes the attorney a beneficiary under the will, unless the attorney is related to the testator, (2) require an attorney to attach an affidavit to the will certifying the attorney is in compliance with the section, and (3) require an attorney who drafted the will to include the attorney's name and business on the will.***

Section 3 of the PCS makes changes to the Uniform Principal and Income Act so that it will be consistent with recent IRS rulings and so that North Carolina's law does not invalidate the marital deduction for a spousal trust.

Section 4 allows a trustee to pay the trust's income taxes from the trust's principal in instances where the tax exceeds the total receipts paid to the trust.

CURRENT LAW:

G.S. 31-4.1 prohibits an attorney who drafts an attested written will, or a codicil to an attested written will, from being a beneficiary under that will, regardless of whether the attorney receives compensation for preparing the will. There is an exception for attorneys who are relatives of the testator within five degrees of kinship, a present or former spouse of the testator, or a parent, sibling, or child of the testator's present or former spouse. An attorney who drafts a will or codicil in which the attorney is a beneficiary must attach an affidavit certifying that the attorney is in compliance with the law. Any bequest or devise to an attorney in violation of the law is void.

G.S. 31-4.2 provides that an attorney who drafts an attested written will, or a codicil to an attested written will to place his or her name and business address on the instrument, as drafter.

G.S. 37A-4-409(c) and (d) provide that if a martial trust receives a payment from a retirement account that cannot be characterized as income or principal, the trustee is to allocate 10 percent to income and the remainder to principal. If necessary to obtain an estate tax marital deduction, a trustee should allocate an additional amount to income. In Rev. Rul. 2006-26, the IRS invalidated the savings language and found that it would not guarantee that the trust would qualify for the marital deduction.

G.S. 37A-5-505 provides that when a trust must pay income taxes on the trust's share of another entity's taxable income, the trust must pay taxes from income to the extent the receipts are from income and from principal to the extent the receipts are from principal. The statute is silent regarding situations where the taxes owed exceed the actual receipts.

BILL ANALYSIS:

Sections 1 and 2 repeal G.S. 31-4.1 and 31-4.2

ection 3 amends G.S. 37A-4-409 to provide that the 10% rule will not apply to any trust that elects to qualify for the marital deduction if the trust would not qualify for the marital deduction if the other provisions of G.S. 37A-4-409 were applicable and then sets out the rules for determining how to allocate income.

Section 4 amends G.S. 37A-5-505 to allow a trustee to pay income taxes from principal when the tax exceeds the total receipts to the trust.

EFFECTIVE DATE: Sections 1 and 2 would become effective July 1, 2010, but no will or codicil would be invalid due to the lack of an affidavit or the disclosure of the drafting attorney's name and business address. Sections 3 and 4 become effective January 1, 2011.

BACKGROUND: The North Carolina State Bar Rules of Professional Conduct [Rule 1.8(c)] provide that:

"A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship."

H620-SMRC-79(CSRC-67) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 4

SENATE BILL 567
Commerce Committee Substitute Adopted 5/5/09
Third Edition Engrossed 5/6/09
House Committee Substitute Favorable 5/26/10

Short Title: Responsible Individuals List/Abuse & Neglect. (Public)

Sponsors:

Referred to:

March 12, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS PERTAINING TO THE RESPONSIBLE INDIVIDUALS LIST AS RELATED TO JUVENILE ABUSE, NEGLECT, AND DEPENDENCY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-101(18a) reads as rewritten:

"As used in this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings:

...

(18a) Responsible individual. – ~~An individual identified by the director as the person who is responsible for rendering a juvenile abused or seriously neglected.~~A parent, guardian, custodian, or caretaker who abuses or seriously neglects a juvenile.

...."

SECTION 2. G.S. 7B-101 is amended by adding a new subdivision to read:

"As used in this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings:

...

(20a) Serious neglect. – Conduct, behavior, or inaction of the juvenile's parent, guardian, custodian, or caretaker that evidences a disregard of consequences of such magnitude that the conduct, behavior, or inaction constitutes an unequivocal danger to the juvenile's health, welfare, or safety, but does not constitute abuse.

...."

SECTION 3. G.S. 7B-200(a)(9) reads as rewritten:

"(a) The court has exclusive, original jurisdiction over any case involving a juvenile who is alleged to be abused, neglected, or dependent. This jurisdiction does not extend to cases involving adult defendants alleged to be guilty of abuse or neglect.

The court also has exclusive original jurisdiction of the following proceedings:

...

(9) Petitions for ~~expunction of an individual's name from the responsible individuals list~~judicial review of a director's determination under Article 3A of this Chapter."

SECTION 4. G.S. 7B-311 reads as rewritten:

"**§ 7B-311. Central registry; responsible individuals list.**

(a) The Department of Health and Human Services shall maintain a central registry of abuse, neglect, and dependency cases and child fatalities that are the result of alleged maltreatment that are reported under this Article in order to compile data for appropriate study of the extent of abuse and neglect within the State and to identify repeated abuses of the same juvenile or of other juveniles in the same family. This data shall be furnished by county directors of social services to the Department of Health and Human Services and shall be confidential, subject to rules adopted by the Social Services Commission providing for its use for study and research and for other appropriate disclosure. Data shall not be used at any hearing or court proceeding unless based upon a final judgment of a court of law.

(b) The Department shall also maintain a list of responsible ~~individuals identified by county directors of social services as the result of investigative assessment responses.~~individuals. The Department may provide information from this list to child caring institutions, child placing agencies, group home facilities, and other providers of foster care, child care, or adoption services that need to determine the fitness of individuals to care for or adopt children. The name of an individual who has been identified as a responsible individual shall be placed on the responsible individuals list only after one of the following:

(1) The individual is properly notified pursuant to G.S. 7B-320 and fails to file a petition for judicial review in a timely manner.

(2) The court determines that the individual is a responsible individual as a result of a hearing either:

a. On the individual's petition for judicial review; or

b. On a juvenile petition that alleges and seeks a determination that the individual is a responsible person.

(3) The individual is criminally convicted as a result of the same incident involved in an investigative assessment response.

(c) It is unlawful for any public official or public employee to knowingly and willfully release information from either the central registry or the responsible individuals list to a person who is not authorized to receive the information. It is unlawful for any person who is authorized to receive information from the central registry or the responsible individuals list to release that information to an unauthorized person. It is unlawful for any person who is not authorized to receive information from the central registry or the responsible individuals list to access or attempt to access that information. A person who commits an offense described in this subsection is guilty of a Class 3 misdemeanor.

(d) The Social Services Commission shall adopt rules regarding the operation of the central registry and responsible individuals list, ~~including:~~including procedures for each of the following:

(1) ~~Procedures for filing~~Filing data.

(2) ~~Procedures for notifying~~Notifiying an individual that the individual has been determined by the director to be a responsible ~~individual of a determination of abuse or serious neglect.~~individual.

(3) ~~Procedures for correcting~~Correcting and expunging information.

(4) Determining persons who are authorized to receive information from the responsible individuals list.

(5) Releasing information from the responsible individuals list to authorized requestors.

(6) Gathering statistical information.

(7) Keeping and maintaining information placed in the registry and on the responsible individuals list.

~~(8) A definition of "serious neglect".~~"

SECTION 5. The title of Article 3A of Chapter 7B of the General Statutes and G.S. 7B-320 read as rewritten:

"Article 3A.

"~~Expunction;~~Judicial Review; Responsible Individuals List.

"§ 7B-320. Notification to individual determined to be a responsible ~~for abuse or substantial neglect.~~individual.

(a) Within five working days after the completion of an investigative assessment response that results in a determination of abuse or serious ~~neglect;~~neglect and the identification of a responsible individual, the director ~~shall notify the Department of the results of the assessment and~~ shall ~~give personal~~personally deliver written notice of the determination to the ~~responsible individual of the determination.~~identified individual.

(b) If personal written notice is not ~~obtained~~ made within 15 days of the ~~determination being made;~~determination, the director shall send the notice to the ~~responsible~~ identified individual by registered or certified mail, restricted delivery, return receipt requested, and addressed to the ~~responsible~~ individual at the individual's last known address. ~~Only the responsible individual may receive the notice.~~

(c) The notice shall include all of the following:

(1) A statement informing the individual of the nature of the investigative assessment response and whether the director determined abuse or serious neglect or both.

(1a) A statement that the individual has been identified as a responsible individual.

(2) A statement summarizing the substantial evidence supporting the director's determination without identifying the reporter or collateral contacts.

(3) A statement informing the individual that unless the individual petitions for judicial review, the individual's name ~~has been~~will be placed on the responsible individuals list as provided in G.S. 7B-311, and that the Department of Health and Human Services may provide information from this list to child caring institutions, child placing agencies, group home facilities, and other providers of foster care, child care, or adoption services that need to determine the fitness of individuals to care for or adopt children.

(4) A clear description of the actions the individual must take ~~to have his or her name removed from the responsible individuals list. The description shall include information regarding how to request an expunction by the director of the individual's name from the responsible individuals list and procedures for seeking review by the district attorney and for seeking~~ to seek judicial review of the director's ~~decision not to remove the individual's name from the list.~~determination.

(d) In addition to the notice, the director shall provide the individual with a copy of a petition for judicial review form and instructions for how to file and serve the petition."

SECTION 6. G.S. 7B-321 and G.S. 7B-322 are repealed.

SECTION 7. G.S. 7B-323 reads as rewritten:

"§ 7B-323. Petition for ~~expunction;~~judicial review; district court.

(a) Within ~~30~~ 15 days of the receipt of notice of the director's ~~decision under G.S. 7B-321(b) or (c), or within 30 days from the date of a determination by the district attorney under G.S. 7B-322, whichever is later,~~determination under G.S. 7B-320(a) or (b), an individual may file a petition for ~~expunction~~ judicial review with the district court of the county in which the abuse or serious neglect report arose. The request shall be by a petition for ~~expunction~~ judicial review filed with the appropriate clerk of court's office with a copy delivered in person or by certified mail, return receipt requested, to the ~~director.~~director who determined the abuse or serious neglect and identified the individual as a responsible individual. The petition for ~~expunction~~ judicial review shall contain the name, date of birth, and address of the individual seeking ~~expunction,~~judicial review, the name of the juvenile who was

the subject of the determination of abuse or serious neglect, and facts that invoke the jurisdiction of the court. Failure to timely file a petition for ~~expunction~~ judicial review constitutes a waiver of the individual's right ~~to file a petition for expunction and~~ to a district court ~~hearing.~~hearing and to contest the placement of the individual's name on the responsible individuals list.

(b) The clerk of court shall maintain a separate docket for ~~expunction actions and upon receipt of a filed petition for expunction~~judicial review actions. Upon the filing of a petition for judicial review, the clerk shall calendar the matter for hearing within 15 days from the date the petition is filed at a session of district court hearing juvenile ~~matters and~~matters or, if there is no such session, at the next session of juvenile court. The clerk shall send notice of the hearing to the petitioner and to the ~~director.~~director who determined the abuse or serious neglect and identified the individual as a responsible individual. Upon the request of a party, the court shall close the hearing to all persons, except officers of the court, the parties, and their witnesses. At the hearing, the director shall have the burden of proving by a preponderance of the evidence the ~~correctness of the director's decision determining~~ abuse or serious neglect and ~~identifying~~ the identification of the individual seeking ~~expunction~~ judicial review as a responsible individual. The hearing shall be before a judge without a jury. The rules of evidence applicable in civil cases shall apply. However, the ~~court shall have discretion to~~court, in its discretion, may permit the admission of any reliable and relevant evidence if the general purposes of the rules of evidence and the interests of justice will best be served by its admission.

(c) At the hearing, the following rights of the parties shall be preserved:

(1) The right to present sworn evidence, law, or rules that bear upon the case.

(2) The right to represent themselves or obtain the services of an attorney at their own expense.

(3) The right to subpoena witnesses, cross-examine witnesses of the other party, and make a closing argument summarizing the party's view of the case and the law.

(d) Within 30 days after completion of the hearing, the court shall enter ~~a signed, written~~an order containing findings of fact and conclusions of law. ~~A~~ The clerk shall serve a copy of the order ~~shall be served~~ on each party or the party's attorney of record. If the court concludes that the director has not established by a preponderance of the evidence ~~the correctness of the determination of~~ abuse or serious neglect or the identification of the responsible individual, the court shall reverse the director's ~~decision~~ determination and order the director ~~to notify the Department of Health and Human Services to expunge~~not to place the individual's name ~~from~~ on the responsible individuals list. If the court concludes that ~~sufficient evidence has not been presented to support a determination of abuse, but there is sufficient evidence to support a determination of~~ the director has established by a preponderance of the evidence abuse or serious neglect and the identification of the individual seeking ~~expunction~~ judicial review as a responsible individual, the court shall ~~modify the director's decision and~~ order the director to ~~notify the Department of Health and Human Services to change the entry~~ place the individual's name on the responsible individuals ~~list to that of neglect.~~list, consistent with the court's order.

(d1) Upon receipt of a notice of hearing for judicial review, the director who identified the individual as a responsible individual may review all records, reports, and other information gathered during the investigative assessment response. If after a review, the director determines that there is not sufficient evidence to support a determination that the individual abused or seriously neglected the juvenile and is a responsible individual, the director shall prepare a written statement of the director's determination and either deliver the statement personally to the individual seeking judicial review or send the statement by first-class mail. The director shall also give written notice of the director's determination to the clerk to be placed in the

court file, and the judicial review hearing shall be cancelled with notice of the cancellation given by the clerk to the petitioner.

(e) Notwithstanding any time limitations contained in this section or the provisions of ~~G.S. 7B-324(a)(3) or (4),~~G.S. 7B-324(a)(4), a district court may review a determination of abuse or serious neglect at any time if the review serves the interests of justice or for extraordinary circumstances.

(f) A party may appeal the district court's decision under G.S. 7A-27(c)."

SECTION 8. G.S. 7B-324 reads as rewritten:

"**§ 7B-324. Persons ineligible to ~~request expunction;~~petition for judicial review; stay of ~~expunction~~ judicial review proceeding pending juvenile court case.**

(a) ~~Any~~ An individual who has been identified by a director as a responsible individual ~~in an abuse or serious neglect case is not entitled to challenge the placement of the individual's name on the responsible individuals list~~may not petition for judicial review if any of the following apply:

(1) The individual is criminally convicted as a result of the same incident. The district attorney shall inform the director of the result of the criminal ~~proceeding, and the director shall immediately notify the Department of Health and Human Services. The Department shall consider this information when determining whether the individual's name should remain on or be expunged from the responsible individuals list.~~proceeding.

(2) The individual is a respondent in a juvenile court proceeding regarding abuse or neglect resulting from the same ~~incident. The director shall immediately notify the Department of Health and Human Services. The Department shall consider this information when determining whether the individual's name should remain on or be expunged from the responsible individuals list.~~incident that concludes with an adjudication of abuse or neglect and a determination that the individual has abused or seriously neglected the juvenile and is a responsible individual.

~~(3) That individual fails to make a timely request for expunction with the director who made the determination of abuse or serious neglect and identified the individual as a responsible individual.~~

(4) ~~That~~ After proper notice, the individual fails to file a petition for ~~expunction~~ judicial review with the district court in a timely manner.

~~(5) That individual fails to keep the county department of social services informed of the individual's current address during any request for expunction so that the individual may receive notification of the director's decisions.~~

(b) ~~If, prior to or during any proceeding provided for in this section,~~If an individual seeking ~~expunction~~ judicial review is named as a respondent in a juvenile court case resulting from the same incident, ~~the director, the district attorney, the district court judge, or the Court of Appeals shall stay any further proceedings for the expunction of that individual's name from the responsible individuals list until the juvenile court case is concluded or dismissed.~~the district court judge may stay the judicial review proceeding or consolidate the proceeding with the juvenile court case. If ~~a~~ the juvenile court case ~~resulting from the same determination of abuse or serious neglect~~ is involuntarily dismissed, or concludes without an adjudication of abuse or ~~neglect, or with an adjudication that differs from the prior determination,~~neglect and a determination that the individual has abused or seriously neglected a juvenile and is a responsible individual, the director shall ~~notify the Department of Health and Human Services to expunge~~ not place the individual's name ~~from~~ on the responsible individuals ~~list or modify the prior decision of the director accordingly~~list. If a juvenile court case concludes with an adjudication of abuse or neglect and a determination that the individual has abused or seriously

neglected a juvenile and is a responsible individual, the director shall place that individual's name on the responsible individuals list, consistent with the court's order."

SECTION 9. G.S. 7B-402(a) reads as rewritten:

"(a) The petition shall contain the name, date of birth, address of the juvenile, the name and last known address of the juvenile's parent, guardian, or custodian, and allegations of facts sufficient to invoke jurisdiction over the juvenile. A petition alleging that a juvenile is abused or neglected may also allege and seek a determination that a respondent is a responsible individual as defined in G.S. 7B-101(18a). A person whose actions resulted in a conviction under G.S. 14-27.2 or G.S. 14-27.3 and the conception of the juvenile need not be named in the petition. The petition may contain information on more than one juvenile when the juveniles are from the same home and are before the court for the same reason."

SECTION 10. G.S. 7B-406(b) reads as rewritten:

"(b) A summons shall be on a printed form supplied by the Administrative Office of the Courts and shall ~~include:~~include each of the following:

(1) Notice of the nature of the ~~proceeding;~~proceeding.

(2) Notice of any right to counsel and information about how to seek the appointment of counsel prior to a ~~hearing;~~hearing.

(2a) Notice that, if the petition alleges and the court determines that the respondent is a responsible individual, the respondent's name will be placed on the responsible individuals list as provided in G.S. 7B-311, and that the Department of Health and Human Services may provide information from the list to child caring institutions, child placing agencies, group home facilities, and other providers of foster care, child care, or adoption services that need to determine the fitness of individuals to care for or adopt children.

(3) Notice that, if the court determines at the hearing that the allegations of the petition are true, the court will conduct a dispositional hearing to consider the needs of the juvenile and enter an order designed to meet those needs and the objectives of the ~~State; and~~State.

(4) Notice that the dispositional order or a subsequent order:

a. May remove the juvenile from the custody of the parent, guardian, or custodian.

b. May require that the juvenile receive medical, psychiatric, psychological, or other treatment and that the parent participate in the treatment.

c. May require the parent to undergo psychiatric, psychological, or other treatment or counseling for the purpose of remedying the behaviors or conditions that are alleged in the petition or that contributed to the removal of the juvenile from the custody of that person.

d. May order the parent to pay for treatment that is ordered for the juvenile or the parent.

e. May, upon proper notice and hearing and a finding based on the criteria set out in G.S. 7B-1111, terminate the parental rights of the respondent parent."

SECTION 11. G.S. 7B-800 reads as rewritten:

"**§ 7B-800. Amendment of petition.**

The ~~court~~court, in its discretion, may permit a petition to be ~~amended when the amendment does not change the nature of the conditions upon which the petition is based.~~amended. The court shall direct the manner in which an amended petition shall be served and the time allowed for a party to prepare after the petition has been amended."

SECTION 12. G.S. 7B-805 reads as rewritten:

"**§ 7B-805. Quantum of proof in adjudicatory hearing.**

The allegations in a petition alleging ~~abuse, neglect, or dependency~~that a juvenile is abused, neglected, or dependent shall be proved by clear and convincing evidence. Allegations in a petition alleging that a respondent is a responsible individual who has abused or seriously neglected a juvenile shall be proved by a preponderance of the evidence."

SECTION 13. G.S. 7B-807 is amended by adding a new subsection to read:

"(a1) After an adjudication that a juvenile is abused or neglected, if the petition alleges and the court determines by a preponderance of the evidence that a respondent has abused or seriously neglected a juvenile and is a responsible individual, the court shall order the placement of that individual's name on the responsible individuals list as provided in G.S. 7B-311."

SECTION 14. This act is effective when it becomes law.

SENATE BILL 567:
Responsible Individuals List/Abuse & Neglect

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 8, 2010
Introduced by:	Senator Hartsell	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	Fourth Edition		

SUMMARY: ***Senate Bill 567 would require that an individual be given an opportunity for notice and judicial review prior to being placed on the responsible individuals list, a list of individuals determined to be responsible for the abuse or serious neglect of children. The bill is in response to a recent N.C. Court of Appeals decision that declared the current process for placement on and expunction from the list to be unconstitutional.***

Senate Bill 567 has come back to the Senate for Concurrence.

CURRENT LAW AND BACKGROUND:

In 2005, the General Assembly enacted a law to require the Department of Health and Human Services (DHHS) to maintain a list of individuals determined to be responsible for the abuse or serious neglect of children, the responsible individuals list (RIL). DHHS is permitted to provide information from the RIL to child care institutions, child placing agencies, group home facilities, and other providers of foster care, child ---e, or adoption services that need to determine the fitness of individuals to care for or adopt children.

individual may be placed on the RIL after an investigative assessment results in a determination of abuse or serious neglect. The investigative assessment doesn't provide for notice to or an opportunity to be heard by the individual. After placement on the list, the individual may request that the individual's name be expunged from the RIL.

In the case of In re W.B.M., 690 S.E.2d 41 (N.C. App. 2010), the North Carolina Court of Appeals considered a challenge to the procedure for placing an individual on the RIL. The Court held that "an individual has a right to notice and an opportunity to be heard before being placed on the RIL," and held that the current statutory RIL procedures were "unconstitutional under Article I, Section 19 of the North Carolina Constitution because they violated the individual's due process rights by listing the individual on the RIL prior to a hearing." Id. at 52. The Court also held that "due process requires the State to substantiate a report of child abuse or neglect by a preponderance of the evidence before an individual's name can be included in and disseminated from the RIL," and that "at the constitutionally necessary pre-deprivation hearing in the district court, the director shall have the burden of proving abuse or serious neglect and identifying the responsible individual by a preponderance of the evidence." Id.

BILL ANALYSIS:

Senate Bill 567 would eliminate the current expunction process for individuals placed on the RIL, and instead would create a process for judicial review prior to the individual being placing on the RIL, as follows:

- An individual identified as a responsible individual may be placed on the RIL only after one of the following:
    1. The individual was properly notified of the determination and failed to file a petition for judicial review in a timely manner.

2. The court determines that the individual is a responsible individual as a result of a hearin either on the individual's petition for judicial review, or on a juvenile petition that alleges and seeks a determination that the individual is a responsible person.
3. The individual is criminally convicted as a result of the same incident.

- Require notice to the identified individual that unless the individual petitions for judicial review, the individual's name will be placed on the RIL.
- Require the individual to file for judicial review within 15 days of receipt of the director's determination. The standard of review for the hearing would be a preponderance of the evidence of abuse or serious neglect and of the identification of the individual. The director, upon receipt of a notice of hearing for judicial review, may review the information and, if after the review determines there is not sufficient evidence, may prepare a written statement and give notice to the individual and the court, cancelling the hearing.
- Define serious neglect as conduct, behavior, or inaction of the juvenile's parent, guardian, custodian, or caretaker that evidences a disregard of consequences of such magnitude that the conduct, behavior, or inaction constitutes an unequivocal danger to the juvenile's health, welfare, or safety, but does not constitute abuse.

EFFECTIVE DATE: Senate Bill 567 becomes effective when it becomes law.

Kara McCraw, counsel to House Judiciary II, substantially contributed to this summary.

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	June 10, 2010	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 1213	Amend State Purchases & Contracts Laws.	Senator Clodfelter
SB 1436	Graham County Relief.	Senator Snow
SB 1445	Goldsboro-Wayne Airport Authority/Changes.	Senator Davis

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

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Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

Corrected: Senate Bill 1436 removed

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AND
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Senator Fletcher L. Hartsell, Jr., Chair

SENATE JUDICIARY II COMMITTEE
Thursday, June 10, 2010 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 10:00 AM on June 10, 2010, in Room 1124 of the Legislative Building, with twelve members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell recognized pages Jennifer Isaza, Elizabeth Lane, Abes Finley, Shelby Andrews, Carson Euster, Robert Wright, Toni Selby, Charlle Hirst, and Jake Froelich and thanked them for their service.

SB 1445 – Goldsboro-Wayne Airport Authority/Changes. Senator Davis was recognized to explain the bill and answered the question from Senator Jacumin. Senator Apodaca moved for a favorable report with a referral to Finance. All voted and the motion carried.

SB 1213 – Amend State Purchases & Contracts Laws. Senator Vaughan moved to adopt the Proposed Committee Substitute for purposes of discussion. Senator Clodfelter was recognized to explain the bill and answered questions from Senators Dorsett, Bingham and Atwater. Mr. John Turcotte, Director of the Division of Program Evaluation gave comments on the background reasons for the bill. Ms. Christy R. Agner from the Department of Administration and Mr. Greg McLeod from the Office of the Attorney General both spoke favorably on the bill. Senator Forrester moved for a favorable report. As the Committee had not received a fiscal note, Senator Hartsell noted that the Committee would continue the motion and hold the bill until the next meeting.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr. Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Thursday, June 10, 2010

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **1445** Goldsboro-Wayne Airport Authority/Changes.
Sequential Referral: Finance
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — June 10, 2010

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Carl Dean	DSP
Mildred Spearman	AOC
Chris Agner	DOA
Erin Schwalpely	UNC-GA
Jennifer Willis	NCCCS
Pam Bell	AOC
Shilanka Ware	Sen. Dorsett Intern
Dennis Patterson	OSA
Alice Garland	NCEL
Michelle Frazier	MF+S

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — **Name of Committee**

June 10 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Hardin	MF+S
Laura C Nunnee	Home Life Care Home Care Agency
Shirley Sutton	Home Life Care Inc.
Lam Shaheen	
Henry Jones	Attorney Raleigh
BRIAN DEMPSEY	MWC
Aaron Day	Intern – Sen.
Peggy Mayer	
DAVID BARNES	Pozen Spence

Senate Judiciary II Committee
Thursday, June 10, 2010, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 1213	Amend State Purchases & Contracts Laws.	Senator Clodfelter
SB 1436	Graham County Relief.	Senator Snow
SB 1445	Goldsboro-Wayne Airport Authority/Changes.	Senator Davis

Presentations

Other Business

Adjournment

SENATE BILL 1213*

Short Title:	Amend State Purchases & Contracts Laws.	(Public)
Sponsors:	Senators Clodfelter; and Hartsell.	
Referred to:	Judiciary II.	

May 19, 2010

A BILL TO BE ENTITLED

AN ACT INCREASING THE AUTHORITY OF THE SECRETARY OF ADMINISTRATION TO PROVIDE OVERSIGHT OF THE REVIEW AND AWARD OF CONTRACTS AND TO ENHANCE THE EFFICIENCY AND EFFECTIVENESS OF THE CONTRACTS PROCESS, REQUIRING ALL STATE AGENCIES AND INSTITUTIONS EXEMPT FROM ARTICLE 3 OF CHAPTER 143 OF THE GENERAL STATUTES TO COMPLY WITH CERTAIN REQUIREMENTS REGARDING THE REVIEW AND AWARD OF CONTRACTS, REQUIRING THE ATTORNEY GENERAL TO REVIEW CERTAIN CONTRACTS, AND PROHIBITING THE USE OF COST PLUS PERCENTAGE OF COST CONTRACTS, AS RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18C-150 reads as rewritten:

"**§ 18C-150. Procurements.**

The Commission shall be exempt from Article 3 of Chapter 143 of the General Statutes but may use the services of the Department of Administration in procuring goods and services for the Commission. However, the Commission shall submit proposed contracts authorized by this section to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all contracts to be awarded by the Commission under this section a standard clause which provides that the State Auditor and internal auditors of the Commission may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Commission shall not award a cost plus percentage of cost contract for any purpose."

SECTION 2. G.S. 53-320 reads as rewritten:

"**§ 53-320. Examinations; periodic reports; cooperative agreements; assessment of fees.**

...

(d) The Commissioner may enter into agreements with any bank supervisory agency supervising (i) a State trust institution engaging in trust business outside this State or (ii) an out-of-state trust institution maintaining a trust office or representative trust office in this State to engage the services of the agency's examiners at a reasonable rate of compensation or to provide the services of the Commissioner's examiners to the agency at a reasonable rate of compensation. Article 3 of Chapter 143 of the General Statutes does not apply to agreements authorized by this subsection. However, the Commissioner shall submit proposed agreements or contracts authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all agreements or contracts to be awarded by the Commissioner under this subsection a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records

of the contractor during the term of the agreement or contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost agreement or contract for any purpose.

...."

SECTION 3. G.S. 53-326 reads as rewritten:

"**§ 53-326. Examinations; periodic reports; cooperative agreements; assessment of fees.**

...

(d) The Commissioner may enter into agreements with bank supervisory agencies supervising (i) a State trust institution engaging in trust business in a foreign country or (ii) a foreign trust institution maintaining a trust office or representative trust office in this State to engage the services of the bank supervisory agency's examiners at a reasonable rate of compensation or to provide the services of the Commissioner's examiners to the bank supervisory agency at a reasonable rate of compensation. Article 3 of Chapter 143 of the General Statutes does not apply to agreements authorized by this section. However, the Commissioner shall submit proposed agreements or contracts authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all agreements or contracts to be awarded by the Commissioner under this subsection a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during the term of the agreement or contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost agreement or contract for any purpose.

...."

SECTION 4. G.S. 53-391 reads as rewritten:

"**§ 53-391. Employment of counsel, accountants, and other experts; compensation.**

The Commissioner, for the purpose of exercising any power under the provisions of this Subpart, may (i) employ any liquidating agents, attorneys, accountants, consultants, and clerks necessary to properly conduct the business of or liquidate and distribute the assets of a State trust company; (ii) fix the compensation for the agents, attorneys, accountants, consultants, and clerks; and (iii) pay the compensation of those persons out of the assets of the State trust company. Provided, that all expenditures described in this section shall be approved by the resident or presiding judge in the county in which the action is pending. Payments made by the Commissioner pursuant to this section shall not be subject to the requirements of Article 3 of Chapter 143 of the General Statutes. As used in this Subpart, the term "Commissioner" includes the Commissioner's duly appointed agents. The Commissioner shall submit proposed agreements or contracts authorized by this section to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all agreements or contracts to be awarded by the Commissioner under this section a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during the term of the agreement or contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost agreement or contract for any purpose."

SECTION 5. G.S. 53-401 reads as rewritten:

"**§ 53-401. Provisions for conservator; duties and powers.**

Whenever the Commissioner deems it necessary in order to conserve the assets of a State trust company for the benefit of clients or creditors, the Commissioner may appoint a conservator for the State trust company and require of the conservator a bond with any surety the Commissioner deems necessary and proper in an amount deemed sufficient by the Commissioner. The conservator, under the direction of the Commissioner, shall take possession of the fiduciary records and other books, records, and assets of every description of the State trust company placed under conservatorship and take actions necessary to conserve those assets

pending further disposition of its business as provided by law. Except as provided in G.S. 53-405, the conservator shall have all rights, powers, and privileges, subject to the approval of the Commissioner, now possessed by or given to the Commissioner under the provisions of Subpart B and Subpart D of this Part. All expenses of the conservator shall be paid out of the assets of the State trust company under conservatorship and shall be a lien thereon which shall be prior to any other lien provided by law. The compensation of the conservator shall be determined by the Commissioner and shall be based on the time and experience of the conservator and the complexity of the conservatorship. Compensation of the conservator shall not be subject to the requirements of Article 3 of Chapter 143 of the General Statutes. However, the Commissioner shall submit proposed agreements or contracts authorized by this section to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all agreements or contracts to be awarded by the Commissioner under this section a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the conservator during the term of the agreement or contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost agreement or contract for any purpose."

SECTION 6. G.S. 58-2-69 reads as rewritten:

"**§ 58-2-69. Notification of criminal convictions and changes of address; service of notice; contracts for online services, administrative services, or regulatory data systems.**

...

(g) The Commissioner may contract with the NAIC or other persons for the provision of online services to licensees, for the provision of administrative services to licensees, or for the provision of regulatory data systems to the Commissioner. The NAIC or other person with whom the Commissioner contracts may charge licensees a reasonable fee for the costs associated with the licensees' use of online services and administrative services. The fee shall be agreed to by the Commissioner and the other contracting party and shall be stated in the contract. Contracts for the provision of online services, contracts for the provision of administrative services, and contracts for the provision of regulatory data systems shall not be subject to Article 3, 3C, or 8 of Chapter 143 of the General Statutes or to Article 3D of Chapter 147 of the General Statutes. However, the Commissioner shall submit proposed contracts authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all contracts to be awarded by the Commissioner under this subsection a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during the term of the agreement or contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost agreement or contract for any purpose."

SECTION 7. G.S. 58-33-30 reads as rewritten:

"**§ 58-33-30. License requirements.**

The Commissioner shall not issue or continue any license of an agent, broker, limited representative, adjuster, or motor vehicle damage appraiser except as follows:

...

(e) Examination.

...

(4) The answers of the applicant to the examination shall be provided by the applicant under the Commissioner's supervision. The Commissioner shall give examinations at such times and places within this State as the Commissioner considers necessary reasonably to serve the convenience of both the Commissioner and applicants: Provided that the Commissioner may

contract directly with persons for the processing of examination application forms and for the administration and grading of the examinations required by this section; the Commissioner may charge a reasonable fee in addition to the registration fee charged under G.S. 58-33-125, to offset the cost of the examination contract authorized by this subsection; and such contracts shall not be subject to Article 3 of Chapter 143 of the General Statutes. However, the Commissioner shall submit proposed contracts authorized by this subdivision to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all contracts to be awarded by the Commissioner under this subdivision a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost contract for any purpose.

(5) The Commissioner shall collect in advance the examination and registration fees provided in G.S. 58-33-125 and in subsection (4) of this section. The Commissioner shall make or cause to be made available to all applicants, for a reasonable fee to offset the costs of production, materials that he considers necessary for the applicants' proper preparation for examinations. The Commissioner may contract directly with publishers and other suppliers for the production of the preparatory materials, and contracts so let by the Commissioner shall not be subject to Article 3 of Chapter 143 of the General Statutes. However, the Commissioner shall submit proposed contracts authorized by this subdivision to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all contracts to be awarded by the Commissioner under this subdivision a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost contract for any purpose.

...."

SECTION 8. G.S. 58-33-125 reads as rewritten:

"**§ 58-33-125. Fees.**

...

(e) A resident licensee may obtain a duplicate photo-bearing license at times and places within this State that the Commissioner considers necessary and reasonable to serve the convenience of both the Commissioner and the licensee. The Commissioner may contract directly with persons for processing of duplicate photo-bearing licenses, and the contract shall not be subject to Article 3 of Chapter 143 of the General Statutes. The Commissioner may charge a reasonable fee for duplicating a photo-bearing license in an amount that offsets the costs to the Department of duplicating the license, including costs associated with any contract entered into pursuant to this subsection. However, the Commissioner shall submit proposed contracts authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all contracts to be awarded by the Commissioner under this subsection a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost agreement or contract for any purpose.

...."

SECTION 9. G.S. 58-33-130 reads as rewritten:

"**§ 58-33-130. Continuing education program for licensees.**

(a) The Commissioner may adopt rules to provide for a program of continuing education requirements for the purpose of enhancing the professional competence and professional responsibility of adjusters and motor vehicle damage appraisers. The rules may include criteria for:

(1) The content of continuing education courses;
(2) Accreditation of continuing education sponsors and programs;
(3) Accreditation of videotape or other audiovisual programs;
(4) Computation of credit;
(5) Special cases and exemptions;
(6) General compliance procedures; and
(7) Sanctions for noncompliance.

The Commissioner may contract directly with persons for the administration of the program provided for by this section, and those contracts shall not be subject to Article 3 of Chapter 143 of the General Statutes. However, the Commissioner shall submit proposed contracts authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all contracts to be awarded by the Commissioner under this subsection a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost agreement or contract for any purpose. The Commissioner may charge a reasonable fee to course providers to offset the cost of the program, including costs associated with contracts authorized by this subsection. The fee authorized by this subsection shall be in addition to the fees specified in G.S. 58-33-133. As used in this section and in G.S. 58-33-132, "administrator" means any person with whom the Commissioner has contracted under this subsection.

...."

SECTION 10. G.S. 58-71-40 reads as rewritten:

"**§ 58-71-40. Bail bondsmen and runners to be qualified and licensed; license applications generally.**

...

(d) When a license is issued under this section, the Commissioner shall issue a picture identification card, of design, size, and content approved by the Commissioner, to the licensee. Each licensee must carry this card at all times when working in the scope of the licensee's employment. A licensee whose license terminates or is terminated shall surrender the identification card to the Commissioner within 10 working days after the termination. The Commissioner may contract directly with persons for the processing and issuance of picture identification cards required by this section and may charge a reasonable fee in addition to the license fee charged under G.S. 58-71-55 in an amount that offsets the cost of the service, including the costs associated with the contract authorized by this subsection. Contracts entered into pursuant to this subsection shall not be subject to Article 3 of Chapter 143 of the General Statutes. However, the Commissioner shall submit proposed contracts authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all contracts to be awarded by the Commissioner under this subsection a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost agreement or contract for any purpose.

...."

SECTION 11. G.S. 63A-24 reads as rewritten:

"**§ 63A-24. General laws apply to Authority; exceptions.**

Except as provided in this section, the general laws that apply to State agencies apply to the Authority. The following general laws, to the extent provided below, do not apply to the Authority:

(1) Article 3 of Chapter 143 of the General Statutes does not apply to contracts for services listed in 49 U.S.C. § 2210(a)(16) or contracts for special user projects. That Article also does not apply to other contracts for projects, but, with respect to these other contracts, the powers and duties established in that Article shall be exercised by the Authority and the Secretary of Administration, and other State officers, employees, or agencies shall have no duties or responsibilities concerning the contracts. However, the Authority shall submit proposed contracts authorized by this subdivision to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all contracts to be awarded by the Commissioner under this subdivision a standard clause which provides that the State Auditor and internal auditors of the Authority may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Authority shall not award a cost plus percentage of cost agreement or contract for any purpose.

...."

SECTION 12. G.S. 84-23 reads as rewritten:

"**§ 84-23. Powers of Council.**

...

(d) The Council may acquire, hold, rent, encumber, alienate, lease, and otherwise deal with real or personal property in the same manner as any private person or corporation, subject only to the approval of the Governor and the Council of State as to the acquisition, rental, encumbering, leasing and sale of real property. The Council may borrow money upon its bonds, notes, debentures, or other evidences of indebtedness sold through public or private sale pursuant to a loan agreement or a trust agreement or indenture with a trustee, with such borrowing either unsecured or secured by a mortgage on the Council's interest in real or personal property, and engage and contract with attorneys, underwriters, financial advisors, and other parties as necessary for such borrowing, with such borrowing and security subject to the approval of the Governor and the Council of State. The Council may utilize the services of the Purchase and Contract Division of the Department of Administration to procure personal property, in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes. However, the Council shall submit proposed contracts authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all contracts to be awarded by the Council under this subsection a standard clause which provides that the State Auditor and internal auditors of the Council may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Council shall not award a cost plus percentage of cost agreement or contract for any purpose."

SECTION 13. G.S. 89E-5 reads as rewritten:

"**§ 89E-5. Functions and duties of the Licensing Board.**

...

(e) The Board may authorize expenditures deemed necessary to carry out the provisions of this Chapter and all expenses shall be paid upon the warrant of the Board treasurer. The Board treasurer shall deposit funds received by the Board in one or more funds in banks or other financial institutions carrying deposit insurance and authorized to do business in North Carolina. Interest earned on such funds may remain in the funds account and may be expended

as authorized by the Board to carry out the provisions of this Chapter. In no event may expenditures exceed the revenues of the Board during any fiscal year. The Board is authorized and empowered to utilize the services of the Purchase and Contract Division of the Department of Administration for the procurement of personal property, in accordance with Article 3 of Chapter 143 of the General Statutes. The Board shall submit proposed contracts authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all contracts to be awarded by the Board under this subsection a standard clause which provides that the State Auditor and internal auditors of the Council may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Board shall not award a cost plus percentage of cost agreement or contract for any purpose.

...."

SECTION 14. G.S. 89F-5 reads as rewritten:

"**§ 89F-5. Powers and duties of the Board.**

...

(d) The Board may employ the necessary personnel for the performance of its functions and shall fix their compensation within the limits of funds available to the Board. The Board may procure personal property in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes. The Board shall submit proposed contracts authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all contracts to be awarded by the Board under this subsection a standard clause which provides that the State Auditor and internal auditors of the Council may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Board shall not award a cost plus percentage of cost agreement or contract for any purpose.

...."

SECTION 15. G.S. 108A-55 reads as rewritten:

"**§ 108A-55. Payments.**

...

(b) Payments shall be made only to intermediate care facilities, hospitals and nursing homes licensed and approved under the laws of the State of North Carolina or under the laws of another state, or to pharmacies, physicians, dentists, optometrists or other providers of health-related services authorized by the Department. Payments may also be made to such fiscal intermediaries and to the capitation or prepaid health service contractors as may be authorized by the Department. Arrangements under which payments are made to capitation or prepaid health services contracts are not subject to the provisions of Chapter 58 of the General Statutes or of Article 3 of Chapter 143 of the General Statutes. However, the Department shall submit proposed agreements or contracts authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all agreements or contracts to be awarded by the Department under this subsection a standard clause which provides that the State Auditor and internal auditors of the Council may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Department shall not award a cost plus percentage of cost agreement or contract for any purpose.

...."

SECTION 16. Article 1 of Chapter 114 of the General Statutes is amended by adding the following new section to read as follows:

"**§ 114-8.3. Attorney General to review certain contracts.**

(a) The Attorney General or the Attorney General's designee shall review all proposed statewide term contracts for supplies, materials, printing, equipment, and contractual services and all proposed agency term contractual services contracts that exceed one million dollars

($1,000,000) to ensure that the proposed contracts are in proper legal form, contain all clauses required by law, provide for sufficient monitoring, provide for sufficient performance penalties, and accomplish the intended purposes of the proposed contract.

(b) The Attorney General or the Attorney General's designee shall review all proposed contracts to be awarded by a department, agency, or institution of the State to ensure that the proposed contracts are in proper legal form, contain all clauses required by law, provide for sufficient monitoring, and provide for sufficient performance penalties. For purposes of this subsection, the term "Attorney General's designee" shall include any attorney approved by the Attorney General to review contracts as provided in this subsection. The Attorney General shall require that any attorney designated under this subsection shall comply with any rules established by the Attorney General regarding the review of contracts."

SECTION 17. G.S. 115D-67.4 reads as rewritten:

"**§ 115D-67.4. Fees collected by the Center; purchases using Center funds.**

Notwithstanding any other provision of law, all fees collected by the Applied Textile Technology Center for services to the textile industry, except for regular curriculum and continuing education tuition receipts, shall be retained by the Center and used for the operations of the Center. Purchases made by the Center using these funds are not subject to the provisions of Article 3 of Chapter 143 of the General Statutes. However, the Center shall submit proposed agreements or contracts to provide services authorized by this section to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all agreements or contracts to be awarded by the Center under this section a standard clause which provides that the State Auditor and internal auditors of the Council may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Department shall not award a cost plus percentage of cost agreement or contract for any purpose."

SECTION 18. G.S. 135-43 reads as rewritten:

"**§ 135-43. Confidentiality of information and medical records; provider contracts.**

...

(b) Notwithstanding the provisions of this Article, the Executive Administrator and Board of Trustees of the State Health Plan for Teachers and State Employees may contract with providers of institutional and professional medical care and services to establish preferred provider networks.

The terms of a contract between the Plan and its third party administrator or between the Plan and its pharmacy benefit manager are a public record except that the terms in those contracts that contain trade secrets or proprietary or competitive information are not a public record under Chapter 132 of the General Statutes, and any such proprietary or competitive information and trade secrets contained in the contract shall be redacted by the Plan prior to making it available to the public. This subsection shall not be construed to prevent or restrict the release of any information made not a public record under this subsection to the State Auditor, the Attorney General, the Director of the State Budget, the Plan's Executive Administrator, and the Committee on Employee Hospital and Medical Benefits solely and exclusively for their use in the furtherance of their duties and responsibilities, and to the Department of Health and Human Services solely for the purpose of implementing the transition of NC Health Choice from the Plan to the Department of Health and Human Services. The design, adoption, and implementation of the preferred provider contracts, networks, and optional alternative comprehensive health benefit plans, and programs available under the optional alternative plans, as authorized under G.S. 135-45 are not subject to the requirements of Article 3 of Chapter 143 of the General Statutes. However, the Executive Administrator and Board of Trustees shall submit proposed contracts authorized by this section to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all proposed contracts to be awarded by the Executive

Administrator and Board of Trustees under this section a standard clause which provides that the State Auditor and internal auditors of the Plan may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Executive Administrator and Board of Trustees shall not award a cost plus percentage of cost agreement or contract for any purpose. The Executive Administrator and Board of Trustees shall make reports as requested to the President of the Senate, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Committee on Employee Hospital and Medical Benefits.

...."

SECTION 19. G.S. 136-28.1 reads as rewritten:

"**§ 136-28.1. Letting of contracts to bidders after advertisement; exceptions.**

...

(h) The Department of Transportation may enter into contracts for applied research and experimental work without soliciting bids or proposals; provided, however, that if the research or work is for the purpose of testing equipment, materials, or supplies, the provisions of Article 3 of Chapter 143 of the General Statutes shall apply. However, the Department of Transportation shall submit proposed contracts authorized by this section to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all proposed contracts to be awarded by the Department of Transportation under this subsection a standard clause which provides that the State Auditor and internal auditors of the Department of Transportation may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Department of Transportation shall not award a cost plus percentage of cost agreement or contract for any purpose. The Department of Transportation is encouraged to solicit proposals when contracts are entered into with private firms when it is in the public interest to do so.

...."

SECTION 20. G.S. 136-89.194 reads as rewritten:

"**§ 136-89.194. Laws applicable to the Authority; exceptions.**

...

(g) Contract Exemptions. – The following provisions concerning the purchase of goods and services by a State agency do not apply to the Turnpike Authority:

(1) Article 3 of Chapter 143 of the General Statutes. The Authority may use the services of the Department of Administration in procuring goods and services that are not specific to establishing and operating a toll revenue system. However, the Authority shall submit proposed contracts authorized by this subdivision to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all proposed contracts to be awarded by the Authority under this subdivision a standard clause which provides that the State Auditor and internal auditors of the Authority may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Authority shall not award a cost plus percentage of cost agreement or contract for any purpose.

(2) Article 3D of Chapter 147 of the General Statutes. The Authority may use the services of the Office of Information Technology Services in procuring goods and services that are not specific to establishing and operating a toll revenue system. All contract information for contracts for information technology are subject to disclosure in accordance with G.S. 147-33.95.

...."

SECTION 21. G.S. 143-49 reads as rewritten:

"**§ 143-49. Powers and duties of Secretary.**

The Secretary of Administration shall have power and authority, and it shall be his duty, subject to the provisions of this Article:

(1) To canvass sources of supply, including sources of supply of materials and supplies with recycled content, and to purchase or to contract for the purchase, lease and lease-purchase of all supplies, materials, equipment and other tangible personal property required by the State government, or any of its departments, institutions or agencies under competitive bidding or otherwise as hereinafter provided. Prior to the awarding of any statewide term or agency term contract for supplies, materials, equipment, or other tangible personal property exceeding a cost of one hundred thousand dollars ($100,000), the Secretary shall request and the Attorney General shall assign a representative of the office of the Attorney General to assist in the award of the contract. It shall be the duty of the representative of the office of the Attorney General to assist and advise in obtaining the most favorable contract for the State or agency, to evaluate all proposals available from prospective contractors for that purpose, to interpret proposed contract terms, and to advise the Secretary or the Secretary's representatives of the liabilities of the State or agency and the validity of the contract to be awarded. All contracts and drafts of contracts shall be prepared by the office of the Attorney General and copies thereof shall be retained by the office of the Attorney General for a period of three years following the termination of the contracts.

...

(3) To purchase or to contract for, by sealed, competitive bidding or other suitable means, all contractual services and needs of the State government, or any of its departments, institutions, or agencies; or to authorize any department, institution or agency to purchase or contract for such services.

~~When the award~~Prior to the awarding of any contract for contractual services exceeding a cost of one hundred thousand dollars ~~($100,000) requires negotiation with prospective contractors,~~($100,000), the Secretary shall request and the Attorney General shall assign a representative of the office of the Attorney General to assist in ~~negotiation for~~ the award of the contract. It shall be the duty of such representative to assist and advise in obtaining the most favorable contract for the State, to evaluate all proposals available from prospective contractors for that purpose, to interpret proposed contract terms and to advise the Secretary or his representatives of the liabilities of the State and validity of the contract to be awarded. All contracts and drafts of such contracts shall be prepared by the office of the Attorney General and copies thereof shall be retained by such office for a period of three years following the termination of such contracts. The term "contractual services" as used in this subsection shall mean work performed by an independent contractor requiring specialized knowledge, experience, expertise or similar capabilities wherein the service rendered does not consist primarily of acquisition by this State of equipment or materials and the rental of equipment, materials and supplies. The term "negotiation" as used herein shall not be deemed to refer to contracts entered into or to be entered into as a result of a competitive bidding process.

...

(9) To include a standard clause in all contracts awarded by the State and departments, agencies, and institutions of the State, providing that the State Auditor and internal auditors of the affected department, agency, or

institution may audit the records of the contactor during the term of the contract to verify accounts and data affecting fees or performance.

(10) To monitor and enforce the terms and conditions of statewide term contracts. The Secretary of Administration shall not delegate the power and authority granted under this subdivision to any other department, agency, or institution of the State.

(11) To develop rules, regulations, and procedures specifying the manner in which departments, agencies, and institutions of the State shall monitor and enforce agency term and non-term contracts.

(12) To consult with the Attorney General or the Attorney General's designee in developing rules, regulations, and procedures providing for the orderly and efficient submission of proposed statewide term, agency term, and non-term contracts to the Attorney General for review as provided in G.S. 114-8.3 and G.S. 143-52.2.

(13) To implement a quality management system equivalent to the International Organization for Standardization (ISO) 9001:2008 to ensure that citizen and agency customer requirements are met. By September 1 of 2012, and more frequently as requested, the Secretary shall report to the Joint Legislative Commission on Governmental Operations, the Program Evaluation Division, and the Fiscal Research Division concerning the progress of the Department's effort to comply with the provisions of this subdivision.

(14) To work in conjunction with the Office of State Personnel to create a Contracting Specialist career path to provide for the designation of one or more employees within each department, agency, or institution of the State to serve as the Contracting Specialist for the department, agency, or institution. Employees on the Contracting Specialist career path shall receive training and guidance as to the provisions of this Article.

(15) To work in conjunction with the Office of State Personnel, the Division of Purchase & Contract, and the University of North Carolina School of Government to develop a rigorous contract management training and certification program for State employees. The program shall be administered by the Office of State Personnel.

(16) To work in conjunction with the University of North Carolina School of Government to study and recommend improvements to State procurement laws, including the feasibility of adopting the provisions of the American Bar Association Model Procurement Code."

SECTION 22. G.S. 143-52 is amended to read as follows:

"**§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary; bids; awarding of ~~contracts.~~contracts; cost plus percentage of cost contracts strictly prohibited.**

...

(c) Neither the Department of Administration nor any department, agency, or institution of the State may award a cost plus percentage of cost contract for any purpose."

SECTION 23. Article 3 of Chapter 143 of the General Statutes is amended by adding a new section to read as follows:

"**§ 143-52.2. Certain contracts subject to review by Attorney General.**

(a) The Secretary of Administration and every department, agency, and institution of the State shall submit to the Attorney General or the Attorney General's designee for review all proposed statewide term contracts for supplies, materials, printing, equipment, and contractual services and all proposed agency term contractual services contracts that exceed one million dollars ($1,000,000) to ensure that the proposed contracts are in proper legal form, contain all

clauses required by law, provide for sufficient monitoring, provide for sufficient performance penalties, and accomplish the intended purposes of the proposed contract.

(b) The Secretary of Administration and every department, agency, and institution of the State shall submit to the Attorney General or the Attorney General's designee for review all proposed contracts to be awarded by a department, agency, or institution of the State to ensure that the proposed contracts are in proper legal form, contain all clauses required by law, provide for sufficient monitoring, and provide for sufficient performance penalties. For purposes of this subsection, the term "Attorney General's designee" shall include any attorney approved by the Attorney General to review contracts as provided in this subsection. The Attorney General shall require that any attorney designated under this subsection shall comply with any rules established by the Attorney General regarding the review of contracts."

SECTION 24. G.S. 143-134 reads as rewritten:

"**§ 143-134. Applicable to Department of Transportation and Department of Correction; ~~exceptions.~~ exceptions; all contracts subject to review by Attorney General and State Auditor.**

(a) This Article shall apply to the Department of Transportation and the Department of Correction except in the construction of roads, bridges and their approaches; provided however, that whenever the Director of the Budget determines that the repair or construction of a building by the Department of Transportation or by the Department of Correction can be done more economically through use of employees of the Department of Transportation and/or prison inmates than by letting such repair or building construction to contract, the provisions of this Article shall not apply to such repair or construction.

(b) Notwithstanding the provisions of subsection (a) of this section, the Department of Transportation and the Department of Correction shall submit proposed contracts authorized by this section or any other provision of general law to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3 and G.S. 143-52-2 and shall include in all contracts to be awarded by the Department of Transportation or the Department of Correction a standard clause which provides that the State Auditor and internal auditors of the Department of Transportation or the Department of Correction may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. Neither the Department of Transportation nor the Department of Correction shall award a cost plus percentage of cost agreement or contract for any purpose."

SECTION 25. G.S. 143-151.16 reads as rewritten:

"**§ 143-151.16. Certification fees; renewal of certificates; examination fees.**

...

(d) The Board may contract with persons for the development and administration of the examinations required by G.S. 143-151.13(a), for course development related to the examinations, for review of a particular applicant's examination, and for other related services. The person with whom the Board contracts may charge applicants a reasonable fee for the costs associated with the development and administration of the examinations, for course development related to the examinations, for review of the applicant's examinations, and for other related services. The fee shall be agreed to by the Board and the other contracting party. The amount of the fee under this subsection shall not exceed one hundred seventy-five dollars ($175.00). Contracts for the development and administration of the examinations, for course development related to the examinations, and for review of examinations shall not be subject to Article 3, 3C, or 8 of Chapter 143 of the General Statutes or to Article 3D of Chapter 147 of the General Statutes. However, the Board shall submit proposed contracts authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all proposed contracts to be awarded by the Board under this subsection a standard clause which provides that the State Auditor and internal auditors of the Board may audit the records of the contractor during the term of the contract to verify accounts

and data affecting fees and performance. The Board shall not award a cost plus percentage of cost agreement or contract for any purpose."

SECTION 26. G.S. 143B-131.2 reads as rewritten:

"**§ 143B-131.2. Roanoke Island Commission – Purpose, powers, and duties.**

...

(b) The Commission shall have the following powers and duties:

...

(15) To procure supplies, services, and property as appropriate and to enter into contracts, leases, or other legal agreements to carry out the purposes of this Part and duties of the Commission. The provisions of G.S. 143-129 and Article 3 of Chapter 143 of the General Statutes do not apply to purchases by the Roanoke Island Commission of equipment, supplies, and services. However, the Commission shall submit proposed contracts authorized by this subdivision to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all proposed contracts to be awarded by the Commission under this subdivision a standard clause which provides that the State Auditor and internal auditors of the Commission may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Commission shall not award a cost plus percentage of cost agreement or contract for any purpose."

SECTION 27. G.S. 147-64.6 reads as rewritten:

"**§ 147-64.6. Duties and responsibilities.**

...

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

...

(18) The Auditor shall, after consultation and in coordination with the State Chief Information Officer, assess, confirm, and report on the security practices of information technology systems. If an agency has adopted standards pursuant to G.S. 147-33.111(a), the audit shall be in accordance with those standards. The Auditor's assessment of information security practices shall include an assessment of network vulnerability. The Auditor may conduct network penetration or any similar procedure as the Auditor may deem necessary. The Auditor may enter into a contract with a State agency under G.S. 147-33.111(c) for an assessment of network vulnerability, including network penetration or any similar procedure. Any contract with the Auditor for the assessment and testing shall be on a cost-reimbursement basis. The Auditor may investigate reported information technology security breaches, cyber attacks, and cyber fraud in State government. The Auditor shall issue public reports on the general results of the reviews undertaken pursuant to this subdivision but may provide agencies with detailed reports of the security issues identified pursuant to this subdivision which shall not be disclosed as provided in G.S. 132-6.1(c). The Auditor shall provide the State Chief Information Officer with detailed reports of the security issues identified pursuant to this subdivision. For the purposes of this subdivision only, the Auditor is exempt from the provisions of Article 3 of Chapter 143 of the General Statutes in retaining contractors. However, the Auditor shall submit proposed contracts authorized by this subdivision to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all proposed contracts to be awarded by the Auditor under this subdivision a standard clause which provides that the

Auditor may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Auditor shall not award a cost plus percentage of cost agreement or contract for any purpose.

...."

SECTION 28. This act becomes effective October 1, 2010, and applies to all contracts proposed or awarded on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1213*
PROPOSED COMMITTEE SUBSTITUTE S1213-CSRI-64 [v.1]

6/9/2010 6:53:51 PM

Short Title: Amend State Purchases & Contracts Laws. (Public)

Sponsors:

Referred to:

May 19, 2010

A BILL TO BE ENTITLED

AN ACT INCREASING THE AUTHORITY OF THE SECRETARY OF ADMINISTRATION TO PROVIDE OVERSIGHT OF THE REVIEW AND AWARD OF CONTRACTS AND TO ENHANCE THE EFFICIENCY AND EFFECTIVENESS OF THE CONTRACTS PROCESS, REQUIRING ALL STATE AGENCIES AND INSTITUTIONS EXEMPT FROM ARTICLE 3 OF CHAPTER 143 OF THE GENERAL STATUTES TO COMPLY WITH CERTAIN REQUIREMENTS REGARDING THE REVIEW AND AWARD OF CONTRACTS, REQUIRING THE ATTORNEY GENERAL TO REVIEW CERTAIN CONTRACTS, AND PROHIBITING THE USE OF COST PLUS PERCENTAGE OF COST CONTRACTS, AS RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18C-150 reads as rewritten:

"**§ 18C-150. Procurements.**

The Commission shall be exempt from Article 3 of Chapter 143 of the General Statutes but may use the services of the Department of Administration in procuring goods and services for the Commission. However, the Commission shall include in all contracts to be awarded by the Commission under this section a standard clause which provides that the State Auditor and internal auditors of the Commission may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Commission shall not award a cost plus percentage of cost contract for any purpose. For purposes of this provision, "cost plus percentage of cost contract" is defined as a contract under which the contractor receives payment for indeterminate costs plus a stated percentage or amount of profit based upon such costs. This provision shall not apply to Commission contracts that require costs to be predetermined and approved by the Commission and a total not to exceed the amount specified in each contract to be paid to the contractor."

SECTION 2. G.S. 53-320 reads as rewritten:

"**§ 53-320. Examinations; periodic reports; cooperative agreements; assessment of fees.**

...

(d) The Commissioner may enter into agreements with any bank supervisory agency supervising (i) a State trust institution engaging in trust business outside this State or (ii) an out-of-state trust institution maintaining a trust office or representative trust office in this State to engage the services of the agency's examiners at a reasonable rate of compensation or to provide the services of the Commissioner's examiners to the agency at a reasonable rate of

compensation. Article 3 of Chapter 143 of the General Statutes does not apply to agreements authorized by this subsection. However, the Commissioner shall submit proposed agreements or contracts authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all agreements or contracts to be awarded by the Commissioner under this subsection a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during the term of the agreement or contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost agreement or contract for any purpose.

...."

SECTION 3. G.S. 53-326 reads as rewritten:

"**§ 53-326. Examinations; periodic reports; cooperative agreements; assessment of fees.**

...

(d) The Commissioner may enter into agreements with bank supervisory agencies supervising (i) a State trust institution engaging in trust business in a foreign country or (ii) a foreign trust institution maintaining a trust office or representative trust office in this State to engage the services of the bank supervisory agency's examiners at a reasonable rate of compensation or to provide the services of the Commissioner's examiners to the bank supervisory agency at a reasonable rate of compensation. Article 3 of Chapter 143 of the General Statutes does not apply to agreements authorized by this section. However, the Commissioner shall submit proposed agreements or contracts authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all agreements or contracts to be awarded by the Commissioner under this subsection a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during the term of the agreement or contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost agreement or contract for any purpose.

...."

SECTION 4. G.S. 53-391 reads as rewritten:

"**§ 53-391. Employment of counsel, accountants, and other experts; compensation.**

The Commissioner, for the purpose of exercising any power under the provisions of this Subpart, may (i) employ any liquidating agents, attorneys, accountants, consultants, and clerks necessary to properly conduct the business of or liquidate and distribute the assets of a State trust company; (ii) fix the compensation for the agents, attorneys, accountants, consultants, and clerks; and (iii) pay the compensation of those persons out of the assets of the State trust company. Provided, that all expenditures described in this section shall be approved by the resident or presiding judge in the county in which the action is pending. Payments made by the Commissioner pursuant to this section shall not be subject to the requirements of Article 3 of Chapter 143 of the General Statutes. As used in this Subpart, the term "Commissioner" includes the Commissioner's duly appointed agents. The Commissioner shall submit proposed agreements or contracts authorized by this section to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all agreements or contracts to be awarded by the Commissioner under this section a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during the term of the agreement or contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost agreement or contract for any purpose."

SECTION 5. G.S. 53-401 reads as rewritten:

"**§ 53-401. Provisions for conservator; duties and powers.**

Whenever the Commissioner deems it necessary in order to conserve the assets of a State trust company for the benefit of clients or creditors, the Commissioner may appoint a conservator for the State trust company and require of the conservator a bond with any surety the Commissioner deems necessary and proper in an amount deemed sufficient by the Commissioner. The conservator, under the direction of the Commissioner, shall take possession of the fiduciary records and other books, records, and assets of every description of the State trust company placed under conservatorship and take actions necessary to conserve those assets pending further disposition of its business as provided by law. Except as provided in G.S. 53-405, the conservator shall have all rights, powers, and privileges, subject to the approval of the Commissioner, now possessed by or given to the Commissioner under the provisions of Subpart B and Subpart D of this Part. All expenses of the conservator shall be paid out of the assets of the State trust company under conservatorship and shall be a lien thereon which shall be prior to any other lien provided by law. The compensation of the conservator shall be determined by the Commissioner and shall be based on the time and experience of the conservator and the complexity of the conservatorship. Compensation of the conservator shall not be subject to the requirements of Article 3 of Chapter 143 of the General Statutes. However, the Commissioner shall submit proposed agreements or contracts authorized by this section to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all agreements or contracts to be awarded by the Commissioner under this section a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the conservator during the term of the agreement or contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost agreement or contract for any purpose."

SECTION 6. G.S. 58-2-69 reads as rewritten:

"**§ 58-2-69. Notification of criminal convictions and changes of address; service of notice; contracts for online services, administrative services, or regulatory data systems.**

...

(g) The Commissioner may contract with the NAIC or other persons for the provision of online services to licensees, for the provision of administrative services to licensees, or for the provision of regulatory data systems to the Commissioner. The NAIC or other person with whom the Commissioner contracts may charge licensees a reasonable fee for the costs associated with the licensees' use of online services and administrative services. The fee shall be agreed to by the Commissioner and the other contracting party and shall be stated in the contract. Contracts for the provision of online services, contracts for the provision of administrative services, and contracts for the provision of regulatory data systems shall not be subject to Article 3, 3C, or 8 of Chapter 143 of the General Statutes or to Article 3D of Chapter 147 of the General Statutes. However, the Commissioner shall submit proposed contracts authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all contracts to be awarded by the Commissioner under this subsection a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during the term of the agreement or contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost agreement or contract for any purpose."

SECTION 7. G.S. 58-33-30 reads as rewritten:

"**§ 58-33-30. License requirements.**

The Commissioner shall not issue or continue any license of an agent, broker, limited representative, adjuster, or motor vehicle damage appraiser except as follows:

...

(e) Examination.

...

(4) The answers of the applicant to the examination shall be provided by the applicant under the Commissioner's supervision. The Commissioner shall give examinations at such times and places within this State as the Commissioner considers necessary reasonably to serve the convenience of both the Commissioner and applicants: Provided that the Commissioner may contract directly with persons for the processing of examination application forms and for the administration and grading of the examinations required by this section; the Commissioner may charge a reasonable fee in addition to the registration fee charged under G.S. 58-33-125, to offset the cost of the examination contract authorized by this subsection; and such contracts shall not be subject to Article 3 of Chapter 143 of the General Statutes. However, the Commissioner shall submit proposed contracts authorized by this subdivision to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all contracts to be awarded by the Commissioner under this subdivision a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost contract for any purpose.

(5) The Commissioner shall collect in advance the examination and registration fees provided in G.S. 58-33-125 and in subsection (4) of this section. The Commissioner shall make or cause to be made available to all applicants, for a reasonable fee to offset the costs of production, materials that he considers necessary for the applicants' proper preparation for examinations. The Commissioner may contract directly with publishers and other suppliers for the production of the preparatory materials, and contracts so let by the Commissioner shall not be subject to Article 3 of Chapter 143 of the General Statutes. However, the Commissioner shall submit proposed contracts authorized by this subdivision to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all contracts to be awarded by the Commissioner under this subdivision a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost contract for any purpose.

...."

SECTION 8. G.S. 58-33-125 reads as rewritten:

"**§ 58-33-125. Fees.**

...

(e) A resident licensee may obtain a duplicate photo-bearing license at times and places within this State that the Commissioner considers necessary and reasonable to serve the convenience of both the Commissioner and the licensee. The Commissioner may contract directly with persons for processing of duplicate photo-bearing licenses, and the contract shall not be subject to Article 3 of Chapter 143 of the General Statutes. The Commissioner may charge a reasonable fee for duplicating a photo-bearing license in an amount that offsets the costs to the Department of duplicating the license, including costs associated with any contract entered into pursuant to this subsection. However, the Commissioner shall submit proposed

contracts authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all contracts to be awarded by the Commissioner under this subsection a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost agreement or contract for any purpose.

...."

SECTION 9. G.S. 58-33-130 reads as rewritten:

"**§ 58-33-130. Continuing education program for licensees.**

(a) The Commissioner may adopt rules to provide for a program of continuing education requirements for the purpose of enhancing the professional competence and professional responsibility of adjusters and motor vehicle damage appraisers. The rules may include criteria for:

(1) The content of continuing education courses;
(2) Accreditation of continuing education sponsors and programs;
(3) Accreditation of videotape or other audiovisual programs;
(4) Computation of credit;
(5) Special cases and exemptions;
(6) General compliance procedures; and
(7) Sanctions for noncompliance.

The Commissioner may contract directly with persons for the administration of the program provided for by this section, and those contracts shall not be subject to Article 3 of Chapter 143 of the General Statutes. However, the Commissioner shall submit proposed contracts authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all contracts to be awarded by the Commissioner under this subsection a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost agreement or contract for any purpose. The Commissioner may charge a reasonable fee to course providers to offset the cost of the program, including costs associated with contracts authorized by this subsection. The fee authorized by this subsection shall be in addition to the fees specified in G.S. 58-33-133. As used in this section and in G.S. 58-33-132, "administrator" means any person with whom the Commissioner has contracted under this subsection.

...."

SECTION 10. G.S. 58-71-40 reads as rewritten:

"**§ 58-71-40. Bail bondsmen and runners to be qualified and licensed; license applications generally.**

...

(d) When a license is issued under this section, the Commissioner shall issue a picture identification card, of design, size, and content approved by the Commissioner, to the licensee. Each licensee must carry this card at all times when working in the scope of the licensee's employment. A licensee whose license terminates or is terminated shall surrender the identification card to the Commissioner within 10 working days after the termination. The Commissioner may contract directly with persons for the processing and issuance of picture identification cards required by this section and may charge a reasonable fee in addition to the license fee charged under G.S. 58-71-55 in an amount that offsets the cost of the service, including the costs associated with the contract authorized by this subsection. Contracts entered into pursuant to this subsection shall not be subject to Article 3 of Chapter 143 of the General Statutes. However, the Commissioner shall submit proposed contracts authorized by this

subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all contracts to be awarded by the Commissioner under this subsection a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost agreement or contract for any purpose.

...."

SECTION 11. G.S. 63A-24 reads as rewritten:

"**§ 63A-24. General laws apply to Authority; exceptions.**

Except as provided in this section, the general laws that apply to State agencies apply to the Authority. The following general laws, to the extent provided below, do not apply to the Authority:

(1) Article 3 of Chapter 143 of the General Statutes does not apply to contracts for services listed in 49 U.S.C. § 2210(a)(16) or contracts for special user projects. That Article also does not apply to other contracts for projects, but, with respect to these other contracts, the powers and duties established in that Article shall be exercised by the Authority and the Secretary of Administration, and other State officers, employees, or agencies shall have no duties or responsibilities concerning the contracts. However, the Authority shall submit proposed contracts authorized by this subdivision to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all contracts to be awarded by the Authority under this subdivision a standard clause which provides that the State Auditor and internal auditors of the Authority may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Authority shall not award a cost plus percentage of cost agreement or contract for any purpose.

...."

SECTION 12. G.S. 84-23 reads as rewritten:

"**§ 84-23. Powers of Council.**

...

(d) The Council may acquire, hold, rent, encumber, alienate, lease, and otherwise deal with real or personal property in the same manner as any private person or corporation, subject only to the approval of the Governor and the Council of State as to the acquisition, rental, encumbering, leasing and sale of real property. The Council may borrow money upon its bonds, notes, debentures, or other evidences of indebtedness sold through public or private sale pursuant to a loan agreement or a trust agreement or indenture with a trustee, with such borrowing either unsecured or secured by a mortgage on the Council's interest in real or personal property, and engage and contract with attorneys, underwriters, financial advisors, and other parties as necessary for such borrowing, with such borrowing and security subject to the approval of the Governor and the Council of State. The Council may utilize the services of the Purchase and Contract Division of the Department of Administration to procure personal property, in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes. However, the Council shall submit proposed contracts authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all contracts to be awarded by the Council under this subsection a standard clause which provides that the State Auditor and internal auditors of the Council may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Council shall not award a cost plus percentage of cost agreement or contract for any purpose."

SECTION 13. G.S. 89E-5 reads as rewritten:

"**§ 89E-5. Functions and duties of the Licensing Board.**

...

(e) The Board may authorize expenditures deemed necessary to carry out the provisions of this Chapter and all expenses shall be paid upon the warrant of the Board treasurer. The Board treasurer shall deposit funds received by the Board in one or more funds in banks or other financial institutions carrying deposit insurance and authorized to do business in North Carolina. Interest earned on such funds may remain in the funds account and may be expended as authorized by the Board to carry out the provisions of this Chapter. In no event may expenditures exceed the revenues of the Board during any fiscal year. The Board is authorized and empowered to utilize the services of the Purchase and Contract Division of the Department of Administration for the procurement of personal property, in accordance with Article 3 of Chapter 143 of the General Statutes. The Board shall submit proposed contracts authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all contracts to be awarded by the Board under this subsection a standard clause which provides that the State Auditor and internal auditors of the Board may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Board shall not award a cost plus percentage of cost agreement or contract for any purpose.

...."

SECTION 14. G.S. 89F-5 reads as rewritten:

"**§ 89F-5. Powers and duties of the Board.**

...

(d) The Board may employ the necessary personnel for the performance of its functions and shall fix their compensation within the limits of funds available to the Board. The Board may procure personal property in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes. The Board shall submit proposed contracts authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all contracts to be awarded by the Board under this subsection a standard clause which provides that the State Auditor and internal auditors of the Board may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Board shall not award a cost plus percentage of cost agreement or contract for any purpose.

...."

SECTION 15. G.S. 108A-55 reads as rewritten:

"**§ 108A-55. Payments.**

...

(b) Payments shall be made only to intermediate care facilities, hospitals and nursing homes licensed and approved under the laws of the State of North Carolina or under the laws of another state, or to pharmacies, physicians, dentists, optometrists or other providers of health-related services authorized by the Department. Payments may also be made to such fiscal intermediaries and to the capitation or prepaid health service contractors as may be authorized by the Department. Arrangements under which payments are made to capitation or prepaid health services contracts are not subject to the provisions of Chapter 58 of the General Statutes or of Article 3 of Chapter 143 of the General Statutes. However, the Department shall submit proposed agreements or contracts authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all agreements or contracts to be awarded by the Department under this subsection a standard clause which provides that the State Auditor and internal auditors of the Department may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Department shall not award a cost plus percentage of cost agreement or contract for any purpose.

...."

SECTION 16. Article 1 of Chapter 114 of the General Statutes is amended by adding the following new section to read as follows:

"**§ 114-8.3. Attorney General to review certain contracts.**

(a) The Attorney General or the Attorney General's designee shall review all proposed statewide term contracts for supplies, materials, printing, equipment, and contractual services and all proposed agency term contractual services contracts that exceed one million dollars ($1,000,000) to ensure that the proposed contracts are in proper legal form, contain all clauses required by law, provide for sufficient monitoring, provide for sufficient performance penalties, and accomplish the intended purposes of the proposed contract.

(b) The Attorney General or the Attorney General's designee shall review all proposed contracts to be awarded by a department, agency, or institution of the State to ensure that the proposed contracts are in proper legal form, contain all clauses required by law, provide for sufficient monitoring, and provide for sufficient performance penalties. For purposes of this subsection, the term "Attorney General's designee" shall include any attorney approved by the Attorney General to review contracts as provided in this subsection. The Attorney General shall require that any attorney designated under this subsection shall comply with any rules established by the Attorney General regarding the review of contracts."

SECTION 17. G.S. 115D-67.4 reads as rewritten:

"**§ 115D-67.4. Fees collected by the Center; purchases using Center funds.**

Notwithstanding any other provision of law, all fees collected by the Applied Textile Technology Center for services to the textile industry, except for regular curriculum and continuing education tuition receipts, shall be retained by the Center and used for the operations of the Center. Purchases made by the Center using these funds are not subject to the provisions of Article 3 of Chapter 143 of the General Statutes. However, the Center shall submit proposed agreements or contracts to provide services authorized by this section to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all agreements or contracts to be awarded by the Center under this section a standard clause which provides that the State Auditor and internal auditors of the Center may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Center shall not award a cost plus percentage of cost agreement or contract for any purpose."

SECTION 18.(a) G.S. 135-43 reads as rewritten:

"**§ 135-43. Confidentiality of information and medical records; provider contracts.**

...

(b) Notwithstanding the provisions of this Article, the Executive Administrator and Board of Trustees of the State Health Plan for Teachers and State Employees may contract with providers of institutional and professional medical care and services to establish preferred provider networks.

The terms of a contract between the Plan and its third party administrator or between the Plan and its pharmacy benefit manager are a public record except that the terms in those contracts that contain trade secrets or proprietary or competitive information are not a public record under Chapter 132 of the General Statutes, and any such proprietary or competitive information and trade secrets contained in the contract shall be redacted by the Plan prior to making it available to the public. This subsection shall not be construed to prevent or restrict the release of any information made not a public record under this subsection to the State Auditor, the Attorney General, the Director of the State Budget, the Plan's Executive Administrator, and the Committee on Employee Hospital and Medical Benefits solely and exclusively for their use in the furtherance of their duties and responsibilities, and to the Department of Health and Human Services solely for the purpose of implementing the transition of NC Health Choice from the Plan to the Department of Health and Human

Services. The design, adoption, and implementation of the preferred provider contracts, networks, and optional alternative comprehensive health benefit plans, and programs available under the optional alternative plans, as authorized under G.S. 135-45 are not subject to the requirements of Article 3 of Chapter 143 of the General Statutes. However, the Executive Administrator and Board of Trustees shall submit proposed contracts authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all proposed contracts to be awarded by the Executive Administrator and Board of Trustees under this section a standard clause which provides that the State Auditor and internal auditors of the Plan may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Executive Administrator and Board of Trustees shall not award a cost plus percentage of cost agreement or contract for any purpose. The Executive Administrator and Board of Trustees shall make reports as requested to the President of the Senate, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Committee on Employee Hospital and Medical Benefits.

...."

SECTION 18.(b) G.S. 135-45 is amended by adding a new subsection to read:

"(d1) The Executive Administrator and Board of Trustees shall submit proposed contracts authorized by this subsection (d) of this section to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all proposed contracts to be awarded by the Executive Administrator and Board of Trustees under this section a standard clause which provides that the State Auditor and internal auditors of the Plan may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Executive Administrator and Board of Trustees shall not award a cost plus percentage of cost agreement or contract for any purpose."

SECTION 19. G.S. 136-28.1 reads as rewritten:

"**§ 136-28.1. Letting of contracts to bidders after advertisement; exceptions.**

...

(h) The Department of Transportation may enter into contracts for applied research and experimental work without soliciting bids or proposals; provided, however, that if the research or work is for the purpose of testing equipment, materials, or supplies, the provisions of Article 3 of Chapter 143 of the General Statutes shall apply. However, the Department of Transportation shall submit proposed contracts authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all proposed contracts to be awarded by the Department of Transportation under this subsection a standard clause which provides that the State Auditor and internal auditors of the Department of Transportation may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Department of Transportation shall not award a cost plus percentage of cost agreement or contract for any purpose. The Department of Transportation is encouraged to solicit proposals when contracts are entered into with private firms when it is in the public interest to do so.

...."

SECTION 20. G.S. 136-89.194 reads as rewritten:

"**§ 136-89.194. Laws applicable to the Authority; exceptions.**

...

(g) Contract Exemptions. – The following provisions concerning the purchase of goods and services by a State agency do not apply to the Turnpike Authority:

(1) Article 3 of Chapter 143 of the General Statutes. The Authority may use the services of the Department of Administration in procuring goods and services that are not specific to establishing and operating a toll revenue system. However, the Authority shall submit proposed contracts authorized

by this subdivision to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all proposed contracts to be awarded by the Authority under this subdivision a standard clause which provides that the State Auditor and internal auditors of the Authority may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Authority shall not award a cost plus percentage of cost agreement or contract for any purpose.

...."

SECTION 21. G.S. 143-49 reads as rewritten:

"**§ 143-49. Powers and duties of Secretary.**

The Secretary of Administration shall have power and authority, and it shall be his duty, subject to the provisions of this Article:

(1) To canvass sources of supply, including sources of supply of materials and supplies with recycled content, and to purchase or to contract for the purchase, lease and lease-purchase of all supplies, materials, equipment and other tangible personal property required by the State government, or any of its departments, institutions or agencies under competitive bidding or otherwise as hereinafter provided. Prior to the awarding of any statewide term or agency term contract for supplies, materials, equipment, or other tangible personal property exceeding a cost of one hundred thousand dollars ($100,000), the Secretary shall request and the Attorney General shall assign a representative of the office of the Attorney General to assist in the award of the contract. It shall be the duty of the representative of the office of the Attorney General to assist and advise in obtaining the most favorable contract for the State or agency, to evaluate all proposals available from prospective contractors for that purpose, to interpret proposed contract terms, and to advise the Secretary or the Secretary's representatives of the liabilities of the State or agency and the validity of the contract to be awarded. All contracts and drafts of contracts shall be prepared by the office of the Attorney General and copies thereof shall be retained by the office of the Attorney General for a period of three years following the termination of the contracts.

...

(3) To purchase or to contract for, by sealed, competitive bidding or other suitable means, all contractual services and needs of the State government, or any of its departments, institutions, or agencies; or to authorize any department, institution or agency to purchase or contract for such services.

~~When the award~~Prior to the awarding of any contract for contractual services exceeding a cost of one hundred thousand dollars ~~($100,000) requires negotiation with prospective contractors,~~($100,000), the Secretary shall request and the Attorney General shall assign a representative of the office of the Attorney General to assist in ~~negotiation for~~ the award of the contract. It shall be the duty of such representative to assist and advise in obtaining the most favorable contract for the State, to evaluate all proposals available from prospective contractors for that purpose, to interpret proposed contract terms and to advise the Secretary or his representatives of the liabilities of the State and validity of the contract to be awarded. All contracts and drafts of such contracts shall be prepared by the office of the Attorney General and copies thereof shall be retained by such office for a period of three years following the termination of such contracts. The term

"contractual services" as used in this subsection shall mean work performed by an independent contractor requiring specialized knowledge, experience, expertise or similar capabilities wherein the service rendered does not consist primarily of acquisition by this State of equipment or materials and the rental of equipment, materials and supplies. The term "negotiation" as used herein shall not be deemed to refer to contracts entered into or to be entered into as a result of a competitive bidding process.

...

(9) To include a standard clause in all contracts awarded by the State and departments, agencies, and institutions of the State, providing that the State Auditor and internal auditors of the affected department, agency, or institution may audit the records of the contactor during the term of the contract to verify accounts and data affecting fees or performance.

(10) To monitor and enforce the terms and conditions of statewide term contracts. The Secretary of Administration shall not delegate the power and authority granted under this subdivision to any other department, agency, or institution of the State.

(11) To develop rules, regulations, and procedures specifying the manner in which departments, agencies, and institutions of the State shall monitor and enforce agency term and non-term contracts.

(12) To consult with the Attorney General or the Attorney General's designee in developing rules, regulations, and procedures providing for the orderly and efficient submission of proposed statewide term, agency term, and non-term contracts to the Attorney General for review as provided in G.S. 114-8.3 and G.S. 143-52.2.

(13) To implement a quality management system equivalent to the International Organization for Standardization (ISO) 9001:2008 to ensure that citizen and agency customer requirements are met. By September 1 2012, and more frequently as requested, the Secretary shall report to the Joint Legislative Commission on Governmental Operations, the Program Evaluation Division, and the Fiscal Research Division concerning the progress of the Department's effort to comply with the provisions of this subdivision.

(14) To work in conjunction with the Office of State Personnel to create a Contracting Specialist career path to provide for the designation of one or more employees within each department, agency, or institution of the State to serve as the Contracting Specialist for the department, agency, or institution. Employees on the Contracting Specialist career path shall receive training and guidance as to the provisions of this Article.

(15) To work in conjunction with the Office of State Personnel, the Division of Purchase & Contract, and the University of North Carolina School of Government to develop a rigorous contract management training and certification program for State employees. The program shall be administered by the Office of State Personnel.

(16) To work in conjunction with the University of North Carolina School of Government to study and recommend improvements to State procurement laws, including the feasibility of adopting the provisions of the American Bar Association Model Procurement Code."

SECTION 22. G.S. 143-52 is amended to read as follows:

"**§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary; bids; awarding of ~~contracts.~~contracts; cost plus percentage of cost contracts strictly prohibited.**

...

(c) Neither the Department of Administration nor any department, agency, or institution of the State may award a cost plus percentage of cost contract for any purpose, except as provided in G.S. 18C-150."

SECTION 23. Article 3 of Chapter 143 of the General Statutes is amended by adding a new section to read as follows:

"**§ 143-52.2. Certain contracts subject to review by Attorney General.**

(a) The Secretary of Administration and every department, agency, and institution of the State shall submit to the Attorney General or the Attorney General's designee for review all proposed statewide term contracts for supplies, materials, printing, equipment, and contractual services and all proposed agency term contractual services contracts that exceed one million dollars ($1,000,000) to ensure that the proposed contracts are in proper legal form, contain all clauses required by law, provide for sufficient monitoring, provide for sufficient performance penalties, and accomplish the intended purposes of the proposed contract.

(b) The Secretary of Administration and every department, agency, and institution of the State shall submit to the Attorney General or the Attorney General's designee for review all proposed contracts to be awarded by a department, agency, or institution of the State to ensure that the proposed contracts are in proper legal form, contain all clauses required by law, provide for sufficient monitoring, and provide for sufficient performance penalties. For purposes of this subsection, the term "Attorney General's designee" shall include any attorney approved by the Attorney General to review contracts as provided in this subsection. The Attorney General shall require that any attorney designated under this subsection shall comply with any rules established by the Attorney General regarding the review of contracts."

SECTION 24. G.S. 143-134 reads as rewritten:

"**§ 143-134. Applicable to Department of Transportation and Department of Correction; ~~exceptions.~~ exceptions; all contracts subject to review by Attorney General and State Auditor.**

(a) This Article shall apply to the Department of Transportation and the Department of Correction except in the construction of roads, bridges and their approaches; provided however, that whenever the Director of the Budget determines that the repair or construction of a building by the Department of Transportation or by the Department of Correction can be done more economically through use of employees of the Department of Transportation and/or prison inmates than by letting such repair or building construction to contract, the provisions of this Article shall not apply to such repair or construction.

(b) Notwithstanding the provisions of subsection (a) of this section, the Department of Transportation and the Department of Correction shall submit proposed contracts authorized by this section or any other provision of general law to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3 and G.S. 143-52.2 and shall include in all contracts to be awarded by the Department of Transportation or the Department of Correction a standard clause which provides that the State Auditor and internal auditors of the Department of Transportation or the Department of Correction may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. Neither the Department of Transportation nor the Department of Correction shall award a cost plus percentage of cost agreement or contract for any purpose."

SECTION 25. G.S. 143-151.16 reads as rewritten:

"**§ 143-151.16. Certification fees; renewal of certificates; examination fees.**

...

(d) The Board may contract with persons for the development and administration of the examinations required by G.S. 143-151.13(a), for course development related to the examinations, for review of a particular applicant's examination, and for other related services. The person with whom the Board contracts may charge applicants a reasonable fee for the costs

associated with the development and administration of the examinations, for course development related to the examinations, for review of the applicant's examinations, and for other related services. The fee shall be agreed to by the Board and the other contracting party. The amount of the fee under this subsection shall not exceed one hundred seventy-five dollars ($175.00). Contracts for the development and administration of the examinations, for course development related to the examinations, and for review of examinations shall not be subject to Article 3, 3C, or 8 of Chapter 143 of the General Statutes or to Article 3D of Chapter 147 of the General Statutes. However, the Board shall submit proposed contracts authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all proposed contracts to be awarded by the Board under this subsection a standard clause which provides that the State Auditor and internal auditors of the Board may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Board shall not award a cost plus percentage of cost agreement or contract for any purpose."

SECTION 26. G.S. 143B-131.2 reads as rewritten:

"**§ 143B-131.2. Roanoke Island Commission – Purpose, powers, and duties.**

...

(b) The Commission shall have the following powers and duties:

...

(15) To procure supplies, services, and property as appropriate and to enter into contracts, leases, or other legal agreements to carry out the purposes of this Part and duties of the Commission. The provisions of G.S. 143-129 and Article 3 of Chapter 143 of the General Statutes do not apply to purchases by the Roanoke Island Commission of equipment, supplies, and services. However, the Commission shall submit proposed contracts authorized by this subdivision to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all proposed contracts to be awarded by the Commission under this subdivision a standard clause which provides that the State Auditor and internal auditors of the Commission may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Commission shall not award a cost plus percentage of cost agreement or contract for any purpose."

SECTION 27. G.S. 147-64.6 reads as rewritten:

"**§ 147-64.6. Duties and responsibilities.**

...

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

...

(18) The Auditor shall, after consultation and in coordination with the State Chief Information Officer, assess, confirm, and report on the security practices of information technology systems. If an agency has adopted standards pursuant to G.S. 147-33.111(a), the audit shall be in accordance with those standards. The Auditor's assessment of information security practices shall include an assessment of network vulnerability. The Auditor may conduct network penetration or any similar procedure as the Auditor may deem necessary. The Auditor may enter into a contract with a State agency under G.S. 147-33.111(c) for an assessment of network vulnerability, including network penetration or any similar procedure. Any contract with the Auditor for the assessment and testing shall be on a cost-reimbursement basis. The Auditor may investigate reported information technology security breaches, cyber attacks, and cyber fraud in State government. The Auditor shall issue

public reports on the general results of the reviews undertaken pursuant to this subdivision but may provide agencies with detailed reports of the security issues identified pursuant to this subdivision which shall not be disclosed as provided in G.S. 132-6.1(c). The Auditor shall provide the State Chief Information Officer with detailed reports of the security issues identified pursuant to this subdivision. For the purposes of this subdivision only, the Auditor is exempt from the provisions of Article 3 of Chapter 143 of the General Statutes in retaining contractors. However, the Auditor shall submit proposed contracts authorized by this subdivision to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all proposed contracts to be awarded by the Auditor under this subdivision a standard clause which provides that the Auditor may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Auditor shall not award a cost plus percentage of cost agreement or contract for any purpose.

...."

SECTION 28. This act becomes effective October 1, 2010, and applies to all contracts proposed or awarded on or after that date.

SENATE BILL 1213:
Amend State Purchases & Contracts Laws

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 10, 2010
Introduced by:	Sen. Clodfelter	**Prepared by:**	Jennifer McGinnis
Analysis of:	PCS to First Edition S1213-CSRI-64		Committee Counsel

SUMMARY: ***Senate Bill 1213 would: (i) require all State agencies and institutions exempt from Article 3 (Purchases and Contracts) of Chapter 143 (State Departments, Institutions, and Commissions) to comply with certain requirements regarding the review and award of contracts; (ii) require all State entities to submit contracts to the Attorney General for review and that the Attorney General (or designee or approved attorney) review the contracts; (iii) prohibit the use of cost plus percentage cost contracts. The bill was a recommendation of the Joint Legislative Program Evaluation Oversight Committee.***

[As introduced, this bill was identical to H1851, as introduced by Reps. Cole, Crawford, which is currently in House State Government/State Personnel, if favorable, Judiciary II.]

BACKGROUND: As noted, the bill was a recommendation of the Joint Legislative Program Evaluation Oversight Committee. The issue of State purchasing and contracting was discussed at a meeting of the Committee on August 3, 2009. Minutes and proceedings of that meeting are attached to this summary, as are a report from the Joint Legislative Program Evaluation Oversight Committee on the issue, and a summary of the bill prepared by staff to the Committee.

BILL ANALYSIS: The bill would require various State agencies, departments, commissions, boards, and authorities, which are currently exempt from the State purchase and contracts requirements, to: (i) submit proposed agreements or contracts to the Attorney General or the Attorney General's designee for review; and (ii) to include a standard clause in all agreements or contracts to be awarded which provides that the State Auditor and internal auditors of the relevant entity may audit the records of the contractor during the term of the agreement or contract to verify accounts and data affecting fees and performance. These entities include:

- State Lottery Commission;
- Commissioner of Banks (supervisory contracts, conservator contracts);
- Commissioner of Insurance (various service contracts);
- Global Transpark Authority (special user and airport projects);
- State Bar Council;
- Board for Licensing of Geologists;
- Board for Licensing of Soil Scientists;
- Department of Health and Human Services (Medical Assistance program (Medicaid) for fiscal intermediary, capitation or prepaid health services contracts);

- Applied Textile Technology Center;
- Executive Administrator and Board of Trustees of the State Health Plan for Teachers and State Employees;
- North Carolina Turnpike Authority;
- Departments of Transportation and Correction (road construction by employees and/or inmates);
- North Carolina Code Officials Qualification Board (course development and administration);
- Roanoke Island Commission; and
- State Auditor (system security assessment).

The bill also:

- Prohibits the entities listed above from awarding a cost plus percentage of cost agreement or contract for any purpose (contracts under which the contractor receives payment for indeterminate costs plus a stated percentage or amount of profit based upon such costs).
- Requires all State entities to submit contracts to the Attorney General (or designee) for review (required review will differ depending on amount of contract, see next two bullets).
- Requires the Attorney General or a designee to review all Statewide term contracts for supplies, materials, printing, equipment, and contractual services and all proposed agency term contractual services contracts that exceed $1,000,000 for form, required clauses, sufficient monitoring and performance penalties, and accomplishment of intended purpose.
- Requires the Attorney General or a designee, **which may be an attorney approved by the Attorney General,** to review all State contracts for form, required clauses, and sufficient monitoring and performance penalties (but not accomplishment of intended purpose)..
- Expands existing responsibilities of the Attorney General to assist the Secretary of Administration with contracting responsibilities. Requires the Secretary of Administration to, among other things, include specific provisions in all contracts, monitor all Statewide term contracts, and develop rules to implement the provisions of this bill.

EFFECTIVE DATE: This bill would become effective October 1, 2010, and apply to all contracts proposed or awarded on or after that date.

S1213-SMRI-93(CSRI-64) v1

Minutes
Joint Legislative Program Evaluation Oversight Committee Meeting
August 3, 2009

Members Present

Co-Chair, Fletcher Hartsell
Co-Chair, Dan Clodfelter
Senator Charlie Albertson
Senator Peter Brunstetter

Co-Chair, Representative Nelson Cole
Representative Bruce Goforth
Representative Ty Harrell
Representative Hugh Holliman
Representative Carolyn Justice
Representative James Langdon
Representative Paul Luebke

Call to Order

Co-Chair Senator Fletcher Hartsell called the meeting to order.

Actions Taken

The Committee approved the Minutes of the July 6, 2009 meeting as presented.

HEARING ON STATE PURCHASING AND CONTRACTING

Co-Chair Fletcher Hartsell stated that the purpose of the meeting was to receive agency suggestions for legislation or other policy changes to correct problems about state personal property and service contracting as reported to this committee by the State Auditor on July 6, 2009.

Don Teeter, Special Deputy Attorney General, Division of Property Control of the Department of Justice

Senator Hartsell recognized Mr. Don Teeter, Special Deputy Attorney General of the Property Control Division of the Department of Justice to make a statement and respond to questions.

Mr. Teeter said that the Secretary of Administration is required by N.C. Gen. Stat. § 143-49 (3) to ask for assistance from the Attorney General's Office in negotiating with prospective contractors for contractual services contracts exceeding a cost of $100,000 and to maintain files for three years. The greatest portion of service contracts are performed competitively and do not require negotiations. Teeter described his experience when he was with the Attorney General's Office in the late 1980's negotiating with EDS for a medical database contract. Relative to the State Health Plan contract at issue, Mr. Teeter said that the State Health Plan prepared the contract with Blue Cross and that the Attorney General's Office was not involved in negotiating or preparing the contract. The State Health Plan handled the negotiations independently and Teeter suggested that the State Health Plan obtained any legal advice elsewhere. Teeter opined that there is a certain critical mass of lawyers needed during negotiations and that exceeding that critical mass means that "nothing is going to happen." The policy person, usually the agency head determines the need for legal advice and if the agency head asks for advice from Teeter or his attorneys, they give that advice. Teeter said, "The current administration has done a superb job in asking for legal services when they need them." Teeter has one staff member dedicated to serving the current administration. Teeter said his office could make improvements and with more staff that his staff could provide services that are more thoroughgoing on contracts and in smaller increments.

Representative Nelson Cole asked why the Attorney General's Office refused to respond in writing to the Program Evaluation Division's questions for background prior to today's hearing. Mr. Teeter said that the written response was an issue "above (Teeter's) pay grade" but that he understood that the Attorney General's Office had informed the "Chief of Staff" (Director of the Program Evaluation Division) that the office respectively declined to make a written response. Representative Cole asked again if this meant that the Joint Committee had asked for a written response and that the Attorney General had refused to respond. Teeter said that was correct. Representative Cole said that the refusal was an insult. He said that he did not have any questions of Teeter because the office had refused to provide written answers.

Senator Daniel Clodfelter asked how many lawyers worked in the Office of Property Control. Mr. Teeter said five lawyers plus himself. Senator Clodfelter asked if the statutes required any agency or offices other than the Secretary of Administration to consult with Teeter and his attorneys about contracting. Senator Clodfelter asked if his understanding of the N.C. Gen. Stat. § 143-49 (3) was correct that the attorneys under Mr. Teeter's supervision reviewed only contracts let by the Department of Administration. Mr. Teeter responded that this was correct and that his staff responded to numerous issues on a daily basis affecting the Department of Administration on personal property procurement, construction, and real property procurement.

Senator Clodfelter asked if Property Control attorneys had veto authority over those contracts submitted for review analogous to the Senator's local government experience that the City Council could not approve a contract unless counsel had approved the contract, i.e. counsel had veto power. Teeter responded that some of the construction contracts come to them for approval "as to form," which means, "It is written on white paper in reasonably dark ink and signed by pretty much the right people. We do not approve as to substance and content." His office "did a great deal of work with all of the divisions of the Department (of Administration) with respect to questions about how to do things and how not to do things, questions about bidding and questions about the law."

Senator Clodfelter asked if the Property Control Office had reviewed the Division of Medical Assistance contract that Teeter mentioned earlier. Teeter said the Property Control Office had not reviewed the contract but that another office in the Department of Justice may have.

Representative Bruce Goforth asked if the laws protected the interests of North Carolina businesses when competing for state agency business and gave an example of a large contract involving recent federal stimulus going to an out-of-state company, which generated many complaints from his House district. He asked what latitude the General Assembly had to make the purchasing laws work in favor of North Carolina companies. Teeter said that the state could consider "price, time to delivery plus two or three but a very limited number of other things," but that in general "unless you can hook it (the bid award) to price, you may be getting off the edge of the map." However, with federal stimulus money, the state could assure that funds benefited the North Carolina economy, unless an action changes who wins the award in a close case. There are potential federal constitutional equal protection issues with legislation that gives preference to in-state bidders. There is also very little way to pass a statute without starting a "border war" that could have a retaliatory effect on North Carolina businesses doing business in other states. Teeter likened the situation to "ripples in a pond." Teeter said that the "black letter law" relative to public procurement is "not there for the care and feeding of contractors," but to protect the public and to get the "best bang for the buck for the taxpayers." The General Assembly can and should strike a balance between protecting local employers and North Carolina businesses and the interests of the taxpayer.

Representative Goforth reported that he knew of out-of-state architects hired for state construction projects who wrote building material requirements to favor businesses in the architects' states, which resulted in both lost business to North Carolina as well as higher prices and which is a huge problem in universities.

Senator Clodfelter noted that N.C. Gen. Stat. § 143-49 (3) appeared to limit Property Control attorneys authority to provide advice only on contractual services and not on purchases of supplies and equipment. Senator Clodfelter asked if those attorneys reviewed the office supplies contract at issue. Mr. Teeter responded that one of the lawyers in his office was involved in the formation of the RFP for the contract. There were two contracts "back to back" and litigation with one of the losing bidders for three months. The great number of products covered by that contract and the E-procurement system, which allowed ordering products over the web without purchase orders, were new experiences for the Department of Administration involving a great number of products. The web system provided a cost savings in reduced paperwork processing. Teeter suggested that the General Assembly might determine what agencies should do to order and receive products more quickly. He said that he "could not swear to this" but that he believed that the Department of Administration Purchase and Contract Division requested Teeter's advice on potential pricing problems with the contractor before the State Auditor identified those problems. Teeter advised the Division to turn the matter over to the State Bureau of Investigation, as the statute requires, and to continue reviewing the pricing problem internally. Teeter said that the State Bureau of Investigation did not detect criminal activity. The Purchase and Contracts Division continued to "get after" the vendor about pricing and recovered money paid for overcharges and stopped Office Depot from recovering for a "substantially larger amount of money that Office Depot had undercharged." Teeter agreed with the current and previous State Auditors criticism "that this was no way to do business," but noted that oversight of the online price charts was an unfamiliar area for the Division of Purchase and Contract and that the Division wanted to simplify the process of getting these goods "in the door." Teeter said that the Department of Administration decided instead of litigating to terminate the contract at the first opportunity after its remaining one year of commitment and then rebid the contract.

Senator Clodfelter said that he agreed with concerns expressed earlier (about the Attorney General's refusal to provide written answers before this hearing). Senator Clodfelter noted in addition to the three contracts criticized by the Auditor that this joint committee had received a report about a fourth contract earlier this year as part of an "absolute fiasco" with Administrative Office of the Courts technology contracts, which are currently exempt by statute from oversight by the Department of Administration. The General Assembly may wish to review that exemption. He commented that a critical mass of attorneys has to be something in excess of zero. The four contracting issues resulted from an absence of anyone "blowing the whistle," questioning and then halting contracts before they went into effect. There are many other examples within state government not represented by the four in question. Senator Clodfelter expressed concern that the Attorney General as the state's legal representative had not provided suggestions to this joint committee for legislation within the resources and realm of possibilities for addressing problems and therefore had left the joint committee adrift, which was not a satisfactory situation.

Teeter said that he "would certainly carry that message back."

Senator Hartsell said that he recalled a body of federal law and statute that allowed renegotiation of procurements and contracts primarily in the military area. Senator Hartsell asked Mr. Teeter if North Carolina had a similar provision permitting or requiring the renegotiation of procurement contracts under certain circumstances.

Mr. Teeter said that the Federal Acquisition Regulations (FAR) permit the agency contracting officer to invite two or three of the best bidders to propose a "best and final offer" (BAFO). North Carolina does not allow this. State government follows a policy of "tell them what you want, take their bids, and buy at the lowest price." The toughest decisions are when agencies may allow a bidder to clarify bids. The "holy grail of that is" that one bidder may explain features of the product and to negotiate items of better quality, but the bidder will not be allowed to bid a different price during

clarification. North Carolina law generally does not allow negotiations with bidders particularly on personal property acquisitions after receiving bids. The law does provide more leeway for construction contracts, which the State Building Commission regulates and statutes address. Mr. Teeter suggested that some of the procedures allowed for purchases during construction including ability to use "single prime, multi-prime and construction manager at risk" types of construction delivery with Building Commission approval and allowable for local governments might be welcome, beneficial and save money on personal property acquisitions if the law allowed.

Without further questions or comments from the committee, Chairman Hartsell excused Mr. Teeter.

Dr. Jack Walker, Executive Administrator, State Health Plan for Teachers and State Employees

Co Chair Fletcher Hartsell recognized Dr. Jack Walker, Executive Administrator of the State Health Plan for Teachers and State Employees to make an opening statement and respond to questions.

Walker said that the State Health Plan (SHP) has about 665,000 members including active employees, retirees, and their dependents. The former Executive Administrator of the SHP entered into the Blue Cross Blue Shield (BCBS) administrative contract criticized by the State Auditor on February 2006 as a "cost plus" contract, had no caps, no reasons for any cost savings initiatives, and lacked any requirements for reporting BCBS costs. It was a cost plus contract with not many requirements for reporting costs. As pointed out by the Auditor, the contract had weak provisions for auditing. Questions received have included "Are bonuses allowed?" "Can marketing expenses of BCBS be charged to the plan?" "How is overhead to be allocated?" A host of things should have been done that were untouched during the negotiations of this contract. In addition, the contract provided that certain portions of administration were to be charged to claims expense, which resulted in understatement of administrative expenses in reports to the General Assembly and others because BCBS took part of the administrative expenses and put them "in the medical claims bucket." As a result, it "looked like administrative expenses were at one level, when in fact they were significantly higher than that." It specifically says in the agreement that a certain portion of administration was to be included in claims expense.

Dr. Walker referred to the written responses to questions posed by the Program Evaluation Division and to a handout distributed during the meeting. In 2005, the administrators of SHP obtained approval from its Board of Trustees to create a PPO option on a sole source basis. This contract cost in excess of $100,000,000 per year. It was not bid. Two people from the State Health Plan were involved in negotiations—the Deputy Administrator and Chief Operating Officer and the Network Administrator. The Attorney General's Office was not involved. The Division of Purchasing and Contracts was not involved. "As far as I can tell" no outside attorney was involved. "But they followed the law." They had to advise the General Assembly and they did. They had to get the consent of the board and they did. "So, from what we can gather, there was no non-following of the law." Very few of the SHP staff were involved, "So it was a very tight knit operation." "I don't know how many on the Blue Cross side were involved." The former Executive Administrator signed the contract on Feb. 28, 2006. In addition there was a comprehensive major medical plan still in existence and the PPO was offered in addition to that and that contract was due to expire. The previous administration went to the board and said they wanted to extend this comprehensive major medical contract for three years. The board approved. The SHP also notified the General Assembly. So that contract was also extended. Again, no bid, "Just extended, I presume under the same terms and conditions."

As to actions taken as a result of the State Auditor's criticisms, Walker said after 2006, the SHP administration decided that they needed to control contracts administration better and it did create a contracting administration department, developed a policy and procedure manual, which is in effect

today with revisions and will be revised again. All of this was done after SHP signed the current BCBS contract.

Walker said the SHP is now seeking advice on all contracts where appropriate from the State Auditor. The SHP is doing what Walker termed the "5-G RFP," which was in Senate Bill 287 calling for an extensive audit of SHP contracts and has worked with Program Evaluation, Purchase and Contract, and an Attorney General's Office attorney dedicated to SHP who is consulted on all contracts. SHP also has an in-house attorney. Walker commented that he did not know as the committee discussed earlier in this meeting whether SHP having two attorneys approached a "critical mass." SHP will continue training staff on contract administration.

Walker said that SHP eliminated the "shared savings" component, which was in the current BCBS contract because it incorporated some of the administrative costs. The rate is now a quarterly per member per month rate for administrative costs and then BCBS adjusts from that. The SHP is now getting a monthly report of charges. Previously BCBS sent a bill for a lump sum amount BCBS said was owed for the month—no detail, "just this is how much was owed for the month of...." Today, SHP is receiving a bill, which is broken down into charges for categories of service, for every major administrative duty required of BCBS.

Walker said that the audit provision stated that BCBS had the right to approve any outside auditor, "to read the audit report, and the right to tell the SHP what it should know." The State Auditor reported that this was "kind of weak." We amended that contract August 17 and the outside auditor works for "us" (the SHP). The auditor will report to SHP "without censorship" what they find. There are more things that SHP wants "to work on" relative to the claims processing contractor. The SHP is getting very good cooperation out of BCBS today as well as very good detailed records and has discussed improvements with BCBS. SHP has done some cost reduction strategies with BCBS. They have been cooperative—someone simply "needed to knock on their door and say 'This is what we want.'"

Walker said that SHP is working on final details of an engagement with a local CPA firm Thomas and Gibbs for auditing administrative expenses and do some limited operational and efficiency work. SHP is focusing the "5-G RFP" to obtain a firm for a full efficiency and operational audit and hope to have the RFP finished by August 15, select a vendor by September 15, and report results to the General Assembly and Blue Ribbon task force as findings emerge from that audit.

Walker said the current contract with BCBS ends June 30, 2013. SHP intends to begin writing an RFP thirty months out around the first of 2011 to bid the next contract. The RFP development will be extensive. The contract will be a fixed price contract, not a cost plus.

Walker explained the SHP written response to the Program Evaluation Division that it did "not have any legislative corrections at this time." The SHP suggests instead of offering preliminary and tentative recommendations better recommendations will result from the Blue Ribbon Task Force review of the claims and efficiency audits.

Walker said that his concern is governance of the SHP. The Executive Administrator has sole authority without much oversight over many major areas affecting the plan. The General Assembly needs to examine this authority carefully and specify the authority of the Executive Administrator. Walker gave an example. Until the General Assembly passed legislation very recently, the Executive Administrator with only some concurrence by the board could change dependent rates, which could have had major cost implications. The examination should include the extent of authority over the administrator by part time board members that meet only quarterly and can be easily swayed. SHP pays the part time members only $100 per meeting.

Representative Holliman asked if SHP could realistically expect a number of claims administrators to handle the number of claims handled by SHP. Walker said that he wished that he could say that there were several, however BCBS is "very strong in this state" and that there could possibly be one other that may be only marginally qualified. The rest "would not be able to give a 100% provider network."

Representative Holliman asked if it was not true that the SHP benefits because the administrator has a statewide provider network. Walker responded that BCBS pricing is "excellent" because SHP benefits from services provided at a discount to BCBS by its network. Representative Holliman asked if the SHP were to change, that SHP would have to adjust to a newly formed network. Walker said that the SHP anticipated that issue by planning to issue the RFP in 2011 to provide a good bidder a year to prepare.

Representative Harrell asked Walker to clarify what he had verbally consulted Mark Trogdon of the Fiscal Research Division about earlier relative to recent legislation addressing the SHP Executive Administrator's authority to raise dependent rates. Walker said that he knew the legislation passed the Senate but was not sure it passed the House.

Mr. Trogdon said that HB 1274 up for third reading that night has a provision requiring that the General Assembly approve dependent rates. The law currently provides that the Executive Administrator and SHP Board can actually set all rates unless otherwise set by the appropriations act. Historically the General Assembly has set the employee rates in the appropriations act and subsequently the Executive Administrator and SHP board have set the dependent rate. Mr. Trogdon said that Walker has recommended the General Assembly set all rates.

Representative Goforth asked Walker what percentage bonuses paid to BCBS employees represented of the overhead charged to the SHP. Walker responded that the SHP will know that answer sometime between August and December. Representative Goforth asked if BCBS included advertising. Walker said that too would be forthcoming between August and December. Representative Goforth said that we apparently have an unknown cost plus percentage basis. Walker said the SHP "had whatever cost the administrator (BCBS) decided to put into overhead." Representative Goforth said, "That is scary."

Representative Cole asked who appointed the SHP Board of Trustees and if there a corporate structure or nonprofit structure allowing for that method of appointment and board responsibilities as well as board member qualifications. Walker said that three each are appointed by the Governor, Speaker and Pro Tempore and within that it is specified one must be a teacher, another a state employee and the other a retiree. However, other than that, there are no other qualifications. They have fiduciary responsibilities and the Executive Administrator "runs approximately 140 things past them during the year, which is nearly impossible" because they meet only four times a year with occasional teleconferences. Representative Cole requested that Walker provide the joint committee and PED staff the names of those trustees. Walker said that he would furnish the names to PED staff.

Without further questions or comments from the committee, Chairman Hartsell excused Walker.

James Staton, State Purchasing Officer, Department of Administration Purchase and Contract Division (P&C)

Co Chair Fletcher Hartsell recognized Mr. James Staton, State Purchasing Officer from the Department of Administration Purchase and Contract Division to give opening statements and then respond to questions.

Mr. Staton reviewed responsibilities, functions performed, and scope of work under N.C. Gen. Stat. § 143. He said that the division has 42 employees including 17 procurement specialists, 3 compliance officers, 2 trainers and educators, 3 engineers, 5 managers, and 9 support personnel. Mr. Staton noted that Walker had responded to questions about the SHP. He said that recommendations made by the State Auditor have been implemented. The division issued a new office supply contract, awarded to four contractors, and established control of product pricing and ID numbers. He does not anticipate further problems. Two of the four contractors are "women only" companies. The contract included penalties for failure to perform. Staton said that even though the Auditor recommended automated contract monitoring, he believed that the current contract achieves the intended results until resources are available for others to develop software to monitor contracts on a statewide basis. He added that the process he reviewed represented efforts to improve from lessons learned. Office Depot credited contract overcharges back to the users.

Representative Holliman asked if P&C is able to keep up with contracts on a timely basis with the current number of employees. Staton said that he did not have metrics on the average processing time. In addition to the number of contracts, the dollar or volume of the contract would be factors in workload. P&C considers 30 days to complete all steps of an acquisition a success, but the time needed depends upon the nature of the contract. Even with a very large staff, turnaround depends upon the magnitude of the contract.

Representative Holliman asked if agencies gave P&C sufficient lead time or do agencies ask for approval on short notice. Staton said that this did happen occasionally and his staff works with agency staff to prevent this by asking agencies to let P&C know of work in process toward a contract submission. Staton said that P&C review including his reading of contracts did not constitute a bottleneck.

Representative Cole asked whom Mr. Staton considered the customer of P&C. Mr. Staton said that customers or stakeholders included state agencies, suppliers, and taxpayers. Representative Cole requested Mr. Staton to prioritize the three and name the most important. Staton said that meeting the needs of the state agencies is the top priority and then state vendors. Representative Cole commented that he considered state residents the customer and that P&C should do so as well. Staton said that he did not disagree.

Without further questions or comments from the committee, Chairman Hartsell excused Staton.

Dan Stewart, CPA, Assistant Secretary for Finance and Business Operations, DHHS

Co Chair Fletcher Hartsell recognized Mr. Dan Stewart, Assistant Secretary for Finance and Business Operations, Department of Health and Human Services (DHHS) to respond to questions following an opening statement.

Mr. Stewart said that his response would cover questions raised by the State Auditor about the Value Options contract: The DHHS Division of Medical Assistance (DMA), which handles Medicaid, had overall responsibility for the Value Options contract with the DMA contracts section exercising primary responsibility. The contracts section currently handles 86 active contracts with some of the contracts over 1,000 pages in length. The section is also responsible for 10 current requests for proposals (RFP) as well as development of proposed contracts. The section consists of 3 people working on contracting and another 3 who are monitors. Contracts collectively represent a value of $230 million. Not only are the contracts very large, there are often many amendments. For example, the EDS fiscal agent contract has 76 amendments and is now up to 2,000 pages in length.

Stewart said that in addition to actions taken in response to the State Auditor report, the DMA contracts section has done several things to improve documentation for contract monitoring:

- Identified appropriate documentation, which is maintained on an on-going basis to reflect the original projected costs of the contract per year along with the actual reviews provided and the costs incurred
- Began using RAT STAT software (also used by the OIG on the federal level) in the Fall of 2008 with the assistance of the DHHS Internal Auditors to sample reviews identified as duplicates in the monthly invoices and data received from Value Options
- Developed a database in the winter of 2008 to handle over 60,000 lines of data received each month by DMA from Value Options in support of their monthly invoice, which comprises about 1,200 pages each month, to ensure the invoice and data support each other. Additionally, logic has been built into the database to identify duplicate billings. This logic was based on discussions with Value Options and DMA Clinical Policy staff. There is documentation for the database as well as a checklist by which these monthly reviews of the Value Options invoice and billing data are reviewed. On-going discussions are conducted between DMA and Value Options.
- Developed more in-depth review processes of the monthly performance reports.

DMA has gradually diminished the amount withheld before payment to Value Options. DMA imposed the "withhold" until DMA and Value Options cleared up billing problems. DMA has gradually reduced the "withhold" to 3% currently. Any adjustments DMA finds are handled through the monthly invoice process.

Representative Harrell asked how many duplicate bills have been submitted by Value Options.

Stewart said that the issue was not duplicate billings, but a single request for services resulting in duplicate entries. When a request for service comes in for prior approval sometimes there may be follow-up activity with the client or with the provider. Initially with the follow-up, there were additional billings. The billing process is involved and complicated. Stewart said that he is a CPA and that half his career has been in auditing and half in administration. With this background, Stewart suggested that the committee could "take his assessment of the process to the bank as being very involved and complicated."

Representative Luebke commented that the issue that has been in the media and before this committee several times was what Value Options was billing for—that is low risk services and that services for higher risk consumers were not offered that often. Thus, Value Options was billing mostly for low risk services or certainly low priority services from the perspective of Representative Luebke and others concerned about the nature of mental health services. Rep. Luebke asked if Stewart's office was involved with this services issue.

Stewart said that his office was not. He said that Value Options performed a prior approval processes and is an agent of the State as is EDS. The providers of services would send requests in to Value Options for a particular service for prior approval. Based upon that information Value Options would question the provider about that service and approve or deny services to a recipient and of course the provider.

Representative Holliman asked if it was correct that at one time Value Options was approving every service requested.

Steward said that was correct. Early on requests for support program services inundated Value Options. There was a lot of provider abuse. The volume of claims was more than anyone had imagined. The problem was getting a sufficient number of staff "up to speed" to handle those requests to assure that those who needed services got those services. Yes, early on Value Options

was approving almost every request. As Value Options staffed up and could contact providers for additional information the approval rate dropped and dropped again.

Representative Justice said that she served on the Mental Health Oversight Committee when the committee first considered the Value Options issue and that there was "much gnashing of teeth" and reluctance to proceed out of concern that there would be too many problems with the transition. Then the problems occurred as many had predicted. She asked Stewart if the problems would be solved a year from now if an assessment were done at that time.

Steward responded that Value Options was making improvements all along, that the issues in the audit report would largely be solved by then, and that most have been solved as of now although there is always room for improvement. The volume of transactions going through the DMA contracts section exceeded the capacity of staff available. An individual reviewer has limits to the number of transactions that can be handled to the degree of depth required.

Stewart said that PED asked DHHS what legislation that DHHS would request.. He said that the issue was not a need for legislation, but a need for manpower resources. The General Assembly has passed legislation that had assisted in this area. However, the workers available had difficulty handling the claims volume from 50,000 providers. The DMA appeals process resulted in a backlog of 7,000 appeals and claims that could not be processed earlier. Appeals require claims staff to stop processing to attend appeals proceedings.

Representative Justice commented that she was glad to hear that DMA had introduced logic into the system and that government needed to introduce logic nationwide.

Senator Clodfelter commented that we needed to know what happened in the past to be able to craft a solution for the future. He reported confusion as to what actually happened from the answers to some of the earlier questions about Value Options suddenly approving all of the requests for authorizations. Clodfelter said that he thought that the DMA had simply switched off the interface function, which was not the same as Value Options approving all requests. He said that he understood that DMA said, "Don't worry with authorizations for now."

Stewart responded DMA recognized early on that there needed to be a prior approval process. The initial claims volume exceeded anticipated volume. Value Options does a number of prior approval services for DHHS.

Senator Clodfelter asked if the failure was Value Options authorizing services that it should not have authorized or if it was DMA saying that it could not handle the approval process.

Stewart responded that the problem was that the volume exceeded Value Options capacity and that the waiting process would have resulted in people needing services not receiving those services. Then the opening up of prior approvals also resulted in people not needing services receiving services.

Clodfelter asked Stewart if it was true that the people who should not have received services received them not because Value Options granted prior authorization for those not in need, i.e. the error was not a Value Options error.

Stewart said "Yes."

Senator Hartsell recognized State Auditor Beth Wood for a comment.

Wood said that one of the audit findings was that DHHS did not do enough work up front before entering into the Value Options contract. Value Options software could not communicate with DMA software system. The DMA system rejected many of the claims for which Value Options had issued prior approvals. Because of the high rate of DMA rejections of claims previously approved by Value Options, DMA turned off the DMA system edits that rejected claims. The result was that the State paid Value Options for a prior approval system that could not "talk" with the DMA system so the State turned off the State system.

Senator Clodfelter asked Stewart if the State Auditor's explanation was correct.

Steward said that the State Auditor's explanation was correct. He added that EDS handled the DMA system. The system has over 4,300 audits and edits of which some were original and some added later as patches during the system's 30-year history. The EDS system was denying too many valid claims because some of those EDS system edits added over time were not working properly. So DMA turned off all edits until DMA could fix the EDS system.

Representative Holliman asked what the State did wrong in contracting with Value Options without any idea about the volume.

Stewart said that his personal opinion was that what started the problem was when the US Center for Medicare and Medicaid Services (CMS) said that they were not going to allow certain services for the mentally ill. DHHS put in a new service definition to "pick up the slack" and people would not "slip through the cracks." DHHS wrote the definition broadly to cover people who were losing services and cover them under the new definition. Some abusive providers took gross advantage of everyone involved. The US CMS approved the definition. Another issue was that CMS would not allow DHHS to phase in from the former service to the new service. Stewart did not remember the date, but on a midnight, DHHS had to switch from one service to another. That led to some of the issues that Stewart explained earlier about Value Options approving services. There was not enough time to get everyone through the system. At that midnight, DHHS had to take everyone in the state who was receiving services and move them to another service.. DHHS had asked CMS for a phase in and CMS denied the request.

Representative Luebke asked why there were no cost controls or a system to identify how much money DHHS spent on these low-level services as opposed to services to more needy clients.

Stewart responded that one could identify a number of areas, but one of the primary areas is that DHHS is behind in technology. There are always limited funds to create a dashboard to flag problems early instead of identifying those up to five months later. This could occur in any area of the department such as Medicaid or another section. DHHS is trying to fast track a particular element under the new Medicaid system. It will be a software system or an analytical tool that will identify these cost overruns as they happen and enable management daily to identify anything out of kilter with the budget. Because DHHS is participating in the Medicaid Management Information System (MMIS) project, the federal government will finance ninety percent. DHHS will have resources available above what are normally available. If management identifies a problem, however, management cannot simply throw a switch to stop it. If DHHS has an approved service definition, changes have to flow through CMS through the Atlanta regional office and ultimately to Baltimore. CMS has a "ninety-day clock" to stop things any time they have questions. Sometimes it takes CMS a long time to approve state plan amendments. It took CMS on one occasion three years to approve a plan amendment. In the meantime, DHHS is spending money, even if DHHS is aware of a needed change, because of federal approval requirements.

Representative Luebke asked why someone in DHHS did not "blow the whistle" on how much money was going into the low-level services. He noted the chart in the Program Evaluation

Division briefing showing the spike in spending after only one month. He asked if Stewart was saying that DHHS had no technology that would have identified the sharply increasing expenditures.

Stewart said that the North Carolina Medicaid program is a $10 Billion program. After sixty days, the DMA director brought the spending escalation to the attention of the DHHS Secretary. The Secretary's office started reviewing the matter and started the process of tightening the definition for CMS approval, which is very lengthy. Meanwhile, there were the abusive providers sending in requests "by the boatload." That affected the Value Options contract. When Value Options would turn down services, providers and recipients would file appeals to the DMA appeals section. The section had a backlog of 7,000 pending appeals. Assembling people in from several DHHS sections, Value Options and DMA appeals staff was a "virtual nightmare." There are no options with services— because of federal regulations services DHHS cannot stop services suddenly. DHHS was spending money while the mandatory of appeals process was backlogged. It is not a "flip a switch" type situation unfortunately. There has been a lot of money wasted as a result.

Representative Luebke commented that what happened was unacceptable. He repeated that Stewart earlier had said that lack of technology was the cause of the problem. He asked Stewart that if in a year DHHS would have the necessary technology.

Stewart said that DHHS has pieces of technology. For example, the interface between EDS and Value Options is working. The contract-monitoring piece is in place. Many other pieces are in development that hopefully will be under contract shortly. Stewart said that he was hopeful that a dashboard would be available by January 2010 covering the entire Medicaid program that will allow DHHS to identify any exceptional usage of a particular service early on. Stewart said that he could not promise that the situation would never happen again. However, DHHS would be able to identify such situations sooner. The things that DHHS does not control such as CMS approval of state plan amendments that may take from ninety days to three years. DHHS has no control over the number of provider and recipient appeals and services and DHHS has to continue services until that appeal is completed. DHHS only has six hearing officers handling appeals. DHHS hopes to have identification of such problems much earlier than in the past.

Representative Luebke commented that Stewart should have a direct line to the Secretary. In spite of the delays and appeals mentioned, the state still experienced huge amounts of money wasted on low intensity services. Representative Luebke expects Stewart to have a direct line to the Secretary for an immediate alert when problems are first identified. He asked if Stewart was saying that Stewart did not have that power now.

Stewart said that the Secretary does not have that power.

Representative Luebke asked if that meant the Secretary did not have the power to end the Value Options "mess."

Steward responded that Value Options "was approval." The Secretary did not have the power to make necessary changes to community support services that CMS had approved in the state plan amendment.

Representative Holliman asked if DHHS wrote the original service definition.

Stewart said yes the department wrote the definition, which CMS approved. He added that there is considerable interchange and a negotiation process between DHHS and CMS involving the initial state proposal with the Atlanta CMS office responding with comments and requests to make changes. DHHS proposed a ninety-day phase in to avoid the midnight flipping of a switch, but CMS did not approve the phasing. There were many negotiations before DHHS had a final definition.

Without further questions or comments from the committee, Chairman Hartsell excused Stewart.

Beth Wood, CPA, State Auditor

Senator Hartsell recognized State Auditor Beth Wood.

Wood stated that she wanted to clarify some items that Mr. Teeter from the Office of the Attorney General said relative to the Office Depot contract. Office Depot, the vendor, found that they were overcharging the State of North Carolina. Office Depot said that they undercharged hundreds of thousands of dollars and "in the goodness of their heart," they were going to pay the state what they overcharged the state and forget about what they undercharged the state. The state auditors requested proof of undercharges, but could not verify that information from the first CD furnished. Then auditors received another CD, but again could not determine that there were any undercharges. She said that she wanted the committee to understand that the auditors did consider the undercharge issue, but could not find any proof that Office Depot undercharged the state.

As to Representative Holliman's question about how the state gets into these situations, Wood said that there were projections on the front end of contracts such as Blue Cross and DMA. There are numbers as to how the contractor will render services and costs. If the projections are flawed, then obviously contractor performance will also be a problem. The key is monitoring after the projections. There is another audit report she will be reviewing for her approval this week. Monitoring is an issue. The agencies involved say that it was the Department of Administration's responsibility to monitor these contracts. Wood said that she knew of no statutory provision as to who has the responsibility for monitoring. If legislation is considered, it should establish who is responsible and even if there were bad projections, monitoring should detect these during the first month that a contract fails to perform as expected.

Representative Goforth asked Wood how the auditor could audit a state contract if there were nothing in writing specifying the percentages and amounts that a contractor could charge for administration and overhead.

Wood said that her office did not. Here office examined the performance of the contract and the projections versus actual. The audit found that the actuary who made the projections of cost of the SHP could not access Blue Cross actual numbers as to what Blue Cross was charging. Her office also could not access that information. Those numbers are not available to anyone.

Representative Luebke expressed concern about Wood's observation that there was no statutory obligation for agencies to monitor costs, to look for exceptions and to flag them.

Wood said that Luebke is correct in assuming that agencies should do this for good stewardship and good resource management. This is obviously an implied obligation. However, as she said earlier, when responding to a pending audit an agency that signed a contract said it was not responsible for monitoring that contract.

Representative Cole asked if in her role as guardian of the purse, had she been denied access by any of the state suppliers to needed information.

Wood said that Blue Cross Blue Shield did.

Representative Cole asked why.

Wood said that the contract states that her office would not be allowed to look at those numbers.

Representative Cole stated that this was inconceivable. He asked if auditors were denied access to information to determine if the millions were spent properly and if they were not that the state does not know.

Wood said that she had an issue with another contract that her office was asked to examine and auditors were not allowed to examine the numbers.

Representative Cole said that was the pharmaceutical supplier. Wood responded yes. Representative Cole said that the supplier was Medco.

Senator Clodfelter stated that his chuckle earlier was not directed at her but at the circumstances she was describing. He said that he had looked at both contracts as a member of the oversight committee and found out after some resistance that he was entitled to look at them. He said that a first year law student during the first day of law school could have done a better job on those contracts.

Representative Cole observed that the discussions kept raising other questions. He asked Wood who in these agencies is authorized to negotiate a contract and sign it wherein the state would have no oversight and affirmed Senator Clodfelter's opinion.

Wood said that she was not certain, but she assumed that the person who signed the contract was authorized to sign. However, she said that she could not say if that was specified by a statute or their job description.

Representative Cole asked if anyone present from Purchasing and Contract (P&C) who could respond.

Don Teeter from the Office of Attorney General said that most contracts that go through P&C are contracts that are let by the agency under the supervision of P&C. That supervision is aimed more at the competitive procurement aspect than the content of the contract. Obviously as P&C considers contracts, many changes are made to most every contract. Because the agency spends appropriated money for contracts—that is an agency responsibility. The agency head signs contracts. Contracts such as Office Depot are "term contracts," which apply to all state agencies and school systems. The Department of Administration lets term contracts. The State Purchasing Officer, Mr. Staton, signs the term contracts. When contracts go through P&C, P&C has teams organized by industry or disciplinary lines, e.g. high tech, services, commodities, etc. The teams are the real level of expertise as to what the industry will bear. That is not elementary learning. The person who has signs is not always the person with the expertise in the industry or area of the economy involved.

Co-Chair Hartsell asked if state contracts have a provision such as that which local governments have requiring a pre-audit provision affixed to the contract to make them enforceable against the entity.

Teeter said that if there is a pre-audit provision, he did not know of it. If there were, it would be for an individual agency where the General Assembly has authorized. When agencies request a contract or a contract form for P&C signature or send out for competition, P&C does not check to see if there is an appropriation or ability to pay. There are agencies that are exempt from the P&C process and some that are not in the executive branch. Some of those that are exempt ask P&C or Construction for assistance. State ports are apart because they are receipt supported.

Committee Discussion

Co-Chair Hartsell asked for committee discussion about proposals for legislation or any follow up with regard to the hearing.

Representative Holliman said that he agreed with Senator Hartsell's suggestion for a pre-audit provision similar to that applicable to local government. In addition, he could support any measure to improve efficiency or to make the process more professional.

Senator Clodfelter suggested that staff make suggestions for legislation and then the committee could debate those.

Representative Langdon said that the contract system should protect the taxpayers and what the state has, apparently does not do that. He suggested that the committee needs legislation that fixes contracting. He told the committee that as a Johnston County official hiring a county attorney that he had the attorney review every contract for potential defects that would hamper performance and that appeared to be what the state needed to do in some way. He observed that he was not an attorney, but that any of the committee members could do better than what others described today.

Representative Cole suggested that staff survey other states for best practices.

Adjournment

With no further business before the committee, the committee adjourned.

APPROVAL OF August 3, 2009 MINUTES:

Co-Chair, Senator Daniel Clodfelter

Co-Chair, Senator Fletcher Hartsell

Co-Chair, Representative Nelson Cole

Co-Chair, Representative James Crawford

S 1213/H 1851 – Amend State Purchases & Contracts Laws

The legislation implements the eleven Program Evaluation Division recommendations approved by the Joint Legislative Program Evaluation Oversight Committee (JLPEOC).

The recommendations stem from State Auditor reports and from findings from an August 2009 JLPEOC hearing relative to the State Health Plan contract with Blue Cross, a statewide term contract with Office Depot for office supplies, and the DHHS contract with Value Options for screening eligibility for community mental health support services.

- Requires the Attorney General or his/her designee to review proposed statewide term and agency term contracts over $1,000,000. Legal review will include whether the proposed contracts are in proper legal form, contain required clauses, provide for sufficient monitoring, provide sufficient performance penalties, and accomplish the intended purposes of the proposed contract.
- Requires the Attorney General or an attorney approved by the Attorney General to review all state contracts. Legal review will include whether the proposed contracts are in proper legal form, contain required clauses, provide for sufficient monitoring, and provide sufficient performance penalties. (The intent of (b) is to allow the Attorney General to authorize state agency counsel to review smaller contracts and prevent excessive workload on the Attorney General.)
- Requires state agencies to submit contracts to the Attorney General for legal review as specified by the act
- Prohibits cost plus percentage of cost contracts
- Conforms statutes, which currently exempt certain state agencies from state purchasing laws or make compliance voluntary, to the specified contract review process and prohibits cost plus percentage of cost contracts
- Requires all state contracts to contain a clause specifying that the State Auditor and agency internal auditors shall have access to contractor records when needed to verify rates or costs
- Requires development by Office of State Personnel, Division of Purchase & Contract, and the UNC School of Government to develop a training and certification program for contract management
- Requires Office of State Personnel to implement a career path for contract management specialists
- Requires the UNC School of Government to study state purchasing laws including the feasibility of incorporating the American Bar Association Model Procurement Code
- Requires the Department of Administration to implement an ISO 9001:2008 quality system or equivalent and to report progress
- Requires the Secretary of Administration and Attorney General to issue rules implementing the requirements of the act

Prepared by Program Evaluation Division
June 8, 2010

PROGRAM EVALUATION DIVISION
NORTH CAROLINA GENERAL ASSEMBLY

Options for Legislation to Improve State Agency Purchasing and Contracting

Background

July 6, 2009 - **Joint Legislative Program Evaluation Oversight Committee (JLPEOC) meeting**—State Auditor presented findings relative to contracts by the State Health Plan (Blue Cross Blue Shield of NC); Division of Purchasing and Contract (Office Depot); and Division of Mental Health (Utilization Review)

State Auditor's Recommendations

a. A contract attorney or other contract professional should be required to review all contracts before signing to ensure that contract terms and conditions are in the best interest of the State
b. The State should ensure that all contracts are transparent and allow for auditing and verifying contractor cost data
c. The General Assembly should consider enacting legislation that prohibits all state agencies from using cost-plus-a-percentage-of-cost contracts

August 3, 2009 - **Joint Legislative Program Evaluation Oversight Committee (JLPEOC) hearing**

a. Don Teeter, Special Deputy Attorney General, Division of Property Control of the Department of Justice
   i. Explained Attorney General's refusal to submit written answers and refusal to offer legislative recommendations to JLPEOC
   ii. Reviewed extent of and limitations of his office's assistance to agencies and Department of Administration per N.C. Gen. Stat. §143-49 (3) but that his office did a substantial amount of consulting work on RFP drafting and bidding procedures
   iii. Stated that his contract review process was limited to form, "which means it is written on white paper in reasonably dark ink and signed by pretty much the right people."
   iv. Explained that a division attorney from his office handled the statewide term contract with Office Depot and provided legal advice during subsequent contract problems
   v. Noted how state was constrained in favoring in-state vendors
   vi. Said that DOA had identified pricing problems with Office Depot before State Auditor and that Office Depot had agreed to refund overcharges and absorb undercharges to the state
   vii. Discussed "best and final offer" and other alternative bidding and contracting processes
   viii. (Following State Auditor's subsequent presentation) responded to a question about who has authority to sign state contracts: agency heads for agency contracts and the State Purchasing Officer for state term contracts and that P&C is more concerned with procurement procedures with agency contracts with the agency responsible for the "content of the contract"

b. Jack Walker, Executive Administrator, State Health Plan for Teachers and State Employees (SHP)
   i. Provided history of sole source contract with Blue Cross Blue Shield
   ii. Said that the contract is a $100,000,000 annual cost plus agreement expiring 2013, with few requirements for reporting costs
   iii. Related lack of clarity in the contract as to what BCBS could charged in administrative expenses and overhead

iv. Explained that the proposed contract in 2006 was negotiated by two former SHP managers; it was not reviewed by the Attorney General nor by any outside attorney; and the Department of Administration Division of Purchase and Contract was not involved in any way
v. Stated that BCBS was probably one of a very few vendors capable of handling SHP claim volume plus a "100% provider network"
vi. Noted the previous lack of detail in BCBS billings, but that SHP was now receiving a categorized bill by service provided
vii. Reported that the SHP was working on an RFP for a management consulting review of BCBS
viii. Noted weak state audit provisions in the BCBS contract
ix. Reported his concerns about weak SHP governance
x. Stated that the SHP had no legislative corrections to recommend

c. James Staton, State Purchasing Officer, Department of Administration Purchase and Contract Division (P&C)
i. Reviewed responsibilities and activities of P&C
ii. Stated that State Auditor's recommendations relative to Office Depot and state term contracts had been implemented and a new office supply contract awarded to four contractors
iii. Stated that there was no "bottleneck" at P&C delaying approval of state agency procurements
iv. Responded that P&C customers were state agencies, suppliers, and taxpayers, which Staton prioritized as (1) agencies, (2) vendors and (after a follow up question) (3) taxpayers as well

d. Dan Stewart, CPA, Assistant Secretary for Finance and Business Operations (DHHS)
i. Responded to State Auditor's findings about Value Options contract
ii. Said that DHHS Division of Medical Assistance (DMA) contracts section has 3 contracting staff and 3 contract monitors; supervised 86 active contracts, some over 1,000 pages in length, contract amendments, plus active RFP's, and contracts under development
iii. Listed four major improvements in response to the State Auditor's report on Value Options, specifically to improve documentation for contract monitoring, audit sampling, and in-depth review of performance reports
iv. Repeated points made in the DHHS response to a previous PED report on transitioning to Enhanced Community Support services and that claims volume and appeals had exceeded his staff capacity leading to excessive vendor claims
v. Reported that DHHS is behind in technology and is trying to fast track a dashboard system to signal alerts before problems worsen
vi. Explained that many of the problems with Value Options were caused by delays by the US Center for Medicare and Medicaid Services (CMS) in approving state plan amendments and service definitions, which stymied DHHS

e. Honorable Beth Wood, CPA, State Auditor
i. Corrected Don Teeter's assertion that Office Depot had discovered the overcharges and undercharges—Wood said that her auditors could find no documentation to support any undercharges to the state and had reviewed all data available from Office Depot
ii. Observed that agencies are not monitoring contractors to assuring how closely contracts are tracking with projections made to define contract requirements—that a determination of projection accuracy should be made the first month of the contract
iii. Noted that statutes are not clear as to whether DOA P&C or agencies are responsible for monitoring contractor performance relative to projections
iv. Responded that the State Auditor could not audit a state contract if there were no written provisions specifying percentages and amounts that a contractor could charge for administration and overhead
v. Said that the SHP actuary could not access BCBS actual numbers to verify accuracy of actuarial cost projections affecting the state's cost for the health plan
vi. Responded that the State Auditor had been denied access by BCBS and Medco (pharmaceutical supplier) to needed information because the SHP/BCBS contract would not allow her office to examine the numbers

After the hearing, the committee directed staff to develop a list of options for committee consideration at a future meeting. (See next section, p. 3)

Options for Legislation

1. Require the Attorney General to review and sign off on all proposed statewide term contracts for services or personal property, and all other service contracts over $1,000,000 opining that the proposed contract is in proper legal form, contains required clauses, provides for sufficient monitoring and performance penalties, and should accomplish the contract's intended purposes

2. Require all state agencies, without exception, to obtain review by the Attorney General or by an attorney approved by the Attorney General of proposed contracts for proper legal form, inclusion of required clauses and provision for sufficient monitoring and performance penalties

3. Amend § 143-49 (3) to expand Attorney General's existing authority and responsibility over contracts over $100,000 to include:
   a. negotiated and non-negotiated contracts
   b. statewide-term and agency-term contracts for commodities and equipment

4. Require a standard clause in all state contracts specifying that the State Auditor and agency internal auditors may audit contractor records to verify accounts and data affecting fees or performance

5. Prohibit "cost plus percentage of cost" contracts

6. Specify that the Department of Administration is responsible for monitoring and enforcing statewide term contracts and may not delegate this authority

7. Require that Department of Administration regulations specify how state agencies will monitor and enforce all non-term and agency-term state contracts

8. Require the Office of State Personnel (OSP) to create a *Contracting Specialist* career path

9. Require OSP, P&C, and UNC School of Government to develop a rigorous contract management training and certification program for state employees administered by OSP

10. Require the School of Government to study and recommend improvements to state procurement laws including the feasibility of conforming laws to the *American Bar Association Model Procurement Code*

11. Require the Department of Administration to implement a quality management system equivalent to ISO 9001: 2008 to assure meeting taxpayer and agency customer requirements, and to report progress to General Assembly by 2012

S 1

SENATE BILL 1445*

Short Title:	Goldsboro-Wayne Airport Authority/Changes.	(Local)
Sponsors:	Senators Davis and Rouzer.	
Referred to:	Judiciary II.	

May 27, 2010

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE CITY OF GOLDSBORO TO CONVEY BY PRIVATE NEGOTIATION AND SALE ITS RIGHT, TITLE, AND INTEREST IN THE GOLDSBORO-WAYNE MUNICIPAL AIRPORT TO WAYNE COUNTY, DISSOLVING THE GOLDSBORO-WAYNE AIRPORT AUTHORITY, AND CREATING THE WAYNE AIRPORT AUTHORITY.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding Article 12 of Chapter 160A of the General Statutes, the City of Goldsboro may convey by private negotiation and sale, with or without monetary consideration, under the terms and conditions it deems proper, any or all of its right, title, and interest in the following described property, known as the Goldsboro-Wayne Municipal Airport, to Wayne County:

BEGINNING at a point on the western right-of-way of Mt. Carmel Church Road and running southwesterly a distance of approximately 162 feet to the northwestern corner of 06-3612-17-7907; thence proceeding in a southwesterly direction a distance of approximately 612 feet to a point on the northern property line of 06-3612-07-5438; thence continuing along this line a distance of approximately 1,301 feet to the northwestern corner of 06-3612-06-0547; thence continuing along the line of 06-3612-06-0547 a distance of approximately 939 feet to a point on the northeastern corner of 06-3602-85-1420; thence from that point, continuing in a northwesterly direction a distance of approximately 783 feet to the northwestern corner of 06-3602-85-1420; thence continuing in a southwesterly direction a distance of approximately 1,051 feet to the northeastern property line of 06-3602-75-1582; thence extending in a northwesterly direction a distance of approximately 835 feet to the northwestern property line of 06-3602-75-1582; thence continuing in a southwesterly direction a distance of approximately 229 feet to the southwestern corner of 06-3602-75-1582; thence continuing in a southeasterly direction a distance of approximately 842 feet to a point near the northwestern corner of 06-3602-74-2736; thence extending in a southwesterly direction a distance of approximately 637 feet to a point on the property line of 06-3602-74-2736; thence turning and extending northwesterly a distance of approximately 1,003 feet to the northwestern corner of 06-3602-64-5889; thence extending in a southwesterly direction a distance of approximately 1,092 feet to the eastern right-of-way line of Airport Road; thence running in a southerly direction along the eastern right-of-way of Airport Road a distance of approximately 37 feet to the southwestern corner of 06-3602-64-5889; thence turning and extending northwesterly a distance of approximately 442 feet to a point on the southern property line of 06-3602-64-5889; then continuing in a southeasterly direction a distance of approximately 966 feet to a point on the southern property line of 06-3602-64-5889; thence continuing in a southerly direction a distance of approximately 547 feet to a point on the northern right-of-way of Aviation Road;

thence turning and extending in a northeasterly direction a distance of approximately 388 feet to the southeastern corner of 06-3602-74-2736; thence turning and extending along the right-of-way terminus for Aviation Road a distance of approximately 68 feet to the northeastern property line of 06-3602-63-5707; thence turning and extending in a southwesterly direction a distance of approximately 1,325 feet to a point on the northwestern corner of 06-3602-63-5707; thence turning and proceeding in southwesterly direction a distance of approximately 109 feet to the western property line of 06-3602-63-5707; thence proceeding southeasterly a distance of approximately 1,331 feet to a point on the southern line of 06-3602-63-5707; thence turning and extending in a southwesterly direction a distance of approximately 989 feet; thence turning and extending in a southeasterly direction a distance of approximately 48 feet; thence turning and extending in a southwesterly direction a distance of approximately 915 feet to the southwestern property corner of 06-3602-62-7208; thence turning and extending in a southeasterly direction a distance of approximately 930 feet; thence turning and extending in a northerly direction a distance of approximately 60 feet; thence turning and following the southern property line of 06-3602-62-7208 in a southeasterly direction a distance of approximately 343 feet; thence extending in a northeasterly direction a distance of approximately 1,976 feet to a point on the eastern property line of 06-3602-72-4566; thence extending in a southeasterly direction a distance of 548 ft. to the eastern property line of 06-3602-72-1121; then turning and extending in a northwesterly direction a distance of approximately 536 ft. to a point on the eastern property line of 06-3602-62-7208; thence turning and extending in a northeasterly direction a distance of approximately 821 feet to the northeastern corner of 06-3602-62-7208; thence turning and extending in a westerly direction a distance of approximately 70 ft. to a point at the southeastern corner of 06-3602-84-3207; thence continuing in a northerly direction a distance of approximately 2,255 ft. to the southeastern property corner of 06-3602-95-7457; thence continuing in a northeasterly direction a distance of approximately 1,918 ft. to a point in the eastern property line of 06-3612-06-0547; thence continuing in a northeasterly direction a distance of approximately 1,271 ft. to the southwestern property corner of 06-3612-17-7907; thence continuing on the line a distance of approximately 203 ft. to the western right-of-way of Mt. Carmel Church Road; thence turning and extending a distance of approximately 755 ft. to the point of beginning and containing approximately 12,605,392 sq. ft., or 289.38 acres, more or less.

SECTION 2. Chapter 927 of the 1963 Session Laws, as amended by Chapter 1006 of the 1987 Session Laws and S.L. 1998-20, reads as rewritten:

"Section 1. Airport or landing field, for the purposes of this and the Sections following, is defined as any plot of land or water formally set aside, and designated as a place where aircraft may land or take off.

"Sec. 2. The governing ~~bodies~~ body of the ~~City of Goldsboro, and of the~~ County of Wayne ~~are~~ is hereby authorized to ~~jointly~~ acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate airports or landing fields for the use of airplanes and other aircraft within the limits of ~~said~~ the County, and may use for such purpose or purposes any properties suitable therefor that are now or may at any time hereafter be ~~jointly~~ owned or controlled by ~~said City~~the County.

"Sec. 3. Any lands acquired, owned, controlled, or occupied by ~~said City and~~the County for the purposes enumerated in Section 2 hereof shall and are hereby declared to be acquired, owned, controlled and occupied for public purpose, and ~~said City and~~the County shall have the right to acquire property for such purpose or purposes under the power of eminent domain as and for a public purpose.

"Sec. 4. Private property needed by the ~~said City and~~County for an airport or landing field may be acquired by gift or devise or shall be acquired by purchase if ~~said City and~~the County ~~are~~ is able to agree with the owners on the terms thereof, and otherwise by condemnation, in the manner provided by law under which the ~~said City and~~ County ~~are~~ is authorized to acquire

real property for public purposes, other than street purposes, or if there be no such law, in the manner provided for and subject to the provisions of the condemnation law. The purchase price, or award, for property acquired for an airport or landing field may be paid for by appropriation of monies available therefor, or by the application of any funds derived by ~~said City or by said~~the County from the sale of any lands now or heretofore or hereafter owned for airport or landing field purposes or other purposes, or wholly or partly from the proceeds of the sale of bonds of ~~said City or of said~~the County as the governing bodies of ~~such City and~~the County shall determine.

"Sec. 5. The power to acquire lands by condemnation herein granted to the ~~said City and~~ County for the purpose of such airport or landing field shall embrace the power to acquire by condemnation any dwelling, yard, orchard, garden, kitchen, burial ground, graveyard or cemetery located or situate upon the lands found necessary to be acquired for such purpose; and in the event there are graves located upon such lands which may be necessary to be acquired by condemnation, it shall be lawful for ~~said City and~~the County, after thirty days' notice to the surviving husband or wife, or next of kin of the deceased buried therein, or the person in control of such graves, if any are known, and if not known, then after publishing a notice once a week for four (4) weeks in a newspaper published in Wayne County, to open any such graves, and to take therefrom any dead body, or part thereof buried therein, and anything interred therewith, and to remove and reinter the same in some other cemetery or suitable place in the same county to be selected by the next of kin, or the welfare officer of the County or by the Clerk of the Superior Court of said County in the order named. Due care shall be taken to do said work in a proper and decent manner, and, if necessary, to furnish suitable coffins or boxes for reinterring said remains. Due care shall also be taken to remove all tombstones and other markers from said graves, and to protect and replace all such tombstones or other markers so as to leave the new grave in as good condition as the former one. All of said work shall be done under the supervision and direction of the welfare officer of the County, if one, or his representatives, but if there is no welfare officer, then under the supervision and direction of the Clerk of the Superior Court of said County, or his representatives. All the expense connected with said work, including the actual expense of one of "next of kin" in attending to same, if one does attend, shall be borne by the ~~said City and~~County doing or causing same to be done.

"Sec. 6. The governing ~~bodies of said City and County and each of them are~~body of the County is hereby authorized to appropriate and use from the net proceeds derived by the ~~said City or~~ County from the operation of any public utility, or from funds derived from any source other than ad valorem taxes, sums sufficient to carry out the provisions of this Act as to the establishment and maintenance of any ~~airport in such proportion and upon such equal basis as may be determined upon by a joint board to be appointed by the governing bodies of the said City and County; provided~~ airport. However, nothing herein shall be construed to permit the governing ~~bodies of said City or~~body of the County to issue bonds under the provisions of this Act without a vote of the people.

"Sec. 7. The ~~joint~~ board to be appointed by the governing ~~bodies of the said City and~~body of the County shall be appointed as follows:

~~Said City shall be entitled to have three (3) representatives on said board and the representatives shall be appointed biennially by a majority of the governing body of the said City, at the first regular meeting in January. Said representatives shall hold office from their appointment until their successors are appointed and qualified and until the first regular meeting of the governing body in the second January thereafter, when successors shall be appointed.~~

~~Said~~ The County shall be entitled to have ~~three (3)~~six representatives on ~~said~~ the board and the representatives shall be appointed biennially by a majority of the board of county commissioners of said County at the first regular meeting in January. ~~Said~~ The representatives shall hold office from their appointment until their successors are appointed and qualified and

until the first regular meeting of the board of county commissioners in the second January thereafter, when successors shall be appointed. The ~~said~~ board so appointed by the governing ~~bodies of the City and~~body of the County shall be known as the ~~"Goldsboro-Wayne Airport Authority".~~ "Wayne Airport Authority." Upon the occurrence of any vacancy on ~~said~~ the board, ~~said~~ the vacancy shall be filled within sixty (60) days after notice thereof by a majority of the governing body of the ~~City or County which has a vacancy within its representation.~~ County.

"Sec. 8. The board, appointed as herein provided by the governing ~~bodies of said City and County,~~body of the County shall act in an administrative capacity and it is hereby authorized and empowered:

(a) To establish, construct, control, lease, maintain, improve, operate and regulate joint airports and landing fields established under the provisions of this Act; to have complete authority over any airport or landing field ~~jointly~~ acquired, established, or constructed by ~~said City and County represented on said board.~~ the County.

(b) (1) To adopt, repeal, amend, readopt rules, regulations, laws and ordinances not inconsistent with this Act, for its own government, management and operation; and

(2) To adopt, repeal, amend and readopt rules, regulations and ordinances with respect to traffic on and use of streets, alleys, driveways, roadways, parking areas, crosswalks and safety areas (not included in the public road system of the State of North Carolina) located within the territorial limits of the lands comprising the ~~Goldsboro-Wayne Airport,~~Wayne County Airport, including by way of illustration but not in limitation of the authority herein granted, the establishment of routes of traffic, the regulation of speed, the location of parking areas, the regulation and prohibition of parking and standing in designated areas and on said streets, driveways, alleys and roadways, the prohibition of obstruction thereof, the prohibition of vehicles and pedestrians on the aprons, ramps, taxiways, runways and other designated parts of the Airport.

(3) To adopt, repeal, amend and readopt rules, regulations, and ordinances with respect to the use of the Airport and its facilities by the public, including by way of illustration but not in limitation of the authority granted, the Terminal Building, the ramps, aprons, hangars, taxiways, runways, water plants and shops, and to prohibit the use of, occupation of, or trespass upon any part thereof.

(c) To lease real or personal property under the supervision of or administered by the Authority, without the joinder in the lease agreements of the owning ~~units of local government, to wit, the County of Wayne and the City of Goldsboro,~~unit of local government, to wit, the County of Wayne, for purposes that the board considers advantageous or conducive to the development of the Airport and that are not inconsistent with the grants and agreements under which the Airport is held by the owning units of local government. The term of a lease to ~~the City of Goldsboro, Wayne County,~~Wayne County or Wayne Community College may not exceed 50 years. The term of a lease to any other lessee may not exceed 20 years.

(d) To contract with persons, firms or corporations for terms not to exceed twenty (20) years, for the operation of airline-scheduled passenger and freight flights, non-scheduled flights, and any other airplane activities, not inconsistent with said grant agreements under which the airport property is held by the owning municipal corporations, and to charge and collect reasonable and adequate fees, charges and rents for the use of such property or for services rendered in the operation thereof.

(e) To operate, own, control, regulate, lease or grant to others the right to operate any airport premises, restaurants, apartments, hotels, motels, tracks, motion picture shows, cafes, soda fountains, or other businesses, amusements or concessions for a term not exceeding

twenty (20) years, as may appear to said Authority advantageous or conducive to the development of said Airport.

(f) To erect and construct buildings, hangars, shops and other improvements and facilities, not inconsistent with or in violation of the agreements applicable to and the grants under which the real property of the Airport is held; to lease the same for a term or terms not to exceed twenty (20) years, to borrow money for use in making or paying for such improvements and facilities, secured by and on the credit only of the lease agreements in respect thereto, to pledge and assign such leases and lease agreements as security for loans herein authorized.

(g) To expend funds appropriated from time to time by ~~said City and County, jointly or severally, for joint airport~~the County for airport purposes, and to appropriate and expend for airport purposes funds received by it from fees, charges, rents and dues arriving out of the operation of said Airport, the facilities, improvements and concessions located thereat or operated thereon.

(h) To enter into contracts and to pledge the credit of the said Airport Authority to the extent herein authorized; provided, however, that neither said Airport Authority nor the individual members thereof shall have authority to pledge the credit of or contract for the ~~City of Goldsboro or the~~ County of Wayne.

(i) To contract and deal with the Federal Aviation Authority of the United States Government and any other representative or agency of said government relating to the grading, constructing, equipping, improving, maintaining and operation of airports and landing fields acquired under the authority of this Act.

"Sec. 9. A majority of the ~~Goldsboro-Wayne~~Wayne County Airport Authority members shall control its decisions. Each member of the Authority, including the chairman, shall have one vote. The Authority shall elect annually in April, from among its members, a chairman, a vice chairman, a secretary and treasurer. In the absence of rules of the Authority in respect thereof, the Authority shall meet at such places and times as the chairman shall designate. Each member of said Authority shall take an oath of office to faithfully perform his duties. All members of said Authority shall serve without compensation.

"Sec. 10. The ~~Goldsboro-Wayne~~ Wayne County Airport Authority shall in no case be liable for damages for injuries to persons or property caused by or growing out of fueling, refueling or servicing any airplane at said Airport, or from falling, exploding and burning airplanes. Members of said Authority shall not be personally liable in any manner for their acts as members of the Authority, except for misfeasance or malfeasance.

"Sec. 11. The Authority shall operate under a budget on a fiscal year basis from July 1 to June 30, and shall make its requests for appropriations from the ~~City of Goldsboro and the~~ County of Wayne in the same manner as that provided under the Fiscal Control Act, and shall maintain complete and adequate records of all receipts and disbursements to be audited and reported thereon at least annually to the ~~City of Goldsboro and~~ County of Wayne as required by the aforesaid Fiscal Control Act. The treasurer shall furnish bond in some surety company authorized to do business in North Carolina, in the amount to be fixed by the Wayne County Board of ~~Commissioners and the Board of Aldermen of the City of Goldsboro.~~Commissioners.

"Sec. 12. It is hereby declared to be the policy of the State of North Carolina to promote, encourage and develop air transportation, service and facilities in connection with the commerce of the United States and to foster and preserve air transportation; and the area including the County of Wayne ~~and the City of Goldsboro~~ is hereby declared to be an area which should be developed in connection with the interior of the State of North Carolina and other states and it is hereby declared to be necessary and desirable and in the public interest of the entire State that there shall be established air transportation facilities in such area in accordance with the provisions of the Acts of Congress and the laws of this State. The ~~joint~~ Authority established pursuant to the provisions of this Act shall be regarded as performing an essential governmental function in undertaking the construction, maintenance and operation of

the facilities herein provided for and in carrying out the provisions of this Act, and shall be required to pay no taxes or assessments upon any of the property acquired or used by it for such purposes. Except as herein specifically otherwise provided, the provisions of Chapter 63 of the General Statutes of North Carolina shall be applicable to the ~~joint~~ Authority herein established. To the extent that G.S. 63-53 requires that the ~~Goldsboro-Wayne~~Wayne County Airport Authority follow the provisions of G.S. 160A-272, G.S. 160A-272 shall be applied by substituting 'the maximum term provided in Section 8 of this act' for '10 years' in each place those words and figures appear.

"Sec. 13. All rules, regulations and ordinances adopted pursuant to the authority of this Act shall be recorded in the proceedings of the ~~Goldsboro-Wayne~~Wayne County Airport Authority and a true copy of all such rules, regulations and ordinances, certified under the hand of the secretary and the seal of the Authority, shall be filed with the Board of County Commissioners of Wayne ~~County and the Board of Aldermen of the City of Goldsboro.~~County.

The ~~Goldsboro-Wayne~~Wayne County Airport Authority shall cause to be posted at appropriate places on the ~~Goldsboro-Wayne~~Wayne County Airport, notice to the public of applicable rules, regulations and ordinances pertaining to the ~~Goldsboro-Wayne~~Wayne County Airport.

Any person violating any rule, regulation or ordinance adopted pursuant to Section 8 (b) (2) and (b) (3) shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine not exceeding fifty dollars ($50.00) or imprisonment not exceeding thirty (30) days.

"Sec. 14. This Act shall apply only to ~~the City of Goldsboro and~~ the County of Wayne.

"Sec. 15. If any part or parts of this Act shall be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this Act. The General Assembly expressly declares that it would have passed the remaining parts of this Act, if it had known that such part or parts thereof would be declared unconstitutional.

"Sec. 16. This Act shall take effect from and after its ratification."

SECTION 3. The terms of the three representatives appointed by the City of Goldsboro to serve on the Goldsboro-Wayne Airport Authority shall expire on October 1, 2010. Within 30 days after this act becomes law, the governing body of Wayne County shall appoint three representatives to the Wayne County Airport Authority, as enacted by Section 2 of this act, to hold office until their successors are appointed in the manner set forth in Chapter 972 of the 1963 Session Laws, as amended by Chapter 1006 of the 1987 Session Laws, S.L. 1998-20, and Section 2 of this act.

SECTION 4. Nothing in this act shall be deemed to affect any pending litigation involving the Goldsboro-Wayne Municipal Airport or the Goldsboro-Wayne Airport Authority.

SECTION 5. This act becomes effective October 1, 2010.

SENATE BILL 1445:
Goldsboro-Wayne Airport Authority/Changes

2009-2010 General Assembly

Committee:	Senate Ref to Judiciary II. If fav, re-ref to Finance	**Date:**	June 9, 2010
Introduced by:	Sen. Davis	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 1445 authorizes the City of Goldsboro to convey its interest in the Goldsboro-Wayne Municipal Airport to Wayne County by private negotiation and sale..***

[As introduced, this bill was identical to H2057, as introduced by Rep. Sager, which is currently in House Local Government I, if favorable, Transportation.]

CURRENT LAW: The sale and disposition of municipal property is governed by Article 12 of Chapter 160A of the General Statutes. According to the procedures prescribed in that Article, a city may dispose of real or personal property belonging to the city by:

(1) Private negotiation and sale;
(2) Advertisement for sealed bids;
(3) Negotiated offer, advertisement, and upset bid;
(4) Public auction; or
(5) Exchange.

Real property, of any value, and personal property valued at thirty thousand dollars ($30,000) or more may be exchanged, or may be sold by any method listed above *other than private negotiation and sale*. An exception (G.S. 160A-277) applies for the sale of land to a volunteer fire department or to a volunteer rescue squad for the purpose of constructing or expanding fire department or rescue squad facilities, if the volunteer fire department or volunteer rescue squad provides fire protection or rescue services to the city. Another exception (G.S. 160A-279) applies to the sale of property to entities that carry out a public purpose, provided no property acquired by the exercise of eminent domain may be conveyed under that provision.

BILL ANALYSIS: Senate Bill 1445 authorizes the City of Goldsboro to convey its interest in the Goldsboro-Wayne Municipal Airport to Wayne County by private negotiation and sale. The bill also amends the 1963 Session Law that authorized the City of Goldsboro and the County of Wayne to jointly establish an airport, making the county solely responsible for operation of the airport. The county commissioners will appoint a 6-member board that will constitute the Wayne Airport Authority. The terms of the three representatives currently serving on the joint Goldsboro-Wayne Airport Authority under appointment by the City of Goldsboro will expire on October 1, 2010.

EFFECTIVE DATE: The bill would become effective October 1, 2010.

S1445-SMRV-126(e1) v1

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	June 15, 2010	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1463	Expand Access/Confidential Intermediaries.	Representative Farmer-Butterfield Representative Dickson Representative Harrell Representative Wilkins, Jr.
SB 1112	Modernization of the State ABC System.	Senator Vaughan
SB 1213	Amend State Purchases & Contracts Laws.	Senator Clodfelter

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II Committee
Tuesday, June 15, 2010, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 1463	Expand Access/Confidential Intermediaries.	Representative Farmer-Butterfield Representative Dickson Representative Harrell Representative Wilkins, Jr.
SB 1112	Modernization of the State ABC System.	Senator Vaughan
SB 1213	Amend State Purchases & Contracts Laws.	Senator Clodfelter

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE
Tuesday, June 15, 2010 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 10:00 AM on June 15, 2010, in Room 1124 of the Legislative Building with ten members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell recognized pages Chris Eley, Tommy Lucioni, Esham Ahmad, Jaye Hunt, Miles Leathers, Quinn Burkhatter, Madison Gibbs, James Springs and Brandon Patton and thanked them for their service.

HB 1463 – Expand Access/Confidential Intermediaries. Senator Hartsell noted that the Committee would not hear HB 1463 at but that it would be heard at a later date.

SB 1213 – Amend State Purchases & Contracts Laws. Senator Jones moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Clodfelter was recognized to explain the bill. Senator Bingham's question was answered by Senator Clodfelter. Senator Bingham then moved for a favorable report for the Proposed Committee Substitute, unfavorable to the original bill. All voted and the motion carried.\

SB 1112 – Modernization of the State ABC System. Senator Hartsell noted that the Committee would hear the bill but that no voted would be taken. Senator Jones moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Vaughan explained the bill. Questions from Senators Forrester, Jones, Jacumin, Bingham Queen, and Allran were answered by Senator Vaughan and Mr. Mikael Gross from Bill Drafting, who also gave additional explanation. Reverend Mark Creech representing the Christian Action League spoke on the bill. Speaking in favor of the bill were Mr. Jon Carr, representing the North Carolina Association of ABC Boards, Ms. Kelli Kukura, League of Municipalities, Ms. Lawless Bean, City Manager's Office, Wilmington, North Carolina, Kevin Leonard, North Carolina Association of County Commissioners, and Mr. Jonathan S. Williams, Chairman of the North Carolina Alcoholic Beverage Control Commission. Mr. Steve Metcalf, speaking on behalf of the Wine Industry Association and Mr. Dean Plunkett, of the North Carolina Beer & Wine Wholesalers Association were in general agreement except for the part of the bill pertaining to the wine industry. It was their desire that this portion would be amended.

There being no additional business, the meeting was adjourned.

Fletcher L. Hartsell, Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Wednesday, June 16, 2010

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

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

S.B. **1213** Amend State Purchases & Contracts Laws.

Draft Number:	65078
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — June 15th 2010
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Amy Hobbs	MWC
Andrew Meehan	Capstrat
Dean Plunkett	NCBWWA
Emily Wellborn	The Policy Group
Steve Metcalf	Wine Institute
Tom Jones	NCACC
Thomas Moore	Envtl. World
Kevin Beaumont	NCACC
Thomas Jones	NCACC
Jordan Green	YES! Weekly
Becki Gray	JLF
Lawrence Olan	City of Wilmington

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Brittany Farrell	NCFPC
Rev. Mark H. Creech	CAL
[illegible]	Civitas
[illegible]	SEAC
MARK SENTER	NC ALCOHOL LAW ENFORCEMENT
John Ledford	NCALE + CCPS
Carl Dean	DSP
Lisa Piercy	Ragsdale Liggett
Daniel Baum	Troutman Sanders
Ken Melton	K. M. A.
Joey Nichols	Cop Results
Jim Blackburn	Association of County Commissioners

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tammy Johnson	NC DHHS - DSS
Penny Griffin	School of Gov.
DOUG DAVIS	City of Selma
Wendy Kelly	NC League
Henry Jones	Attorney - Raleigh
Denny Litchfield	ITS
Dennis Patterson	OSA
Jeff Hayward	CNC
Michelle Frazier	DMFAS
MIKE HORNING	NC ABC COMMISSION
Will Carlton	atty.

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	NMRS
Paul Powell	APB Distn.
Kris Gardner	NC Beer & Wine Wholesalers Assoc.
William Riley	Mutual Distributing Company
Pamela Best	NCABC
Kathleen Edwards	State Ethics Comm'n
Amelia Thompson	State Ethics Comm
Mary Shuping	State Ethics Comm.
Agnes Stevens	ABC Commission
Don Nelson	DOC Purchasing
Erin Schaetzely	UNC-GA

HOUSE BILL 1463

Committee Substitute Favorable 5/5/09
Senate Judiciary II Committee Substitute Adopted 8/6/09

Short Title: Expand Access/Confidential Intermediaries. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT ALLOWING ADULT BIOLOGICAL SIBLINGS OF ADULT ADOPTEES, ADULT BIOLOGICAL HALF SIBLINGS OF ADULT ADOPTEES, ADULT FAMILY MEMBERS OF DECEASED ADOPTEES, AND ADULT FAMILY MEMBERS OF DECEASED BIOLOGICAL PARENTS TO HAVE ACCESS TO CONFIDENTIAL INTERMEDIARY SERVICES UPON THE CONSENT OF THE PARTIES, AND ALLOWING AN AGENCY ACTING AS A CONFIDENTIAL INTERMEDIARY TO OBTAIN A COPY OF A DEATH CERTIFICATE OF THE PERSON WHO IS THE SUBJECT OF THE SEARCH AND DELIVER IT TO THE PERSON REQUESTING SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 48-1-101 reads as rewritten:

"**§ 48-1-101. Definitions.**

...

(5a) "Confidential intermediary" means ~~a licensed adoption agency staff person who~~ an agency that may act as a third party to facilitate ~~contact between an adult adoptee or the adult lineal descendant of a deceased adoptee and the biological parent.~~ the sharing of information authorized by G.S. 48-9-104.

...

~~(9a) "Lineal descendant of a deceased adoptee" means any person who descends from the direct line of the adoptee.~~

...."

SECTION 2. G.S. 48-9-101 reads as rewritten:

"**§ 48-9-101. ~~Certain terms~~ Records defined.**

~~(a)~~ For purposes of this Article, "records" means any petition, affidavit, consent or relinquishment, transcript or notes of testimony, deposition, power of attorney, report, decree, order, judgment, correspondence, document, invoice, receipt, certificate, or other printed, written, microfilmed or microfiched, video-taped or tape-recorded material or electronic data processing records regardless of physical form or characteristics pertaining to a proceeding for adoption under this Chapter.

~~(b) Notwithstanding G.S. 48-1-101, for purposes of this Article, "adult" means an individual who has attained 21 years of age.~~"

SECTION 3. G.S. 48-9-104 reads as rewritten:

"**§ 48-9-104. Release of identifying ~~information.~~information; confidential intermediary services.**

(a) Except as provided in this section or in G.S. 48-9-109(2) or (3), no person or entity shall release from any records retained and sealed under this Article the name, address, or other information that reasonably could be expected to lead directly to the identity of an adoptee, an adoptive parent of an adoptee, an adoptee's parent at birth, or an individual who, but for the adoption, would be the adoptee's sibling or grandparent, except upon order of the court for cause pursuant to G.S. 48-9-105.

(b) A child placing agency licensed by the Department or a county department of social services may agree to act as a confidential intermediary for ~~a biological parent or adult adoptee or adult lineal descendant of a deceased adoptee, without appointment by the court pursuant to G.S. 48-9-105, in order to obtain and share nonidentifying birth family health information or facilitate contact or share identifying information with adult adoptees, adult lineal descendants of deceased adoptees, and biological parents with the written consent of all parties to the contact or the sharing of information.~~ any of the following:

(1) A biological parent.
(2) An adult adoptee.
(3) An adult biological sibling of an adult adoptee.
(4) An adult biological half sibling of an adult adoptee.
(5) An adult family member of a deceased biological parent.
(6) An adult family member of a deceased adoptee.

In order to obtain and share nonidentifying birth family health information, to facilitate contact, or to share identifying information with any person listed in subdivisions (1) through (6) of this subsection, an agency may act as a confidential intermediary without appointment by the court pursuant to G.S. 48-9-105 and with the written consent of all parties to the contact or the sharing of information. Written consent of the biological parent is required if the biological parent is living at the time any party described in subdivisions (2) through (6) of this subsection seeks to contact or share identifying information with any other party described in subdivisions (2) through (6) of this subsection. Further, ~~a child placing agency licensed by the Department or a county department of social services~~ an agency may agree to act as a confidential intermediary for the adoptive parents of a minor adoptee or the guardian of a minor adoptee, without appointment by the court pursuant to G.S. 48-9-105, to obtain and share nonidentifying birth family health information. An agency providing confidential intermediary services shall contact individuals in a manner reasonably calculated to prevent incidental disclosure of confidential information. An agency that agrees to provide confidential intermediary services may charge a reasonable fee for doing so, which fee must be pursuant to written agreement signed by the individual to be charged. The Division shall establish guidelines for confidential intermediary services.

(c) For purposes of this section only, the term 'family member' means a spouse, child, stepchild, parent, stepparent, grandparent, or grandchild.

(d) If an agency providing confidential intermediary services determines that the person who is the subject of the search is deceased, the agency may obtain a copy of the death certificate pursuant to G.S. 130A-93 and deliver it to the person who requested the services."

SECTION 4. G.S. 130A-93 is amended by adding a new subsection to read:

"(c2) An agency acting as a confidential intermediary in accordance with G.S. 48-9-104 shall be entitled to a certified copy of a death certificate upon request."

SECTION 5. This act becomes effective October 1, 2009.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 1213*

Short Title:	Amend State Purchases & Contracts Laws.	(Public)
Sponsors:	Senators Clodfelter; and Hartsell.	
Referred to:	Judiciary II.	

May 19, 2010

A BILL TO BE ENTITLED

AN ACT INCREASING THE AUTHORITY OF THE SECRETARY OF ADMINISTRATION TO PROVIDE OVERSIGHT OF THE REVIEW AND AWARD OF CONTRACTS AND TO ENHANCE THE EFFICIENCY AND EFFECTIVENESS OF THE CONTRACTS PROCESS, REQUIRING ALL STATE AGENCIES AND INSTITUTIONS EXEMPT FROM ARTICLE 3 OF CHAPTER 143 OF THE GENERAL STATUTES TO COMPLY WITH CERTAIN REQUIREMENTS REGARDING THE REVIEW AND AWARD OF CONTRACTS, REQUIRING THE ATTORNEY GENERAL TO REVIEW CERTAIN CONTRACTS, AND PROHIBITING THE USE OF COST PLUS PERCENTAGE OF COST CONTRACTS, AS RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18C-150 reads as rewritten:

"**§ 18C-150. Procurements.**

The Commission shall be exempt from Article 3 of Chapter 143 of the General Statutes but may use the services of the Department of Administration in procuring goods and services for the Commission. However, the Commission shall submit proposed contracts authorized by this section to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all contracts to be awarded by the Commission under this section a standard clause which provides that the State Auditor and internal auditors of the Commission may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Commission shall not award a cost plus percentage of cost contract for any purpose."

SECTION 2. G.S. 53-320 reads as rewritten:

"**§ 53-320. Examinations; periodic reports; cooperative agreements; assessment of fees.**

...

(d) The Commissioner may enter into agreements with any bank supervisory agency supervising (i) a State trust institution engaging in trust business outside this State or (ii) an out-of-state trust institution maintaining a trust office or representative trust office in this State to engage the services of the agency's examiners at a reasonable rate of compensation or to provide the services of the Commissioner's examiners to the agency at a reasonable rate of compensation. Article 3 of Chapter 143 of the General Statutes does not apply to agreements authorized by this subsection. However, the Commissioner shall submit proposed agreements or contracts authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all agreements or contracts to be awarded by the Commissioner under this subsection a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records

of the contractor during the term of the agreement or contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost agreement or contract for any purpose.

...."

SECTION 3. G.S. 53-326 reads as rewritten:

"**§ 53-326. Examinations; periodic reports; cooperative agreements; assessment of fees.**

...

(d) The Commissioner may enter into agreements with bank supervisory agencies supervising (i) a State trust institution engaging in trust business in a foreign country or (ii) a foreign trust institution maintaining a trust office or representative trust office in this State to engage the services of the bank supervisory agency's examiners at a reasonable rate of compensation or to provide the services of the Commissioner's examiners to the bank supervisory agency at a reasonable rate of compensation. Article 3 of Chapter 143 of the General Statutes does not apply to agreements authorized by this section. However, the Commissioner shall submit proposed agreements or contracts authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all agreements or contracts to be awarded by the Commissioner under this subsection a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during the term of the agreement or contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost agreement or contract for any purpose.

...."

SECTION 4. G.S. 53-391 reads as rewritten:

"**§ 53-391. Employment of counsel, accountants, and other experts; compensation.**

The Commissioner, for the purpose of exercising any power under the provisions of this Subpart, may (i) employ any liquidating agents, attorneys, accountants, consultants, and clerks necessary to properly conduct the business of or liquidate and distribute the assets of a State trust company; (ii) fix the compensation for the agents, attorneys, accountants, consultants, and clerks; and (iii) pay the compensation of those persons out of the assets of the State trust company. Provided, that all expenditures described in this section shall be approved by the resident or presiding judge in the county in which the action is pending. Payments made by the Commissioner pursuant to this section shall not be subject to the requirements of Article 3 of Chapter 143 of the General Statutes. As used in this Subpart, the term "Commissioner" includes the Commissioner's duly appointed agents. The Commissioner shall submit proposed agreements or contracts authorized by this section to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all agreements or contracts to be awarded by the Commissioner under this section a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during the term of the agreement or contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost agreement or contract for any purpose."

SECTION 5. G.S. 53-401 reads as rewritten:

"**§ 53-401. Provisions for conservator; duties and powers.**

Whenever the Commissioner deems it necessary in order to conserve the assets of a State trust company for the benefit of clients or creditors, the Commissioner may appoint a conservator for the State trust company and require of the conservator a bond with any surety the Commissioner deems necessary and proper in an amount deemed sufficient by the Commissioner. The conservator, under the direction of the Commissioner, shall take possession of the fiduciary records and other books, records, and assets of every description of the State trust company placed under conservatorship and take actions necessary to conserve those assets

pending further disposition of its business as provided by law. Except as provided in G.S. 53-405, the conservator shall have all rights, powers, and privileges, subject to the approval of the Commissioner, now possessed by or given to the Commissioner under the provisions of Subpart B and Subpart D of this Part. All expenses of the conservator shall be paid out of the assets of the State trust company under conservatorship and shall be a lien thereon which shall be prior to any other lien provided by law. The compensation of the conservator shall be determined by the Commissioner and shall be based on the time and experience of the conservator and the complexity of the conservatorship. Compensation of the conservator shall not be subject to the requirements of Article 3 of Chapter 143 of the General Statutes. However, the Commissioner shall submit proposed agreements or contracts authorized by this section to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all agreements or contracts to be awarded by the Commissioner under this section a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the conservator during the term of the agreement or contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost agreement or contract for any purpose."

SECTION 6. G.S. 58-2-69 reads as rewritten:

"**§ 58-2-69. Notification of criminal convictions and changes of address; service of notice; contracts for online services, administrative services, or regulatory data systems.**

...

(g) The Commissioner may contract with the NAIC or other persons for the provision of online services to licensees, for the provision of administrative services to licensees, or for the provision of regulatory data systems to the Commissioner. The NAIC or other person with whom the Commissioner contracts may charge licensees a reasonable fee for the costs associated with the licensees' use of online services and administrative services. The fee shall be agreed to by the Commissioner and the other contracting party and shall be stated in the contract. Contracts for the provision of online services, contracts for the provision of administrative services, and contracts for the provision of regulatory data systems shall not be subject to Article 3, 3C, or 8 of Chapter 143 of the General Statutes or to Article 3D of Chapter 147 of the General Statutes. However, the Commissioner shall submit proposed contracts authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all contracts to be awarded by the Commissioner under this subsection a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during the term of the agreement or contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost agreement or contract for any purpose."

SECTION 7. G.S. 58-33-30 reads as rewritten:

"**§ 58-33-30. License requirements.**

The Commissioner shall not issue or continue any license of an agent, broker, limited representative, adjuster, or motor vehicle damage appraiser except as follows:

...

(e) Examination.

...

(4) The answers of the applicant to the examination shall be provided by the applicant under the Commissioner's supervision. The Commissioner shall give examinations at such times and places within this State as the Commissioner considers necessary reasonably to serve the convenience of both the Commissioner and applicants: Provided that the Commissioner may

contract directly with persons for the processing of examination application forms and for the administration and grading of the examinations required by this section; the Commissioner may charge a reasonable fee in addition to the registration fee charged under G.S. 58-33-125, to offset the cost of the examination contract authorized by this subsection; and such contracts shall not be subject to Article 3 of Chapter 143 of the General Statutes. However, the Commissioner shall submit proposed contracts authorized by this subdivision to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all contracts to be awarded by the Commissioner under this subdivision a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost contract for any purpose.

(5) The Commissioner shall collect in advance the examination and registration fees provided in G.S. 58-33-125 and in subsection (4) of this section. The Commissioner shall make or cause to be made available to all applicants, for a reasonable fee to offset the costs of production, materials that he considers necessary for the applicants' proper preparation for examinations. The Commissioner may contract directly with publishers and other suppliers for the production of the preparatory materials, and contracts so let by the Commissioner shall not be subject to Article 3 of Chapter 143 of the General Statutes. However, the Commissioner shall submit proposed contracts authorized by this subdivision to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all contracts to be awarded by the Commissioner under this subdivision a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost contract for any purpose.

...."

SECTION 8. G.S. 58-33-125 reads as rewritten:

"**§ 58-33-125. Fees.**

...

(e) A resident licensee may obtain a duplicate photo-bearing license at times and places within this State that the Commissioner considers necessary and reasonable to serve the convenience of both the Commissioner and the licensee. The Commissioner may contract directly with persons for processing of duplicate photo-bearing licenses, and the contract shall not be subject to Article 3 of Chapter 143 of the General Statutes. The Commissioner may charge a reasonable fee for duplicating a photo-bearing license in an amount that offsets the costs to the Department of duplicating the license, including costs associated with any contract entered into pursuant to this subsection. However, the Commissioner shall submit proposed contracts authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all contracts to be awarded by the Commissioner under this subsection a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost agreement or contract for any purpose.

...."

SECTION 9. G.S. 58-33-130 reads as rewritten:

"**§ 58-33-130. Continuing education program for licensees.**

(a) The Commissioner may adopt rules to provide for a program of continuing education requirements for the purpose of enhancing the professional competence and professional responsibility of adjusters and motor vehicle damage appraisers. The rules may include criteria for:

(1) The content of continuing education courses;
(2) Accreditation of continuing education sponsors and programs;
(3) Accreditation of videotape or other audiovisual programs;
(4) Computation of credit;
(5) Special cases and exemptions;
(6) General compliance procedures; and
(7) Sanctions for noncompliance.

The Commissioner may contract directly with persons for the administration of the program provided for by this section, and those contracts shall not be subject to Article 3 of Chapter 143 of the General Statutes. However, the Commissioner shall submit proposed contracts authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all contracts to be awarded by the Commissioner under this subsection a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost agreement or contract for any purpose. The Commissioner may charge a reasonable fee to course providers to offset the cost of the program, including costs associated with contracts authorized by this subsection. The fee authorized by this subsection shall be in addition to the fees specified in G.S. 58-33-133. As used in this section and in G.S. 58-33-132, "administrator" means any person with whom the Commissioner has contracted under this subsection.

...."

SECTION 10. G.S. 58-71-40 reads as rewritten:

"**§ 58-71-40. Bail bondsmen and runners to be qualified and licensed; license applications generally.**

...

(d) When a license is issued under this section, the Commissioner shall issue a picture identification card, of design, size, and content approved by the Commissioner, to the licensee. Each licensee must carry this card at all times when working in the scope of the licensee's employment. A licensee whose license terminates or is terminated shall surrender the identification card to the Commissioner within 10 working days after the termination. The Commissioner may contract directly with persons for the processing and issuance of picture identification cards required by this section and may charge a reasonable fee in addition to the license fee charged under G.S. 58-71-55 in an amount that offsets the cost of the service, including the costs associated with the contract authorized by this subsection. Contracts entered into pursuant to this subsection shall not be subject to Article 3 of Chapter 143 of the General Statutes. However, the Commissioner shall submit proposed contracts authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all contracts to be awarded by the Commissioner under this subsection a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost agreement or contract for any purpose.

...."

SECTION 11. G.S. 63A-24 reads as rewritten:

"**§ 63A-24. General laws apply to Authority; exceptions.**

Except as provided in this section, the general laws that apply to State agencies apply to the Authority. The following general laws, to the extent provided below, do not apply to the Authority:

(1) Article 3 of Chapter 143 of the General Statutes does not apply to contracts for services listed in 49 U.S.C. § 2210(a)(16) or contracts for special user projects. That Article also does not apply to other contracts for projects, but, with respect to these other contracts, the powers and duties established in that Article shall be exercised by the Authority and the Secretary of Administration, and other State officers, employees, or agencies shall have no duties or responsibilities concerning the contracts. However, the Authority shall submit proposed contracts authorized by this subdivision to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all contracts to be awarded by the Commissioner under this subdivision a standard clause which provides that the State Auditor and internal auditors of the Authority may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Authority shall not award a cost plus percentage of cost agreement or contract for any purpose.

...."

SECTION 12. G.S. 84-23 reads as rewritten:

"**§ 84-23. Powers of Council.**

...

(d) The Council may acquire, hold, rent, encumber, alienate, lease, and otherwise deal with real or personal property in the same manner as any private person or corporation, subject only to the approval of the Governor and the Council of State as to the acquisition, rental, encumbering, leasing and sale of real property. The Council may borrow money upon its bonds, notes, debentures, or other evidences of indebtedness sold through public or private sale pursuant to a loan agreement or a trust agreement or indenture with a trustee, with such borrowing either unsecured or secured by a mortgage on the Council's interest in real or personal property, and engage and contract with attorneys, underwriters, financial advisors, and other parties as necessary for such borrowing, with such borrowing and security subject to the approval of the Governor and the Council of State. The Council may utilize the services of the Purchase and Contract Division of the Department of Administration to procure personal property, in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes. However, the Council shall submit proposed contracts authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all contracts to be awarded by the Council under this subsection a standard clause which provides that the State Auditor and internal auditors of the Council may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Council shall not award a cost plus percentage of cost agreement or contract for any purpose."

SECTION 13. G.S. 89E-5 reads as rewritten:

"**§ 89E-5. Functions and duties of the Licensing Board.**

...

(e) The Board may authorize expenditures deemed necessary to carry out the provisions of this Chapter and all expenses shall be paid upon the warrant of the Board treasurer. The Board treasurer shall deposit funds received by the Board in one or more funds in banks or other financial institutions carrying deposit insurance and authorized to do business in North Carolina. Interest earned on such funds may remain in the funds account and may be expended

as authorized by the Board to carry out the provisions of this Chapter. In no event may expenditures exceed the revenues of the Board during any fiscal year. The Board is authorized and empowered to utilize the services of the Purchase and Contract Division of the Department of Administration for the procurement of personal property, in accordance with Article 3 of Chapter 143 of the General Statutes. The Board shall submit proposed contracts authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all contracts to be awarded by the Board under this subsection a standard clause which provides that the State Auditor and internal auditors of the Council may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Board shall not award a cost plus percentage of cost agreement or contract for any purpose.

...."

SECTION 14. G.S. 89F-5 reads as rewritten:

"**§ 89F-5. Powers and duties of the Board.**

...

(d) The Board may employ the necessary personnel for the performance of its functions and shall fix their compensation within the limits of funds available to the Board. The Board may procure personal property in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes. The Board shall submit proposed contracts authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all contracts to be awarded by the Board under this subsection a standard clause which provides that the State Auditor and internal auditors of the Council may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Board shall not award a cost plus percentage of cost agreement or contract for any purpose.

...."

SECTION 15. G.S. 108A-55 reads as rewritten:

"**§ 108A-55. Payments.**

...

(b) Payments shall be made only to intermediate care facilities, hospitals and nursing homes licensed and approved under the laws of the State of North Carolina or under the laws of another state, or to pharmacies, physicians, dentists, optometrists or other providers of health-related services authorized by the Department. Payments may also be made to such fiscal intermediaries and to the capitation or prepaid health service contractors as may be authorized by the Department. Arrangements under which payments are made to capitation or prepaid health services contracts are not subject to the provisions of Chapter 58 of the General Statutes or of Article 3 of Chapter 143 of the General Statutes. However, the Department shall submit proposed agreements or contracts authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all agreements or contracts to be awarded by the Department under this subsection a standard clause which provides that the State Auditor and internal auditors of the Council may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Department shall not award a cost plus percentage of cost agreement or contract for any purpose.

...."

SECTION 16. Article 1 of Chapter 114 of the General Statutes is amended by adding the following new section to read as follows:

"**§ 114-8.3. Attorney General to review certain contracts.**

(a) The Attorney General or the Attorney General's designee shall review all proposed statewide term contracts for supplies, materials, printing, equipment, and contractual services and all proposed agency term contractual services contracts that exceed one million dollars

($1,000,000) to ensure that the proposed contracts are in proper legal form, contain all clauses required by law, provide for sufficient monitoring, provide for sufficient performance penalties, and accomplish the intended purposes of the proposed contract.

(b) The Attorney General or the Attorney General's designee shall review all proposed contracts to be awarded by a department, agency, or institution of the State to ensure that the proposed contracts are in proper legal form, contain all clauses required by law, provide for sufficient monitoring, and provide for sufficient performance penalties. For purposes of this subsection, the term "Attorney General's designee" shall include any attorney approved by the Attorney General to review contracts as provided in this subsection. The Attorney General shall require that any attorney designated under this subsection shall comply with any rules established by the Attorney General regarding the review of contracts."

SECTION 17. G.S. 115D-67.4 reads as rewritten:

"**§ 115D-67.4. Fees collected by the Center; purchases using Center funds.**

Notwithstanding any other provision of law, all fees collected by the Applied Textile Technology Center for services to the textile industry, except for regular curriculum and continuing education tuition receipts, shall be retained by the Center and used for the operations of the Center. Purchases made by the Center using these funds are not subject to the provisions of Article 3 of Chapter 143 of the General Statutes. However, the Center shall submit proposed agreements or contracts to provide services authorized by this section to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all agreements or contracts to be awarded by the Center under this section a standard clause which provides that the State Auditor and internal auditors of the Council may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Department shall not award a cost plus percentage of cost agreement or contract for any purpose."

SECTION 18. G.S. 135-43 reads as rewritten:

"**§ 135-43. Confidentiality of information and medical records; provider contracts.**

...

(b) Notwithstanding the provisions of this Article, the Executive Administrator and Board of Trustees of the State Health Plan for Teachers and State Employees may contract with providers of institutional and professional medical care and services to establish preferred provider networks.

The terms of a contract between the Plan and its third party administrator or between the Plan and its pharmacy benefit manager are a public record except that the terms in those contracts that contain trade secrets or proprietary or competitive information are not a public record under Chapter 132 of the General Statutes, and any such proprietary or competitive information and trade secrets contained in the contract shall be redacted by the Plan prior to making it available to the public. This subsection shall not be construed to prevent or restrict the release of any information made not a public record under this subsection to the State Auditor, the Attorney General, the Director of the State Budget, the Plan's Executive Administrator, and the Committee on Employee Hospital and Medical Benefits solely and exclusively for their use in the furtherance of their duties and responsibilities, and to the Department of Health and Human Services solely for the purpose of implementing the transition of NC Health Choice from the Plan to the Department of Health and Human Services. The design, adoption, and implementation of the preferred provider contracts, networks, and optional alternative comprehensive health benefit plans, and programs available under the optional alternative plans, as authorized under G.S. 135-45 are not subject to the requirements of Article 3 of Chapter 143 of the General Statutes. However, the Executive Administrator and Board of Trustees shall submit proposed contracts authorized by this section to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all proposed contracts to be awarded by the Executive

Administrator and Board of Trustees under this section a standard clause which provides that the State Auditor and internal auditors of the Plan may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Executive Administrator and Board of Trustees shall not award a cost plus percentage of cost agreement or contract for any purpose. The Executive Administrator and Board of Trustees shall make reports as requested to the President of the Senate, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Committee on Employee Hospital and Medical Benefits.

...."

SECTION 19. G.S. 136-28.1 reads as rewritten:

"**§ 136-28.1. Letting of contracts to bidders after advertisement; exceptions.**

...

(h) The Department of Transportation may enter into contracts for applied research and experimental work without soliciting bids or proposals; provided, however, that if the research or work is for the purpose of testing equipment, materials, or supplies, the provisions of Article 3 of Chapter 143 of the General Statutes shall apply. However, the Department of Transportation shall submit proposed contracts authorized by this section to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all proposed contracts to be awarded by the Department of Transportation under this subsection a standard clause which provides that the State Auditor and internal auditors of the Department of Transportation may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Department of Transportation shall not award a cost plus percentage of cost agreement or contract for any purpose. The Department of Transportation is encouraged to solicit proposals when contracts are entered into with private firms when it is in the public interest to do so.

...."

SECTION 20. G.S. 136-89.194 reads as rewritten:

"**§ 136-89.194. Laws applicable to the Authority; exceptions.**

...

(g) Contract Exemptions. – The following provisions concerning the purchase of goods and services by a State agency do not apply to the Turnpike Authority:

(1) Article 3 of Chapter 143 of the General Statutes. The Authority may use the services of the Department of Administration in procuring goods and services that are not specific to establishing and operating a toll revenue system. However, the Authority shall submit proposed contracts authorized by this subdivision to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all proposed contracts to be awarded by the Authority under this subdivision a standard clause which provides that the State Auditor and internal auditors of the Authority may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Authority shall not award a cost plus percentage of cost agreement or contract for any purpose.

(2) Article 3D of Chapter 147 of the General Statutes. The Authority may use the services of the Office of Information Technology Services in procuring goods and services that are not specific to establishing and operating a toll revenue system. All contract information for contracts for information technology are subject to disclosure in accordance with G.S. 147-33.95.

...."

SECTION 21. G.S. 143-49 reads as rewritten:

"**§ 143-49. Powers and duties of Secretary.**

The Secretary of Administration shall have power and authority, and it shall be his duty, subject to the provisions of this Article:

(1) To canvass sources of supply, including sources of supply of materials and supplies with recycled content, and to purchase or to contract for the purchase, lease and lease-purchase of all supplies, materials, equipment and other tangible personal property required by the State government, or any of its departments, institutions or agencies under competitive bidding or otherwise as hereinafter provided. Prior to the awarding of any statewide term or agency term contract for supplies, materials, equipment, or other tangible personal property exceeding a cost of one hundred thousand dollars ($100,000), the Secretary shall request and the Attorney General shall assign a representative of the office of the Attorney General to assist in the award of the contract. It shall be the duty of the representative of the office of the Attorney General to assist and advise in obtaining the most favorable contract for the State or agency, to evaluate all proposals available from prospective contractors for that purpose, to interpret proposed contract terms, and to advise the Secretary or the Secretary's representatives of the liabilities of the State or agency and the validity of the contract to be awarded. All contracts and drafts of contracts shall be prepared by the office of the Attorney General and copies thereof shall be retained by the office of the Attorney General for a period of three years following the termination of the contracts.

...

(3) To purchase or to contract for, by sealed, competitive bidding or other suitable means, all contractual services and needs of the State government, or any of its departments, institutions, or agencies; or to authorize any department, institution or agency to purchase or contract for such services.

~~When the award~~Prior to the awarding of any contract for contractual services exceeding a cost of one hundred thousand dollars ~~($100,000) requires negotiation with prospective contractors,~~($100,000), the Secretary shall request and the Attorney General shall assign a representative of the office of the Attorney General to assist in ~~negotiation for~~ the award of the contract. It shall be the duty of such representative to assist and advise in obtaining the most favorable contract for the State, to evaluate all proposals available from prospective contractors for that purpose, to interpret proposed contract terms and to advise the Secretary or his representatives of the liabilities of the State and validity of the contract to be awarded. All contracts and drafts of such contracts shall be prepared by the office of the Attorney General and copies thereof shall be retained by such office for a period of three years following the termination of such contracts. The term "contractual services" as used in this subsection shall mean work performed by an independent contractor requiring specialized knowledge, experience, expertise or similar capabilities wherein the service rendered does not consist primarily of acquisition by this State of equipment or materials and the rental of equipment, materials and supplies. The term "negotiation" as used herein shall not be deemed to refer to contracts entered into or to be entered into as a result of a competitive bidding process.

...

(9) To include a standard clause in all contracts awarded by the State and departments, agencies, and institutions of the State, providing that the State Auditor and internal auditors of the affected department, agency, or

institution may audit the records of the contactor during the term of the contract to verify accounts and data affecting fees or performance.

(10) To monitor and enforce the terms and conditions of statewide term contracts. The Secretary of Administration shall not delegate the power and authority granted under this subdivision to any other department, agency, or institution of the State.

(11) To develop rules, regulations, and procedures specifying the manner in which departments, agencies, and institutions of the State shall monitor and enforce agency term and non-term contracts.

(12) To consult with the Attorney General or the Attorney General's designee in developing rules, regulations, and procedures providing for the orderly and efficient submission of proposed statewide term, agency term, and non-term contracts to the Attorney General for review as provided in G.S. 114-8.3 and G.S. 143-52.2.

(13) To implement a quality management system equivalent to the International Organization for Standardization (ISO) 9001:2008 to ensure that citizen and agency customer requirements are met. By September 1 of 2012, and more frequently as requested, the Secretary shall report to the Joint Legislative Commission on Governmental Operations, the Program Evaluation Division, and the Fiscal Research Division concerning the progress of the Department's effort to comply with the provisions of this subdivision.

(14) To work in conjunction with the Office of State Personnel to create a Contracting Specialist career path to provide for the designation of one or more employees within each department, agency, or institution of the State to serve as the Contracting Specialist for the department, agency, or institution. Employees on the Contracting Specialist career path shall receive training and guidance as to the provisions of this Article.

(15) To work in conjunction with the Office of State Personnel, the Division of Purchase & Contract, and the University of North Carolina School of Government to develop a rigorous contract management training and certification program for State employees. The program shall be administered by the Office of State Personnel.

(16) To work in conjunction with the University of North Carolina School of Government to study and recommend improvements to State procurement laws, including the feasibility of adopting the provisions of the American Bar Association Model Procurement Code."

SECTION 22. G.S. 143-52 is amended to read as follows:

"**§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary; bids; awarding of ~~contracts.~~contracts; cost plus percentage of cost contracts strictly prohibited.**

...

(c) Neither the Department of Administration nor any department, agency, or institution of the State may award a cost plus percentage of cost contract for any purpose."

SECTION 23. Article 3 of Chapter 143 of the General Statutes is amended by adding a new section to read as follows:

"**§ 143-52.2. Certain contracts subject to review by Attorney General.**

(a) The Secretary of Administration and every department, agency, and institution of the State shall submit to the Attorney General or the Attorney General's designee for review all proposed statewide term contracts for supplies, materials, printing, equipment, and contractual services and all proposed agency term contractual services contracts that exceed one million dollars ($1,000,000) to ensure that the proposed contracts are in proper legal form, contain all

clauses required by law, provide for sufficient monitoring, provide for sufficient performance penalties, and accomplish the intended purposes of the proposed contract.

(b) The Secretary of Administration and every department, agency, and institution of the State shall submit to the Attorney General or the Attorney General's designee for review all proposed contracts to be awarded by a department, agency, or institution of the State to ensure that the proposed contracts are in proper legal form, contain all clauses required by law, provide for sufficient monitoring, and provide for sufficient performance penalties. For purposes of this subsection, the term "Attorney General's designee" shall include any attorney approved by the Attorney General to review contracts as provided in this subsection. The Attorney General shall require that any attorney designated under this subsection shall comply with any rules established by the Attorney General regarding the review of contracts."

SECTION 24. G.S. 143-134 reads as rewritten:

"**§ 143-134. Applicable to Department of Transportation and Department of Correction; ~~exceptions.~~ exceptions; all contracts subject to review by Attorney General and State Auditor.**

(a) This Article shall apply to the Department of Transportation and the Department of Correction except in the construction of roads, bridges and their approaches; provided however, that whenever the Director of the Budget determines that the repair or construction of a building by the Department of Transportation or by the Department of Correction can be done more economically through use of employees of the Department of Transportation and/or prison inmates than by letting such repair or building construction to contract, the provisions of this Article shall not apply to such repair or construction.

(b) Notwithstanding the provisions of subsection (a) of this section, the Department of Transportation and the Department of Correction shall submit proposed contracts authorized by this section or any other provision of general law to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3 and G.S. 143-52-2 and shall include in all contracts to be awarded by the Department of Transportation or the Department of Correction a standard clause which provides that the State Auditor and internal auditors of the Department of Transportation or the Department of Correction may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. Neither the Department of Transportation nor the Department of Correction shall award a cost plus percentage of cost agreement or contract for any purpose."

SECTION 25. G.S. 143-151.16 reads as rewritten:

"**§ 143-151.16. Certification fees; renewal of certificates; examination fees.**

...

(d) The Board may contract with persons for the development and administration of the examinations required by G.S. 143-151.13(a), for course development related to the examinations, for review of a particular applicant's examination, and for other related services. The person with whom the Board contracts may charge applicants a reasonable fee for the costs associated with the development and administration of the examinations, for course development related to the examinations, for review of the applicant's examinations, and for other related services. The fee shall be agreed to by the Board and the other contracting party. The amount of the fee under this subsection shall not exceed one hundred seventy-five dollars ($175.00). Contracts for the development and administration of the examinations, for course development related to the examinations, and for review of examinations shall not be subject to Article 3, 3C, or 8 of Chapter 143 of the General Statutes or to Article 3D of Chapter 147 of the General Statutes. However, the Board shall submit proposed contracts authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all proposed contracts to be awarded by the Board under this subsection a standard clause which provides that the State Auditor and internal auditors of the Board may audit the records of the contractor during the term of the contract to verify accounts

and data affecting fees and performance. The Board shall not award a cost plus percentage of cost agreement or contract for any purpose."

SECTION 26. G.S. 143B-131.2 reads as rewritten:

"**§ 143B-131.2. Roanoke Island Commission – Purpose, powers, and duties.**

...

(b) The Commission shall have the following powers and duties:

...

(15) To procure supplies, services, and property as appropriate and to enter into contracts, leases, or other legal agreements to carry out the purposes of this Part and duties of the Commission. The provisions of G.S. 143-129 and Article 3 of Chapter 143 of the General Statutes do not apply to purchases by the Roanoke Island Commission of equipment, supplies, and services. However, the Commission shall submit proposed contracts authorized by this subdivision to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all proposed contracts to be awarded by the Commission under this subdivision a standard clause which provides that the State Auditor and internal auditors of the Commission may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Commission shall not award a cost plus percentage of cost agreement or contract for any purpose."

SECTION 27. G.S. 147-64.6 reads as rewritten:

"**§ 147-64.6. Duties and responsibilities.**

...

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

...

(18) The Auditor shall, after consultation and in coordination with the State Chief Information Officer, assess, confirm, and report on the security practices of information technology systems. If an agency has adopted standards pursuant to G.S. 147-33.111(a), the audit shall be in accordance with those standards. The Auditor's assessment of information security practices shall include an assessment of network vulnerability. The Auditor may conduct network penetration or any similar procedure as the Auditor may deem necessary. The Auditor may enter into a contract with a State agency under G.S. 147-33.111(c) for an assessment of network vulnerability, including network penetration or any similar procedure. Any contract with the Auditor for the assessment and testing shall be on a cost-reimbursement basis. The Auditor may investigate reported information technology security breaches, cyber attacks, and cyber fraud in State government. The Auditor shall issue public reports on the general results of the reviews undertaken pursuant to this subdivision but may provide agencies with detailed reports of the security issues identified pursuant to this subdivision which shall not be disclosed as provided in G.S. 132-6.1(c). The Auditor shall provide the State Chief Information Officer with detailed reports of the security issues identified pursuant to this subdivision. For the purposes of this subdivision only, the Auditor is exempt from the provisions of Article 3 of Chapter 143 of the General Statutes in retaining contractors. However, the Auditor shall submit proposed contracts authorized by this subdivision to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3, and shall include in all proposed contracts to be awarded by the Auditor under this subdivision a standard clause which provides that the

Auditor may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Auditor shall not award a cost plus percentage of cost agreement or contract for any purpose.

...."

SECTION 28. This act becomes effective October 1, 2010, and applies to all contracts proposed or awarded on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1213*
PROPOSED COMMITTEE SUBSTITUTE S1213-CSRI-64 [v.8]

6/14/2010 4:36:26 PM

Short Title: Amend State Purchases & Contracts Laws. (Public)

Sponsors:

Referred to:

May 19, 2010

A BILL TO BE ENTITLED

AN ACT INCREASING THE AUTHORITY OF THE SECRETARY OF ADMINISTRATION TO PROVIDE OVERSIGHT OF THE REVIEW AND AWARD OF CONTRACTS AND TO ENHANCE THE EFFICIENCY AND EFFECTIVENESS OF THE CONTRACTS PROCESS, REQUIRING ALL STATE AGENCIES AND INSTITUTIONS EXEMPT FROM ARTICLE 3 OF CHAPTER 143 OF THE GENERAL STATUTES TO COMPLY WITH CERTAIN REQUIREMENTS REGARDING THE REVIEW AND AWARD OF CONTRACTS, REQUIRING THE ATTORNEY GENERAL TO REVIEW CERTAIN CONTRACTS, AND PROHIBITING THE USE OF COST PLUS PERCENTAGE OF COST CONTRACTS, AS RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18C-150 reads as rewritten:

"**§ 18C-150. Procurements.**

The Commission shall be exempt from Article 3 of Chapter 143 of the General Statutes but may use the services of the Department of Administration in procuring goods and services for the Commission. However, the Commission shall include in all contracts to be awarded by the Commission under this section a standard clause which provides that the State Auditor and internal auditors of the Commission may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Commission shall not award a cost plus percentage of cost contract for any purpose. For purposes of this provision, "cost plus percentage of cost contract" is defined as a contract under which the contractor receives payment for indeterminate costs plus a stated percentage or amount of profit based upon such costs. This provision shall not apply to Commission contracts that require costs to be predetermined and approved by the Commission and a total not to exceed the amount specified in each contract to be paid to the contractor."

SECTION 2. G.S. 53-320 reads as rewritten:

"**§ 53-320. Examinations; periodic reports; cooperative agreements; assessment of fees.**

...

(d) The Commissioner may enter into agreements with any bank supervisory agency supervising (i) a State trust institution engaging in trust business outside this State or (ii) an out-of-state trust institution maintaining a trust office or representative trust office in this State to engage the services of the agency's examiners at a reasonable rate of compensation or to provide the services of the Commissioner's examiners to the agency at a reasonable rate of

compensation. Article 3 of Chapter 143 of the General Statutes does not apply to agreements authorized by this subsection. However, the Commissioner shall: (i) submit all proposed statewide and agency term agreements or contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars ($1,000,000) authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and, (ii) include in all agreements or contracts to be awarded by the Commissioner under this subsection a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during the term of the agreement or contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost agreement or contract for any purpose.

...."

SECTION 3. G.S. 53-326 reads as rewritten:

"**§ 53-326. Examinations; periodic reports; cooperative agreements; assessment of fees.**

...

(d) The Commissioner may enter into agreements with bank supervisory agencies supervising (i) a State trust institution engaging in trust business in a foreign country or (ii) a foreign trust institution maintaining a trust office or representative trust office in this State to engage the services of the bank supervisory agency's examiners at a reasonable rate of compensation or to provide the services of the Commissioner's examiners to the bank supervisory agency at a reasonable rate of compensation. Article 3 of Chapter 143 of the General Statutes does not apply to agreements authorized by this section. However, the Commissioner shall: (i) submit all proposed statewide and agency term agreements or contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars ($1,000,000) authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and, (ii) include in all agreements or contracts to be awarded by the Commissioner under this subsection a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during the term of the agreement or contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost agreement or contract for any purpose.

...."

SECTION 4. G.S. 53-391 reads as rewritten:

"**§ 53-391. Employment of counsel, accountants, and other experts; compensation.**

The Commissioner, for the purpose of exercising any power under the provisions of this Subpart, may (i) employ any liquidating agents, attorneys, accountants, consultants, and clerks necessary to properly conduct the business of or liquidate and distribute the assets of a State trust company; (ii) fix the compensation for the agents, attorneys, accountants, consultants, and clerks; and (iii) pay the compensation of those persons out of the assets of the State trust company. Provided, that all expenditures described in this section shall be approved by the resident or presiding judge in the county in which the action is pending. Payments made by the Commissioner pursuant to this section shall not be subject to the requirements of Article 3 of Chapter 143 of the General Statutes. As used in this Subpart, the term "Commissioner" includes the Commissioner's duly appointed agents. The Commissioner shall: (i) submit all proposed statewide and agency term agreements or contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars ($1,000,000) authorized by this section to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and, (ii) include in all agreements or contracts to be awarded by the Commissioner under this section a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during the term of the agreement or contract to verify accounts and data affecting fees and performance. The

Commissioner shall not award a cost plus percentage of cost agreement or contract for any purpose."

SECTION 5. G.S. 53-401 reads as rewritten:

"**§ 53-401. Provisions for conservator; duties and powers.**

Whenever the Commissioner deems it necessary in order to conserve the assets of a State trust company for the benefit of clients or creditors, the Commissioner may appoint a conservator for the State trust company and require of the conservator a bond with any surety the Commissioner deems necessary and proper in an amount deemed sufficient by the Commissioner. The conservator, under the direction of the Commissioner, shall take possession of the fiduciary records and other books, records, and assets of every description of the State trust company placed under conservatorship and take actions necessary to conserve those assets pending further disposition of its business as provided by law. Except as provided in G.S. 53-405, the conservator shall have all rights, powers, and privileges, subject to the approval of the Commissioner, now possessed by or given to the Commissioner under the provisions of Subpart B and Subpart D of this Part. All expenses of the conservator shall be paid out of the assets of the State trust company under conservatorship and shall be a lien thereon which shall be prior to any other lien provided by law. The compensation of the conservator shall be determined by the Commissioner and shall be based on the time and experience of the conservator and the complexity of the conservatorship. Compensation of the conservator shall not be subject to the requirements of Article 3 of Chapter 143 of the General Statutes. However, the Commissioner shall: (i) submit all proposed statewide and agency term agreements or contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars ($1,000,000) authorized by this section to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and, (ii) include in all agreements or contracts to be awarded by the Commissioner under this section a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the conservator during the term of the agreement or contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost agreement or contract for any purpose."

SECTION 6. G.S. 58-2-69 reads as rewritten:

"**§ 58-2-69. Notification of criminal convictions and changes of address; service of notice; contracts for online services, administrative services, or regulatory data systems.**

...

(g) The Commissioner may contract with the NAIC or other persons for the provision of online services to licensees, for the provision of administrative services to licensees, or for the provision of regulatory data systems to the Commissioner. The NAIC or other person with whom the Commissioner contracts may charge licensees a reasonable fee for the costs associated with the licensees' use of online services and administrative services. The fee shall be agreed to by the Commissioner and the other contracting party and shall be stated in the contract. Contracts for the provision of online services, contracts for the provision of administrative services, and contracts for the provision of regulatory data systems shall not be subject to Article 3, 3C, or 8 of Chapter 143 of the General Statutes or to Article 3D of Chapter 147 of the General Statutes. However, the Commissioner shall: (i) submit all proposed statewide and agency term contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars ($1,000,000) authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and, (ii) include in all contracts to be awarded by the Commissioner under this subsection a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during the term of the agreement or

contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost agreement or contract for any purpose."

SECTION 7. G.S. 58-33-30 reads as rewritten:

"**§ 58-33-30. License requirements.**

The Commissioner shall not issue or continue any license of an agent, broker, limited representative, adjuster, or motor vehicle damage appraiser except as follows:

...

(e) Examination.

...

(4) The answers of the applicant to the examination shall be provided by the applicant under the Commissioner's supervision. The Commissioner shall give examinations at such times and places within this State as the Commissioner considers necessary reasonably to serve the convenience of both the Commissioner and applicants: Provided that the Commissioner may contract directly with persons for the processing of examination application forms and for the administration and grading of the examinations required by this section; the Commissioner may charge a reasonable fee in addition to the registration fee charged under G.S. 58-33-125, to offset the cost of the examination contract authorized by this subsection; and such contracts shall not be subject to Article 3 of Chapter 143 of the General Statutes. However, the Commissioner shall: (i) submit all proposed statewide and agency term agreements or contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars ($1,000,000) authorized by this subdivision to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and (ii) include in all contracts to be awarded by the Commissioner under this subdivision a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost contract for any purpose.

(5) The Commissioner shall collect in advance the examination and registration fees provided in G.S. 58-33-125 and in subsection (4) of this section. The Commissioner shall make or cause to be made available to all applicants, for a reasonable fee to offset the costs of production, materials that he considers necessary for the applicants' proper preparation for examinations. The Commissioner may contract directly with publishers and other suppliers for the production of the preparatory materials, and contracts so let by the Commissioner shall not be subject to Article 3 of Chapter 143 of the General Statutes. However, the Commissioner shall: (i) submit all proposed statewide and agency term contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars ($1,000,000) authorized by this subdivision to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and, (ii) include in all contracts to be awarded by the Commissioner under this subdivision a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost contract for any purpose.

...."

SECTION 8. G.S. 58-33-125 reads as rewritten:

"**§ 58-33-125. Fees.**

...

(e) A resident licensee may obtain a duplicate photo-bearing license at times and places within this State that the Commissioner considers necessary and reasonable to serve the convenience of both the Commissioner and the licensee. The Commissioner may contract directly with persons for processing of duplicate photo-bearing licenses, and the contract shall not be subject to Article 3 of Chapter 143 of the General Statutes. The Commissioner may charge a reasonable fee for duplicating a photo-bearing license in an amount that offsets the costs to the Department of duplicating the license, including costs associated with any contract entered into pursuant to this subsection. However, the Commissioner shall: (i) submit all proposed statewide and agency term contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars ($1,000,000) authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and, (ii) include in all contracts to be awarded by the Commissioner under this subsection a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost agreement or contract for any purpose.

...."

SECTION 9. G.S. 58-33-130 reads as rewritten:

"**§ 58-33-130. Continuing education program for licensees.**

(a) The Commissioner may adopt rules to provide for a program of continuing education requirements for the purpose of enhancing the professional competence and professional responsibility of adjusters and motor vehicle damage appraisers. The rules may include criteria for:

(1) The content of continuing education courses;
(2) Accreditation of continuing education sponsors and programs;
(3) Accreditation of videotape or other audiovisual programs;
(4) Computation of credit;
(5) Special cases and exemptions;
(6) General compliance procedures; and
(7) Sanctions for noncompliance.

The Commissioner may contract directly with persons for the administration of the program provided for by this section, and those contracts shall not be subject to Article 3 of Chapter 143 of the General Statutes. However, the Commissioner shall: (i) submit all proposed statewide and agency term contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars ($1,000,000) authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and, (ii) include in all contracts to be awarded by the Commissioner under this subsection a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost agreement or contract for any purpose. The Commissioner may charge a reasonable fee to course providers to offset the cost of the program, including costs associated with contracts authorized by this subsection. The fee authorized by this subsection shall be in addition to the fees specified in G.S. 58-33-133. As used in this section and in G.S. 58-33-132, "administrator" means any person with whom the Commissioner has contracted under this subsection.

...."

SECTION 10. G.S. 58-71-40 reads as rewritten:

"**§ 58-71-40. Bail bondsmen and runners to be qualified and licensed; license applications generally.**

...

(d) When a license is issued under this section, the Commissioner shall issue a picture identification card, of design, size, and content approved by the Commissioner, to the licensee. Each licensee must carry this card at all times when working in the scope of the licensee's employment. A licensee whose license terminates or is terminated shall surrender the identification card to the Commissioner within 10 working days after the termination. The Commissioner may contract directly with persons for the processing and issuance of picture identification cards required by this section and may charge a reasonable fee in addition to the license fee charged under G.S. 58-71-55 in an amount that offsets the cost of the service, including the costs associated with the contract authorized by this subsection. Contracts entered into pursuant to this subsection shall not be subject to Article 3 of Chapter 143 of the General Statutes. However, the Commissioner shall: (i) submit all proposed statewide and agency term contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars ($1,000,000) authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and, (ii) include in all contracts to be awarded by the Commissioner under this subsection a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost agreement or contract for any purpose.

...."

SECTION 11. G.S. 63A-24 reads as rewritten:

"**§ 63A-24. General laws apply to Authority; exceptions.**

Except as provided in this section, the general laws that apply to State agencies apply to the Authority. The following general laws, to the extent provided below, do not apply to the Authority:

(1) Article 3 of Chapter 143 of the General Statutes does not apply to contracts for services listed in 49 U.S.C. § 2210(a)(16) or contracts for special user projects. That Article also does not apply to other contracts for projects, but, with respect to these other contracts, the powers and duties established in that Article shall be exercised by the Authority and the Secretary of Administration, and other State officers, employees, or agencies shall have no duties or responsibilities concerning the contracts. However, the Authority shall: (i) submit all proposed statewide and agency term contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars ($1,000,000) authorized by this subdivision to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and, (ii) include in all contracts to be awarded by the Authority under this subdivision a standard clause which provides that the State Auditor and internal auditors of the Authority may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Authority shall not award a cost plus percentage of cost agreement or contract for any purpose.

...."

SECTION 12. G.S. 84-23 reads as rewritten:

"**§ 84-23. Powers of Council.**

...

(d) The Council may acquire, hold, rent, encumber, alienate, lease, and otherwise deal with real or personal property in the same manner as any private person or corporation, subject

only to the approval of the Governor and the Council of State as to the acquisition, rental, encumbering, leasing and sale of real property. The Council may borrow money upon its bonds, notes, debentures, or other evidences of indebtedness sold through public or private sale pursuant to a loan agreement or a trust agreement or indenture with a trustee, with such borrowing either unsecured or secured by a mortgage on the Council's interest in real or personal property, and engage and contract with attorneys, underwriters, financial advisors, and other parties as necessary for such borrowing, with such borrowing and security subject to the approval of the Governor and the Council of State. The Council may utilize the services of the Purchase and Contract Division of the Department of Administration to procure personal property, in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes. However, the Council shall: (i) submit all proposed statewide and agency term contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars ($1,000,000) authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and, (ii) include in all contracts to be awarded by the Council under this subsection a standard clause which provides that the State Auditor and internal auditors of the Council may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Council shall not award a cost plus percentage of cost agreement or contract for any purpose."

SECTION 13. G.S. 89E-5 reads as rewritten:

"**§ 89E-5. Functions and duties of the Licensing Board.**

...

(e) The Board may authorize expenditures deemed necessary to carry out the provisions of this Chapter and all expenses shall be paid upon the warrant of the Board treasurer. The Board treasurer shall deposit funds received by the Board in one or more funds in banks or other financial institutions carrying deposit insurance and authorized to do business in North Carolina. Interest earned on such funds may remain in the funds account and may be expended as authorized by the Board to carry out the provisions of this Chapter. In no event may expenditures exceed the revenues of the Board during any fiscal year. The Board is authorized and empowered to utilize the services of the Purchase and Contract Division of the Department of Administration for the procurement of personal property, in accordance with Article 3 of Chapter 143 of the General Statutes. The Board shall: (i) submit all proposed statewide and agency term contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars ($1,000,000) authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and, (ii) include in all contracts to be awarded by the Board under this subsection a standard clause which provides that the State Auditor and internal auditors of the Board may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Board shall not award a cost plus percentage of cost agreement or contract for any purpose.

...."

SECTION 14. G.S. 89F-5 reads as rewritten:

"**§ 89F-5. Powers and duties of the Board.**

...

(d) The Board may employ the necessary personnel for the performance of its functions and shall fix their compensation within the limits of funds available to the Board. The Board may procure personal property in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes. The Board shall: (i) submit all proposed statewide and agency term contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars ($1,000,000) authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and, (ii) include in all contracts to be awarded by the Board under this subsection a standard clause which provides that the State Auditor and internal auditors of the Board may audit the records of the contractor

during the term of the contract to verify accounts and data affecting fees and performance. The Board shall not award a cost plus percentage of cost agreement or contract for any purpose.

...."

SECTION 15. G.S. 108A-55 reads as rewritten:

"**§ 108A-55. Payments.**

...

(b) Payments shall be made only to intermediate care facilities, hospitals and nursing homes licensed and approved under the laws of the State of North Carolina or under the laws of another state, or to pharmacies, physicians, dentists, optometrists or other providers of health-related services authorized by the Department. Payments may also be made to such fiscal intermediaries and to the capitation or prepaid health service contractors as may be authorized by the Department. Arrangements under which payments are made to capitation or prepaid health services contracts are not subject to the provisions of Chapter 58 of the General Statutes or of Article 3 of Chapter 143 of the General Statutes. However, the Department shall: (i) submit all proposed statewide and agency term contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars ($1,000,000) authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and, (ii) include in all agreements or contracts to be awarded by the Department under this subsection a standard clause which provides that the State Auditor and internal auditors of the Department may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Department shall not award a cost plus percentage of cost agreement or contract for any purpose.

...."

SECTION 16. Article 1 of Chapter 114 of the General Statutes is amended by adding the following new section to read as follows:

"**§ 114-8.3. Attorney General to review certain contracts.**

(a) Except as provided in subsection (b) of this section, t~~T~~he Attorney General or the Attorney General's designee shall review all proposed statewide and agency term contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars ($1,000,000) to ensure that the proposed contracts are in proper legal form, contain all clauses required by law, are legally enforceable, and accomplish the intended purposes of the proposed contract. The term "review" as used in this section shall not constitute approval or disapproval of the policy merit or lack thereof of the proposed contract. For purposes of this subsection, the term "Attorney General's designee" shall include any attorney approved by the Attorney General to review contracts as provided in this subsection. The Attorney General shall require that any attorney designated under this subsection comply with any rules established by the Attorney General or the Department of Administration regarding the review of contracts.

(b) For the constituent institutions of the University of North Carolina, the General Counsel of each institution or the General Counsel's designee shall review all proposed statewide and agency term contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars ($1,000,000) to ensure that the proposed contracts are in proper legal form, contain all clauses required by law, are legally enforceable, and accomplish the intended purposes of the proposed contract. The term "review" as used in this section shall not constitute approval or disapproval of the policy merit or lack thereof of the proposed contract. For purposes of this subsection, the term "General Counsel's designee" shall include any attorney approved by the General Counsel to review contracts as provided in this subsection. The General Counsel shall require that any attorney designated under this subsection comply with any rules established by the Attorney General or the Department of Administration regarding the review of contracts."

SECTION 17. G.S. 115D-67.4 reads as rewritten:

"**§ 115D-67.4. Fees collected by the Center; purchases using Center funds.**

Notwithstanding any other provision of law, all fees collected by the Applied Textile Technology Center for services to the textile industry, except for regular curriculum and continuing education tuition receipts, shall be retained by the Center and used for the operations of the Center. Purchases made by the Center using these funds are not subject to the provisions of Article 3 of Chapter 143 of the General Statutes. However, the Center shall: (i) submit all proposed statewide and agency term agreements or contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars ($1,000,000) authorized by this section to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and, (ii) include in all agreements or contracts to be awarded by the Center under this section a standard clause which provides that the State Auditor and internal auditors of the Center may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Center shall not award a cost plus percentage of cost agreement or contract for any purpose."

SECTION 18.(a) G.S. 135-43 reads as rewritten:

"**§ 135-43. Confidentiality of information and medical records; provider contracts.**

...

(b) Notwithstanding the provisions of this Article, the Executive Administrator and Board of Trustees of the State Health Plan for Teachers and State Employees may contract with providers of institutional and professional medical care and services to establish preferred provider networks.

The terms of a contract between the Plan and its third party administrator or between the Plan and its pharmacy benefit manager are a public record except that the terms in those contracts that contain trade secrets or proprietary or competitive information are not a public record under Chapter 132 of the General Statutes, and any such proprietary or competitive information and trade secrets contained in the contract shall be redacted by the Plan prior to making it available to the public. This subsection shall not be construed to prevent or restrict the release of any information made not a public record under this subsection to the State Auditor, the Attorney General, the Director of the State Budget, the Plan's Executive Administrator, and the Committee on Employee Hospital and Medical Benefits solely and exclusively for their use in the furtherance of their duties and responsibilities, and to the Department of Health and Human Services solely for the purpose of implementing the transition of NC Health Choice from the Plan to the Department of Health and Human Services. The design, adoption, and implementation of the preferred provider contracts, networks, and optional alternative comprehensive health benefit plans, and programs available under the optional alternative plans, as authorized under G.S. 135-45 are not subject to the requirements of Article 3 of Chapter 143 of the General Statutes. However, the Executive Administrator and Board of Trustees shall: (i) submit all proposed statewide and agency term contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars ($1,000,000) authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and, (ii) include in all proposed contracts to be awarded by the Executive Administrator and Board of Trustees under this section a standard clause which provides that the State Auditor and internal auditors of the Plan may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Executive Administrator and Board of Trustees shall not award a cost plus percentage of cost agreement or contract for any purpose. The Executive Administrator and Board of Trustees shall make reports as requested to the President of the Senate, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Committee on Employee Hospital and Medical Benefits.

...."

SECTION 18.(b) G.S. 135-45 is amended by adding a new subsection to read:

"(d1) The Executive Administrator and Board of Trustees shall: (i) submit all proposed statewide and agency term contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars ($1,000,000) authorized by subsection (d) of this section to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and, (ii) include in all proposed contracts to be awarded by the Executive Administrator and Board of Trustees under this section a standard clause which provides that the State Auditor and internal auditors of the Plan may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Executive Administrator and Board of Trustees shall not award a cost plus percentage of cost agreement or contract for any purpose."

SECTION 19. G.S. 136-28.1 reads as rewritten:

"**§ 136-28.1. Letting of contracts to bidders after advertisement; exceptions.**

...

(h) The Department of Transportation may enter into contracts for applied research and experimental work without soliciting bids or proposals; provided, however, that if the research or work is for the purpose of testing equipment, materials, or supplies, the provisions of Article 3 of Chapter 143 of the General Statutes shall apply. However, the Department of Transportation shall: (i) submit all proposed statewide and agency term contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars ($1,000,000) authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and, (ii) include in all proposed contracts to be awarded by the Department of Transportation under this subsection a standard clause which provides that the State Auditor and internal auditors of the Department of Transportation may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Department of Transportation shall not award a cost plus percentage of cost agreement or contract for any purpose. The Department of Transportation is encouraged to solicit proposals when contracts are entered into with private firms when it is in the public interest to do so.

...."

SECTION 20. G.S. 136-89.194 reads as rewritten:

"**§ 136-89.194. Laws applicable to the Authority; exceptions.**

...

(g) Contract Exemptions. – The following provisions concerning the purchase of goods and services by a State agency do not apply to the Turnpike Authority:

(1) Article 3 of Chapter 143 of the General Statutes. The Authority may use the services of the Department of Administration in procuring goods and services that are not specific to establishing and operating a toll revenue system. However, the Authority shall: (i) submit all proposed statewide and agency term contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars ($1,000,000) authorized by this subdivision to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and, (ii) include in all proposed contracts to be awarded by the Authority under this subdivision a standard clause which provides that the State Auditor and internal auditors of the Authority may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Authority shall not award a cost plus percentage of cost agreement or contract for any purpose.

...."

SECTION 20.1. G.S. 143-48.1 reads as rewritten:

"**§ 143-48.1. Medicaid program exemption.**

(a) This Article shall not apply to any capitation arrangement or prepaid health service arrangement implemented or administered by the North Carolina Department of Health and Human Services or its delegates pursuant to the Medicaid waiver provisions of 42 U.S.C. § 1396n, or to the Medicaid program authorizations under Chapter 108A of the General Statutes.

(b) As used in this section, the following definitions apply:

(1) "Capitation arrangement" means an agreement whereby the Department of Health and Human Services pays a periodic per enrollee fee to a contract entity that provides medical services to Medicaid recipients during their enrollment period.

(2) "Prepaid health services" means services provided to Medicaid recipients that are paid on the basis of a prepaid capitation fee, pursuant to an agreement between the Department of Health and Human Services and a contract entity.

(c) The Department of Health and Human Services shall: (i) submit all proposed statewide and agency term contracts for a capitation arrangement or prepaid health services, as defined by this section, that exceed one million dollars ($1,000,000) to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and, (ii) include in all agreements or contracts to be awarded by the Department under this section a standard clause which provides that the State Auditor and internal auditors of the Department may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Department shall not award a cost plus percentage of cost agreement or contract for any purpose."

SECTION 21. G.S. 143-49 reads as rewritten:

"**§ 143-49. Powers and duties of Secretary.**

...

(9) To include a standard clause in all contracts awarded by the State and departments, agencies, and institutions of the State, providing that the State Auditor and internal auditors of the affected department, agency, or institution may audit the records of the contactor during the term of the contract to verify accounts and data affecting fees or performance.

(10) To monitor and enforce the terms and conditions of statewide term contracts. The Secretary of Administration shall not delegate the power and authority granted under this subdivision to any other department, agency, or institution of the State.

(11) To develop rules, regulations, and procedures specifying the manner in which departments, agencies, and institutions of the State shall monitor and enforce agency term and non-term contracts.

(12) To consult with the Attorney General or the Attorney General's designee in developing rules, regulations, and procedures providing for the orderly and efficient submission of proposed statewide term, agency term, and non-term contracts to the Attorney General for review as provided in G.S. 114-8.3 and G.S. 143-52.2.

(13) To implement a quality management system equivalent to the International Organization for Standardization (ISO) 9001:2008 to ensure that citizen and agency customer requirements are met. By September 1 2012, and more frequently as requested, the Secretary shall report to the Joint Legislative Commission on Governmental Operations, the Program Evaluation Division, and the Fiscal Research Division concerning the progress of the Department's effort to comply with the provisions of this subdivision.

(14) To work in conjunction with the Office of State Personnel to create a Contracting Specialist career path to provide for the designation of one or

more employees within each department, agency, or institution of the State to serve as the Contracting Specialist for the department, agency, or institution. Employees on the Contracting Specialist career path shall receive training and guidance as to the provisions of this Article.

(15) To work in conjunction with the Office of State Personnel, the Division of Purchase & Contract, and the University of North Carolina School of Government to develop a rigorous contract management training and certification program for State employees. The program shall be administered by the Office of State Personnel.

(16) To work in conjunction with the University of North Carolina School of Government to study and recommend improvements to State procurement laws, including the feasibility of adopting the provisions of the American Bar Association Model Procurement Code."

SECTION 22. G.S. 143-52 is amended to read as follows:

"**§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary; bids; awarding of ~~contracts.~~contracts; cost plus percentage of cost contracts strictly prohibited.**

...

(c) Neither the Department of Administration nor any department, agency, or institution of the State may award a cost plus percentage of cost contract for any purpose, except as provided in G.S. 18C-150."

SECTION 23. Article 3 of Chapter 143 of the General Statutes is amended by adding a new section to read as follows:

"**§ 143-52.2. Certain contracts subject to review by Attorney General.**

The Secretary of Administration and every department, agency, and institution of the State shall submit all proposed statewide and agency term contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars ($1,000,000) to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3(a). This section shall not apply to the constituent institutions of the University of North Carolina."

SECTION 24. G.S. 143-134 reads as rewritten:

"**§ 143-134. Applicable to Department of Transportation and Department of Correction; ~~exceptions.~~exceptions; all contracts subject to review by Attorney General and State Auditor.**

(a) This Article shall apply to the Department of Transportation and the Department of Correction except in the construction of roads, bridges and their approaches; provided however, that whenever the Director of the Budget determines that the repair or construction of a building by the Department of Transportation or by the Department of Correction can be done more economically through use of employees of the Department of Transportation and/or prison inmates than by letting such repair or building construction to contract, the provisions of this Article shall not apply to such repair or construction.

(b) Notwithstanding the provisions of subsection (a) of this section, the Department of Transportation and the Department of Correction shall: (i) submit all proposed statewide and agency term contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars ($1,000,000) to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and, (ii) include in all contracts to be awarded by the Department of Transportation or the Department of Correction a standard clause which provides that the State Auditor and internal auditors of the Department of Transportation or the Department of Correction may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. Neither the Department of Transportation nor the Department of Correction shall award a cost plus percentage of cost agreement or contract for any purpose."

SECTION 25. G.S. 143-151.16 reads as rewritten:

"**§ 143-151.16. Certification fees; renewal of certificates; examination fees.**

...

(d) The Board may contract with persons for the development and administration of the examinations required by G.S. 143-151.13(a), for course development related to the examinations, for review of a particular applicant's examination, and for other related services. The person with whom the Board contracts may charge applicants a reasonable fee for the costs associated with the development and administration of the examinations, for course development related to the examinations, for review of the applicant's examinations, and for other related services. The fee shall be agreed to by the Board and the other contracting party. The amount of the fee under this subsection shall not exceed one hundred seventy-five dollars ($175.00). Contracts for the development and administration of the examinations, for course development related to the examinations, and for review of examinations shall not be subject to Article 3, 3C, or 8 of Chapter 143 of the General Statutes or to Article 3D of Chapter 147 of the General Statutes. However, the Board shall: (i) submit all proposed statewide and agency term contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars ($1,000,000) authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and, (ii) include in all proposed contracts to be awarded by the Board under this subsection a standard clause which provides that the State Auditor and internal auditors of the Board may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Board shall not award a cost plus percentage of cost agreement or contract for any purpose."

SECTION 26. G.S. 143B-131.2 reads as rewritten:

"**§ 143B-131.2. Roanoke Island Commission – Purpose, powers, and duties.**

...

(b) The Commission shall have the following powers and duties:

...

(15) To procure supplies, services, and property as appropriate and to enter into contracts, leases, or other legal agreements to carry out the purposes of this Part and duties of the Commission. The provisions of G.S. 143-129 and Article 3 of Chapter 143 of the General Statutes do not apply to purchases by the Roanoke Island Commission of equipment, supplies, and services. However, the Commission shall: (i) submit all proposed statewide and agency term contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars ($1,000,000) authorized by this subdivision to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and, (ii) include in all proposed contracts to be awarded by the Commission under this subdivision a standard clause which provides that the State Auditor and internal auditors of the Commission may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Commission shall not award a cost plus percentage of cost agreement or contract for any purpose."

SECTION 27. G.S. 147-64.6 reads as rewritten:

"**§ 147-64.6. Duties and responsibilities.**

...

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

...

(18) The Auditor shall, after consultation and in coordination with the State Chief Information Officer, assess, confirm, and report on the security practices of

information technology systems. If an agency has adopted standards pursuant to G.S. 147-33.111(a), the audit shall be in accordance with those standards. The Auditor's assessment of information security practices shall include an assessment of network vulnerability. The Auditor may conduct network penetration or any similar procedure as the Auditor may deem necessary. The Auditor may enter into a contract with a State agency under G.S. 147-33.111(c) for an assessment of network vulnerability, including network penetration or any similar procedure. Any contract with the Auditor for the assessment and testing shall be on a cost-reimbursement basis. The Auditor may investigate reported information technology security breaches, cyber attacks, and cyber fraud in State government. The Auditor shall issue public reports on the general results of the reviews undertaken pursuant to this subdivision but may provide agencies with detailed reports of the security issues identified pursuant to this subdivision which shall not be disclosed as provided in G.S. 132-6.1(c). The Auditor shall provide the State Chief Information Officer with detailed reports of the security issues identified pursuant to this subdivision. For the purposes of this subdivision only, the Auditor is exempt from the provisions of Article 3 of Chapter 143 of the General Statutes in retaining contractors. However, the Auditor shall: (i) submit all proposed statewide and agency term contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars ($1,000,000) authorized by this subdivision to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and, (ii) include in all proposed contracts to be awarded by the Auditor under this subdivision a standard clause which provides that the Auditor may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance. The Auditor shall not award a cost plus percentage of cost agreement or contract for any purpose.

...."

SECTION 28. This act becomes effective October 1, 2010, and applies to all contracts proposed or awarded on or after that date.

SENATE BILL 1213:
Amend State Purchases & Contracts Laws

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 15, 2010
Introduced by:	Sen. Clodfelter	**Prepared by:**	Jennifer McGinnis
Analysis of:	PCS to First Edition S1213-CSRI-64[v.8]		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute(PCS) for Senate Bill 1213 would: (i) require State agencies and institutions exempt from Article 3 (Purchases and Contracts) of Chapter 143 (State Departments, Institutions, and Commissions) to comply with certain requirements regarding the review and award of contracts; (ii) require all State entities (except constituent institutions of the University of North Carolina (UNC)) to submit statewide and agency term contracts over $1,000,000 to the Attorney General for review, and that the Attorney General (or designee or approved attorney) review the contracts. Such contracts of constituent institutions of UNC would need to be reviewed by the institution's General Counsel (or designee); (iii) and generally prohibit the use of cost plus percentage cost contracts. The bill was a recommendation of the Joint Legislative Program Evaluation Oversight Committee.***

[As introduced, this bill was identical to H1851, as introduced by Reps. Cole, Crawford, which is currently in House State Government/State Personnel, if favorable, Judiciary II.]

BACKGROUND: As noted, the bill was a recommendation of the Joint Legislative Program Evaluation Oversight Committee. The issue of State purchasing and contracting was discussed at a meeting of the Committee on August 3, 2009. Minutes and proceedings of that meeting are attached to this summary, as are a report from the Joint Legislative Program Evaluation Oversight Committee on the issue, and a summary of the bill prepared by staff to the Committee.

BILL ANALYSIS: The PCS would require various State agencies, departments, commissions, boards, and authorities, which are currently exempt from the State purchase and contracts requirements, to: (i) submit proposed statewide or agency term agreements or contracts over $1,000,000 to the Attorney General or the Attorney General's designee for review; and (ii) to include a standard clause in all agreements or contracts to be awarded which provides that the State Auditor and internal auditors of the relevant entity may audit the records of the contractor during the term of the agreement or contract to verify accounts and data affecting fees and performance. These entities include:

- State Lottery Commission;
- Commissioner of Banks (supervisory contracts, conservator contracts);
- Commissioner of Insurance (various service contracts);
- Global Transpark Authority (special user and airport projects);
- State Bar Council;
- Board for Licensing of Geologists;
- Board for Licensing of Soil Scientists;

- Department of Health and Human Services (Medical Assistance program (Medicaid) for fiscal intermediary, capitation or prepaid health services contracts);
- Applied Textile Technology Center;
- Executive Administrator and Board of Trustees of the State Health Plan for Teachers and State Employees;
- North Carolina Turnpike Authority;
- Departments of Transportation and Correction (road construction by employees and/or inmates);
- North Carolina Code Officials Qualification Board (course development and administration);
- Roanoke Island Commission; and
- State Auditor (system security assessment).

The PCS also:

- Prohibits the entities listed above (except the State Lottery Commission) from awarding a cost plus percentage of cost agreement or contract for any purpose (contracts under which the contractor receives payment for indeterminate costs plus a stated percentage or amount of profit based upon such costs).
- With the exception of the constituent institutions of UNC, requires State entities to submit proposed statewide and agency term contracts for supplies, materials, printing, equipment, and contractual services that exceed $1,000,000 to the Attorney General (or designee) for review.
- Requires the Attorney General or a designee to review all proposed statewide and agency term contracts for supplies, materials, printing, equipment, and contractual services that exceed $1,000,000 to ensure that proposed contracts are in proper legal form, contain all clauses required by law, are legally enforceable, and accomplish the intended purposes of the proposed contract. Such contracts of constituent institutions of UNC would need to be reviewed by the institution's General Counsel (or designee).
- Expands existing responsibilities of the Attorney General to assist the Secretary of Administration with contracting responsibilities. Requires the Secretary of Administration to, among other things, include specific provisions in all contracts, monitor all Statewide term contracts, and develop rules to implement the provisions of this bill.

EFFECTIVE DATE: This PCS would become effective October 1, 2010, and apply to all contracts proposed or awarded on or after that date.

S1213-SMRI-94(CSRI-64v5) v3

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 15, 2010

TO: Senator Clodfelter

FROM: Tazra Mitchell
Fiscal Research Division

RE: PCS S1213-CSRI-64 [v.8]

FISCAL IMPACT

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

	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
REVENUES	0	0	0	0	0
EXPENDITURES					
Dept. of Justice:	$362,922	$441,685	$471,949	$498,257	$524,102
Dept. of Admin.:	$818,272	$776,550	$834,919	$885,593	$924,427
State Personnel:	$88,756	$124,084	$131,221	$137,441	$142, 382
Dept. of Heath and Human Services, Transportation, & UNC System :	SEE ASSUMPTIONS AND METHODOLOGY				

	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
POSITIONS (cumulative)					
Dept. of Justice:	4	4	4	4	4
Dept. of Admin.:	4	6	6	6	6
State Personnel:	0.75	1	1	1	1
Dept. of Heath and Human Services, Transportation, & UNC System :	**SEE ASSUMPTIONS AND METHODOLOGY**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Justice, Department of Administration, Office of State Auditor, and Office of State Personnel.

EFFECTIVE DATE: October 1, 2010

BILL SUMMARY:

The Proposed Committee Substitute (PCS) for Senate Bill 1213 would require State agencies and institutions exempt from Article 3 of Chapter 143 to comply with certain requirements regarding the review and award of contracts. Excluding constituent institutions of the University of North Carolina, the PCS requires State entities to submit statewide and agency term contracts over $1,000,000 to the Attorney General for review, and that the Attorney General (or designee) review the contracts. Such contracts of constituent institutions of the University of North Carolina would need to be reviewed by the institution's General Counsel (or designee). Also, the PCS prohibits the use of cost plus percentage cost contracts.

Attorney General Review Responsibility

The PCS enacts new GS 114-8.3 directing the Attorney General (AG) or any attorney approved by the AG to review all proposed statewide term contracts for supplies, materials, printing, equipment, and contractual services that exceed $1,000,000. For the constituent institutions of the University of North Carolina, the General Counsel of each institution or the General Counsel's designee shall review all proposed statewide and agency term contracts for supplies, materials, printing, equipment, and contractual services that exceed $1,000,000.

Review of the specified contracts is to ensure the following: 1) they are in proper legal form; 2) they contain all clauses required by law; 3) they provide for sufficient monitoring; 4) they provide for sufficient performance penalties; and 5) they accomplish the intended purposes.

Obligation to Seek Attorney General Review

The PCS amends the following sections of the General Statutes to require the contracting authority to submit proposed contracts that exceed $1,000,000 to the Attorney General for review and to require that contracts contain a standard clause providing that the State Auditor and internal auditors of the agency may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees and performance:

GS 18C-150 (State Lottery Commission);
GS 53-320, 53-391, 53-326, and 53-401 (Commissioner of Banks);
GS 58-2-69, 58-33-30, 58-33-125, 58-33-130, 58-71-40 (Commissioner of Insurance);
GS 63A-24 (Global Transpark Authority);
GS 84-23 (State Bar Council);
GS 89E-5 (Board for Licensing of Geologists);
GS 89F-5 (Board for Licensing of Soil Scientists);
GS 108A-55 [Department of Health and Human Services--Medical Assistance program (Medicaid) for fiscal intermediary, capitation or prepaid health services contracts];
GS 115D-67.4 (Applied Textile Technology Center);
GS 135-43 (Executive Administrator and Board of Trustees of the State Health Plan for Teachers and State Employees);
GS 136-28.1 (Department of Transportation);
GS 136-89.194 (North Carolina Turnpike Authority);
GS 143-49 (Secretary of Administration)
GS 143-134 (Departments of Transportation and Commerce);
GS 143-151.16 (North Carolina Code Officials Qualification Board);
GS 143-131.2 (Roanoke Island Commission); and
GS 147-64.6 (State Auditor).

The contracting authority is prohibited from awarding a cost plus percentage of cost agreement or contract for any purpose in each of these instances except for the State Lottery Commission.

Obligations of the Secretary of Administration

The PCS expands existing responsibilities of the Attorney General to assist the Secretary of Administration with contracting responsibilities. The PCS also requires the Secretary to include a standard clause in all contracts providing that the State Auditor and internal auditors of the agency may audit the records of the contractor during the term of the contract. The bill also requires the Secretary to monitor and enforce the terms and conditions of statewide contracts and develop rules to implement the provisions of the bill.

The PCS requires the Secretary to work with the Office of State Personnel (OSP) to create a Contracting Specialist career path. The bill directs the Secretary to work in conjunction with OSP and the University of North Carolina School of Government to develop a contract management training and certification program for State employees. The program shall be administered by the

OSP. Further, the bill requires the Secretary to work with the University of North School of Government to study and recommend improvements to State procurement laws.

The effective date of the PCS is October 1, 2010; the bill applies to all contracts proposed or awarded on or after that date.

Source: Bill Digest S.B. 1213 (05/18/2010) and Bill Summary PCS to SB 1213 (06/15/2010).

ASSUMPTIONS AND METHODOLOGY:

Although required by SB 1213 to submit proposed contracts to the Attorney General for review, Fiscal Research estimates that the bill will have no fiscal impact on the following institutions:

- State Lottery Commission
- State Banking Commission
- Roanoke Island Commission
- Executive Administrator & Board of Trustees of the State Health Plan
- Department of Insurance
- State Bar Council
- Board for Licensing of Geologists
- Board for Licensing of Soil Scientists

Office of State Auditor

Due to a lack of information, Fiscal Research does not know what impact this proposed legislation will have on the Office of State Auditor at this time.

Department of Health and Human Services

Sections 15 amends G.S. 108A-55 and 20.1 amends G.S. 143-48.1 to require that the Department of Health and Human Services (DHHS) submit certain term agreements or contracts that exceed $1,000,000 to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3. It also prohibits DHHS from awarding a cost plus percentage of cost agreement or contract for any purpose.

Fiscal Research estimates that the PCS will have a fiscal impact resulting from the contract reviews to be conducted by Attorney General attorneys for DHHS. This law will require additional Staff Attorneys to review all contracts submitted by DHHS to the Attorney General; however, no estimate is available at this time on the number of FTE's necessary to complete the requirements. The additional Staff Attorneys would be assigned and budgeted within DHHS but are administratively managed by Department of Justice.

Department of Justice

According to the Department of Justice (DOJ), the proposed legislation includes a minimum $1,000,000 threshold for legal review and other substantive changes that will lesson the fiscal

impact on the Department. However, DOJ anticipates that the volume and complexity of the work submitted to the DOJ Legal Division will increase and necessitate additional resources in order to provide client agencies with high quality timely legal services related to contract management and oversight. At a minimum, DOJ estimates a need for two additional attorneys and two paralegals to effectively carry out the demands described in the act.

The chart below shows the total cost estimate for DOJ to implement the proposed legislation:

TABLE 1. Department of Justice Estimated Costs to Administer SB 1213

Description	Estimated Costs FY 2010-11	Estimated Costs FY 2011-12	Estimated Costs FY 2012-13	Estimated Costs FY 2013-14	Estimated Costs FY 2014-15
Attorney II & III	2 Positions	2 Positions	2 Positions	2 Positions	2 Positions
Salary and Benefits	$212,874	$227,665	$246,298	$262,464	$278,212
Paralegal 1	2 Positions	2 Positions	2 Positions	2 Positions	2 Positions
Salary and Benefits	$108,809	$116,034	$125,117	$132,997	$140,977
Rentals/Leases	$11,400	$11,701	$12,005	$12,275	$12,528
Travel	$12,600	$19,707	$20,219	$20,674	$21,100
Communications & Data Processing	$14,564	$56,509	$57,979	$59,283	$60,504
Other Services	$1,626	$1,668	$1,712	$1,750	$1,786
General Admin Supplies	$1,050	$8,400	$8,618	$8,812	$8,994
Equipment (Furniture, Office Equip., Computers)	$17,624				
Intangible Assets	$4,435				
TOTAL COST	**$384,982**	**$441,685**	**$471,949**	**$498,257**	**$524,102**
TOTAL FTEs	**4**	**4**	**4**	**4**	**4**

*Benefits include Social Security, Retirement, and Health Insurance.

Applied Textile Technology Center

Section 17 amends G.S. 115D-67.5 to require that the Applied Textile Technology Center (the Textile Center), located at Gaston College, submit certain term agreements or contracts that exceed $1,000,000 to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3. It also prohibits the Center from awarding a cost plus percentage of cost agreement or contract for any purpose.

This bill would have minimal to no fiscal impact on the Textile Center. According to the NC Community College System Office, the college reports that they do not have any contracts that are

being supported by the retained Textile fees and therefore, the number of contracts falling under this review would be minimal, if not zero. Retained fees are currently being used to purchase equipment and supplies, primarily through the E-procurement System.

Department of Transportation

Section 24 amends G.S. 143-134 to require that the Department of Transportation (DOT) submit certain term agreements or contracts that exceed $1,000,000 to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3. It also prohibits DOT from awarding a cost plus percentage of cost agreement or contract for any purpose.

Fiscal Research estimates that the PCS will have a fiscal impact resulting from the contract reviews to be conducted by Attorney General attorneys for DOT. This law will require additional Staff Attorneys to review all contracts submitted by DOT to the Attorney General; however, no estimate is available at this time on the number of FTE's necessary to complete the requirements. The additional Staff Attorneys would be assigned and budgeted within DOT but are administratively managed by Department of Justice.

Department of Administration

Section 21 amends G.S. 143-49 to increase the authority of the Secretary of Administration to provide oversight of the review and award of contracts. The Department of Administration (DOA) indicates that its current staff will not be able to absorb the additional workload required in order to administer SB 1213. DOA anticipates that it will need 4 Compliance Monitors, 2 Procurement Training Specialists, 1 Compliance Manager, and 1 Procurement Standards position to fulfill the requirements of this legislation.

DOA estimates that it will need 6 Compliance Monitors after FY 2010-11. DOA currently has 2 time-limited FTEs handling compliance for AARA responsibilities and DOA anticipates that these 2 FTEs could absorb some of the work during FY 2010-11. After the 2 time-limited positions are removed, DOA anticipates that it will need the full complement of compliance monitors to meet the compliance expectation provided by the bill.

In total, DOA estimates that it will need $818,272 for the 8 FTEs in FY 2010-11 (a breakdown of these expenses is provided in Table 2 on page 7).

Office of State Personnel

Section 21 amends G.S. 143-49 to require the Office of State Personnel (OSP) to work with DOA and the University School of Government to develop a contract management training and certification program for State employees. OSP estimates that the bill would require $51,256 for one Human Resource Consultant position to run this program.[1] OSP also anticipates that the bill would require $37,500 for the following administrative supplies:

[1] The proposed legislation is not effective until October 1, 2010. The FTE is prorated for FY 2010-11, but 1.0 FTE will be needed for subsequent years.

- Virtual classroom for training and telephone minutes for participants to connect virtually
- Written materials including copies, binders, and CDs
- An Electronic Learning Authoring Tool to develop and maintain the course
- Possible purchase of third party material to enhance certification process

In total, OSP estimates that it will need $88,756 to administer the bill in FY 2010-11. Fiscal Research concurs with these estimates.

TABLE 2. Department of Administration Estimated Costs to Administer SB 1213

Description	Estimated Costs FY 2010-11	Estimated Costs FY 2011-12	Estimated Costs FY 2012-13	Estimated Costs FY 2013-14	Estimated Costs FY 2014-15
Procurement Compliance Specialists	4 Positions	6 Positions	6 Positions	6 Positions	6 Positions
Salary and Benefits	$249,674	$398,566	$430,132	$457,519	$478,365
Procurement Training Specialists	2 Positions	2 Positions	2 Positions	2 Positions	2 Positions
Salary and Benefits	$93,270	$127,751	$137,837	$146,587	$153,247
Compliance & Analysis Manager	1 Position	1 Position	1 Position	1 Position	1 Position
Salary and Benefits	$74,323	$98,873	$106,910	$113,882	$119,190
Procurement Standards Position	1 Position	1 Position	1 Position	1 Position	1 Position
Salary and Benefits	$64,778	$86,808	$93,813	$99,890	$104,516
Purchased Services					
Contractual Services	$207,432	$9,535	$9,783	$10,003	$10,209
Repair Services	$480	$616	$632	$646	$659
Maintenance Agreements	$1,600	$2,053	$2,106	$2,153	$2,197
Travel	$19,200	$24,634	$25,274	$25,843	$26,375
Communications & Data Processing	$12,000	$15,396	$15,796	$16,151	$16,484
Other Services	$1,600	$2,053	$2,106	$2,153	$2,197
Supplies					
General Admin Supplies	$4,000	$5,132	$5,265	$5,383	$5,494
Equipment	$28,000	$5,132	$5,265	$5,383	$5,494
TOTAL COST	**$818,272**	**$776,550**	**$834,919**	**$885,593**	**$924,427**
TOTAL FTEs	**8**	**10**	**10**	**10**	**10**

*Benefits include Social Security, Retirement, and Health Insurance.

University of North Carolina System

Section 16 amends G.S. 114-8.3 to require that the constituent institutions of the University of North Carolina to submit certain term agreements or contracts that exceed $1,000,000 to the

institution's General Counsel (or designee). The constituent institutions of the University of North Carolina (UNC) do not anticipate any fiscal impact regarding submitting contracts to the Attorney General or designee.

Section 21 amends G.S. 143-49 to require the UNC School of Government to work with DOA and OSP to develop a contract management training and certification program for State employees. With respect to the School of Government's role, if the School of Government were assisting, there would likely be minimal impact. If the School of Government were actually conducting and leading the projects, then there could be an undetermined amount of fiscal impact.

SOURCES OF DATA: Department of Cultural Resources, Department of Administration, Department of Transportation, Department of Health and Human Services, Department of Justice, Department of Insurance, State Bar Council, Office of State Personnel, Board for Licensing of Geologists, Applied Textile Technology Center, UNC System, and the Board for Licensing of Soil Scientists

TECHNICAL CONSIDERATIONS: None.

SENATE BILL 1112*

Short Title:	Modernization of the State ABC System.	(Public)
Sponsors:	Senator Vaughan.	
Referred to:	Judiciary II.	

May 13, 2010

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE THE NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL SYSTEM, AS RECOMMENDED BY THE JOINT STUDY COMMITTEE ON ALCOHOLIC BEVERAGE CONTROL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-101 reads as rewritten:

"**§ 18B-101. Definitions.**

As used in this Chapter, unless the context requires otherwise:

...

(6f) "Finance officer" means the local board employee, other than a general manager, that is responsible for keeping the accounts of the local board, receiving and depositing receipts, disbursing funds, and any other duties assigned by the local board or Commission.

(7) "Fortified wine" means any wine, of more than sixteen percent (16%) and no more than twenty-four percent (24%) alcohol by volume, made by fermentation from grapes, fruits, berries, rice, or honey; or by the addition of pure cane, beet, or dextrose sugar; or by the addition of pure brandy from the same type of grape, fruit, berry, rice, or honey that is contained in the base wine and produced in accordance with the regulations of the United States.

(7d) "General manager" means the local board employee that is responsible for the oversight of daily operations of the ABC system and any other duties assigned by the local board or Commission. The board may designate only one employee to be the general manager.

~~(7a)~~(7g) "Historic ABC establishment" means a restaurant or hotel that meets all of the following requirements:

a. Is on the national register of historic places or located within a State historic district.

b. Is a property designed to attract local, State, national, and international tourists located on a State Route (SR) and with a property line located within 1.5 miles of the intersection of a designated North Carolina scenic byway as defined in G.S. 136-18(31).

c. Is located within 15 miles of a national scenic highway.

d. Is located in a county in which the on-premises sale of malt beverages or unfortified wine is authorized in two or more cities in the county.

~~(7b)~~(7k) "Keg" means a portable container designed to hold and dispense 7.75 gallons or more of malt beverage.

...."

SECTION 2. G.S. 18B-203(a) is amended by adding a new subdivision to read:

"**§ 18B-203. Powers and duties of the Commission.**

(a) Powers. – The Commission shall have authority to:

...

(20) Promulgate rules to establish performance standards for local boards. Performance standards established pursuant to this subdivision shall include, but not be limited to, standards that address enforcement of ABC laws, store appearance, operating efficiency, and customer service.

(21) Promulgate rules to establish mandatory training requirements for local board members, managers, and employees."

SECTION 3. G.S. 18B-501 reads as rewritten:

"**§ 18B-501. Local ABC officers.**

(a) Appointment. – Except as provided in subsection (f), each local board shall hire one or more ABC enforcement officers. Local ABC enforcement officers shall be designated as "ABC Officers". The local board may designate one officer as the chief ABC officer for that board.

(b) Subject Matter Jurisdiction. – After taking the oath prescribed for a peace officer, a local ABC officer may arrest and take other investigatory and enforcement actions for any criminal offense; however, the primary responsibility of a local ABC officer is enforcement of the ABC laws and Article 5 of Chapter 90 (The Controlled Substances Act).

(c) Territorial Jurisdiction. – A local ABC officer has jurisdiction anywhere in the county in which he is employed except that a city ABC officer's territorial jurisdiction is subject to any limitation included in any local act governing that city ABC system. A local ABC officer may pursue outside his normal territorial jurisdiction anyone who commits an offense within that jurisdiction, as provided in G.S. 15A-402(d).

(d) Assisting Other Local Agencies. – The local ABC officers employed by a local board shall constitute a "law-enforcement agency" for purposes of G.S. 160A-288, and a local board shall have the same authority as a city or county governing body to approve cooperation between law-enforcement agencies under that section.

(e) Assisting State and Federal Enforcement. – A local ABC officer may assist State and federal law-enforcement agencies in the investigation of criminal offenses in North Carolina, under the following conditions:

(1) The local board employing the officer has adopted a resolution approving such assistance and stating the conditions under which it may be provided;

(2) The State or federal agency has made a written request for assistance from that local board, either for a particular investigation or for any investigation that might require assistance within a certain period of time;

(3) The local ABC officer is supervised by someone in the requesting agency; and

(4) As soon as practical after the assistance begins, an acknowledgement of the action is placed in the records of the local board.

A local ABC officer shall have territorial jurisdiction throughout North Carolina while assisting a State or federal agency under this section. While providing that assistance the officer shall continue to be considered an employee of the local board for purposes of salary, worker's compensation, and other benefits, unless a different arrangement is negotiated between the local board and the requesting agency.

(f) Contracts with Other Agencies. – Instead ~~of~~ of, or in addition to, hiring local ABC officers, a local board may contract ~~to pay its enforcement funds to~~with a sheriff's department,

city police department, or other local law-enforcement agency for enforcement of the ABC laws within the law-enforcement agency's territorial jurisdiction. Enforcement agreements may be made with more than one agency at the same time. When such a contract for enforcement exists, ~~the~~ those officers of the contracting law-enforcement agency who have been designated by the agency head shall have the same authority to inspect under G.S. 18B-502 that an ABC officer employed by that local board would ~~have.~~have once the designated officers of the contracting law enforcement agency have been certified by the chief ABC officer as having been trained. In order to be certified, the designated officers shall receive the same training in the enforcement of ABC laws as is provided to local ABC officers. If a city located in two or more counties approves the sale of some type of alcoholic beverage pursuant to the provisions of G.S. 18B-600(e4), and there are no local ABC boards established in the city and one of the counties in which the city is located, the local ABC board of any county in which the city is located may enter into an enforcement agreement with the city's police department for enforcement of the ABC laws within the entire city, including that portion of the city located in the county of the ABC board entering into the enforcement agreement.

(f1) ABC Enforcement in Absence of Contract. – In those cities and counties in which no contract exists between the local board and a local law enforcement agency for enforcement of ABC laws, officers of a local law enforcement agency shall have the same authority to inspect under G.S. 18B-502 that an ABC officer employed by that board would have, provided:

(1) The local law enforcement agency head or sheriff has designated one or more officers of the agency to conduct inspections under G.S. 18B-502.

(2) The designated officers of the law enforcement agency have been certified by the chief ABC officer as having been trained.

(3) The designated officers have received the same training in the enforcement of ABC laws as that provided to local ABC officers.

(f2) Accountability; Enforcement Reports. – To ensure accountability to the appointing authority and the Commission, every local board's ABC officers and those law enforcement agencies subject to an enforcement agreement entered into pursuant to subsection (f1) of this section shall report to the local board, by the fifth business day of each month, on a form developed by the Commission, the following:

(1) The number of arrests made for ABC law, Controlled Substance Act, or other violations, by category, at ABC permitted outlets.

(2) The number of arrests made for ABC law, Controlled Substance Act, or other violations, by category, at other locations.

(3) The number of agencies assisted with ABC law or controlled substance related matters.

(4) The number of alcohol education and responsible server programs presented.

The local board shall submit a copy of the enforcement report to the appointing authority and the Commission not later than five business days after receipt of the enforcement report by the local board. The Commission shall publish this information, by local board and enforcement agency, on a public Internet Web site maintained by the Commission.

(g) Discharge. – Local ABC officers and officers of agencies which contract with local boards for enforcement of the ABC laws are subject to the discharge provisions of G.S. 18B-202."

SECTION 4. G.S. 18B-600(e) reads as rewritten:

"(e) City Mixed Beverage Elections. – A city may hold a mixed beverage election ~~only if:~~if the city has at least 500 registered voters.

~~(1) The city has at least 500 registered voters; and~~

~~(2) Either:~~

~~a. The city already operates a city ABC store; or~~

~~b. A city ABC store election is to be held at the same time as the mixed beverage election; or~~

~~c. The city does not operate a city ABC store but:~~

~~1. The county operates an ABC store;~~

~~2. The county has already held a mixed beverage election; and~~

~~3. The vote in the last county election was against the sale of mixed beverages.~~"

SECTION 5. G.S. 18B-700 is amended by adding a new subsection to read:

"(a1) Mission. – The mission of local ABC boards and their employees shall be to responsibly serve their localities by controlling the sale of spirituous liquor and promoting customer-friendly, modern, and efficient stores."

SECTION 6. G.S. 18B-700(g) reads as rewritten:

"(g) ~~Salary.~~Compensation of Board Members. – A local board member ~~may be compensated as determined by the appointing authority.~~shall receive compensation in an amount not to exceed one hundred fifty dollars ($150.00) per board meeting unless a different level of monetary compensation is approved by the appointing authority. If a different level is approved by the appointing authority, the appointing authority shall notify the Commission of the approved level of compensation in writing. No local board member shall receive any nonmonetary compensation or benefits unless specifically authorized by this section."

SECTION 7. G.S. 18B-700 is amended by adding a new subsection to read:

"(g1) Compensation of General Managers of Local Boards. – The salary authorized for the general manager of a local board shall not exceed the salary authorized by the General Assembly for the clerk of superior court of the county in which the appointing authority was originally incorporated unless such compensation is otherwise approved by the appointing authority. The local board shall provide the appointing authority's written confirmation of such approval to the Commission. The general manager of a local board may receive any other benefits to which all employees of the local board are entitled. The salary authorized for other employees of a local board may not exceed that of the general manager."

SECTION 8. G.S. 18B-700 is amended by adding a new subsection to read:

"(g2) Travel Allowance and Per Diem Rates. – Approved travel on official business by the members and employees of local boards shall be reimbursed pursuant to G.S. 138-6 unless the local board adopts a travel policy that conforms to the travel policy of the appointing authority and such policy is approved by the appointing authority. The local board shall provide the appointing authority's written confirmation of such approval to the Commission."

SECTION 9. G.S. 18B-700(i) reads as rewritten:

"(i) Bond. – Each local board member and the employees designated as the general manager or finance officer of the local board shall be bonded in an amount not less than ~~five thousand dollars ($5,000),~~one hundred thousand dollars ($100,000) secured by a corporate surety, for the faithful performance of his duties. A public employees' blanket position bond in the required amount satisfies the requirements of this subsection. The bond shall be payable to the local board and shall be approved by the appointing authority for the local board. The appointing authority may ~~exempt from this bond requirement any board member who does not handle board funds, and it may also~~ increase the amount of the bond required for any member or employee who ~~does handle~~handles board funds."

SECTION 10. G.S. 18B-700 is amended by adding a new subsection to read:

"(k) Nepotism. – Members of an immediate family shall not be employed within the local board if such employment will result in one member of the immediate family supervising another member of the immediate family, or if one member of the immediate family will occupy a position which has influence over another member's employment, promotion, salary administration, or other related management or personnel considerations. This subsection applies to local board members and employees.

For the purpose of this subsection, the term immediate family includes wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson, and granddaughter. Also included are the step-, half-, and in-law relationships. It also includes other people living in the same household, who share a relationship comparable to immediate family members, if either occupies a position which requires influence over the other's employment, promotion, salary administration, or other related management or personnel considerations."

SECTION 11. G.S. 18B-700 is amended by adding a new subsection to read:

"(l) Local Acts. – Notwithstanding the provisions of any local act, this section applies to all local boards."

SECTION 12. G.S. 18B-701 reads as rewritten:

"**§ 18B-701. Powers and duties of local ABC boards.**

(a) Powers. – A local board shall have authority to:

(1) Buy, sell, transport, and possess alcoholic beverages as necessary for the operation of its ABC stores;
(2) Adopt rules for its ABC system, subject to the approval of the Commission;
(3) Hire and fire employees for the ABC system;
(4) Designate one employee as manager of the ABC system and determine his responsibilities;
(5) Require bonds of employees as provided in the rules of the Commission;
(6) Operate ABC stores as provided in Article 8;
(7) Issue purchase-transportation permits as provided in Article 4;
(8) Employ local ABC officers or make other provision for enforcement of ABC laws as provided in Article 5;
(9) Borrow money as provided in G.S. 18B-702;
(10) Buy and lease real and personal property, and receive property bequeathed or given, as necessary for the operation of the ABC system;
(11) Invest surplus funds as provided in G.S. 18B-702;
(12) Dispose of property in the same manner as a city council may under Article 12 of Chapter 160A of the General Statutes; and
(13) Perform any other activity authorized or required by the ABC law.

(b) Duties. – A local board shall have the duty to comply with all rules adopted by the Commission pursuant to G.S. 18B and meet all standards for performance and training established by the Commission pursuant to G.S. 18B-203(a)(20) and (21). Failure to comply with Commission rules shall be cause for removal."

SECTION 13. G.S. 18B-702 reads as rewritten:

"**§ 18B-702. Financial operations of local boards.**

(a) Generally. – A local board may transact business as a corporate body, except as limited by this section. A local board shall not be considered a public authority under G.S. 159-7(b)(10).

(b) Budget Officer. – The general manager of the local board shall be the budget officer for the local board. In the absence of a general manager, a local board may impose the duties of budget officer on the chairman or any member of the local board or any other employee of the board.

(c) Annual Balanced Budget. – Each local board shall operate under an annual balanced budget administered in accordance with this section. A budget is balanced when the sum of estimated gross revenues and both restricted and unrestricted funds are equal to appropriations. Expenditures shall not exceed the amount of funds received or in reserve for the purpose to which the funds are appropriated. It is the intent of this section that all monies received and expended by a local board should be included in the budget. Therefore, notwithstanding any other provision of law, no local board may expend any monies, regardless of their source

except in accordance with a budget adopted under this section. The budget of a local board shall cover a fiscal year beginning July 1 and ending June 30.

(d) Preparation and Submission of Budget and Budget Message. – Upon receipt of the budget requests and revenue estimates and the financial information supplied by the finance officer, the budget officer shall prepare a budget for consideration by the local board in such form and detail as may have been prescribed by the budget officer or the local board. The budget, together with a budget message, shall be submitted to the local board, the appointing authority, and the Commission not later than June 1. The budget and budget message should, but need not, be submitted at a formal meeting of the board. The budget message should contain a concise explanation of the goals fixed by the budget for the budget year, should explain important features of the activities anticipated in the budget, should set forth the reasons for stated changes from the previous year in appropriation levels and should explain any major changes in fiscal policy.

(e) Filing and Publication of the Budget. – On the same day the budget officer submits the budget to the local board, the budget officer shall make a copy for public inspection, and it shall remain available for public inspection until the budget is adopted. The budget officer shall make a copy of the budget available to all news media in the county. The budget officer shall also publish a statement that the budget has been submitted to the local board and is available for public inspection in the office of the general manager of the local board. The statement shall also give notice of the time and place of the budget hearing required by subsection (f) of this section.

(f) Budget Hearings. – Before adopting the budget, the board shall hold a public hearing at which time any persons who wish to be heard on the budget may appear.

(g) Adoption of Budget. – Not earlier than 10 days after the day the budget is presented to the board and not later than July 1, the local board shall adopt a budget making appropriations for the budget year in such sums as the board may consider sufficient and proper, whether greater or less than the sums recommended in the budget. The budget shall authorize all financial transactions of the local board. The budget may be in any form that the board considers most efficient in enabling it to make the fiscal policy decisions embodied therein, but it shall make appropriations by department, function, or project and show revenues by major source. The following directions and limitations shall bind the local board in adopting the budget:

(1) The full amount estimated by the finance officer to be required for debt service during the budget year shall be appropriated.

(2) The full amount of any deficit in each fund shall be appropriated.

(3) Working capital funds set aside pursuant to G.S. 18B-805 shall be no less than two weeks' average gross sales of the latest fiscal year or greater than two months' average gross sales of the latest fiscal year. "Working capital" means the total of cash, investments, and inventory less all unsecured liabilities. Gross sales means gross receipts from the sale of alcoholic beverages less distributions as defined in G.S. 18B-805(b)(2), (3), (4), and (5). Any expenditure to be charged against working capital funds shall be authorized by resolution of the local board, which resolution shall be deemed an amendment to the budget setting up an appropriation for the object of expenditure authorized. The local board may authorize the budget officer to authorize expenditures from working capital funds subject to such limitations and procedures as it may prescribe. Any such expenditure shall be deemed an amendment and reported to the board at its next regular meeting and recorded in the minutes.

(4) Estimated revenues shall include only those revenues reasonably expected to be realized in the budget year.

(5) Sufficient funds to meet the amounts to be paid during the fiscal year under continuing contracts previously entered into shall be appropriated unless such contract reserves to the local board the right to limit or not to make such appropriation.

(6) The sum of estimated net revenues and appropriated fund balance in each fund shall be equal to appropriations in that fund. Appropriated fund balance in a fund shall not exceed the sum of cash and investments minus the sum of liabilities, encumbrances, and deferred revenues arising from cash receipts, as those figures stand at the close of the fiscal year next preceding the budget year.

The budget shall be entered in the minutes of the local board and within five days after adoption, and copies thereof shall be filed with the finance officer, the budget officer, the appointing authority, and the Commission.

(h) Amendments to the Budget. – Except as otherwise restricted by law, the local board may amend the budget at any time after adoption, in any manner, so long as the budget, as amended, continues to satisfy the requirements of this section. The local board by appropriate resolution may authorize the budget officer to transfer monies from one appropriation to another within the same fund subject to such limitations and procedures as it may prescribe. Any such transfers shall be reported to the local board at its next regular meeting and shall be entered in the minutes. Amendments to the adopted budget shall also be provided to the appointing authority and the Commission.

(i) Interim Budget. – In case the adoption of the budget is delayed until after July 1, the local board shall make interim appropriations for the purpose of paying salaries, debt service payments, and the usual ordinary expenses of the local board for the interval between the beginning of the budget year and the adoption of the budget. Interim appropriations so made shall be charged to the proper appropriations in the adopted budget.

(j) Finance Officer. – The local board shall designate an employee of the board, other than the general manager, to be the finance officer for the local board. The Commission, for good cause shown, may allow the general manager of a board to also be the finance officer.

(k) Duties and Powers of the Finance Officer. – The finance officer for a local board shall:

(1) Keep the accounts of the local board in accordance with generally accepted principles of governmental accounting and the rules and regulations of the Commission.

(2) Disburse all funds of the local board in strict compliance with this Chapter, the budget, and preaudit obligations, and disbursements as required by this section.

(3) As often as may be requested by the local board or the general manager, prepare and file with the board a statement of the financial condition of the local board.

(4) Receive and deposit all monies accruing to the local board, or supervise the receipt and deposit of money by other duly authorized employees.

(5) Maintain all records concerning the debt and other obligations of the local board, determine the amount of money that will be required for debt service or the payment of other obligations during each fiscal year, and maintain all funds.

(6) Supervise the investment of idle funds of the local board pursuant to subsection (t) of this section.

The finance officer shall perform such other duties as may be assigned by law, by the general manager, budget officer, or local board, or by rules and regulations of the Commission.

(l) Accounting System. – Each local board shall establish and maintain an accounting system designed to show in detail its assets, liabilities, equities, revenues, and expenditures. The system shall also be designed to show appropriations and estimated revenues as established in the budget originally adopted and subsequently amended.

(m) Incurring Obligations. – No obligation may be incurred in a program, function, or activity accounted for in a fund included in the budget unless the budget includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the transaction for the current fiscal year. No obligation may be incurred for a capital project unless the budget authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay the sums obligated by the transaction. If an obligation is evidenced by a contract or agreement requiring the payment of money or by a purchase order for supplies and materials, the contract, agreement, or purchase order shall include on its face a certificate stating that the instrument has been preaudited to assure compliance with this subsection. The certificate, which shall be signed by the finance officer or any deputy finance officer approved for this purpose by the local board, shall take substantially the following form:

"This instrument has been preaudited in the manner required by G.S. 18B-702.

_____

(Signature of finance officer)."

An obligation incurred in violation of this subsection is invalid and may not be enforced. The finance officer shall establish procedures to assure compliance with this subsection.

(n) Disbursements. – When a bill, invoice, or other claim against a local board is presented, the finance officer shall either approve or disapprove the necessary disbursement. If the claim involves a program, function, or activity accounted for in a fund included in the budget or a capital project or a grant project authorized by the budget, the finance officer may approve the claim only if:

(1) The finance officer determines the amount to be payable; and

(2) The budget includes an appropriation authorizing the expenditure and either (i) an encumbrance has been previously created for the transaction or (ii) an unencumbered balance remains in the appropriation sufficient to pay the amount to be disbursed.

A bill, invoice, or other claim may not be paid unless it has been approved by the finance officer or, under subsection (o) of this section, by the local board. The finance officer shall establish procedures to assure compliance with this subsection.

(o) Local Board Approval of Bills, Invoices, or Claims. – The local board may, as permitted by this subsection, approve a bill, invoice, or other claim against the local board that has been disapproved by the finance officer. It may not approve a claim for which no appropriation appears in the budget, or for which the appropriation contains no encumbrance and the unencumbered balance is less than the amount to be paid. The local board shall approve payment by formal resolution stating the board's reasons for allowing the bill, invoice, or other claim. The resolution shall be entered in the minutes together with the names of those voting in the affirmative. The chairman of the board or some other member designated for this purpose shall sign the certificate on the check or draft given in payment of the bill, invoice, or other claim. If payment results in a violation of law, each member of the board voting to allow payment is jointly and severally liable for the full amount of the check or draft given in payment.

(p) Checks or Drafts Signed by Finance Officer. – Except as otherwise provided by law, all checks or drafts on an official depository shall be signed by the finance officer or a properly designated deputy finance officer. The chairman of the local board or general manager of the local board shall countersign these checks and drafts. The Commission may waive the

requirements of this subsection if the board determines that the internal control procedures of the unit or authority will be satisfactory in the absence of dual signatures.

(q) Payment of a Bill, Invoice, Salary, or Claim. – A local board may not pay a bill, invoice, salary, or other claim except by a check or draft on an official depository or by a bank wire transfer from an official depository. Except as provided in this subsection, each check or draft on an official depository shall bear on its face a certificate signed by the finance officer or a deputy finance officer approved for this purpose by the local board (or signed by the chairman or some other member of the board pursuant to subsection (o) of this section). The certificate shall take substantially the following form:

"This disbursement has been approved in the manner required by G.S. 18B-702.

_____

(Signature of finance officer)."

No certificate is required on payroll checks or drafts on an imprest account in an official depository if the check or draft depositing the funds in the imprest account carried a signed certificate. No certificate is required for expenditures of fifty dollars ($50.00) or less from a petty cash fund provided the expenditure is accounted for by a receipt for the expended item.

~~(b)~~(r) Borrowing Money. – A local board may borrow money only for the purchase of land, buildings, equipment and stock needed for the operation of its ABC system. A local board may pledge a security interest in any real or personal property it owns other than alcoholic beverages. A city or county whose governing body appoints a local board shall not in any way be held responsible for the debts of that board.

~~(c)~~(s) Audits. – A local board shall submit to the appointing authority and Commission an annual independent audit of its operations, performed in accordance with generally accepted accounting standards and in compliance with a chart of accounts prescribed by the Commission. The audit report shall contain a summary of the requirements of this Chapter, or of any local act applicable to that local board, concerning the distribution of profits of that board and a description of how those distributions have been made, including the names of recipients of the profits and the activities for which the funds were distributed. A local board shall also submit to any other audits and submit any reports demanded by the appointing authority or the Commission.

~~(d)~~(t) Deposits and Investments. – A local board may deposit ~~moneys~~monies at interest in any bank or trust company in this State in the form of savings accounts or certificates of deposit. Investment deposits shall be secured as provided in G.S. 159-31(b) and the reports required by G.S. 159-33 shall be submitted. A local board may invest all or part of the cash balance of any fund as provided in G.S. 159-30(c) and (d), and may deposit any portion of those funds for investment with the State Treasurer in the same manner as State boards and commissions under G.S. 147-69.3.

~~(e)~~(u) Compliance with Commission Rules. – The Commission shall adopt, and each local board shall comply with, fiscal control rules concerning the borrowing of money, maintenance of working capital, investments, appointment of a budget officer, appointment of a financial officer, daily deposit of funds, bonding of employees, auditing of operations, and the schedule, manner and other procedures for distribution of profits. The Commission may also adopt any other rules concerning the financial operations of local boards which are needed to assure the proper accountability of public funds. The Commission may vary these rules and regulations according to any other criteria reasonably related to the purpose or complexity of the financial operations involved. The Commission has the authority to inquire into and investigate the internal control procedures of a local board, and may require any modifications in internal control procedures which, in the opinion of the Commission, are necessary or desirable to prevent embezzlements or mishandling of public monies.

(v) Penalties. – If a board member or employee of a local board incurs an obligation or pays out or causes to be paid out any funds in violation of this section, the member or employee

and the sureties on the official bond are liable for any sums so committed or disbursed. If the finance officer or any properly designated deputy finance officer gives a false certificate to any contract, agreement, purchase order, check, draft, or other document, the finance officer and the sureties on the official bond are liable for any sums illegally committed or disbursed thereby.

~~(f)~~(w) Applicability of Criminal Statutes. – The provisions of G.S. 14-90 and G.S. 14-254 shall apply to any person appointed to or employed by a local board, and any person convicted of a violation of G.S. 14-90 or G.S. 14-254 shall be punished as a Class H felon.

(x) Local Acts. – Notwithstanding the provisions of any local act, this section applies to all local boards."

SECTION 14. Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-704. Removal of local board members and employees.**

(a) Improper Influence. – Neither the Commission nor its individual members shall attempt to coerce any appointing authority to appoint a particular person as a member of a local board or attempt to coerce a local board to employ any particular applicant.

(b) Purpose. – This section is intended to provide a uniform system of removal for appointing authorities and the Commission.

(c) Cause for Removal. – Disqualification of a local board member or employee under the law, a violation of the ABC laws, failure to complete training required by this Chapter or the Commission, or engaging in any conduct constituting moral turpitude or which brings the local board or the ABC system into disrepute is cause for the Commission to remove any member or employee of a local board. The employment or retention of any employee who is known to be disqualified under the law to hold a position with a local board is cause for the Commission to remove the board members involved.

(d) Removal Process. – The Commission or appointing authority shall provide, in writing, to the local board member or employee the findings of fact upon which the decision for removal is based. The Commission or appointing authority shall also provide the local board member or employee with notice of the availability of a hearing before the Commission to review the removal.

(e) Removal Hearing. – Any local board member or employee removed from office or discharged by the Commission or the appointing authority may request a hearing before the Commission. Such a request operates to stay the action of the Commission or the appointing authority with regard to the matter until after the hearing, unless the Commission finds that the public interest requires immediate action. At the hearing, the employee or his counsel may examine all evidence used against him and present evidence in his own behalf. A removal hearing is not subject to the provisions of Chapter 150B of the General Statutes. All hearings shall be conducted informally and in such manner as to preserve the substantial rights of the parties.

(f) Hearing Procedure. – The Commission shall hold the hearing required by subsection (e) of this section within 15 days of the member's or employee's request for a hearing. The standard of review by the Commission is de novo. The Commission or appointing authority shall be represented by a Commission hearing officer. The Commission shall discharge the member or employee if two-thirds of the Commission's members vote for removal. The Commission shall make findings of fact. The Commission may adopt the findings of fact of the Commission or the appointing authority, may add new findings of fact to the original findings of fact, or may substitute new findings of fact for the original findings of fact. The Commission shall make conclusions of law and shall issue a written decision to the member or employee of the local board, and to the appointing authority, within 15 days of the hearing.

(g) Commission Authority. – The Commission shall have the sole power, in its discretion, to determine if cause exists for removal of a local board member or employee who

has requested a hearing before the Commission. The Commission's decision in a removal hearing is final.

(h) Appeal. – A local board member or employee may appeal the Commission's final decision to the Court of Appeals. The standard of review shall be abuse of discretion. The sole remedy for a local board member or employee shall be the reinstatement of the board member or employee to the local board with back pay. All awards for back pay shall be paid by the local board from which the board member or employee was removed.

(i) Removal Hearing Not a Substitute for Termination of Employee. – Nothing in this section replaces or is intended to replace a local board's policy regarding the termination of an employee for personnel reasons. The removal process under this section is reserved solely for the appointing authority or the Commission to remove a board member or employee for cause.

(j) Local Acts. – Notwithstanding the provisions of any local act, this section applies to all local boards."

SECTION 15. Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-705. Compliance with performance standards; remedies.**

(a) Local Board Compliance. – The Commission shall establish performance standards pursuant to G.S. 18B-203(a)(20). The Commission shall ensure that all local boards comply with established performance standards by conducting regular or special audits, conducting performance evaluations, monitoring ABC law enforcement efforts, or taking other measures which may include inspections by Commission auditors or alcohol law enforcement agents.

(b) Performance Improvement Plans. – The Commission, upon determining that a local board is failing to meet performance standards established pursuant to G.S. 18B-203(a)(20), shall meet with the chair of the local board and the appointing authority and issue a statement of findings. The appointing authority, in consultation with the Commission, shall develop for and deliver a performance improvement plan to the local board within 30 days of the meeting with the Commission. The performance improvement plan shall include, but not be limited to, recommendations for improved performance based on the performance standards established by the Commission. The plan shall also state a period of time in which the performance improvements are to occur and what action will be taken by the Commission if performance standards are not met within the given time limits. The appointing authority shall allow up to, but no more than, six months' time to the local board to implement and show improvement under the performance improvement plan. The local appointing authority, in consultation with the Commission and upon good cause shown, may allow up to an additional six-month period of time for the local board to meet all requirements in the performance improvement plan and to establish that the performance standards established by the Commission are met.

(c) Remedies. – If the Commission determines that the local board has not implemented the recommendations for improved performance in a timely manner and the local board is not meeting the performance standards or is failing to make all distributions required by G.S. 18B-805(b), the Commission shall notify the local board and the appointing authority and may make additional recommendations to the local board and appointing authority, including closing a store or stores, relocating store locations, merging the local board with another local board, or entering into an agreement for joint store operations, or abolishing the local board.

(d) Local Acts. – Notwithstanding the provisions of any local act, this section applies to all local boards."

SECTION 16. Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-706. Ethics requirements for local boards.**

(a) Each local board shall adopt a policy containing a code of ethics to guide actions by the board members and employees of the ABC board in the performance of their official duties. The policy shall address at least all of the following:

(1) The need to obey all applicable laws regarding official actions taken as a board member or employee.
(2) The need to uphold the integrity and independence of the board member or employee's position.
(3) The need to avoid impropriety in the exercise of official duties.
(4) The need to faithfully perform the duties of the position.
(5) The need to conduct the affairs of the board in an open and public manner, including complying with all applicable laws governing open meetings and public records.

(b) Each member of a local board shall receive a minimum of two hours of ethics education within 12 months after initial appointment to the office and again within 12 months after each subsequent appointment to the office. The ethics education shall cover laws and principles that govern conflicts of interest and ethical standards of conduct for local ABC boards. The education may be provided by the Commission or other qualified source approved by the Commission. The local board shall maintain a record verifying receipt of the ethics education by each member of the board. The local board may require appropriate ethics training and education for employees of the local ABC board."

SECTION 17. G.S. 18B-801(b) reads as rewritten:

"(b) Location of Stores. – A local board may choose the location of the ABC stores within its jurisdiction, subject to the approval of the Commission. In making its decision on a location, the Commission may consider:

(1) Whether the health, safety, or general welfare of the community will be adversely ~~affected; and~~affected.
(2) Whether the citizens of the community or city in which the proposed store is to be located voted for or against ABC stores in the last election on the question.
(3) The proximity of the new location to existing ABC stores operated by the local board or any other boards."

SECTION 18. G.S. 18B-801(d) reads as rewritten:

"(d) Insolvent ABC System. – If an ABC system is insolvent, the local board may apply to the Commission for an order to close the system. Upon receipt of an application, or upon its own motion, the Commission shall investigate the system, and if it finds that ~~further operation of the ABC stores will not be profitable,~~the system is insolvent, it may order the system closed. If the Commission orders a local system to close, the Commission may:

(1) After consultation with the local board, its creditors, and other interested parties, schedule a phase out of the system's business activities;
(2) Represent the local board in negotiations with creditors and other interested parties;
(3) Require an accounting or auditing of the local system;
(4) Take possession or arrange for the disposition of any liquor for which the local board has not paid;
(5) Apply to the Superior Court to be appointed as receiver for the local board with all powers and duties of a receiver for a corporation under Article 38 of Chapter 1 of the General Statutes, except that the Commission shall not be required to post the bond required by G.S. 1-504; or
(6) Take any other reasonable steps to promote an orderly closing of the system.

In lieu of closing an insolvent system, the Commission may, in acting as appointed receiver for the local board, enter into a voluntary agreement to merge the local board with another local board pursuant to G.S. 18B-703, or may enter into a voluntary agreement with one or more local boards to jointly operate one or more stores pursuant to G.S. 18B-703(h)."

SECTION 19. G.S. 18B-803 reads as rewritten:

"**§ 18B-803. Store management.**

(a) Manager. – A local board shall provide for the management of each store operated by it. The board shall employ at least one manager for each store, who shall operate the store pursuant to the directions of that board.

(b) Bonding of Manager. – Each store manager shall be bonded in an amount not less than ~~five thousand dollars ($5,000),~~ one hundred thousand dollars ($100,000) secured by a corporate surety, for the honest performance of his duties. A public employees' blanket position bond, honesty form, in the required amount satisfies the requirements of this subsection. The bond shall be payable to the local board and shall be approved by the appointing authority for the local board. The appointing authority may increase the amount of bond required for store managers under this subsection.

(c) Bonding of Other Employees. – A local board or the appointing authority may require any of its other employees who handle funds to obtain bonds. The amount and form of those bonds shall be determined by the local board.

(d) Local Acts. – Notwithstanding the provisions of any local act, this section applies to all local boards."

SECTION 20. Section 6 of this act becomes effective January 1, 2011. Sections 8 and 10 of this act become effective October 1, 2010, and applies to general managers and employees hired on or after that date. Section 13 of this act becomes effective May 1, 2011. The remainder of this act becomes effective October 1, 2010.

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Editorial: ABC system revisions target abuses

Friday, June 11, 2010
(Updated 3:00 am)

The state's Alcohol Beverage Control system, which has been around since 1937, is in need of a tune-up, not an overhaul. A bill pending in the General Assembly is a commendable move in that direction.

It preserves what works well while addressing shortcomings. Local boards and communities still will exercise hands-on control and receive much-needed tax revenue, but the state ABC Commission gets a larger role.

Egregious examples of lax accountability and wrongdoing at several local boards, nepotism and allegations of payoffs from distributors led to a special legislative commission study.

It recommended tougher ethics standards and called for more efficiency in the overall system operation. The bill bans local board members from accepting vendor gifts, sets pay guidelines for general managers and prohibits an employee from directly supervising a family member.

The state ABC Commission also would have a greater say in local issues, including closing under-performing stores and merging them with neighboring competitors.

However, counties won't be limited to just one system, which would have unfairly penalized larger ones like Guilford, where several operate successfully and at a profit.

Despite a few glitches, the state's liquor sales monopoly has enjoyed an enviable reputation. Per-bottle revenue is among the highest in the nation and per-capita consumption remains comparatively low.

Both state and local governments benefit handsomely from the tax flow that liquor sales generate. And law-enforcement agencies receive substantial funding for educational programs that address excessive consumption.

Yet an update of the system has been long overdue. Granting the state board more oversight while maintaining a high level of local autonomy is a realistic compromise.

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1112*
PROPOSED COMMITTEE SUBSTITUTE S1112-CSRV-65 [v.1]

6/10/2010 2:27:23 PM

Short Title: Modernization of the State ABC System. (Public)

Sponsors:

Referred to:

May 13, 2010

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE THE NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL SYSTEM, TO ENSURE THE INTEGRITY OF THE THREE TIER SYSTEM, AND TO REQUIRE MINIMUM STANDARDS AGE STANDARDS LAW ENFORCEMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-101 reads as rewritten:

"**§ 18B-101. Definitions.**

As used in this Chapter, unless the context requires otherwise:

...

(6a) "Finance officer" means the local board employee, other than a general manager, that is responsible for keeping the accounts of the local board, receiving and depositing receipts, disbursing funds, and any other duties assigned by the local board or Commission.

(7) "Fortified wine" means any wine, of more than sixteen percent (16%) and no more than twenty-four percent (24%) alcohol by volume, made by fermentation from grapes, fruits, berries, rice, or honey; or by the addition of pure cane, beet, or dextrose sugar; or by the addition of pure brandy from the same type of grape, fruit, berry, rice, or honey that is contained in the base wine and produced in accordance with the regulations of the United States.

(7a) "General manager" means the local board employee that is responsible for the oversight of daily operations of the ABC system and any other duties assigned by the local board or Commission. The board may designate only one employee to be the general manager.

~~(7a)~~(7b) "Historic ABC establishment" means a restaurant or hotel that meets all of the following requirements:

a. Is on the national register of historic places or located within a State historic district.

b. Is a property designed to attract local, State, national, and international tourists located on a State Route (SR) and with a property line located within 1.5 miles of the intersection of a designated North Carolina scenic byway as defined in G.S. 136-18(31).

c. Is located within 15 miles of a national scenic highway.

d. Is located in a county in which the on-premises sale of malt beverages or unfortified wine is authorized in two or more cities in the county.

~~(7b)~~(7c) "Keg" means a portable container designed to hold and dispense 7.75 gallons or more of malt beverage.

...."

SECTION 2. G.S. 18B-201 reads as rewritten:

"**§ 18B-201. Conflict of ~~interest.~~interest; gifts.**

(a) Financial Interests Restricted. – No person shall be appointed to or employed by the Commission, a local board, or the ALE Division if that person or a member of that person's family related to that person by blood or marriage to the first degree has or controls, directly or indirectly, a financial interest in any commercial alcoholic beverage enterprise, including any business required to have an ABC permit. The Commission may exempt from this provision any person, other than a Commission member, when the financial interest in question is so insignificant or remote that it is unlikely to affect the person's official actions in any way. Exemptions may be granted only to individuals, not to groups or classes of people, and each exemption shall be in writing, be available for public inspection, and contain a statement of the financial interest in question.

(b) Self-dealing. – The provisions of G.S. 14-234 shall apply to the Commission and local boards.

(c) Dealing for Family Members. – Neither the Commission nor any local board shall contract or otherwise deal in any business matter so that a member, member's spouse or any person related to ~~him~~ the member by blood to a degree of first cousin or closer in any way financially benefits, directly or indirectly, from the transaction unless:

(1) The member who financially benefits from the transaction or whose spouse or relative financially benefits from the transaction abstains from participating in any way, including voting, in the decision;

(2) The minutes of the meeting at which the final decision is reached specifically note the member who is financially benefited or whose spouse or relative is financially benefited and the amount involved in each transaction;

(3) The next annual audit of the Commission or local board specifically notes the member and the amount involved in each transaction occurring during the year covered by the audit; and

(4) If the transaction is by a local board, the Commission is notified at least two weeks before final board approval of the transaction.

(d) Gifts Generally. – The provisions of G.S. 133-32 shall apply to the Commission and local boards.

(e) Conflicts of Interest for the Commission. – The provisions of Article 4 of Chapter 138A of the General Statutes shall apply to the Commission.

(f) Conflicts of Interest for Local Boards. – Except as permitted under subsection (h) of this section, a local ABC board member shall not knowingly use the local ABC board member's position on the board in any way that will result in financial benefit to the local ABC board member, the local ABC board member's spouse, any person related to the local ABC board member by blood to a degree of first cousin or closer, or any business with which the local ABC board member is associated.

(g) For purposes of subsection (f) of this section, 'business with which associated' shall have the same meaning as in G.S. 138A-3(3). For purposes of this section, 'financial benefit' shall mean a direct pecuniary gain or loss, or a direct pecuniary loss to a business competitor.

(h) Notwithstanding subsection (f) of this section, a local ABC board member may participate in an action of the local ABC board under any of the following circumstances except as specifically limited:

(1) The financial benefit that accrues to the local ABC board member, the local ABC board member's spouse or any person related to the local ABC board member by blood to a degree of first cousin or closer, or a business with which the local ABC board member is associated is one that is accrued as a member of a profession, occupation, or general class and is no greater than that which could reasonably be foreseen to accrue to all members of that profession, occupation, or general class.

(2) The financial benefit derived by a local ABC board member, the local ABC board member's spouse or any person related to the local ABC board member by blood to a degree of first cousin or closer, or a business with which the local ABC board member is associated is one that would be enjoyed to an extent no greater than that which other citizens of the State would or could enjoy.

(3) The financial benefit derived by a local ABC board member, the local ABC board member's spouse or any person related to the local ABC board member by blood to a degree of first cousin or closer, or a business with which the local ABC board member is so remote, tenuous, insignificant, or speculative that a reasonable person would conclude under the circumstances that the local ABC board member's ability to protect the public interest and perform the local ABC board member's duties would not be compromised.

(4) When an action affects or would affect the local ABC board member's compensation as a local ABC board member.

(5) Before the local ABC board member participated in the action, the board member requested and received from the ABC Commission a written advisory opinion that authorized the participation. In authorizing the participation under this subdivision, the ABC Commission shall consider the need for the local ABC board member's particular contribution, such as special knowledge of the subject matter and the effective functioning of the local ABC board.

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

(7) When the local ABC board records in its minutes that it cannot obtain a quorum in order to take the action because the local ABC board member is disqualified from acting, the local ABC board member may be counted for purposes of a quorum but shall otherwise abstain from taking any further action.

(i) Nothing in this section shall allow participation in an action prohibited by G.S. 14-234 or G.S. 133-32.

(j) A local board member shall not improperly use or improperly disclose any confidential information.

(k) A local board member shall have an affirmative duty to promptly disclose in writing to the local board any conflict of interest or potential conflict of interest."

SECTION 3. G.S. 18B-202 reads as rewritten:

"**§ 18B-202. Discharge upon conviction.**

In addition to imposing any other penalty authorized by law, a judge may remove from office or discharge from employment any Commission or local board member or employee, or any ALE agent, who is convicted of a violation of any provision of this Chapter or of any

felony and may declare that person ineligible for membership or employment with the Commission, any local board, or the ALE Division, for a period of not longer than three years. Conviction of a crime under this Chapter or of any felony shall also be grounds for the Commission to remove from office or discharge from employment any local board member or employee. In addition to imposing any other penalty authorized by law, a judge may prohibit a designated officer of an agency which holds a contract to enforce the ABC laws for a local board who is convicted of a violation of this Chapter or of any felony from participating in any contract to enforce the ABC laws for a local board and may prohibit the officer from being designated as an officer that enforces the ABC law under a contract with a local board for a period of not longer than three years."

SECTION 4. G.S. 18B-203(a) is amended by adding two new subdivisions to read:

"**§ 18B-203. Powers and duties of the Commission.**

(a) Powers. – The Commission shall have authority to:

...

(20) Promulgate rules to establish performance standards for local boards. Performance standards established pursuant to this subdivision shall include, but not be limited to, standards that address enforcement of ABC laws, store appearance, operating efficiency, solvency, and customer service.

(21) Promulgate rules to establish mandatory training requirements for local board members, finance officers, and general managers. The Commission shall not require more than four hours of training and shall provide up to two hours of training at convenient locations around the State in conjunction with ethics training if personal attendance is required."

SECTION 5. G.S. 18B-501(f) reads as rewritten:

"(f) Contracts with Other Agencies. – Instead of hiring local ABC officers, a local board may contract to pay its enforcement funds to a sheriff's department, city police department, or other local law-enforcement agency for enforcement of the ABC laws within the law-enforcement agency's territorial jurisdiction. Enforcement agreements may be made with more than one agency at the same time. When such a contract for enforcement exists, the designated officers of the contracting law-enforcement agency shall have the same authority to inspect under G.S. 18B-502 that an ABC officer employed by that local board would have. An agency contracted to provided ABC law enforcement shall designate no more than five officers to conduct inspections pursuant to this section and G.S. 18B-502. If a city located in two or more counties approves the sale of some type of alcoholic beverage pursuant to the provisions of G.S. 18B-600(e4), and there are no local ABC boards established in the city and one of the counties in which the city is located, the local ABC board of any county in which the city is located may enter into an enforcement agreement with the city's police department for enforcement of the ABC laws within the entire city, including that portion of the city located in the county of the ABC board entering into the enforcement agreement."

SECTION 6. G.S. 18B-501 is amended by adding a new section to read:

"(f1) Accountability; Enforcement Reports. – To ensure accountability to the appointing authority and the Commission, every local board's ABC officers and those law enforcement agencies subject to an enforcement agreement entered into pursuant to subsection (f) of this section shall report to the local board, by the fifth business day of each month, on a form developed by the Commission, the following:

(1) The number of arrests made for ABC law, Controlled Substance Act, or other violations, by category, at ABC permitted outlets.

(2) The number of arrests made for ABC law, Controlled Substance Act, or other violations, by category, at other locations.

(3) The number of agencies assisted with ABC law or controlled substance related matters.

(4) The number of alcohol education and responsible server programs presented.

The local board shall submit a copy of the enforcement report to the appointing authority and the Commission not later than five business days after receipt of the enforcement report by the local board. The Commission shall publish this information, by local board and enforcement agency, on a public Internet Web site maintained by the Commission."

SECTION 7. G.S. 18B-501(g) reads as rewritten:

"(g) Discharge. – Local ABC officers and the designated officers of agencies which contract with local boards for enforcement of the ABC laws are subject to the discharge provisions of G.S. 18B-202."

SECTION 8. G.S. 18B-600(e) reads as rewritten:

"(e) City Mixed Beverage Elections. – A city may hold a mixed beverage election ~~only if:~~if the city has at least 500 registered voters.

~~(1) The city has at least 500 registered voters; and~~

~~(2) Either:~~

~~a. The city already operates a city ABC store; or~~

~~b. A city ABC store election is to be held at the same time as the mixed beverage election; or~~

~~c. The city does not operate a city ABC store but:~~

~~1. The county operates an ABC store;~~

~~2. The county has already held a mixed beverage election; and~~

~~3. The vote in the last county election was against the sale of mixed beverages.~~"

SECTION 9. G.S. 18B-700 is amended by adding a new subsection to read:

"(a1) Mission. – The mission of local ABC boards and their employees shall be to responsibly serve their localities by controlling the sale of spirituous liquor and promoting customer-friendly, modern, and efficient stores."

SECTION 10. G.S. 18B-700(g) reads as rewritten:

"(g) ~~Salary.~~Compensation of Board Members. – A local board member ~~may be compensated as determined by the appointing authority.~~shall receive compensation in an amount not to exceed one hundred fifty dollars ($150.00) per board meeting unless a different level of monetary compensation is approved by the appointing authority. If a different level is approved by the appointing authority, the appointing authority shall notify the Commission of the approved level of compensation in writing. Any change in compensation approved by the appointing authority shall be reported to the Commission in writing within 30 days of the effective date of the change. No local board member shall receive any nonmonetary compensation or benefits unless specifically authorized by this section."

SECTION 11. G.S. 18B-700 is amended by adding a new subsection to read:

"(g1) Compensation of General Managers of Local Boards. – The salary authorized for the general manager of a local board shall not exceed the salary authorized by the General Assembly for the clerk of superior court of the county in which the appointing authority was originally incorporated unless such compensation is otherwise approved by the appointing authority. The local board shall provide the appointing authority's written confirmation of such approval to the Commission. Any change in compensation approved by the appointing authority shall be reported to the Commission in writing within 30 days of the effective date of the change. The general manager of a local board may receive any other benefits to which all employees of the local board are entitled. The salary authorized for other employees of a local board may not exceed that of the general manager."

SECTION 12. G.S. 18B-700 is amended by adding a new subsection to read:

"(g2) Travel Allowance and Per Diem Rates. – Approved travel on official business by the members and employees of local boards shall be reimbursed pursuant to G.S. 138-6 unless the local board adopts a travel policy that conforms to the travel policy of the appointing

authority and such policy is approved by the appointing authority. The local board shall annually provide the appointing authority's written confirmation of such approval to the Commission and a copy of the travel policy authorized by the appointing authority. Any excess expenses not covered by the local board's travel policy shall only be paid with the written authorization of the appointing authority's finance officer. A copy of the written authorization for excess expenses shall be submitted to the Commission by the local board within 30 days of approval."

SECTION 13. G.S. 18B-700(i) reads as rewritten:

"(i) Bond. – Each local board member and the employees designated as the general manager or finance officer of the local board shall be bonded in an amount not less than ~~five thousand dollars ($5,000),~~fifty thousand dollars ($50,000) secured by a corporate surety, for the faithful performance of his duties. A public employees' blanket position bond in the required amount satisfies the requirements of this subsection. The bond shall be payable to the local board and shall be approved by the appointing authority for the local board. The appointing authority may ~~exempt from this bond requirement any board member who does not handle board funds, and it may also~~ increase the amount of the bond required for any member or employee who ~~does handle~~handles board funds."

SECTION 14. G.S. 18B-700 is amended by adding a new subsection to read:

"(k) Nepotism. – Members of an immediate family shall not be employed within the local board if such employment will result in one member of the immediate family supervising another member of the immediate family, or if one member of the immediate family will occupy a position which has influence over another member's employment, promotion, salary administration, or other related management or personnel considerations. This subsection applies to local board members and employees.

For the purpose of this subsection, the term immediate family includes wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson, and granddaughter. Also included are the step-, half-, and in-law relationships. It also includes other people living in the same household, who share a relationship comparable to immediate family members, if either occupies a position which requires influence over the other's employment, promotion, salary administration, or other related management or personnel considerations."

SECTION 15. G.S. 18B-700 is amended by adding a new subsection to read:

"(l) Local Acts. – Notwithstanding the provisions of any local act, this section applies to all local boards."

SECTION 16. G.S. 18B-701 reads as rewritten:

"**§ 18B-701. Powers and duties of local ABC boards.**

(a) Powers. – A local board shall have authority to:

(1) Buy, sell, transport, and possess alcoholic beverages as necessary for the operation of its ABC stores;

(2) Adopt rules for its ABC system, subject to the approval of the Commission;

(3) Hire and fire employees for the ABC system;

(4) Designate one employee as manager of the ABC system and determine his responsibilities;

(5) Require bonds of employees as provided in the rules of the Commission;

(6) Operate ABC stores as provided in Article 8;

(7) Issue purchase-transportation permits as provided in Article 4;

(8) Employ local ABC officers or make other provision for enforcement of ABC laws as provided in Article 5;

(9) Borrow money as provided in G.S. 18B-702;

(10) Buy and lease real and personal property, and receive property bequeathed or given, as necessary for the operation of the ABC system;

(11) Invest surplus funds as provided in G.S. 18B-702;

(12) Dispose of property in the same manner as a city council may under Article 12 of Chapter 160A of the General Statutes; and

(13) Perform any other activity authorized or required by the ABC law.

(b) Duties. – A local board shall have the duty to comply with all rules adopted by the Commission pursuant to this Chapter and meet all standards for performance and training established by the Commission pursuant to G.S. 18B-203(a)(20) and (21). Failure to comply with Commission rules shall be cause for removal."

SECTION 17. G.S. 18B-702 reads as rewritten:

"**§ 18B-702. Financial operations of local boards.**

(a) Generally. – A local board may transact business as a corporate body, except as limited by this section. A local board shall not be considered a public authority under G.S. 159-7(b)(10).

(b) Budget Officer. – The general manager of the local board shall be the budget officer for the local board. In the absence of a general manager, a local board may impose the duties of budget officer on the chairman or any member of the local board or any other employee of the board.

(c) Annual Balanced Budget. – Each local board shall operate under an annual balanced budget administered in accordance with this section. A budget is balanced when the sum of estimated gross revenues and both restricted and unrestricted funds are equal to appropriations. Expenditures shall not exceed the amount of funds received or in reserve for the purpose to which the funds are appropriated. It is the intent of this section that all monies received and expended by a local board should be included in the budget. Therefore, notwithstanding any other provision of law, no local board may expend any monies, regardless of their source, except in accordance with a budget adopted under this section. The budget of a local board shall cover a fiscal year beginning July 1 and ending June 30.

(d) Preparation and Submission of Budget and Budget Message. – Upon receipt of the budget requests and revenue estimates and the financial information supplied by the finance officer, the budget officer shall prepare a budget for consideration by the local board in such form and detail as may have been prescribed by the budget officer or the local board. The budget, together with a budget message, shall be submitted to the local board, the appointing authority, and the Commission not later than June 1. The budget and budget message should, but need not, be submitted at a formal meeting of the board. The budget message should contain a concise explanation of the goals fixed by the budget for the budget year, should explain important features of the activities anticipated in the budget, should set forth the reasons for stated changes from the previous year in appropriation levels, and should explain any major changes in fiscal policy.

(e) Filing and Publication of the Budget. – On the same day the budget officer submits the budget to the local board, the budget officer shall make a copy for public inspection, and it shall remain available for public inspection until the budget is adopted. The budget officer shall make a copy of the budget available to all news media in the county. The budget officer shall also publish a statement that the budget has been submitted to the local board and is available for public inspection in the office of the general manager of the local board. The statement shall also give notice of the time and place of the budget hearing required by subsection (f) of this section.

(f) Budget Hearings. – Before adopting the budget, the board shall hold a public hearing at which time any persons who wish to be heard on the budget may appear.

(g) Adoption of Budget. – Not earlier than 10 days after the day the budget is presented to the board and not later than July 1, the local board shall adopt a budget making appropriations for the budget year in such sums as the board may consider sufficient and proper, whether greater or less than the sums recommended in the budget. The budget shall authorize all financial transactions of the local board. The budget may be in any form that the

board considers most efficient in enabling it to make the fiscal policy decisions embodied therein, but it shall make appropriations by department, function, or project and show revenues by major source. The following directions and limitations shall bind the local board in adopting the budget:

(1) The full amount estimated by the finance officer to be required for debt service during the budget year shall be appropriated.

(2) The full amount of any deficit in each fund shall be appropriated.

(3) Working capital funds set aside pursuant to G.S. 18B-805 shall be established by rule of the Commission. "Working capital" means the total of cash, investments, and inventory less all unsecured liabilities. Gross sales means gross receipts from the sale of alcoholic beverages less distributions as defined in G.S. 18B-805(b)(2), (3), (4), and (5). Any expenditure to be charged against working capital funds shall be authorized by resolution of the local board, which resolution shall be deemed an amendment to the budget setting up an appropriation for the object of expenditure authorized. The local board may authorize the budget officer to authorize expenditures from working capital funds subject to such limitations and procedures as it may prescribe. Any such expenditure shall be deemed an amendment and reported to the board at its next regular meeting and recorded in the minutes.

(4) Estimated revenues shall include only those revenues reasonably expected to be realized in the budget year.

(5) Sufficient funds to meet the amounts to be paid during the fiscal year under continuing contracts previously entered into shall be appropriated unless such contract reserves to the local board the right to limit or not to make such appropriation.

(6) The sum of estimated net revenues and appropriated fund balance in each fund shall be equal to appropriations in that fund. Appropriated fund balance in a fund shall not exceed the sum of cash and investments minus the sum of liabilities, encumbrances, and deferred revenues arising from cash receipts, as those figures stand at the close of the fiscal year next preceding the budget year.

The budget shall be entered in the minutes of the local board and within five days after adoption, and copies thereof shall be filed with the finance officer, the budget officer, the appointing authority, and the Commission.

(h) Amendments to the Budget. – Except as otherwise restricted by law, the local board may amend the budget at any time after adoption, in any manner; so long as the budget, as amended, continues to satisfy the requirements of this section. The local board by appropriate resolution may authorize the budget officer to transfer monies from one appropriation to another within the same fund subject to such limitations and procedures as it may prescribe. Any such transfers shall be reported to the local board at its next regular meeting and shall be entered in the minutes. Amendments to the adopted budget shall also be provided to the appointing authority and the Commission.

(i) Interim Budget. – In case the adoption of the budget is delayed until after July 1, the local board shall make interim appropriations for the purpose of paying salaries, debt service payments, and the usual ordinary expenses of the local board for the interval between the beginning of the budget year and the adoption of the budget. Interim appropriations so made shall be charged to the proper appropriations in the adopted budget.

(j) Finance Officer. – The local board shall designate (i) a part-time or full-time employee of the board other than the general manager or (ii) the finance officer of the appointing authority with consent of the appointing authority to be the finance officer for the local board. The Commission, for good cause shown, may allow the general manager of a

board to also be the finance officer. Good cause includes, but is not limited to, the fact that the board operates no more than two stores, and any approval for the general manager to also be the finance officer shall apply until the board operates more than two stores; in any event, the approval shall be effective for 36 months.

(k) Duties and Powers of the Finance Officer. – The finance officer for a local board shall:

(1) Keep the accounts of the local board in accordance with generally accepted principles of governmental accounting and the rules and regulations of the Commission.

(2) Disburse all funds of the local board in strict compliance with this Chapter, the budget, and preaudit obligations, and disbursements as required by this section.

(3) As often as may be requested by the local board or the general manager, prepare and file with the board a statement of the financial condition of the local board.

(4) Receive and deposit all monies accruing to the local board, or supervise the receipt and deposit of money by other duly authorized employees.

(5) Maintain all records concerning the debt and other obligations of the local board, determine the amount of money that will be required for debt service or the payment of other obligations during each fiscal year, and maintain all funds.

(6) Supervise the investment of idle funds of the local board pursuant to subsection (t) of this section.

The finance officer shall perform such other duties as may be assigned by law, by the general manager, budget officer, or local board, or by rules and regulations of the Commission.

(l) Accounting System.– Each local board shall establish and maintain an accounting system designed to show in detail its assets, liabilities, equities, revenues, and expenditures. The system shall also be designed to show appropriations and estimated revenues as established in the budget originally adopted and subsequently amended.

(m) Incurring Obligations. – No obligation may be incurred in a program, function, or activity accounted for in a fund included in the budget unless the budget includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the transaction for the current fiscal year. No obligation may be incurred for a capital project unless the budget authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay the sums obligated by the transaction. If an obligation is evidenced by a contract or agreement requiring the payment of money or by a purchase order for supplies and materials, the contract, agreement, or purchase order shall include on its face a certificate stating that the instrument has been preaudited to assure compliance with this subsection. The certificate, which shall be signed by the finance officer or any deputy finance officer approved for this purpose by the local board, shall take substantially the following form:

"This instrument has been preaudited in the manner required by G.S. 18B-702.

_____

(Signature of finance officer)."

An obligation incurred in violation of this subsection is invalid and may not be enforced. The finance officer shall establish procedures to assure compliance with this subsection.

(n) Disbursements. – When a bill, invoice, or other claim against a local board is presented, the finance officer shall either approve or disapprove the necessary disbursement. If the claim involves a program, function, or activity accounted for in a fund included in the budget or a capital project or a grant project authorized by the budget, the finance officer may approve the claim only if:

(1) The finance officer determines the amount to be payable; and
(2) The budget includes an appropriation authorizing the expenditure and either (i) an encumbrance has been previously created for the transaction or (ii) an unencumbered balance remains in the appropriation sufficient to pay the amount to be disbursed.

A bill, invoice, or other claim may not be paid unless it has been approved by the finance officer or, under subsection (o) of this section, by the local board. The finance officer shall establish procedures to assure compliance with this subsection.

(o) Local Board Approval of Bills, Invoices, or Claims. – The local board may, as permitted by this subsection, approve a bill, invoice, or other claim against the local board that has been disapproved by the finance officer. It may not approve a claim for which no appropriation appears in the budget, or for which the appropriation contains no encumbrance and the unencumbered balance is less than the amount to be paid. The local board shall approve payment by formal resolution stating the board's reasons for allowing the bill, invoice, or other claim. The resolution shall be entered in the minutes together with the names of those voting in the affirmative. The chairman of the board or some other member designated for this purpose shall sign the certificate on the check or draft given in payment of the bill, invoice, or other claim. If payment results in a violation of law, each member of the board voting to allow payment is jointly and severally liable for the full amount of the check or draft given in payment.

(p) Checks or Drafts Signed by Finance Officer. – Except as otherwise provided by law, all checks or drafts on an official depository shall be signed by the finance officer or a properly designated deputy finance officer. The chairman of the local board or general manager of the local board shall countersign these checks and drafts. The Commission may waive the requirements of this subsection if the board determines that the internal control procedures of the unit or authority will be satisfactory in the absence of dual signatures.

(q) Payment of a Bill, Invoice, Salary, or Claim. – A local board may not pay a bill, invoice, salary, or other claim except by a check or draft on an official depository or by a bank wire transfer from an official depository. Except as provided in this subsection, each check or draft on an official depository shall bear on its face a certificate signed by the finance officer or a deputy finance officer approved for this purpose by the local board (or signed by the chairman or some other member of the board pursuant to subsection (o) of this section). The certificate shall take substantially the following form:

"This disbursement has been approved in the manner required by G.S. 18B-702.

_____

(Signature of finance officer)."

No certificate is required on payroll checks or drafts on an imprest account in an official depository if the check or draft depositing the funds in the imprest account carried a signed certificate. No certificate is required for expenditures of fifty dollars ($50.00) or less from a petty cash fund, provided the expenditure is accounted for by a receipt for the expended item.

~~(b)~~(r) Borrowing Money. – A local board may borrow money only for the purchase of land, buildings, equipment and stock needed for the operation of its ABC system. A local board may pledge a security interest in any real or personal property it owns other than alcoholic beverages. A city or county whose governing body appoints a local board shall not in any way be held responsible for the debts of that board.

~~(c)~~(s) Audits. – A local board shall submit to the appointing authority and Commission an annual independent audit of its operations, performed in accordance with generally accepted accounting standards and in compliance with a chart of accounts prescribed by the Commission. The audit report shall contain a summary of the requirements of this Chapter, or of any local act applicable to that local board, concerning the distribution of profits of that board and a description of how those distributions have been made, including the names of

recipients of the profits and the activities for which the funds were distributed. A local board shall also submit to any other audits and submit any reports demanded by the appointing authority or the Commission.

~~(d)~~(t) Deposits and Investments. – A local board may deposit ~~moneys~~monies at interest in any bank or trust company in this State in the form of savings accounts or certificates of deposit. Investment deposits shall be secured as provided in G.S. 159-31(b) and the reports required by G.S. 159-33 shall be submitted. A local board may invest all or part of the cash balance of any fund as provided in G.S. 159-30(c) and (d), and may deposit any portion of those funds for investment with the State Treasurer in the same manner as State boards and commissions under G.S. 147-69.3.

~~(e)~~(u) Compliance with Commission Rules. – The Commission shall adopt, and each local board shall comply with, fiscal control rules concerning the borrowing of money, maintenance of working capital, investments, appointment of a budget officer, appointment of a financial officer, daily deposit of funds, bonding of employees, auditing of operations, and the schedule, manner and other procedures for distribution of profits. The Commission may also adopt any other rules concerning the financial operations of local boards which are needed to assure the proper accountability of public funds. The Commission may vary these rules and regulations according to any other criteria reasonably related to the purpose or complexity of the financial operations involved. The Commission has the authority to inquire into and investigate the internal control procedures of a local board and may require any modifications in internal control procedures which, in the opinion of the Commission, are necessary or desirable to prevent embezzlements or mishandling of public monies.

(v) Penalties. – If a board member or employee of a local board incurs an obligation or pays out or causes to be paid out any funds in violation of this section, the member or employee and the sureties on the official bond are liable for any sums so committed or disbursed. If the finance officer or any properly designated deputy finance officer gives a false certificate to any contract, agreement, purchase order, check, draft, or other document, the finance officer and the sureties on the official bond are liable for any sums illegally committed or disbursed thereby.

~~(f)~~(w) Applicability of Criminal Statutes. – The provisions of G.S. 14-90 and G.S. 14-254 shall apply to any person appointed to or employed by a local board, and any person convicted of a violation of G.S. 14-90 or G.S. 14-254 shall be punished as a Class H felon.

(x) Local Acts. – Notwithstanding the provisions of any local act, this section applies to all local boards."

SECTION 18. Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-704. Removal of local board members and employees.**

(a) Improper Influence. – Neither the Commission nor its individual members shall attempt to coerce any appointing authority to appoint a particular person as a member of a local board or attempt to coerce a local board to employ any particular applicant.

(b) Purpose. – This section is intended to provide a uniform system of removal for appointing authorities and the Commission.

(c) Cause for Removal. – Disqualification of a local board member or employee under the law, a violation of the ABC laws, failure to complete training required by this Chapter or the Commission, or engaging in any conduct constituting moral turpitude or which brings the local board or the ABC system into disrepute is cause for the Commission to remove any member or employee of a local board. The employment or retention of any employee who is known to be disqualified under the law to hold a position with a local board is cause for the Commission to remove the board members involved.

(d) Removal Process. – The Commission or appointing authority shall provide, in writing, to the local board member or employee the findings of fact upon which the decision for removal is based. The Commission or appointing authority shall also provide the local board

member or employee with notice of the availability of a hearing before the Commission to review the removal.

(e) Removal Hearing. – Any local board member or employee removed from office or discharged by the Commission or the appointing authority may request a hearing before the Commission. Such a request operates to stay the action of the Commission or the appointing authority with regard to the matter until after the hearing, unless the Commission finds that the public interest requires immediate action. At the hearing, the employee or the employee's counsel may examine all evidence used against the employee and present evidence in the employee's own behalf. A removal hearing is not subject to the provisions of Chapter 150B of the General Statutes. All hearings shall be conducted informally and in such manner as to preserve the substantial rights of the parties.

(f) Hearing Procedure. – The Commission shall hold the hearing required by subsection (e) of this section within 15 days of the member's or employee's request for a hearing. The standard of review by the Commission is de novo. The Commission or appointing authority shall be represented by a Commission hearing officer. The Commission shall discharge the member or employee if two-thirds of the Commission's members vote for removal. The Commission shall make findings of fact. The Commission may adopt the findings of fact of the Commission or the appointing authority, may add new findings of fact to the original findings of fact, or may substitute new findings of fact for the original findings of fact. The Commission shall make conclusions of law and shall issue a written decision to the member or employee of the local board, and to the appointing authority, within 15 days of the hearing.

(g) Commission Authority. – The Commission shall have the sole power, in its discretion, to determine if cause exists for removal of a local board member or employee who has requested a hearing before the Commission. The Commission's decision in a removal hearing is final.

(h) Appeal. – A local board member or employee may appeal the Commission's final decision to the Court of Appeals. The standard of review for an appeal shall be abuse of discretion. The sole remedy for a local board member or employee shall be the reinstatement of the board member or employee to the local board with back pay. All awards for back pay shall be paid by the local board from which the board member or employee was removed.

(i) Removal Hearing Not a Substitute for Termination of Employee. – Nothing in this section replaces or is intended to replace a local board's policy regarding the termination of an employee for personnel reasons. The removal process under this section is reserved solely for the appointing authority or the Commission to remove a board member or employee for cause.

(j) Local Acts. – Notwithstanding the provisions of any local act, this section applies to all local boards."

SECTION 19. Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-705. Compliance with performance standards; remedies.**

(a) Local Board Compliance. – The Commission shall establish performance standards pursuant to G.S. 18B-203(a)(20). The Commission shall ensure that all local boards comply with established performance standards by conducting regular or special audits, conducting performance evaluations, monitoring ABC law enforcement efforts, or taking other measures, which may include inspections by Commission auditors or alcohol law enforcement agents.

(b) Performance Improvement Plans. – The Commission, upon determining that a local board is failing to meet performance standards established pursuant to G.S. 18B-203(a)(20), shall meet with the chair of the local board and the appointing authority and issue a statement of findings. The appointing authority, in consultation with the Commission and the local board, shall develop for and deliver a performance improvement plan to the local board within 60 days of the meeting with the Commission. The performance improvement plan shall include, but not be limited to, recommendations for improved performance based on the performance standards

established by the Commission. The plan shall also state a period of time in which the performance improvements are to occur and what action will be taken by the Commission if performance standards are not met within the given time limits. The appointing authority shall allow up to, but no more than, 12 months' time to the local board to implement and show improvement under the performance improvement plan. The local appointing authority, in consultation with the Commission and upon good cause shown, may allow up to an additional six-month period of time for the local board to meet all requirements in the performance improvement plan and to establish that the performance standards established by the Commission are met.

(c) Remedies. – If the Commission determines that the established performance standards identified in the statement of findings cannot be met after a performance improvement plan has been implemented and adequate time has been given, but in no case less than 12 months, the Commission shall take appropriate action to avoid insolvency. This action may include closing the board pursuant to G.S. 18B-801(d), closing a store or multiple stores, or merging the local board with another local board in order to maintain solvency. The Commission may also seize the assets of the local board and liquidate any assets necessary to satisfy any debt in order to maintain the solvency of the local board. Prior to taking action pursuant to this subsection, the Commission shall issue a notice of intent to take such action to the appointing authority and the local board.

(d) Local Acts. – Notwithstanding the provisions of any local act, this section applies to all local boards."

SECTION 20. Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-706. Ethics requirements for local boards.**

(a) Each local board shall adopt a policy containing a code of ethics, consistent with the provisions of G.S. 18B-201, to guide actions by the local board members and employees of the local board in the performance of their official duties. The policy shall address at least all of the following:

(1) The need to obey all applicable laws regarding official actions taken as a local board member or employee.

(2) The need to uphold the integrity and independence of the local board member or employee's position.

(3) The need to avoid impropriety in the exercise of official duties.

(4) The need to faithfully perform the duties of the position.

(5) The need to conduct the affairs of the board in an open and public manner, including complying with all applicable laws governing open meetings and public records.

(b) Each member of a local board shall receive a minimum of two hours of ethics education within 12 months after initial appointment to the office and again within 12 months after each subsequent appointment to the office. The ethics education shall cover laws and principles that govern conflicts of interest and ethical standards of conduct for local ABC boards. The education may be provided by the Commission or other qualified source approved by the Commission. The local board shall maintain a record verifying receipt of the ethics education by each member of the local board. The local board may require appropriate ethics training and education for employees of the local ABC board.

(c) The Commission shall develop a model ethics policy that local ABC boards may adopt to be in compliance with this section."

SECTION 21. G.S. 18B-801(b) reads as rewritten:

"(b) Location of Stores. – A local board may choose the location of the ABC stores within its jurisdiction, subject to the approval of the Commission. In making its decision on a location, the Commission may consider:

(1) Whether the health, safety, or general welfare of the community will be adversely ~~affected; and~~affected.
(2) Whether the citizens of the community or city in which the proposed store is to be located voted for or against ABC stores in the last election on the question.
(3) The proximity of the new location to existing ABC stores operated by the local board or any other board."

SECTION 21.1. G.S. 18B-801(c) reads as rewritten:

"(c) Closing of Stores. – Subject to the provisions of ~~subsection (a),~~ subsection (a) of this section, a local board may ~~close,~~ close a store, or the Commission may order a local board to ~~close,~~ close any store when the local board or the Commission determines that:

~~(1) The operation of the store is not sufficiently profitable to justify its continuation;~~
(2) The store is not operated in accordance with the ABC law; or
(3) The continued operation of that store will adversely affect the health, safety, or general welfare of the community in which the store operates."

SECTION 22. G.S. 18B-803 reads as rewritten:

"**§ 18B-803. Store management.**

(a) Manager. – A local board shall provide for the management of each store operated by it. The board shall employ at least one manager for each store, who shall operate the store pursuant to the directions of that board.

(b) Bonding of Manager. – Each store manager shall be bonded in an amount not less than ~~five thousand dollars ($5,000),~~ fifty thousand dollars ($50,000) secured by a corporate surety, for the honest performance of his duties. A public employees' blanket position bond, honesty form, in the required amount satisfies the requirements of this subsection. The bond shall be payable to the local board and shall be approved by the appointing authority for the local board. The appointing authority may increase the amount of bond required for store managers under this subsection.

(c) Bonding of Other Employees. – A local board or the appointing authority may require any of its other employees who handle funds to obtain bonds. The amount and form of those bonds shall be determined by the local board.

(d) Local Acts. – Notwithstanding the provisions of any local act, this section applies to all local boards."

SECTION 23. G.S. 18B-1213 reads as rewritten:

"**§ 18B-1213. Obligations of purchaser.**

The purchaser of a ~~winery~~winery, and any successor to the rights of a winery, is obligated to all the terms and conditions of an agreement in effect on the date of the ~~purchase,~~purchase or other acquisition of the right to distribute a brand, except for good cause, which includes,

(1) Revocation of the wholesaler's permit or license to do business in this State,
(2) Bankruptcy or insolvency of the wholesaler,
(3) Assignment for the benefit of creditors or similar disposition of the assets of the wholesaler, or
(4) Failure by the wholesaler to comply substantially, without reasonable excuse or justification, with any reasonable and material requirement imposed upon ~~him~~ the wholesaler by the winery.

As used in this Article, "purchase" includes the sale of stock, sale of assets, merger, lease, transfer, or consolidation."

SECTION 24. G.S. 93B-9 reads as rewritten:

"**§ 93B-9. Age requirements.**

Any other provision notwithstanding, except certifications issued by the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina

Sheriff's Education and Training Standards Commission pursuant to Chapters 17C, 17D, 74E, and 74G of the General Statutes, no occupational licensing board may require that an individual be more than 18 years of age as a requirement for receiving a license."

SECTION 25. Section 6 of this act becomes effective January 1, 2011. Sections 11 and 14 of this act become effective October 1, 2010, and apply to general managers and employees hired on or after that date. Section 15 of this act becomes effective October 1, 2011. Section 17 of this act becomes effective May 1, 2011, and is applicable for local board fiscal years beginning July 1, 2011. The ABC Commission shall offer training and education to local boards to assist local boards in complying with Section 17 of this act, and such training and education shall be offered at least once annually after the effective date of this act; however, the Commission shall have no obligation to provide such training and education after December 31, 2013. Section 23 of this act is effective when it becomes law and its provisions shall apply to all existing franchise agreements. A supplier's shipment of wine to a wholesaler in North Carolina following the effective date of Section 23 of this act shall constitute acceptance by the supplier of the terms of this act and shall be incorporated into the agreement between the supplier and wholesaler. Section 24 of this act is effective when it becomes law. The remainder of this act becomes effective October 1, 2010.

SENATE BILL 1112:
Modernization of the State ABC System

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 14, 2010
Introduced by:	Sen. Vaughan	**Prepared by:**	Brenda J. Carter
Analysis of:	S1112-CSRV-65[v.1]		Committee Counsel

SUMMARY: This proposed committee substitute for Senate Bill 1112 makes a number of changes to the State's ABC laws, many of which were recommended by a joint legislative study committee on Alcoholic Beverage Control issues.

[As introduced, this bill was identical to H1717, as introduced by Reps. R. Warren, Bell, Lucas, which is currently in House State Government/State Personnel.]

BILL ANALYSIS: **Section 1** of the bill would provide definitions for the finance officer and the general manager of local ABC boards. The finance officer is the person responsible for keeping the accounts of the local board, including receiving and depositing receipts and disbursing funds. The general manager is the person responsible for the oversight of daily operations of the ABC system. *(Note: Section 17 of the bill requires the local board to designate an employee other than the general manager to be the finance officer of the local board. For good cause, the Commission may allow the board's general manager to also be the finance officer.)*

Section 2 of the bill would amend the law pertaining to conflicts of interest and gifts. Current law prohibits a person who has a financial interest in a commercial ABC enterprise from being appointed to or employed by the State ABC Commission, a local board, or the Alcohol Law Enforcement (ALE) Division, and current criminal prohibitions against public officers or employees benefiting from public contracts apply to the ABC Commission and local ABC boards. The bill would apply the provisions of G.S. 133-32 to the ABC Commission and local ABC boards, making it unlawful for contractors or suppliers who have or seek to have a contract with the Commission or local board to make gifts or to give favors to any Commission or local board officers or employees; it would also be unlawful for an officer or employee to accept such gifts. The bill would make the ABC Commission subject to the Ethical Standards of the State Ethics Acts, which prohibits the use of public position for private gain, prohibits certain gifts and other compensation, prohibits the use of information for private gain, and sets other rules of conduct for public servants. The bill would provide specific guidelines pertaining to conflicts of interest for local ABC boards, prohibiting a local board member from knowingly using his or her position in a manner that would result in financial benefit to the local board member, to his or her spouse or near relative, or to any business with which the local board member is associated. The bill would prohibit a local board member from improperly using or disclosing any confidential information, and would impose an affirmative duty on every local board member to promptly disclose in writing to the local board any actual or potential conflict of interest.

Section 3 of the bill would amend the law concerning judicial authority to remove from office or discharge from employment any Commission or local board member or employee, or any ALE agent who violates the State's alcohol laws or commits any felony. The bill would make the discharge provision applicable to local law enforcement officers who serve as the designated officer of an agency which holds a contract to enforce the ABC laws for a local board, giving the judge authority to prohibit the officer from being designated as an officer that enforces the ABC law, for a period up to 3 years.

Section 4 of the bill would give the ABC Commission authority to adopt rules to establish performance standards for local boards, including standards that address enforcement of ABC laws, store appearance, operating efficiency, solvency, and customer service. The Commission would also have authority to

adopt rules setting mandatory training requirements for local board members, finance officers, and general managers.

Section 5 of the bill would limit the number of officers that a contracting law enforcement agency may designate to conduct inspections of ABC-licensed premises. Under current law, instead of hiring local ABC officers a local board may contract to pay its enforcement funds to a local law enforcement agency for enforcement of the ABC laws within the agency's territorial jurisdiction. Officers of contracting law enforcement agencies have the same authority to inspect that an ABC officer employed by that local board would have, including viewing the entire premises and examining the books and records of the permittee. The bill would require that a contracting law enforcement agency designate not more than five officers to conduct ABC inspections.

Section 6 of the bill would require local board ABC officers and law enforcement agencies subject to enforcement agreements with a local board to provide monthly reports to the local board, including information on the number of arrests made for ABC law and controlled substance violations and other violations at ABC-permitted outlets and other locations, the number of agencies assisted with ABC law or controlled substance related matters, and the number of alcohol education and responsible server programs presented. The local board would be required to submit a copy of the report to its appointing authority and to the ABC Commission; and the ABC Commission would be required to publish the information on a public Internet website. This section would become effective January 1, 2011.

Section 7 of the bill would make a conforming change to the statute pertaining to local ABC officers, making it clear that designated officers of agencies that contract with local boards for enforcement of the ABC laws are subject to statutory provisions concerning discharge from those duties.

Section 8 of the bill would allow any city that has at least 500 registered voters to hold a mixed beverage election. It would eliminate the current requirement that the city already operate a city ABC store in order to hold the mixed beverage election or if not, the county either operates an ABC store or has already held a mixed beverage election and the vote was against the sale of mixed beverages.

Section 9 of the bill would define the mission of local ABC boards and their employees: controlling the sale of spirituous liquor and promoting customer-friendly, modern, and efficient stores.

Section 10 of the bill would limit the compensation of local ABC board members to not more than $150 per meeting, unless a different level of monetary compensation is approved by the board's appointing authority. If a different level of compensation is approved, the appointing authority would be required to provide written notice to the ABC Commission.

Section 11 of the bill would limit the compensation of general managers of local ABC boards. The salary authorized for the board's general manager could not exceed the salary authorized by the General Assembly for the clerk of superior court of the county in which the appointing authority was originally incorporated. Under G.S. 7A-101, the salaries of clerks of superior court are based on the population of the county, according to the following schedule:

Population	Annual Salary
Less than 100,000	$ 82,401
100,000 to 149,999	92,468
150,000 to 249,999	102,536
250,000 and above	112,607

The bill provides that a different level of monetary compensation may be approved by the board's appointing authority. If a different level of compensation is approved, the appointing authority would be required to provide written notice to the ABC Commission. The bill provides that no employee of a local board may receive a salary in excess of the amount authorized for the salary of the general manager. This section would become effective October 1, 2010 and apply to general managers and employees hired on or after that date.

Section 12 of the bill provides for members and employees of local ABC boards to be reimbursed for travel on official business in accordance with the statutory travel allowances of State officers and employees. With approval of the appointing authority, a local board may adopt a travel policy that conforms to the travel policy of the appointing authority. The local board would be required to annually provide to the Commission a copy of its travel policy along with the appointing authority's written confirmation of its approval. Excess expenses not covered by the local board's travel policy would be paid only with written authorization of the appointing authority's finance officer, and the local board would be required to submit a copy of the authorization to the ABC Commission within 30 days of approval.

Section 13 of the bill would increase the minimum amount of the bond required for local ABC board members and for the employees designated as the general manager or finance officer of the local board, raising it from $5,000 to $50,000. No board member would be exempt from the requirement, and the appointing authority could require a higher bond amount for any board member or employee who handles board funds

Section 14 of the bill would prohibit members of an immediate family or members of the same household from being employed within a local board if the employment would result in one family or household member supervising another, or if one family or household member would occupy a position that has influence over the employment, promotion, or salary administration of another. The provision would apply to local board members and employees. This section would become effective October 1, 2010 and apply to employees hired on or after that date.

Section 15 of the bill would make the provisions of G.S. 18B-700 regarding the appointment and organization of local ABC boards applicable to all local ABC boards, notwithstanding any local acts that may provide otherwise. This section would become effective October 1, 2011.

Section 16 of the bill would require a local ABC board to comply with all rules adopted by the ABC Commission pursuant to its authority under the State's ABC laws, and to meet all standards set by the Commission for performance and training. Failure to comply with Commission rules would be grounds for removal.

Section 17 of the bill would amend the statute pertaining to the financial operations of local boards. A local board would be required to operate under an annual balanced budget in accordance with provisions in the bill. All monies received and expended by a local board would be included in the budget, and no local board could expend any monies except in accordance with the budget. The general manager of the local board, as budget officer, would prepare a budget for consideration by the local board. The proposed budget would be submitted to the local board, its appointing authority, and the ABC Commission by June 1; and a copy would be made available for public inspection. Before adopting the budget, the board would be required to hold a public hearing. This section of the bill would establish specific directions and limitations that a local board must comply with in adopting its budget. Once the budget is adopted, it must be filed with the board's finance officer and budget officer, the board's appointing authority, and the ABC Commission. The bill provides for amendments to an adopted budget and for an interim budget in case adoption of the budget is delayed until after the start of the fiscal year. The bill requires the local board to designate an employee other than the general manager to be the finance officer of the local board, and sets out the duties and powers of the finance officer. For good cause, the Commission may allow the board's general manager to also be the finance officer. Each local board would be required to establish and maintain an accounting system designed to show in detail its assets, liabilities, revenues, and expenditures. The bill contains specific provisions relative to incurring obligations, disbursements, and local board approval of bills, invoices, or claims. All checks or drafts must be signed by the finance officer or a properly designated deputy finance officer, and countersigned by the chair of the local board or the general manager, except where the requirement for dual signatures is waived by the Commission. Audits and reports currently required to be submitted to the ABC

Commission must also be submitted to the local board's appointing authority. The bill would give the ABC Commission specific authority to inquire into and investigate the internal control procedures of a local board, and to require any modifications necessary or desirable to prevent the embezzlement or mishandling of public monies. The finance officer and sureties on the official bond would be liable for any sums committed or disbursed in violation of the law. The provisions pertaining to financial operations of local boards would apply to all local boards, notwithstanding any local acts. This section would become effective May 1, 2011 and apply to local board fiscal years beginning July 1, 2011. The ABC Commission would be required to offer training and education to assist local boards in complying with this section.

Section 18 of the bill would prohibit the ABC Commission or its individual members from attempting to coerce any appointing authority to appoint a particular person as a member of a local board, or attempting to coerce a local board to employ a particular applicant. It would give the ABC Commission authority to remove any member or employee of a local board for disqualification under the law, violation of the ABC laws, failure to complete required training, or engaging in conduct constituting moral turpitude or which brings the local board of the ABC system into disrepute. The bill sets out a removal process that requires written findings of fact upon which the decision for removal is based, and provides for an informal removal hearing before the ABC Commission. The Commission would have authority to discharge the board member or employee if two-thirds of the Commission's members vote for removal. The Commission would have the sole power, in its discretion, to determine if cause exists for removal of a local board member or employee who has requested a hearing before the Commission, and the Commission's decision would be final. The local board member or employee could appeal the Commission's final decision to the Court of Appeals. The standard of review is abuse of discretion, and the sole remedy would be reinstatement with back pay. Awards for back pay would be paid by the local board from which the board member or employee was removed. These provisions would apply to all local boards.

Section 19 of the bill would require the ABC Commission to establish performance standards, and to ensure that all local boards comply with those standards by conducting regular or special audits, performance evaluations, monitoring ABC law enforcement efforts, or taking other measures including inspections by Commission auditors or alcohol law enforcement agents. When a local board fails to meet established performance standards, the Commission would be required to meet with the chair of the local board and the appointing authority and issue a statement of findings. The appointing authority would, in consultation with the Commission, develop and deliver a performance improvement plan to the local board. The plan would include recommendations for improved performance, and state a period of time in which improvements are to occur and what actions will be taken by the Commission if performance standards are not met within the prescribed time limits. The appointing authority may allow no more than 12 months for the local board to implement and show improvement under the plan; however, upon a showing of good cause and in consultation with the ABC Commission, the appointing authority may allow up to an additional 6 month period of time for the local board to meet all requirements in the improvement plan and to establish that performance standards are met. If the Commission determines that the established performance standards cannot be met after a performance improvement plan has been implemented and adequate time has been given, the Commission would be required to take appropriate action to avoid insolvency. The Commission would have authority to close the local board or one or more of its stores, or to merge the local board with another local board in order to maintain solvency. The Commission would also have authority to seize the assets of the local board and liquidate assets necessary to satisfy debt and maintain solvency of the local board.

Section 20 of the bill would require each local ABC board to adopt a policy containing a code of ethics consistent with statutory provisions concerning conflicts of interests and gifts. *(See Section 2 of the bill.)*

Each member of a local board would be required to receive a minimum of 2 hours of ethics education within 12 months after initial appointment to the board, and again within 12 months after each subsequent appointment to the office. The education may be provided by the ABC Commission or by some other qualified source approved by the Commission. A local board may require appropriate ethics training and education for its employees. The ABC Commission is required to develop a model ethic polity that local ABC boards may adopt in compliance with the requirements of the bill.

Section 21 of the bill would authorize the ABC Commission to consider the proximity of a new ABC store location to existing ABC stores when making its decision regarding approval of the new location.

Section 21.1 of the bill would amend the law with regard to the closing of ABC stores, eliminating specific authority of a local ABC board or the ABC Commission to close a store when the Commission determines that the store is not sufficiently profitable to justify its continuation.

Section 22 of the bill would increase the minimum amount of the bond required for ABC store managers, raising it from $5,000 to $50,000. An appointing authority may require a bond that exceeds the minimum amount.

Section 23 of the bill would amend G.S. 18B-1213 concerning the obligations of the purchaser of a winery, making it clear that the purchaser as well as *any successor to the rights of a winery* is obligated to all the terms and conditions of an agreement in effect on the date of the purchase *or other acquisition of the right to distribute a brand.* This section would be effective when it becomes law and apply to all existing franchise agreements. A supplier's shipment of wine to a wholesaler in this State following the effective date would constitute acceptance by the supplier of the terms of the bill and be incorporated into the agreement between the supplier and wholesaler.

Section 24 of the bill would create an exception to the law that prohibits occupational licensing boards from requiring that an individual be more than 18 years of age as a requirement for receiving a license. The exception would apply to certifications issued by the Criminal Justice Education and Training Standards Commission and the North Carolina Sheriff's Education and Training Standards Commission. This section would be effective when it becomes law.

EFFECTIVE DATE: Except as otherwise specified, the bill would become effective October 1, 2010.

S1112-SMRV-127(e1) v1

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	June 22, 2010	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1463	Expand Access/Confidential Intermediaries.	Representative Farmer-Butterfield Representative Dickson Representative Harrell Representative Wilkins, Jr.
SB 1112	Modernization of the State ABC System.	Senator Vaughan

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk ____
Reading Clerk ____

Corrected: HB 1753 added, SB 1112 removed

SENATE
NOTICE OF COMMITTEE MEETING
AND
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The Senate Committee on **Judiciary II** will meet at the following time:

DAY	DATE	TIME	ROOM
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The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1463	Expand Access/Confidential Intermediaries.	Representative Farmer-Butterfield Representative Dickson Representative Harrell Representative Wilkins, Jr.
HB 1753	School Bus Railroad Crossing Exception.	Representative Underhill Representative Wainwright

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II Committee
Tuesday, June 22, 2010, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 1463	Expand Access/Confidential Intermediaries.	Representative Farmer-Butterfield Representative Dickson Representative Harrell Representative Wilkins, Jr.
SB 1112	Modernization of the State ABC System.	Senator Vaughan

Presentations

Other Business

Adjournment

Senate Judiciary II Committee
Tuesday, June 22, 2010, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 1463	Expand Access/Confidential Intermediaries.	Representative Farmer-Butterfield Representative Dickson Representative Harrell Representative Wilkins, Jr.
HB 1753	School Bus Railroad Crossing Exception.	Representative Underhill Representative Wainwright

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE
Tuesday, June 22, 2010 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 10:00 AM on June 22, 2010, in Room 1124 of the Legislative Building with fourteen members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell introduced pages Brianna Tate, Alex Sewell, Ellie Holleman and Grace Holbrook and thanked them for their service.

HB 1463 – Expand Access/Confidential Intermediaries. - Senator Jones moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Dickson was recognized to explain the bill. Representative Wainwright gave additional information on the bill. Mr. Brinton Wright, attorney, spoke in favor of the bill. Senator Dixon and Representative Wainwright answered questions from Senators Allran, Forrester, Jacumin, Dannelly, East and Bingham. Ms. Brittany Farrell representing the North Carolina Family Policy Council spoke on the bill. Representative Wilkins spoke in favor of the bill. Senator Dannelly moved for a favorable report to the Proposed Committee Substitute, unfavorable to the original bill. All voted and the motion carried.

HB 1753 – School Bus Railroad Crossing Exception. Representative Underhill was recognized to explain the bill. Representative Wainwright gave additional information. Representatives Underhill and Wainwright answered questions from Senators Bingham, Jones, Dannelly and Berger. Senator Bingham moved for a favorable report. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, June 22, 2010

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **1753** School Bus Railroad Crossing Exception.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

H.B.(SCS #1) **1463** Expand Access/Confidential Intermediaries.
Draft Number: DRS 60088
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comments:

Sen. Dickson will handle HB1463
Sen. Preston will handleHB 1753

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

6-22-10
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Michelle Frazier	MFS
Ben Matthews	NCDPZ
Tammy Johnson	DHHS / DSS
Roberta MacDonald	American Adoption Congress NC Coalition for Adoption Reform
MARY SHEPPARD	CHS OF NC
Edith Vatta	CHS of NC
Paul Meyer	NCLM
Henry Jones	Attorney - Raleigh
Chris Williams	NC Beer & Wine Wholesalers
Shelley Smith	HLC-Inc
Donna Hurdle	HLC-Inc

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

6-22-10
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Brittany Farrell	NCFPC
Brinton Wright	NCBA - Family Law Council
Penny Griffin	School of Gov.
Sam Sanders	UNC

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 3

HOUSE BILL 1463
Committee Substitute Favorable 5/5/09
Senate Judiciary II Committee Substitute Adopted 8/6/09

Short Title: Expand Access/Confidential Intermediaries. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT ALLOWING ADULT BIOLOGICAL SIBLINGS OF ADULT ADOPTEES, ADULT BIOLOGICAL HALF SIBLINGS OF ADULT ADOPTEES, ADULT FAMILY MEMBERS OF DECEASED ADOPTEES, AND ADULT FAMILY MEMBERS OF DECEASED BIOLOGICAL PARENTS TO HAVE ACCESS TO CONFIDENTIAL INTERMEDIARY SERVICES UPON THE CONSENT OF THE PARTIES, AND ALLOWING AN AGENCY ACTING AS A CONFIDENTIAL INTERMEDIARY TO OBTAIN A COPY OF A DEATH CERTIFICATE OF THE PERSON WHO IS THE SUBJECT OF THE SEARCH AND DELIVER IT TO THE PERSON REQUESTING SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 48-1-101 reads as rewritten:

"**§ 48-1-101. Definitions.**

...

(5a) "Confidential intermediary" means ~~a licensed adoption agency staff person who~~ an agency that may act as a third party to facilitate ~~contact between an adult adoptee or the adult lineal descendant of a deceased adoptee and the biological parent.~~ the sharing of information authorized by G.S. 48-9-104.

...

~~(9a) "Lineal descendant of a deceased adoptee" means any person who descends from the direct line of the adoptee.~~

...."

SECTION 2. G.S. 48-9-101 reads as rewritten:

"**§ 48-9-101. ~~Certain terms~~ Records defined.**

~~(a)~~ For purposes of this Article, "records" means any petition, affidavit, consent or relinquishment, transcript or notes of testimony, deposition, power of attorney, report, decree, order, judgment, correspondence, document, invoice, receipt, certificate, or other printed, written, microfilmed or microfiched, video-taped or tape-recorded material or electronic data processing records regardless of physical form or characteristics pertaining to a proceeding for adoption under this Chapter.

~~(b) Notwithstanding G.S. 48-1-101, for purposes of this Article, "adult" means an individual who has attained 21 years of age.~~"

SECTION 3. G.S. 48-9-104 reads as rewritten:

"**§ 48-9-104. Release of identifying ~~information.~~information; confidential intermediary services.**

(a) Except as provided in this section or in G.S. 48-9-109(2) or (3), no person or entity shall release from any records retained and sealed under this Article the name, address, or other information that reasonably could be expected to lead directly to the identity of an adoptee, an adoptive parent of an adoptee, an adoptee's parent at birth, or an individual who, but for the adoption, would be the adoptee's sibling or grandparent, except upon order of the court for cause pursuant to G.S. 48-9-105.

(b) A child placing agency licensed by the Department or a county department of social services may agree to act as a confidential intermediary for ~~a biological parent or adult adoptee or adult lineal descendant of a deceased adoptee, without appointment by the court pursuant to G.S. 48-9-105, in order to obtain and share nonidentifying birth family health information or facilitate contact or share identifying information with adult adoptees, adult lineal descendants of deceased adoptees, and biological parents with the written consent of all parties to the contact or the sharing of information.~~ any of the following:

(1) A biological parent.
(2) An adult adoptee.
(3) An adult biological sibling of an adult adoptee.
(4) An adult biological half sibling of an adult adoptee.
(5) An adult family member of a deceased biological parent.
(6) An adult family member of a deceased adoptee.

In order to obtain and share nonidentifying birth family health information, to facilitate contact, or to share identifying information with any person listed in subdivisions (1) through (6) of this subsection, an agency may act as a confidential intermediary without appointment by the court pursuant to G.S. 48-9-105 and with the written consent of all parties to the contact or the sharing of information. Written consent of the biological parent is required if the biological parent is living at the time any party described in subdivisions (2) through (6) of this subsection seeks to contact or share identifying information with any other party described in subdivisions (2) through (6) of this subsection. Further, ~~a child placing agency licensed by the Department or a county department of social services~~ an agency may agree to act as a confidential intermediary for the adoptive parents of a minor adoptee or the guardian of a minor adoptee, without appointment by the court pursuant to G.S. 48-9-105, to obtain and share nonidentifying birth family health information. An agency providing confidential intermediary services shall contact individuals in a manner reasonably calculated to prevent incidental disclosure of confidential information. An agency that agrees to provide confidential intermediary services may charge a reasonable fee for doing so, which fee must be pursuant to written agreement signed by the individual to be charged. The Division shall establish guidelines for confidential intermediary services.

(c) For purposes of this section only, the term 'family member' means a spouse, child, stepchild, parent, stepparent, grandparent, or grandchild.

(d) If an agency providing confidential intermediary services determines that the person who is the subject of the search is deceased, the agency may obtain a copy of the death certificate pursuant to G.S. 130A-93 and deliver it to the person who requested the services."

SECTION 4. G.S. 130A-93 is amended by adding a new subsection to read:

"(c2) An agency acting as a confidential intermediary in accordance with G.S. 48-9-104 shall be entitled to a certified copy of a death certificate upon request."

SECTION 5. This act becomes effective October 1, 2009.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1463
Committee Substitute Favorable 5/5/09
Senate Judiciary II Committee Substitute Adopted 8/6/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1463-CSRV-66 [v.1]

6/14/2010 6:11:28 PM

Short Title: Expand Access/Confidential Intermediaries. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT ALLOWING ADULT BIOLOGICAL SIBLINGS OF ADULT ADOPTEES, ADULT BIOLOGICAL HALF SIBLINGS OF ADULT ADOPTEES, ADULT FAMILY MEMBERS OF DECEASED ADOPTEES, AND ADULT FAMILY MEMBERS OF DECEASED BIOLOGICAL PARENTS TO HAVE ACCESS TO CONFIDENTIAL INTERMEDIARY SERVICES UPON THE CONSENT OF THE PARTIES, AND ALLOWING AN AGENCY ACTING AS A CONFIDENTIAL INTERMEDIARY TO OBTAIN A COPY OF A DEATH CERTIFICATE OF THE PERSON WHO IS THE SUBJECT OF THE SEARCH AND DELIVER IT TO THE PERSON REQUESTING SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 48-1-101 reads as rewritten:

"**§ 48-1-101. Definitions.**

...

(5a) "Confidential intermediary" means ~~a licensed adoption agency staff person who~~ an agency that may act as a third party to facilitate ~~contact between an adult adoptee or the adult lineal descendant of a deceased adoptee and the biological parent.~~ the sharing of information authorized by G.S. 48-9-104.

...

~~(9a) "Lineal descendant of a deceased adoptee" means any person who descends from the direct line of the adoptee.~~

...."

SECTION 2. G.S. 48-9-101 reads as rewritten:

"**§ 48-9-101. ~~Certain terms~~ Records defined.**

~~(a)~~ For purposes of this Article, "records" means any petition, affidavit, consent or relinquishment, transcript or notes of testimony, deposition, power of attorney, report, decree, order, judgment, correspondence, document, invoice, receipt, certificate, or other printed, written, microfilmed or microfiched, video-taped or tape-recorded material or electronic data processing records regardless of physical form or characteristics pertaining to a proceeding for adoption under this Chapter.

~~(b) Notwithstanding G.S. 48-1-101, for purposes of this Article, "adult" means an individual who has attained 21 years of age.~~"

SECTION 3. G.S. 48-9-104 reads as rewritten:

"**§ 48-9-104. Release of identifying ~~information.~~information; confidential intermediary services.**

(a) Except as provided in this section or in G.S. 48-9-109(2) or (3), no person or entity shall release from any records retained and sealed under this Article the name, address, or other information that reasonably could be expected to lead directly to the identity of an adoptee, an adoptive parent of an adoptee, an adoptee's parent at birth, or an individual who, but for the adoption, would be the adoptee's sibling or grandparent, except upon order of the court for cause pursuant to G.S. 48-9-105.

(b) A child placing agency licensed by the Department or a county department of social services may agree to act as a confidential intermediary for ~~a biological parent or adult adoptee or adult lineal descendant of a deceased adoptee, without appointment by the court pursuant to G.S. 48-9-105, in order to obtain and share nonidentifying birth family health information or facilitate contact or share identifying information with adult adoptees, adult lineal descendants of deceased adoptees, and biological parents with the written consent of all parties to the contact or the sharing of information.~~ any of the following:

(1) A biological parent.

(2) An adult adoptee.

(3) An adult biological sibling of an adult adoptee.

(4) An adult biological half sibling of an adult adoptee.

(5) An adult family member of a deceased biological parent.

(6) An adult family member of a deceased adoptee.

In order to obtain and share nonidentifying birth family health information, to facilitate contact, or to share identifying information with any person listed in subdivisions (1) through (6) of this subsection, an agency may act as a confidential intermediary without appointment by the court pursuant to G.S. 48-9-105 and with the written consent of all parties to the contact or the sharing of information. Written consent of the biological parent is required if the biological parent is living at the time any party described in subdivisions (2) through (6) of this subsection seeks to contact or share identifying information with any other party described in subdivisions (2) through (6) of this subsection. Further, ~~a child placing agency licensed by the Department or a county department of social services~~ an agency may agree to act as a confidential intermediary for the adoptive parents of a minor adoptee or the guardian of a minor adoptee, without appointment by the court pursuant to G.S. 48-9-105, to obtain and share nonidentifying birth family health information. An agency providing confidential intermediary services shall contact individuals in a manner reasonably calculated to prevent incidental disclosure of confidential information. An agency that agrees to provide confidential intermediary services may charge a reasonable fee for doing so, which fee must be pursuant to written agreement signed by the individual to be charged. The Division shall establish guidelines for confidential intermediary services.

(c) For purposes of this section only, the term 'family member' means a spouse, child, stepchild, parent, stepparent, grandparent, or grandchild.

(d) If an agency providing confidential intermediary services determines that the person who is the subject of the search is deceased, the agency may obtain a copy of the death certificate pursuant to G.S. 130A-93 and deliver it to the person who requested the services."

SECTION 4. G.S. 130A-93 is amended by adding a new subsection to read:

"(c2) An agency acting as a confidential intermediary in accordance with G.S. 48-9-104 shall be entitled to a certified copy of a death certificate upon request."

SECTION 5. This act becomes effective October 1, 2010.

HOUSE BILL 1463:
Expand Access/Confidential Intermediaries

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 14, 2010
Introduced by:	Reps. Dickson, Wilkins, Harrell, Farmer-Butterfield	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	PCS to Third Edition H1463-CSRV-66		

SUMMARY: ***House Bill 1463 would allow adult full and half siblings of adult adoptees, and adult family members of deceased adoptees or deceased biological parents, to have access to confidential intermediary services from an adoption agency for facilitation of contact or to obtain identifying adoption information. The bill would also allow an agency acting as a confidential intermediary to obtain a copy of a death certificate of the person who is the subject of the search and deliver it to the person requesting services. This proposed committee substitute corrects the effective date.***

CURRENT LAW: Currently, NC adoption records are closed. The law provides that, with certain exceptions, no one may release a record that would lead directly to the identity of an adoptee, an adoptive parent of an adoptee, an adoptee's parent at birth, or an adoptee's birth sibling or grandparent. Exceptions are available through a court order, through voluntary consent, or through the services of a confidential intermediary. A confidential intermediary is a licensed adoption agency staff person authorized to act as a 3rd party to facilitate contact between an adult adoptee or the adult lineal descendant of a deceased adoptee and the biological parent. To facilitate contact or share the information, the confidential intermediary must have the written consent of all parties.

BILL ANALYSIS:

Section 1 – Definition of "confidential intermediary." This section would amend the definition of "confidential intermediary" to define the term as an agency (licensed child placing agency or a county department of social services) that may act as a third party to facilitate the sharing of information authorized by G.S. 48-9-104 (which is rewritten in Section 3 of the bill). This section of the bill would also delete the definition of "lineal descendant of a deceased adoptee".

Section 2 – Definition of "adult." This section would delete the provision that defined "adult" as someone 21 or older for purposes of the provisions relating to the use of confidential intermediaries. This means that the general definition of "adult" in G.S. 48-1-101 would apply, which says an adult is 18 or older, or a person under 18 who is either married or legally emancipated.

Section 3 – New Categories of People Added. This section of the bill would amend the list of people authorized to use confidential intermediary services to include the following:

- An adult biological sibling of an adult adoptee.
- An adult biological half sibling of an adult adoptee.
- An adult family member of a deceased biological parent.
- An adult family member of a deceased adoptee.

For purposes of this section, "family member" would mean spouse, child, stepchild, parent, stepparent, grandparent, or grandchild.

If the biological parent is living, written consent of the biological parent is required before contact with or sharing of identifying information between any of the other specified parties. The bill would also allow an agency to act as a confidential intermediary for the guardian of a minor adoptee.

If a confidential intermediary determines that the person who is the subject of the search is deceased, the agency may obtain a copy of the death certificate and deliver it to the person who requested the services.

Section 4 – Access to Death Certificate. This section would amend the statute relating to access to vital records to authorize agencies providing confidential intermediary services to obtain a copy of the death certificate when the agency determines that the person who is the object of its search is deceased.

EFFECTIVE DATE: The PCS corrects the effective date, making the bill effective October 1, 2010.

BACKGROUND: This bill was favorably reported by this Committee just prior to adjournment in August, 2009. It was withdrawn from the calendar on the opening day of the 2010 Regular Session, and re-referred to this Committee.

Susan Sitze and William Gilkeson, Staff Attorneys in the Research Division, contributed significantly to this summary.

H1463-SMRV-129(e3) v2

North Carolina General Assembly
Senate Chamber
State Legislative Building
Raleigh 27601-2808

SENATOR TOM APODACA
48TH DISTRICT

June 21, 2010

Fellow Senators:

Last year in committee when we discussed this bill, I spoke in favor of this bill and I still support the legislation. Each adoptee comes from different circumstances. I was blessed to be raised by my mother and step-father (who adopted me). Later in life I developed a relationship with my father and eventually took back his name. Nonetheless, I cannot imagine not knowing or having relationships with my half-siblings on either side. They bring happiness to me each day and some consternation.

I respect the rights of the living but furthermore I respect the rights of the surviving children whom may be fortunate enough to meet and develop relationships with their siblings.

Please support Senator Dickson.

Sincerely,

Tom Apodaca

P.S. I would rather be with you instead of rehab with my arm.

TMA/ab

Comments (31) | Recommend (16)

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An only child finds his big family

Harold Cogdell always wondered if he had other relatives. A recent state law helped him find them.

By David Perlmutt
dperlmutt@charlotteobserver.com
Posted: Sunday, Mar. 07, 2010

Growing up, a suspicion constantly gnawed at Harold Cogdell Jr. He'd never heard his mother, Jeanette, talk about her pregnancy, or how much he weighed at birth - like his friends' mothers did.

She and his father, Harold Sr., were older than his friends' parents in Kinston, where Harold Jr. was raised an only child 70 miles southeast of Raleigh. They were reserved; he was outgoing.

hey didn't share the same physical features. Harold Jr.'s friends often kidded that he looked like he came Ahoskie, a town in northeast North Carolina known for its large Native American community.

His parents were African-American.

"Kinston lacked diversity; it was black or white," Harold Jr. said. "I didn't fit squarely into either one. There were times when I felt out of place."

He suspected he might be adopted. Yet he never brought it up to his parents.

"I didn't want it to affect our relationship," he said. "I knew my parents loved me and I loved them. So I never confronted them."

Until he launched a search to fill the hole in 1993. He was a first semester law student at N.C. Central University in Durham, researching adoption laws. Suddenly, he needed to know the truth.

Driving home to Kinston for the weekend, he thought about his parents. He admired Harold Sr.'s strength: He was Kinston's first black police officer (and sergeant) and later its first black probation officer. He treasured Jeanette's elegance: She taught piano.

Adopted or not, the truth wouldn't come between them.

night, he sat with Harold Sr., mustering the courage:

"Pop, there's something that's not making sense," he recalls saying. "You and Mom have loved me, done everything possible for me. I am so thankful. But I feel there's some part of the story that I'm missing.

"I need to know: Was I adopted?"

d Sr. said nothing. He got up and nervously walked to the back - returning with Jeanette.

They'd been expecting that question all Harold Jr.'s life.

Yes, they did adopt him. He was slightly older than a year, living in a foster home in Durham. His name was only "Owen."

"I took one look at you and knew I had to have you," Jeanette told him.

When Harold Jr. was 6, they tried to tell him. His father read him a book about a baby alligator who'd been adopted. Story over, the boy threw the book across the room, and ran out crying and screaming: "I never want to hear that book again!"

The Cogdells dropped it.

Now, their son a grown man, they told him what little they knew about his birth mother: She'd been a college student in Durham - too young to care for a baby.

A baby born to a teenager

In fall 1968, Rene Melton Strickland was an 18-year-old student at a Durham business college. There, she met a young law student named Frank Turner.

dated briefly. But at the end of Frank's first semester of law school - at N.C. Central - he left school to work in Washington, D.C.

Weeks later, Rene discovered something she'd keep from much of her family, including her two sons, for four decades.

In late 1968, she was pregnant.

Abortion was out. So, too, was raising the baby - she felt she was too young. Her parents worked hard and had her four siblings to raise in Ahoskie, where her family descended from the Meherrin Indian tribe of Hertford County.

"I was not prepared to look after my baby; I knew I couldn't provide for him," Rene said. "I didn't want my parents to have to do it. They had enough on their hands. Back then, we didn't talk about these things. I felt it was best the baby go to a home that could provide for it."

Her decision was firm: She'd turn the baby over to Durham County Social Services to place for adoption.

At first, Rene told only her parents and a sister. She didn't try to find Frank.

On Aug. 13, 1969, Rene had a boy. She'd instructed nurses not to show her the baby, concerned it would make her decision harder. One nurse didn't get the message: "Here, I've brought your son so you can feed

Rene turned her head away.

mother, Dorothy, tried to see the baby. But he was gone.

Rene cried for an hour.

A new family in New York

After her son was born, Rene moved to Brooklyn, N.Y., to live with an aunt.

Soon, a young NYPD cop named Claudie Strickland began coming around. He, too, was Native American and had grown up in Clinton, N.C., 40 miles east of Fayetteville.

The attraction was instant. At Christmas 1969, Claudie drove Rene home to Ahoskie. Before leaving for Clinton, he asked Rene's father for permission to marry her.

"My mother asked if Claudie knew (about the baby)," Rene said. "I assured her that he did. She said, 'OK, then everything will be fine.'"

They married in January 1970. Three years later, son Billy was born, and in 1976, they had a second son, Jason.

They settled on Staten Island, as Claudie became an intelligence detective assigned to guard New York mayors.

stayed at home with their sons. She often thought about the son she gave up and prayed he was with a good family that loved him.

In 1990, son Billy spent his high school senior year in Charlotte with an aunt and uncle. He graduated from Queens College (now University) of Charlotte in 1996.

Four years earlier, Rene, Claudie and Jason had also moved to Charlotte. Claudie had retired. Rene had finished nursing school and began working as a nurse.

All along, neither son knew they had a half-brother.

Finding his birth mother

Harold Jr. had grown closer to Harold Sr. and Jeanette since their revelation, but somewhere he had another mother and father.

After law school in 1996, he took a job as an assistant district attorney in Charlotte. Two years later, he started his own criminal law practice. He got involved in politics and was elected to the Charlotte City Council in 2001, but left after one term to look after his practice. He's been a Mecklenburg County commissioner (he's now vice chair) since 2008.

07, he read that N.C. legislators had eased restrictions on adopted adults finding birth parents, using ion agencies as a go-between.

Harold Jr. applied through Durham County Social Services, and was assigned a "confidential intermediary" from an adoption agency. The law took effect in January 2008. A year later, the intermediary called: She'd found Harold's birth mother.

Her name is Rene.

By law, the intermediary wrote Rene Strickland in Charlotte that the son she'd given up in 1969 wanted to meet her. Was she willing? In early May, Rene and Claudie returned from vacation in California and found the letter in a stack of mail.

That evening, the intermediary called. I am so relieved, Rene told her. Of course I want to meet him. But not until I've told my other two sons.

On Mother's Day 2009, Rene sat Billy and Jason down. Two months earlier, she'd reacted strangely to Billy's news that he and his wife, Tracy, were adopting a baby. Now Rene was crying: "I don't want you to be shocked. Before Dad and I got married, I had a son who I gave up for adoption. I never thought it was important to tell you unless he found us.

"He's found us."

A new brother

Billy and Jason were stunned and excited; they had another brother. But where?

In a letter Harold Jr. was permitted to write and give to the intermediary, they only knew his first name. That he was a lawyer in Charlotte and "involved in the political arena."

At home, Billy Googled: "Harold, lawyer and Charlotte." Among Charlotte lawyers named Harold was Harold Cogdell Jr. Billy opened the Web site for Harold Jr.'s law office and saw his photo.

"Of course," he recalled saying. "He's definitely family."

Billy called Rene, his mother, with the Web site address. "Rene, that's your boy," Claudie told his wife.

Rene agreed: "If I'd ever seen him on the street, I'd have asked him where he was from. He really does look like family."

Billy contacted Harold Jr. by Facebook. He told him he and his family were all in Charlotte. They agreed to meet the next Saturday, May 16, at Tavern on the Tracks, a pub near Harold Jr.'s office. Billy knew the place well. For years, he worked for a title insurance company in a building across South Boulevard from Harold Jr.'s office.

Billy arrived first, then Harold Jr. They embraced. After an hour, Billy asked if it'd be OK for Jason to stop by.

Of course, Harold Jr. said. I'd love to meet him.

Jason arrived, Billy said: Harold, I don't want to pile on, but would you like to meet our mother?

Oh, yes, of course - absolutely, he said, beaming.

Well, she's at my house now, Billy said. The whole family's there. They all want to meet you.

:hree caravanned to Billy's house near Park Road Shopping Center. Harold Jr. swept Rene into a bear They cried, and couldn't stop staring at each other.

They started catching up. She asked Harold Jr. where he lived. On The Plaza. Goodness, she said, she'd been riding by his house for years on her way to work at a pulmonary doctor's office near Presbyterian Hospital.

Jason and his girlfriend, Ronda Ridout, had lived two blocks away.

Soon, Harold Jr. asked Rene: I don't want you to feel uncomfortable. But do you know anything about my father?

Rene said they'd had a brief relationship. He was a law student and left Durham. His name was Frank Turner.

I always remembered his name, she said. Because I hoped that one day you would come looking for it.

A father and 4 more brothers

That night, Harold Jr. Googled: "Frank Turner NCCU and law."

He read that Frank, too, was a politician, a veteran member of the Maryland House of Delegates from Columbia and a college professor at Morgan State University. And he read this: Two months earlier, Frank ıeen in intensive care with blood clots after kidney stone surgery.

"I couldn't let this chance pass," Harold Jr. said. "If my father didn't want to meet me or have a relationship, that's OK. I had to try. I wasn't looking for anything from him - just trying to discover who I am."

Four days after he met his birth mother and the rest of the Stricklands, Harold Jr. drove to Maryland. He found Frank in his front yard pulling weeds on his knees.

Harold Jr. introduced himself and told Frank he had something important to tell him. Frank invited him up to the front porch.

"Does the name Rene Melton mean anything to you?" he recalled asking.

Initially, it didn't.

"Well, I was adopted and I just learned that she's my birth mother. I was born in 1969 in Durham, North Carolina. And she tells me you're my birth father," Harold Jr. said.

Frank pulled on his chin, then quietly said: "I didn't know ..." He paused, and continued: "You know, I've always wanted a basketball team."

Harold Jr. looked at him, befuddled. "I've already got four sons," Frank explained. "Now I've got five."

..., who'd been raised in Raleigh and finished his law degree at N.C. Central, told him he'd written the Maryland law that loosened restrictions on adult adoptees finding birth parents. He'd sent it to law school

buddies in the N.C. legislature. Harold Jr. wondered to himself: So I could find you?

idn't know Frank had been adopted, too. Frank had tried to find his own birth parents, but there were too r obstacles.

Welcomed into the family

On Christmas Day, Harold Sr. died at age 85.

Throughout Harold Jr.'s search, his parents had supported him. Rene and Claudie visited the Cogdells, thanking them for raising a fine son.

Frank agreed: "They obviously did a great job raising Harold. That's what you want: Regardless of who raised him, the main thing is he turned out to be a good person, a good citizen."

On the day of Harold Sr.'s funeral, Rene, Claudie and the rest of the Stricklands drove up for the noon service at Kinston's St. Augustus AME Zion Church. A simple family tree had suddenly sprouted many branches - Harold Jr., who'd grown up an only child, had two mothers, his birth father, six brothers, a stepfather and stepmother.

"His parents welcomed us all into their family. They are lovely people," Rene said. "I am so happy Harold found us.

"Deep in my heart, I knew that one day I'd look up and he'd be at the door."

amily comes together

It was a crystallizing moment for Harold Jr. He'd been able to lean on the Stricklands' support during Harold Sr.'s illness. But at the funeral, he was deeply touched when he saw all of them sitting in the church - family helping him and his adoptive mother, Jeanette, through their most trying moment.

Reflecting on the months since he found Rene and Frank and their families, Harold Jr. said he's the same man with a "broader perspective on the world."

He cherishes his African-American family and traditions - and now his Native American heritage as well.

"I don't think I ever longed to change the way I saw the world. ... It was more of a desire to connect to biological parents - people who shared the same bloodline and had the same mannerisms and physical features. ... It gives me some real interesting perspectives on who I am.

"I do know this: The Christmas present list just got longer."

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HOUSE BILL 1753*

Short Title:	School Bus Railroad Crossing Exception.	(Local)
Sponsors:	Representatives Underhill, Wainwright (Primary Sponsors); Hughes and Rapp.	
Referred to:	Education, if favorable, Judiciary III.	

May 18, 2010

A BILL TO BE ENTITLED

AN ACT TO ALLOW SCHOOL BUSES AND ACTIVITY BUSES TO CROSS CERTAIN RAILROAD GRADE CROSSINGS WITHOUT FIRST STOPPING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-142.3 reads as rewritten:

"**§ 20-142.3. Certain vehicles must stop at railroad grade crossing.**

(a) Before crossing at grade any track or tracks of a railroad, the driver of any school bus, any activity bus, any motor vehicle carrying passengers for compensation, any commercial motor vehicle listed in 49 C.F.R. § 392.10, and any motor vehicle with a capacity of 16 or more persons shall stop the vehicle within 50 feet but not less than 15 feet from the nearest rail of the railroad. While stopped, the driver shall listen and look in both directions along the track for any approaching train and shall not proceed until the driver can do so safely. Upon proceeding, the driver of the vehicle shall cross the track in a gear that allows the driver to cross the track without changing gears and the driver shall not change gears while crossing the track or tracks.

(b) Except for school buses and activity buses, the provisions of this section shall not require the driver of a vehicle to stop:

(1) At railroad tracks used exclusively for industrial switching purposes within a business district.

(2) At a railroad grade crossing which a police officer or crossing flagman directs traffic to proceed.

(3) At a railroad grade crossing protected by a gate or flashing signal designed to stop traffic upon the approach of a train, when the gate or flashing signal does not indicate the approach of a train.

(4) At an abandoned railroad grade crossing which is marked with a sign indicating that the rail line is abandoned.

(5) At an industrial or spur line railroad grade crossing marked with a sign reading "Exempt" erected by or with the consent of the appropriate State or local authority.

(b1) Notwithstanding the provisions of subsection (b) of this section, no school bus or activity bus shall be required to stop at a railroad grade crossing that is marked with a sign reading "Exempt" erected by or with the consent of the appropriate State or local authority and the railroad tracks leading to and from the railroad grade crossing are gated closed at all times when a train is not passing over the railroad grade crossing.

(c) A person violating the provisions of this section shall be guilty of an infraction and punished in accordance with G.S. 20-176. Violation of this section shall not constitute negligence per se.

(d),(e) Repealed by Session Laws 2001-487, s. 50(g).

(f) An employer who knowingly allows, requires, permits, or otherwise authorizes a driver of a commercial motor vehicle to violate this section shall be guilty of an infraction. Such employer will also be subject to a civil penalty under G.S. 20-37.21."

SECTION 2. This act applies to Craven County only.

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

HOUSE BILL 1753:
School Bus Railroad Crossing Exception

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 21, 2010
Introduced by:	Reps. Underhill, Wainwright	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 1753 is a local bill that would allow school buses and activity buses in Craven County to cross certain railroad crossings without first stopping, provided the crossings meet specific criteria.***

[As introduced, this bill was identical to S1377, as introduced by Sen. Preston, which is currently in Senate Education/Higher Education.]

CURRENT LAW: G.S. 20-142.3(b) requires that school buses and activity buses must stop at:

- Railroad tracks used exclusively for industrial switching purposes within a business district
- Railroad grade crossings where a police officer or crossing flagman directs traffic to proceed
- Railroad grade crossings protected by a gate or flashing signal when the signal does not indicate an approaching train
- Abandoned railroad crossings marked with a sign
- An industrial or spur line railroad grade crossing marked with a sign reading "Exempt" erected by or with the consent of the appropriate State or local authority.

A violation of this section is an infraction with a penalty of not more than $100.

BILL ANALYSIS: The bill would allow a school bus or activity bus to cross a railroad grade crossing without first stopping if (1) the crossing is marked with an "Exempt" sign erected by or with the consent of a State or local authority and (2) the railroad tracks leading to and from the railroad grade crossing are gated closed at all times when a train is not passing over the crossing.

EFFECTIVE DATE: The bill would be effective when it becomes law and applies only to Craven County.

BACKGROUND: The only gated railroad crossing marked "Exempt" in Craven County is located on U.S. Highway 70 in James City, just southeast of the interchange of U.S. Highway 70 and U.S. Highway 17. The Craven County Board of Commissioners, the Craven County Board of Education, and the Highway Patrol are in support of the proposed legislation.

Sara Kampreth, legislative analyst to the House Committee on Education, substantially contributed to this summary.

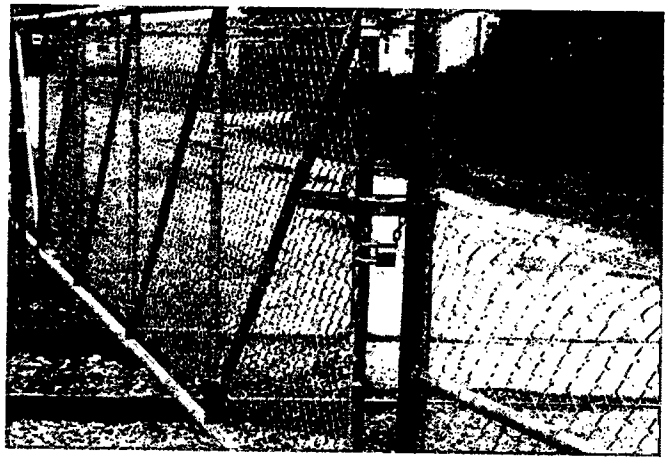
Craven County Schools
Transportation Services

Information on Norfolk Southern Railroad Crossing
US 70 James City 722599E
Relative to NC General Assembly -- House Bill 1753
Short Title: School Bus Railroad Crossing Exception

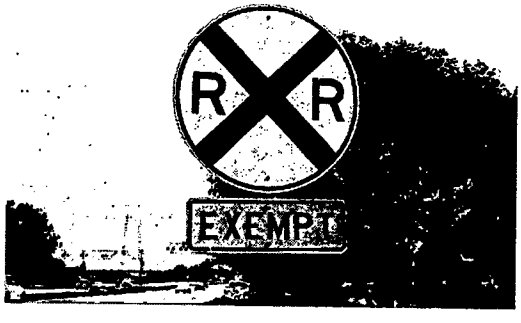
The location for this railroad grade crossing on "Google Maps" is:
search address -- 508 E US 70 Hwy New Bern, NC (use satellite view)

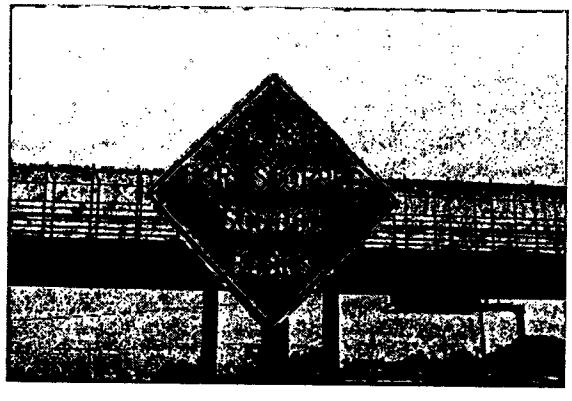
Note: railroad spur line parallels W Maple Street on west side of US 70 and crosses Plum Street on east side of US 70

The possibility of a train/bus collision at this gated and locked spur line crossing is almost impossible. Train personnel leave the train and unlock and open the west side gate then cross US 70 (seven lines of traffic) to unlock and open the east side gates.



NC DOT has been very cooperative in trying to make motorists "aware of the school/activity bus exception" to the "exempt" status of this railroad crossing. This area is so congested with merging and exiting traffic that some motorists fail to realize a school/activity bus is stopped in the flow of three plus lanes of traffic. NOTE: I do not think that flashing lights on a sign will stop an inattentive motorist or a motorist attempting to change lanes in order to avoid being behind a school/activity bus.





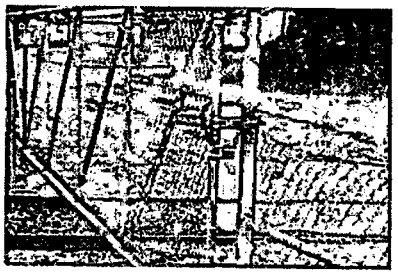
Craven County Schools
Transportation Services

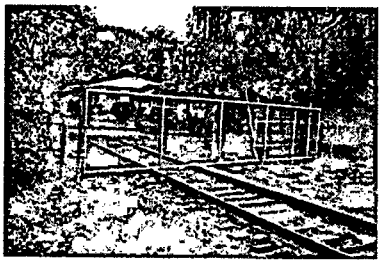
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Short Title: School Bus Railroad Crossing Exception

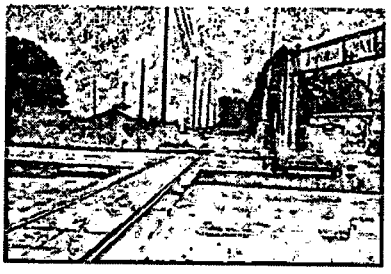
The location for this railroad grade crossing on "Google Maps" is:
search address -- 508 E US 70 Hwy New Bern, NC (use satellite view)

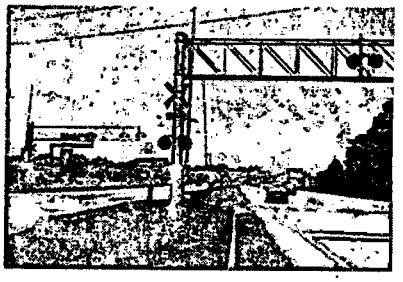
Note: railroad spur line parallels W Maple Street on west side of US 70 and crosses Plum Street on east side of US 70

The possibility of a train/bus collision at this gated and locked spur line crossing is almost impossible. Train personnel leave the train and unlock and open the west side gate then cross US 70 (seven lines of traffic) to unlock and open the east side gates.

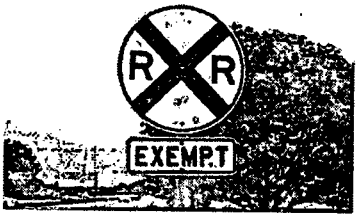




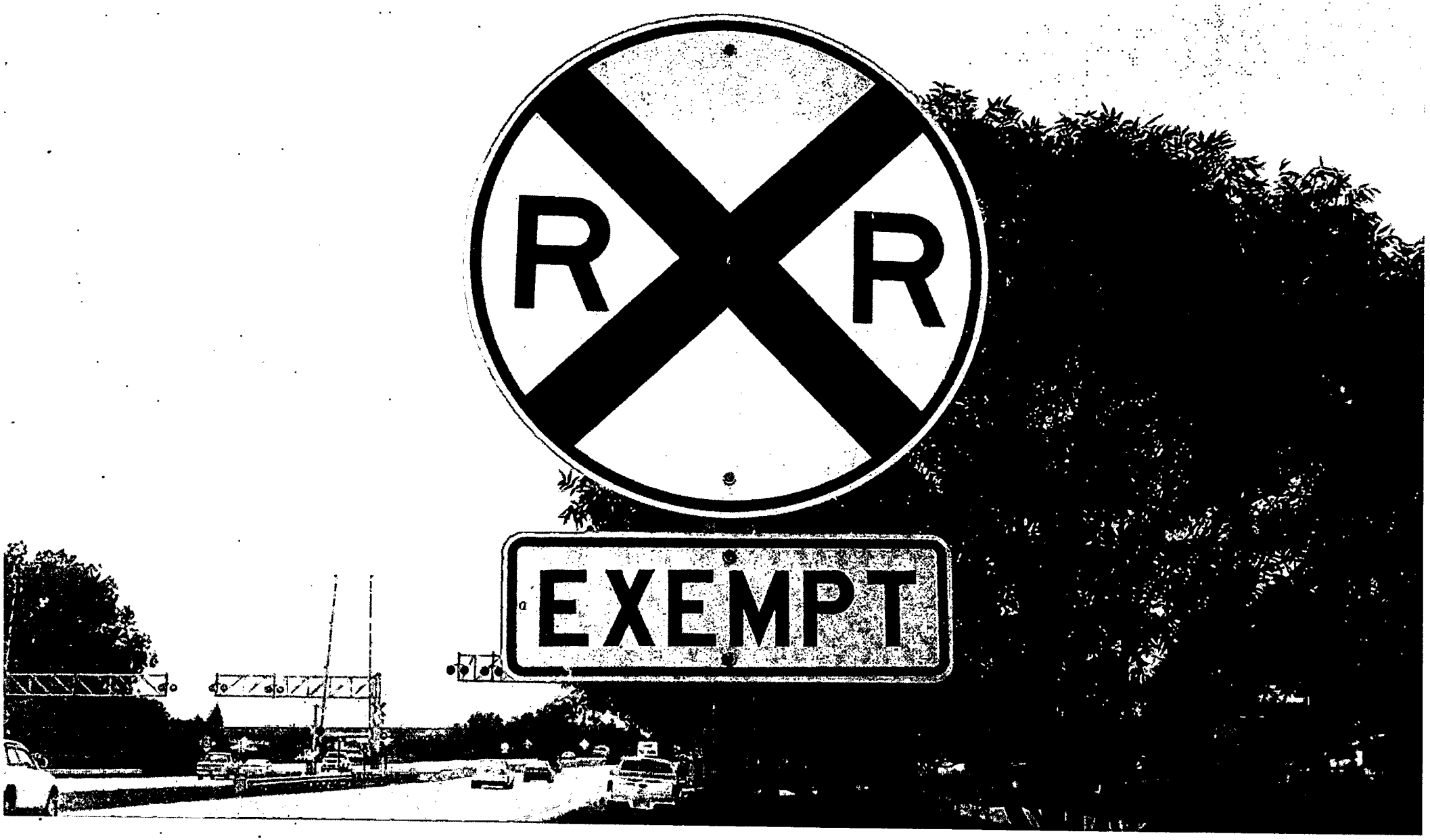


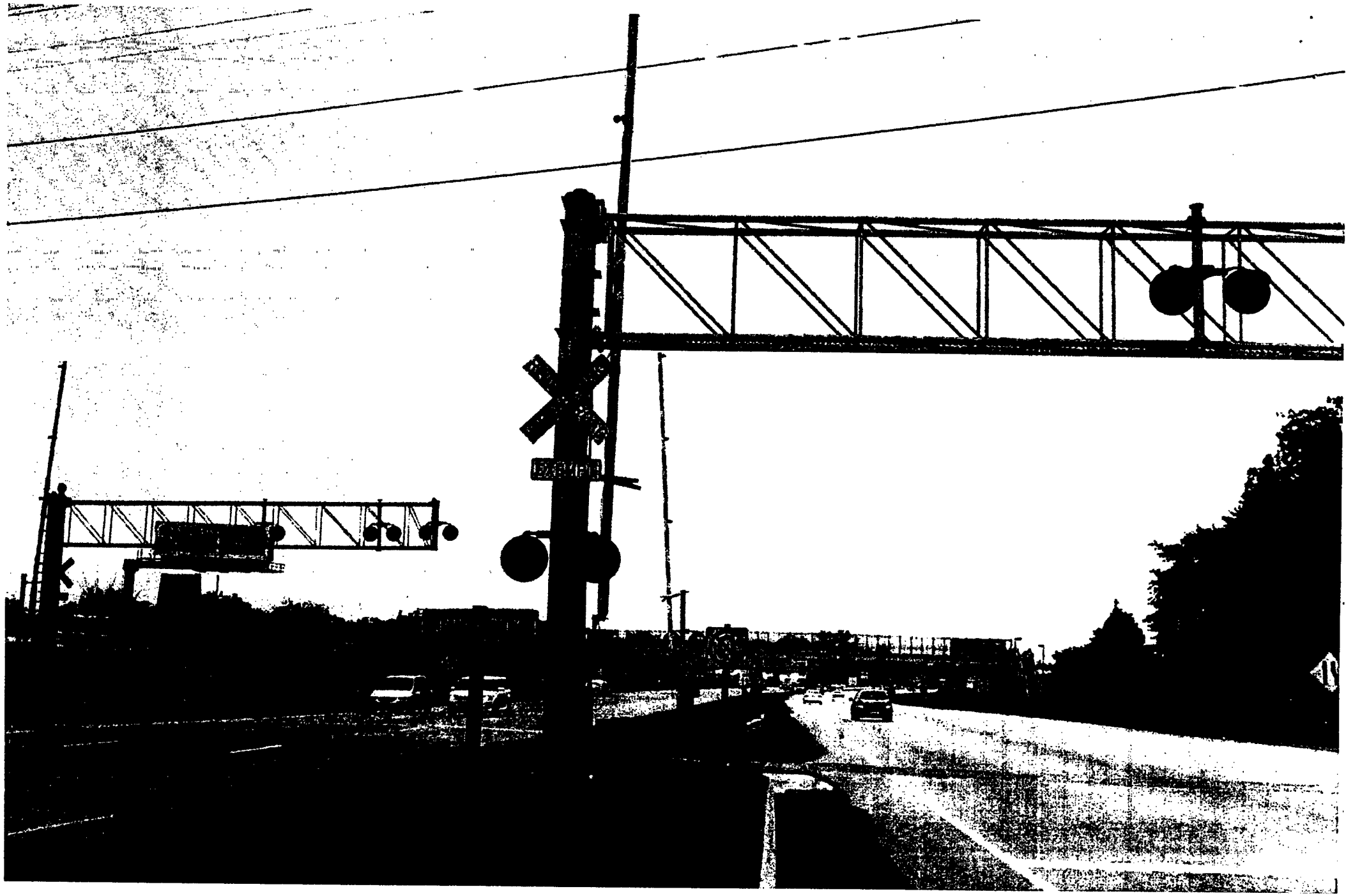


NC DOT has been very cooperative in trying to make motorists "aware of the school/activity bus exception" to the "exempt" status of this railroad crossing. This area is so congested with merging and exiting traffic that some motorists fail to realize a school/activity bus is stopped in the flow of three plus lanes of traffic. NOTE: I do not think that flashing lights on a sign will stop an inattentive motorist or a motorist attempting to change lanes in order to avoid being behind a school/activity bus.

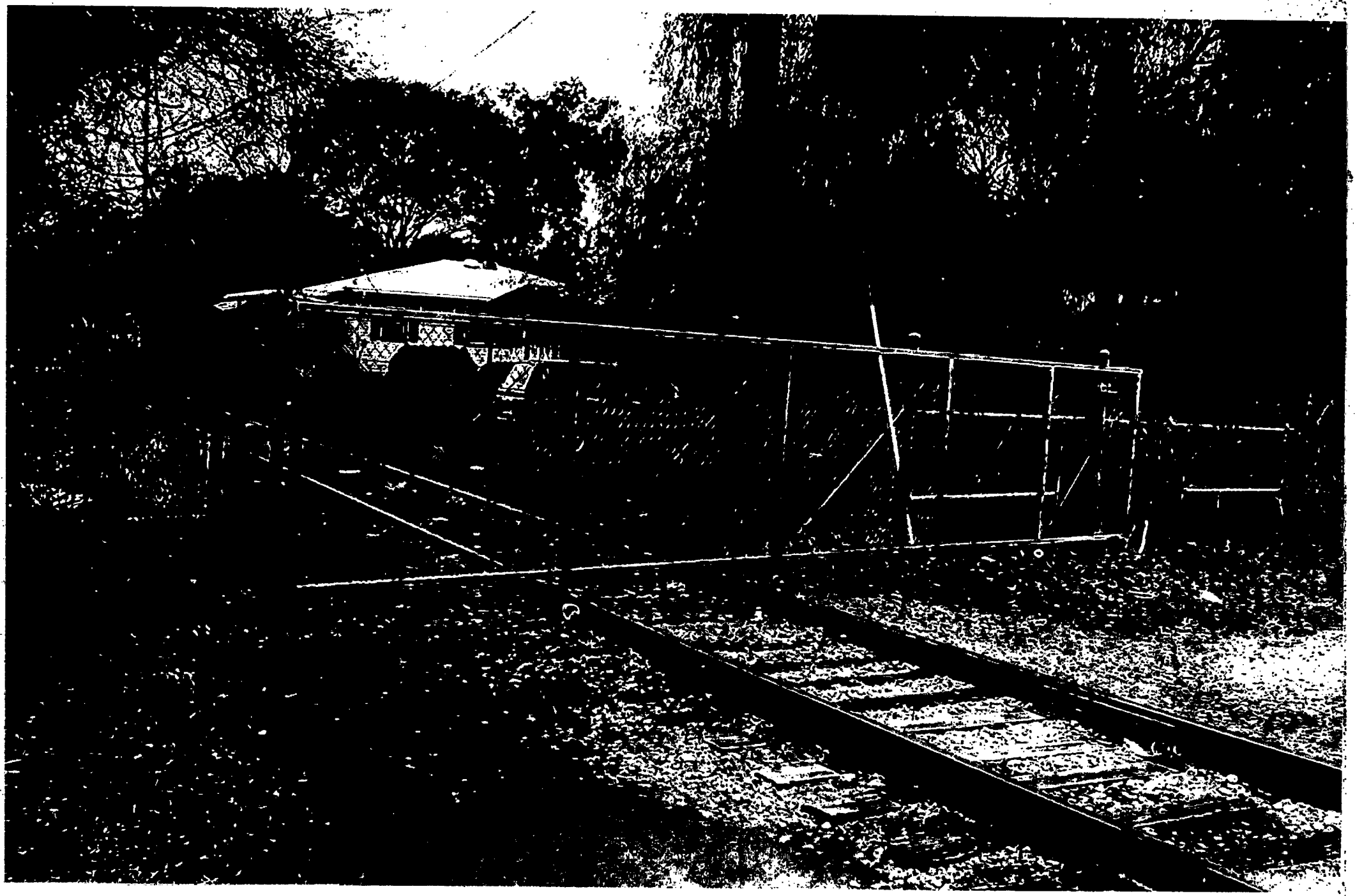





R
R
EXEMPT




WATCH
FOR STOPPED
SCHOOL
BUSES





SAMPLE photos showing the severity of damage that has resulted from school/activity buses being required to stop at this "exempt" locked and gated railroad crossing.

Date of accident – October 1, 2009 Bus # 349
Result -- car driver lost his life and pregnant wife sustained injuries also





Date of accident – April 24, 2007 Bus # 2008
Result – truck driver was in critical condition and is now permanently disabled





Summary -- The unique traffic features of the US 70 James City 722599E railroad crossing prompted the Craven County Commissioners and Board of Education to request an exemption to G.S. Chapter 20 Section 142.3 .
I ask that you evaluate your action on HB 1753 with regard to what has happened at this crossing, not upon what future implications MAY result at other exempt railroad crossings across this great state of ours. I thank you for your consideration in this safety matter.

My contact information –
Becton Broughton
Director of Transportation
Craven County Schools
1816 Hazel Avenue
New Bern, NC 28560

252-514-6377 (office phone)
252-671-5460 (cell phone)
becton.broughton@craven.k12.nc.us

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	June 29, 2010	10:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 144	Special Care Dentistry Collaboration.	Representative Bordsen Representative Mobley Representative Pierce Representative Farmer-Butterfield
HB 859	Amend Conditions of Probation.	Representative Faison Representative Warren Representative Spear Representative Guice
HB 1717	Modernization of the State ABC System.	Representative Bell Representative Lucas Representative Warren
HB 1762	Domestic Violence Training for Judges.	Representative Ross Representative Farmer-Butterfield Representative McLawhorn Representative Warren
SB 866	Retiring of State Flags.	Senator Hoyle
SB 1115	Carteret Schools May Administer Oath.	Senator Preston
SB 1165	General Statutes Comm. Technical Corrections.	Senator Hartsell

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II Committee
Tuesday, June 29, 2010, 10:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 144	Special Care Dentistry Collaboration.	Representative Bordsen Representative Mobley Representative Pierce Representative Farmer-Butterfield
HB 859	Amend Conditions of Probation.	Representative Faison Representative Warren Representative Spear Representative Guice
HB 1717	Modernization of the State ABC System.	Representative Bell Representative Lucas Representative Warren
HB 1762	Domestic Violence Training for Judges.	Representative Ross Representative Farmer-Butterfield Representative McLawhorn Representative Warren
SB 866	Retiring of State Flags.	Senator Hoyle
SB 1115	Carteret Schools May Administer Oath.	Senator Preston
SB 1165	General Statutes Comm. Technical Corrections.	Senator Hartsell

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE
Tuesday, June 29, 2010 at 10:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 10:00 AM on June 29, 2010, in Room 1124 of the Legislative Building with twelve members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell recognized pages Alyssa Crotser, Deanna Metivier, Amythest McPhail and Harry Riegel and thanked them for their service.

HB 1717 - Modernization of the State ABC System - Senator Queen moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Vaughan introduced the bill and recognized Mr. Mikael Gross of Bill Drafting to explain the bill. Representative Ray gave additional explanation. Senator Dorsett offered an amendment and gave an explanation of the amendment. Representative Warren asked that the amendment not be adopted. Questions from Senators Swindell, Allran, Dannelly and Jacumin were answered by Senator Dorsett, Mikael Gross, Mr. John Williams, Chairman of the ABC Commission, and Senator Vaughan. Senator Dorsett respectfully withdrew her amendment. Questions regarding the Proposed Committee Substitute from Senators Allran, Queen and Snow were answered by Representative Warren and Senator Vaughan. Mr. Dean Plunkett of the North Carolina Beer & Wine Wholesalers Association and Mr. Steve Metcalf, representing the wine business spoke in opposition to the bill. Mr. Jon Carr, representing the Association of ABC Boards, and Kelli Kukura from League of Municipalities spoke in favor of the bill. Senator Dannelly moved for a favorable report of the Proposed Committee Substitute, unfavorable to the original bill. All voted and the motion carried.

SB 866 - Retiring of State Flags. - The bill was presented for concurrence. Representative Tarleton explained the bill. Senator Snow moved for concurrence. All voted and the motion carried.

SB 1115 - Carteret Schools May Administer Oath. - Senator Queen moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Preston explained the bill. Senator Preston answered the question from Senator Jones. Senator Allran moved for a favorable report to the Proposed Committee Substitute, unfavorable to the original bill. All voted and the motion carried.

HB 144 - Special Care Dentistry Collaboration. - Senator Vaughan moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Berger explained the bill. Questions from Senators Queen, Dannelly, Dorsett and Allran were answered by Senator Berger. Mr. Bill Scoggins of America's Health Insurance Plans, Mr. Skip Braziel of Met Life and Mr. Kenneth Lewis of First Carolina Care all spoke in opposition to the bill. Senator Snow moved for a favorable report. In view of continued additional discussion

and due to time constraints, Senator Hartsell noted that the bill would be heard again at the Thursday meeting with the motion pending.

The meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Corrected Copy

Tuesday, June 29, 2010

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE AS TO CONCURRENCE

S.B.(HCS #1) **866** Retiring of State Flags.

Sequential Referral:	None
Recommended Referral:	None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #2) **1115** Carteret Schools May Administer Oath.

Draft Number:	PCS 85374
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

Sen. Dannelly will handle on the floor.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, June 29, 2010

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE AS TO CONCURRENCE

S.B.(HCS #1) **866** Retiring of State Flags.

Sequential Referral:	None
Recommended Referral:	None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 3

S.B.(CS #2) **1115** Carteret Schools May Administer Oath.

Draft Number:	PCS 85374
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

Sen. Rouzer will handle on the floor

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, June 29, 2010

Senator HARTSELL, 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) **1717** Modernization of the State ABC System.

Draft Number:	PCS 60093
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

Senator Vaughan will handle on the floor.

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 6-29-10

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Todd Barlow	NC Advocates for Justice
Adya Baker	NC DOJ
Patty Hollman	Intern
Bill Kennedy	Mutual Dist. Co.
KRIS GARDNER	NC BEER & WINE WHOLESALERS ASSOC.
Velma Cruz	Sprint
Tim Moore	NC DOC
Diane Belsaas	NC DOC
Mary Shuping	State Ethics Commission
Penny Hoffer	School of Gov.
John Eick	Students for Cheap Liquor

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 6-29-10

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	MWC
Chris Anglin	AOC
Joan Reicy	Ragsdale Liggett
Tom Quaster	Raleigh
M. Lee Parker	NC Dental Society
Hubbard Robinson	NARMA
	TPG
	MWC
Rev. Mark Creech	CMC
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 6-29-10

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Leford	NCALE
Linden Gwinn	Intern Sen. Dan.
Dean Plunkett	NCBWWA
Dana Fenton	City of Charlotte
Steve Metcalf	Wine Inst. Fine
K Wright	BCBSNC
Bill Scogin	ITSS
Skip Brazeil	Met Life
Wendy Kelly	Policy Group
Doug Dacus	City of Salisbury
Julia Adams	The Arc of NC

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 6-29-10

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jason	Civitas
Jerry Douglas	Biltmore Asheville, NC
Emily Widdowson	Policy Group
Whitney Campbell	Jordan Price
Keith Whitfield	Dunham
Joe Lanier	Nelson Mullins

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — 6-29-10

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sarah Preston	ACLU-NC
Doug Howey	NCPCM
Ed Gulston	Brooks Pierce
Chris Wilson	NC Beer & Wine Assn
Susan Valaam	Nationwide
Crockett Long	NCRWMA

HOUSE BILL 144*

Committee Substitute Favorable 3/19/09
Senate Health Care Committee Substitute Adopted 6/3/10

Short Title: No Set Fee/Noncovered Dental Srvcs. (Public)

Sponsors:

Referred to:

February 12, 2009

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT HEALTH BENEFIT PLANS AND INSURERS FROM LIMITING OR FIXING THE FEE A DENTIST MAY CHARGE PATIENTS FOR SERVICES UNLESS THE SERVICES ARE COVERED FOR REIMBURSEMENT UNDER THE PLAN OR INSURER CONTRACT WITH THE DENTIST.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-50-290. Health benefit plans or insurers contracting for provision of dental services; no limitation on fees for noncovered services.**

(a) No contract between a health benefit plan or insurer and a dentist for the provision of dental services to plan members or insurance subscribers may require that a dentist provide services at a fee limited or set by the plan or insurer, unless the services are reimbursed as covered services under the contract.

(b) This section applies to dental plans and dental insurance policies offered by health benefit plans or insurers which provide for coverage of dental services not in connection with or incidental to coverage under a basic medical plan or health insurance policy, and this section shall further apply to Dental Service Corporations regulated under Article 65 of this Chapter."

SECTION 2. G.S. 58-65-2 reads as rewritten:

"**§ 58-65-2. Other laws applicable to service corporations.**

The following provisions of this Chapter are applicable to service corporations that are subject to this Article:

G.S. 58-2-125.	Authority over all insurance companies; no exemptions from license.
G.S. 58-2-150.	Oath required for compliance with law.
G.S. 58-2-155.	Investigation of charges.
G.S. 58-2-160.	Reporting and investigation of insurance and reinsurance fraud and the financial condition of licensees; immunity from liability.
G.S. 58-2-162.	Embezzlement by insurance agents, brokers, or administrators.
G.S. 58-2-185.	Record of business kept by companies and agents; Commissioner may inspect.
G.S. 58-2-190.	Commissioner may require special reports.
G.S. 58-2-195.	Commissioner may require records, reports, etc., for agencies, agents, and others.

G.S. 58-2-200.	Books and papers required to be exhibited.
G.S. 58-3-50.	Companies must do business in own name; emblems, insignias, etc.
G.S. 58-3-100(c),(e).	Insurance company licensing provisions.
G.S. 58-3-115.	Twisting with respect to insurance policies; penalties.
G.S. 58-7-46.	Notification to Commissioner for president or chief executive officer changes.
Part 7 of Article 10.	Annual Financial Reporting.
G.S. 58-50-35.	Notice of nonpayment of premium required before forfeiture.
G.S. 58-50-290.	Health benefit plans or insurers contracting for the provision of dental services; no limitation on fees for noncovered services.
G.S. 58-51-15(a)(2)b.	Accident and health policy provisions.
G.S. 58-51-17	Portability for accident and health insurance.
G.S. 58-51-25.	Policy coverage to continue as to mentally retarded or physically handicapped children.
G.S. 58-51-95(h),(i),(j).	Approval by Commissioner of forms, classification and rates; hearings; exceptions."

SECTION 3. This act is effective when it becomes law and applies to contracts between dentists and heath benefit plans or insurers delivered, amended, or renewed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 144*

Committee Substitute Favorable 3/19/09
Senate Health Care Committee Substitute Adopted 6/3/10
PROPOSED SENATE COMMITTEE SUBSTITUTE H144-PCS50952-RC-75

Short Title: Not Set Fee/Noncovered Dental Srvcs. (Public)

Sponsors:

Referred to:

February 12, 2009

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT HEALTH BENEFIT PLANS AND INSURERS FROM LIMITING OR FIXING THE FEE A DENTIST MAY CHARGE PATIENTS FOR SERVICES UNLESS THE SERVICES ARE COVERED FOR REIMBURSEMENT UNDER THE PLAN OR INSURER CONTRACT WITH THE DENTIST.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-50-290. Health benefit plans or insurers contracting for provision of dental services; no limitation on fees for noncovered services.**

(a) No agreement between an insurer or an entity that writes stand-alone dental insurance and a dentist for the provision of dental services on a preferred or in-network basis to plan members or insurance subscribers in connection with coverage under a stand-alone dental plan, but not in connection with or incidental to coverage under a medical plan or health insurance policy, may require that a dentist provide services at a fee limited or set by the plan or insurer, unless the services are reimbursed as covered services under the contract.

(b) For purposes of this section, "covered services" means a service for which reimbursement is available under an insurer's policy, without regard to contractual limitations by a deductible, copayment, coinsurance, waiting period, annual or lifetime maximum, frequency limitation, alternative benefit payment, or other limitation."

SECTION 2. G.S. 58-65-2 reads as rewritten:

"**§ 58-65-2. Other laws applicable to service corporations.**

The following provisions of this Chapter are applicable to service corporations that are subject to this Article:

G.S. 58-2-125.	Authority over all insurance companies; no exemptions from license.
G.S. 58-2-150.	Oath required for compliance with law.
G.S. 58-2-155.	Investigation of charges.
G.S. 58-2-160.	Reporting and investigation of insurance and reinsurance fraud and the financial condition of licensees; immunity from liability.

G.S. 58-2-162.	Embezzlement by insurance agents, brokers, or administrators.
G.S. 58-2-185.	Record of business kept by companies and agents; Commissioner may inspect.
G.S. 58-2-190.	Commissioner may require special reports.
G.S. 58-2-195.	Commissioner may require records, reports, etc., for agencies, agents, and others.
G.S. 58-2-200.	Books and papers required to be exhibited.
G.S. 58-3-50.	Companies must do business in own name; emblems, insignias, etc.
G.S. 58-3-100(c),(e).	Insurance company licensing provisions.
G.S. 58-3-115.	Twisting with respect to insurance policies; penalties.
G.S. 58-7-46.	Notification to Commissioner for president or chief executive officer changes.
Part 7 of Article 10.	Annual Financial Reporting.
G.S. 58-50-35.	Notice of nonpayment of premium required before forfeiture.
G.S. 58-50-290.	Health benefit plans or insurers contracting for the provision of dental services; no limitation on fees for noncovered services.
G.S. 58-51-15(a)(2)b.	Accident and health policy provisions.
G.S. 58-51-17	Portability for accident and health insurance.
G.S. 58-51-25.	Policy coverage to continue as to mentally retarded or physically handicapped children.
G.S. 58-51-95(h),(i),(j).	Approval by Commissioner of forms, classification and rates; hearings; exceptions."

SECTION 3. This act is effective when it becomes law and applies to contracts between dentists and heath benefit plans or insurers delivered, amended, or renewed on or after that date.

HOUSE BILL 144:
No Set Fee/Noncovered Dental Srvcs

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 28, 2010
Introduced by:	Reps. Farmer-Butterfield, Pierce, Bordsen, Mobley	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	PCS to Third Edition H144-CSRC-75		

SUMMARY: ***House Bill 144 would prohibit agreements between a dentist and an insurer or an entity that writes stand alone dental insurance that limit fees for dental services unless the services are reimbursed as covered services under the contract. The Proposed Committee Substitute adds a definition of 'covered services'.***

The act is effective when it becomes law and applies to contracts between dentists and plans delivered, amended or renewed on or after that date.

BILL ANALYSIS:

Section 1 would enact G.S. 58-50-290 to prohibit fee limitations in agreements between a dentist and an insurer or between a dentist and an entity that writes stand alone dental insurance for the provision of dental services on a preferred or in-network basis unless the service in question is covered service under the contract.

A "covered service" is defined as services for which reimbursement is available under an insurer's policy, without regard to contractual limitations by a deductible, co-payment or other limitation.

Section 2 provides that the prohibition contained in new G.S. 58-50-290 applies to dental service corporations.

EFFECTIVE DATE: This act is effective when it becomes law and applies to contracts between dentists and health benefit plans or insurers delivered, amended, or renewed on or after that date.

Ben Popkin, counsel to Senate Health Care Committee, substantially contributed to this summary.

H144-SMRC-85(CSRC-75) v3

HOUSE BILL 859
Committee Substitute Favorable 5/7/09

Short Title: Amend Conditions of Probation. (Public)

Sponsors:

Referred to:

March 30, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS GOVERNING THE CONDITIONS OF PROBATION.

The General Assembly of North Carolina enacts:

SECTION 1. 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 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.

(14) 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.

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)."

SECTION 2. 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 supervision by officers assigned to the Intensive Supervision Program established pursuant to G.S. 143B-262(c), and abide by the rules adopted for that Program. Unless otherwise ordered by the court, intensive supervision also requires multiple contacts by a probation officer per week, a specific period each day during which the offender must be at his or her residence, and that the offender remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip the offender for suitable employment.

(3c) Remain at his or her residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study, or vocational training. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically 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 and pay any fee required by law or ordered by the court for participation in the community or reparation service program.

~~(7) Submit at reasonable times to warrantless searches by a probation officer of his or her person and of his or her vehicle and premises while the probationer is present, for purposes specified by the court and reasonably related to his or her probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful. Whenever the warrantless search consists of testing for the presence of illegal drugs, the probationer may also be required to reimburse the Department of Correction for the actual cost of drug screening and drug testing, if the results are positive.~~

~~(8) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for him or her by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used.~~

(8a) Purchase the least expensive annual statewide license or combination of licenses to hunt, trap, or fish listed in G.S. 113-270.2, 113-270.3, 113-270.5, 113-271, 113-272, and 113-272.2 that would be required to engage lawfully in the specific activity or activities in which the defendant was engaged and

which constitute the basis of the offense or offenses of which he was convicted.

(9) If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court should encourage the minor and the minor's parents or custodians to participate in rehabilitative treatment and may order the defendant to pay the cost of such treatment.

(9a) 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 3. This act becomes effective December 1, 2009, and applies to persons sentenced to probation on or after that date.

HOUSE BILL 1717*

Committee Substitute Favorable 6/9/10
Committee Substitute #2 Favorable 6/16/10
Fourth Edition Engrossed 6/22/10

Short Title: Modernization of the State ABC System. (Public)

Sponsors:

Referred to:

May 17, 2010

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE THE NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL SYSTEM, TO ENSURE THE INTEGRITY OF THE THREE-TIER SYSTEM, AND TO REQUIRE MINIMUM AGE STANDARDS FOR LAW ENFORCEMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-101 reads as rewritten:

"**§ 18B-101. Definitions.**

As used in this Chapter, unless the context requires otherwise:

...

(6f) "Finance officer" means the local board employee, other than a general manager, that is responsible for keeping the accounts of the local board, receiving and depositing receipts, disbursing funds, and any other duties assigned by the local board or Commission.

(7) "Fortified wine" means any wine, of more than sixteen percent (16%) and no more than twenty-four percent (24%) alcohol by volume, made by fermentation from grapes, fruits, berries, rice, or honey; or by the addition of pure cane, beet, or dextrose sugar; or by the addition of pure brandy from the same type of grape, fruit, berry, rice, or honey that is contained in the base wine and produced in accordance with the regulations of the United States.

(7d) "General manager" means the local board employee that is responsible for the oversight of daily operations of the ABC system and any other duties assigned by the local board or Commission. The board may designate only one employee to be the general manager.

~~(7a)~~(7g) "Historic ABC establishment" means a restaurant or hotel that meets all of the following requirements:

a. Is on the national register of historic places or located within a State historic district.

b. Is a property designed to attract local, State, national, and international tourists located on a State Route (SR) and with a property line located within 1.5 miles of the intersection of a designated North Carolina scenic byway as defined in G.S. 136-18(31).

c. Is located within 15 miles of a national scenic highway.

d. Is located in a county in which the on-premises sale of malt beverages or unfortified wine is authorized in two or more cities in the county.

~~(7b)~~(7k) "Keg" means a portable container designed to hold and dispense 7.75 gallons or more of malt beverage.

...."

SECTION 2. G.S. 18B-201 reads as rewritten:

"**§ 18B-201. Conflict of ~~interest.~~interest; gifts.**

(a) Financial Interests Restricted. – No person shall be appointed to or employed by the Commission, a local board, or the ALE Division if that person or a member of that person's family related to that person by blood or marriage to the first degree has or controls, directly or indirectly, a financial interest in any commercial alcoholic beverage enterprise, including any business required to have an ABC permit. The Commission may exempt from this provision any person, other than a Commission member, when the financial interest in question is so insignificant or remote that it is unlikely to affect the person's official actions in any way. Exemptions may be granted only to individuals, not to groups or classes of people, and each exemption shall be in writing, be available for public inspection, and contain a statement of the financial interest in question.

(b) Self-dealing. – The provisions of G.S. 14-234 shall apply to the Commission and local boards.

(c) Dealing for Family Members. – Neither the Commission nor any local board shall contract or otherwise deal in any business matter so that a member, member's spouse or any person related to ~~him~~ the member by blood to a degree of first cousin or closer in any way financially benefits, directly or indirectly, from the transaction unless:

(1) The member who financially benefits from the transaction or whose spouse or relative financially benefits from the transaction abstains from participating in any way, including voting, in the decision;

(2) The minutes of the meeting at which the final decision is reached specifically note the member who is financially benefited or whose spouse or relative is financially benefited and the amount involved in each transaction;

(3) The next annual audit of the Commission or local board specifically notes the member and the amount involved in each transaction occurring during the year covered by the audit; and

(4) If the transaction is by a local board, the Commission is notified at least two weeks before final board approval of the transaction.

(d) Gifts Generally. – The provisions of G.S. 133-32 shall apply to the Commission and local boards.

(e) Conflicts of Interest for the Commission. – The provisions of Article 4 of Chapter 138A of the General Statutes shall apply to the Commission.

(f) Conflicts of Interest for Local Boards. – Except as permitted under subsection (h) of this section, a local ABC board member shall not knowingly use the local ABC board member's position on the board in any way that will result in financial benefit to the local ABC board member, the local ABC board member's spouse, any person related to the local ABC board member by blood to a degree of first cousin or closer, or any business with which the local ABC board member is associated.

(g) For purposes of subsection (f) of this section, 'business with which associated' shall have the same meaning as in G.S. 138A-3(3). For purposes of this section, 'financial benefit' shall mean a direct pecuniary gain or loss, or a direct pecuniary loss to a business competitor.

(h) Notwithstanding subsection (f) of this section, a local ABC board member may participate in an action of the local ABC board under any of the following circumstances except as specifically limited:

(1) The financial benefit that accrues to the local ABC board member, the local ABC board member's spouse or any person related to the local ABC board member by blood to a degree of first cousin or closer, or a business with which the local ABC board member is associated is one that is accrued as a member of a profession, occupation, or general class and is no greater than that which could reasonably be foreseen to accrue to all members of that profession, occupation, or general class.

(2) The financial benefit derived by a local ABC board member, the local ABC board member's spouse or any person related to the local ABC board member by blood to a degree of first cousin or closer, or a business with which the local ABC board member is associated is one that would be enjoyed to an extent no greater than that which other citizens of the State would or could enjoy.

(3) The financial benefit derived by a local ABC board member, the local ABC board member's spouse or any person related to the local ABC board member by blood to a degree of first cousin or closer, or a business with which the local ABC board member is so remote, tenuous, insignificant, or speculative that a reasonable person would conclude under the circumstances that the local ABC board member's ability to protect the public interest and perform the local ABC board member's duties would not be compromised.

(4) When an action affects or would affect the local ABC board member's compensation as a local ABC board member.

(5) Before the local ABC board member participated in the action, the board member requested and received from the ABC Commission a written advisory opinion that authorized the participation. In authorizing the participation under this subdivision, the ABC Commission shall consider the need for the local ABC board member's particular contribution, such as special knowledge of the subject matter and the effective functioning of the local ABC board.

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

(7) When the local ABC board records in its minutes that it cannot obtain a quorum in order to take the action because the local ABC board member is disqualified from acting, the local ABC board member may be counted for purposes of a quorum but shall otherwise abstain from taking any further action.

(i) Nothing in this section shall allow participation in an action prohibited by G.S. 14-234 or G.S. 133-32.

(j) A local board member shall not improperly use or improperly disclose any confidential information.

(k) A local board member shall have an affirmative duty to promptly disclose in writing to the local board any conflict of interest or potential conflict of interest."

SECTION 3. G.S. 18B-202 reads as rewritten:

"**§ 18B-202. Discharge upon conviction.**

In addition to imposing any other penalty authorized by law, a judge may remove from office or discharge from employment any Commission or local board member or employee, or any ALE agent, who is convicted of a violation of any provision of this Chapter or of any

felony and may declare that person ineligible for membership or employment with the Commission, any local board, or the ALE Division, for a period of not longer than three years. Conviction of a crime under this Chapter or of any felony shall also be grounds for the Commission to remove from office or discharge from employment any local board member or employee. In addition to imposing any other penalty authorized by law, a judge may prohibit an individual convicted of a violation of this Chapter, or of any felony, from participating in any contract to enforce the ABC laws for a local board if that individual is a designated officer of an agency which holds a contract to enforce the ABC laws for a local board. A judge may also prohibit an individual convicted of a violation of this Chapter, or of any felony, from being designated as an officer that enforces the ABC law under a contract with any local board for a period of not longer than three years."

SECTION 4. G.S. 18B-203(a) is amended by adding new subdivisions to read:

"**§ 18B-203. Powers and duties of the Commission.**

(a) Powers. – The Commission shall have authority to:

...

(20) Promulgate rules to establish performance standards for local boards. Performance standards established pursuant to this subdivision shall include, but not be limited to, standards that address enforcement of ABC laws, store appearance, operating efficiency, solvency, and customer service.

(21) Promulgate rules to establish mandatory training requirements for local board members, finance officers, and general managers. If personal attendance is required, the Commission shall not require more than four hours of training and shall provide up to two hours of training at convenient locations around the State in conjunction with ethics training.

(22) Provide for the purchase of spirituous liquor from another ABC board by mixed beverage permittees when an ABC system becomes insolvent, closes, or is closed by the Commission and the county or municipality in which the system is located has approved the sale of mixed beverages."

SECTION 5. G.S. 18B-501(f) reads as rewritten:

"(f) Contracts with Other Agencies. – Instead of hiring local ABC officers, a local board may contract to pay its enforcement funds to a sheriff's department, city police department, or other local law-enforcement agency for enforcement of the ABC laws within the law-enforcement agency's territorial jurisdiction. Enforcement agreements may be made with more than one agency at the same time. When such a contract for enforcement exists, the designated officers of the contracting law-enforcement agency shall have the same authority to inspect under G.S. 18B-502 that an ABC officer employed by that local board would have. An agency contracted to provide ABC law enforcement shall designate no more than five officers to conduct inspections pursuant to this section and G.S. 18B-502. If a city located in two or more counties approves the sale of some type of alcoholic beverage pursuant to the provisions of G.S. 18B-600(e4), and there are no local ABC boards established in the city and one of the counties in which the city is located, the local ABC board of any county in which the city is located may enter into an enforcement agreement with the city's police department for enforcement of the ABC laws within the entire city, including that portion of the city located in the county of the ABC board entering into the enforcement agreement."

SECTION 6. G.S. 18B-501 is amended by adding a new subsection to read:

"(f1) Accountability; Enforcement Reports. – To ensure accountability to the appointing authority and the Commission, every local board's ABC officers and those law enforcement agencies subject to an enforcement agreement entered into pursuant to subsection (f) of this section shall report to the local board, by the fifth business day of each month, on a form developed by the Commission, the following:

(1) The number of arrests made for ABC law, Controlled Substance Act, or other violations, by category, at ABC permitted outlets.
(2) The number of arrests made for ABC law, Controlled Substance Act, or other violations, by category, at other locations.
(3) The number of agencies assisted with ABC law or controlled substance related matters.
(4) The number of alcohol education and responsible server programs presented.

The local board shall submit a copy of the enforcement report to the appointing authority and the Commission not later than five business days after receipt of the enforcement report by the local board. The Commission shall publish this information, by local board and enforcement agency, on a public Internet Web site maintained by the Commission."

SECTION 7. G.S. 18B-501(g) reads as rewritten:

"(g) Discharge. – Local ABC officers and the designated officers of agencies which contract with local boards for enforcement of the ABC laws are subject to the discharge and ineligibility provisions of G.S. 18B-202."

SECTION 7.1. G.S. 18B-600(d) reads as rewritten:

"(d) City ABC Store Elections. – A city may hold an ABC store election only if:
(1) The city has at least ~~500~~ 1000 registered voters; and
(2) The county in which the city is located does not operate ABC stores."

SECTION 8. G.S. 18B-600(e) reads as rewritten:

"(e) City Mixed Beverage Elections. – A city may hold a mixed beverage election ~~only if:~~ if the city has at least 500 registered voters. Provided, that if a city that qualifies for an election under this subsection approves the sale of mixed beverages, mixed beverages permittees in the city may purchase liquor from the ABC store designated by the local ABC board that has been approved by the Commission for this purpose.

~~(1) The city has at least 500 registered voters; and~~
~~(2) Either:~~
~~a. The city already operates a city ABC store; or~~
~~b. A city ABC store election is to be held at the same time as the mixed beverage election; or~~
~~c. The city does not operate a city ABC store but:~~
~~1. The county operates an ABC store;~~
~~2. The county has already held a mixed beverage election; and~~
~~3. The vote in the last county election was against the sale of mixed beverages.~~"

SECTION 9. G.S. 18B-700(a) reads as rewritten:

"(a) Membership. – A local ABC board shall consist of three or five members appointed for three-year ~~terms, unless a different membership or term is provided by a local act enacted before the effective date of this Chapter, or~~ terms unless the board is a board for a merged ABC system under G.S. 18B-703 and a different size membership has been provided for as part of the negotiated merger. ~~One~~ If the board is a three-member board, one member of the initial board of a newly created ABC system shall be appointed for a three-year term, one member for a two-year term, and one member for a one-year term. If the board is a five-member board, one member of the initial board of a newly created ABC system shall be appointed for a three-year term, two members for two-year terms, and two members for one-year terms. As the terms of initial board members expire, their successors shall each be appointed for three-year terms. If a board is initially a three-member board and the appointing authority determines a five-member board is preferable, the terms of the two new members shall be for three years. If a local board has five members and the appointing authority determines a three-member board is preferable, the appointing authority shall not reduce the size of the board except upon the expiration of a

member's term and only with the approval of the Commission. The appointing authority shall designate one member of the local board as chairman."

SECTION 10. G.S. 18B-700 is amended by adding a new subsection to read:

"(a1) Mission. – The mission of local ABC boards and their employees shall be to serve their localities responsibly by controlling the sale of spirituous liquor and promoting customer-friendly, modern, and efficient stores."

SECTION 11. G.S. 18B-700(g) reads as rewritten:

"(g) ~~Salary.~~Compensation of Board Members. – A local board member ~~may be compensated as determined by the appointing authority.~~shall receive compensation in an amount not to exceed one hundred fifty dollars ($150.00) per board meeting unless a different level of monetary compensation is approved by the appointing authority. If a different level is approved by the appointing authority, the appointing authority shall notify the Commission of the approved level of compensation in writing. Any change in compensation approved by the appointing authority shall be reported to the Commission in writing within 30 days of the effective date of the change. No local board member shall receive any nonmonetary compensation or benefits unless specifically authorized by this section."

SECTION 12. G.S. 18B-700 is amended by adding a new subsection to read:

"(g1) Compensation of General Managers of Local Boards. – The salary authorized for the general manager, as defined in G.S. 18B-101, of a local board shall not exceed the salary authorized by the General Assembly for the clerk of superior court of the county in which the appointing authority was originally incorporated unless such compensation is otherwise approved by the appointing authority. The local board shall provide the appointing authority's written confirmation of such approval to the Commission. Any change in compensation approved by the appointing authority shall be reported to the Commission in writing within 30 days of the effective date of the change. The general manager of a local board may receive any other benefits to which all employees of the local board are entitled. The salary authorized for other employees of a local board may not exceed that of the general manager."

SECTION 13. G.S. 18B-700 is amended by adding a new subsection to read:

"(g2) Travel Allowance and Per Diem Rates. – Approved travel on official business by the members and employees of local boards shall be reimbursed pursuant to G.S. 138-6 unless the local board adopts a travel policy that conforms to the travel policy of the appointing authority and such policy is approved by the appointing authority. The local board shall annually provide the appointing authority's written confirmation of such approval to the Commission and a copy of the travel policy authorized by the appointing authority. Any excess expenses not covered by the local board's travel policy shall only be paid with the written authorization of the appointing authority's finance officer. A copy of the written authorization for excess expenses shall be submitted to the Commission by the local board within 30 days of approval."

SECTION 14. G.S. 18B-700(i) reads as rewritten:

"(i) Bond. – Each local board member and the employees designated as the general manager and finance officer of the local board shall be bonded in an amount not less than ~~five thousand dollars ($5,000),~~fifty thousand dollars ($50,000) secured by a corporate surety, for the faithful performance of his duties. A public employees' blanket position bond in the required amount satisfies the requirements of this subsection. The bond shall be payable to the local board and shall be approved by the appointing authority for the local board. The appointing authority may ~~exempt from this bond requirement any board member who does not handle board funds, and it may also~~ increase the amount of the bond required for any member or employee who ~~does handle~~handles board funds."

SECTION 15. G.S. 18B-700 is amended by adding a new subsection to read:

"(k) , Nepotism. – Members of an immediate family shall not be employed within the local board if such employment will result in one member of the immediate family supervising

another member of the immediate family, or if one member of the immediate family will occupy a position which has influence over another member's employment, promotion, salary administration, or other related management or personnel considerations. This subsection applies to local board members and employees.

For the purpose of this subsection, the term 'immediate family' includes wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson, and granddaughter. Also included are the step-, half-, and in-law relationships. It also includes other people living in the same household, who share a relationship comparable to immediate family members, if either occupies a position which requires influence over the other's employment, promotion, salary administration, or other related management or personnel considerations."

SECTION 16. G.S. 18B-700 is amended by adding a new subsection to read:

"(l) Local Acts. – Notwithstanding the provisions of any local act, this section applies to all local boards."

SECTION 17. G.S. 18B-701 reads as rewritten:

"**§ 18B-701. Powers and duties of local ABC boards.**

(a) Powers. – A local board shall have authority to:

(1) Buy, sell, transport, and possess alcoholic beverages as necessary for the operation of its ABC stores;
(2) Adopt rules for its ABC system, subject to the approval of the Commission;
(3) Hire and fire employees for the ABC system;
(4) Designate one employee as manager of the ABC system and determine his responsibilities;
(5) Require bonds of employees as provided in the rules of the Commission;
(6) Operate ABC stores as provided in Article 8;
(7) Issue purchase-transportation permits as provided in Article 4;
(8) Employ local ABC officers or make other provision for enforcement of ABC laws as provided in Article 5;
(9) Borrow money as provided in G.S. 18B-702;
(10) Buy and lease real and personal property, and receive property bequeathed or given, as necessary for the operation of the ABC system;
(11) Invest surplus funds as provided in G.S. 18B-702;
(12) Dispose of property in the same manner as a city council may under Article 12 of Chapter 160A of the General Statutes; and
(13) Perform any other activity authorized or required by the ABC law.

(b) Duties. – A local board shall have the duty to comply with all rules adopted by the Commission pursuant to this Chapter and meet all standards for performance and training established by the Commission pursuant to G.S. 18B-203(a)(20) and (21). Failure to comply with Commission rules shall be cause for removal."

SECTION 18. G.S. 18B-702 reads as rewritten:

"**§ 18B-702. Financial operations of local boards.**

(a) Generally. – A local board may transact business as a corporate body, except as limited by this section. A local board shall not be considered a public authority under G.S. 159-7(b)(10).

(b) Budget Officer. – The general manager of the local board shall be the budget officer for the local board. In the absence of a general manager, a local board may impose the duties of budget officer on the chairman or any member of the local board or any other employee of the board.

(c) Annual Balanced Budget. – Each local board shall operate under an annual balanced budget administered in accordance with this section. A budget is balanced when the sum of estimated gross revenues and both restricted and unrestricted funds are equal to appropriations. Expenditures shall not exceed the amount of funds received or in reserve for the purpose to

which the funds are appropriated. It is the intent of this section that all monies received and expended by a local board should be included in the budget. Therefore, notwithstanding any other provision of law, no local board may expend any monies, regardless of their source, except in accordance with a budget adopted under this section. The budget of a local board shall cover a fiscal year beginning July 1 and ending June 30.

(d) Preparation and Submission of Budget and Budget Message. – Upon receipt of the budget requests and revenue estimates and the financial information supplied by the finance officer, the budget officer shall prepare a budget for consideration by the local board in such form and detail as may have been prescribed by the budget officer or the local board. The budget, together with a budget message, shall be submitted to the local board, the appointing authority, and the Commission not later than June 1. The budget and budget message should, but need not, be submitted at a formal meeting of the board. The budget message should contain a concise explanation of the goals fixed by the budget for the budget year, explain important features of the activities anticipated in the budget, set forth the reasons for stated changes from the previous year in appropriation levels, and explain any major changes in fiscal policy.

(e) Filing and Publication of the Budget. – On the same day the budget officer submits the budget to the local board, the budget officer shall make a copy for public inspection, and it shall remain available for public inspection until the budget is adopted. The budget officer shall make a copy of the budget available to all news media in the county. The budget officer shall also publish a statement that the budget has been submitted to the local board and is available for public inspection in the office of the general manager of the local board. The statement shall also give notice of the time and place of the budget hearing required by subsection (f) of this section.

(f) Budget Hearings. – Before adopting the budget, the board shall hold a public hearing at which time any persons who wish to be heard on the budget may appear.

(g) Adoption of Budget. – Not earlier than 10 days after the day the budget is presented to the board and not later than July 1, the local board shall adopt a budget making appropriations for the budget year in such sums as the board may consider sufficient and proper, whether greater or less than the sums recommended in the budget. The budget shall authorize all financial transactions of the local board. The budget may be in any form that the board considers most efficient in enabling it to make the fiscal policy decisions embodied therein, but it shall make appropriations by department, function, or project and show revenues by major source. The following directions and limitations shall bind the local board in adopting the budget:

(1) The full amount estimated by the finance officer to be required for debt service during the budget year shall be appropriated.

(2) The full amount of any deficit in each fund shall be appropriated.

(3) Working capital funds set aside pursuant to G.S. 18B-805 shall be established by rule of the Commission. "Working capital" means the total of cash, investments, and inventory less all unsecured liabilities. Gross sales means gross receipts from the sale of alcoholic beverages less distributions as defined in G.S. 18B-805(b)(2), (3), (4), and (5). Any expenditure to be charged against working capital funds shall be authorized by resolution of the local board, which resolution shall be deemed an amendment to the budget setting up an appropriation for the object of expenditure authorized. The local board may authorize the budget officer to authorize expenditures from working capital funds subject to such limitations and procedures as it may prescribe. Any such expenditure shall be deemed an amendment and reported to the board at its next regular meeting and recorded in the minutes.

(4) Estimated revenues shall include only those revenues reasonably expected to be realized in the budget year.

(5) Sufficient funds to meet the amounts to be paid during the fiscal year under continuing contracts previously entered into shall be appropriated unless such contract reserves to the local board the right to limit or not to make such appropriation.

(6) The sum of estimated net revenues and appropriated fund balance in each fund shall be equal to appropriations in that fund. Appropriated fund balance in a fund shall not exceed the sum of cash and investments minus the sum of liabilities, encumbrances, and deferred revenues arising from cash receipts, as those figures stand at the close of the fiscal year next preceding the budget year.

The budget shall be entered in the minutes of the local board and within five days after adoption, and copies thereof shall be filed with the finance officer, the budget officer, the appointing authority, and the Commission.

(h) Amendments to the Budget. – Except as otherwise restricted by law, the local board may amend the budget at any time after adoption, in any manner, so long as the budget, as amended, continues to satisfy the requirements of this section. The local board by appropriate resolution may authorize the budget officer to transfer monies from one appropriation to another within the same fund subject to such limitations and procedures as it may prescribe. Any such transfers shall be reported to the local board at its next regular meeting and shall be entered in the minutes. Amendments to the adopted budget shall also be provided to the appointing authority and the Commission.

(i) Interim Budget. – In case the adoption of the budget is delayed until after July 1, the local board shall make interim appropriations for the purpose of paying salaries, debt service payments, and the usual ordinary expenses of the local board for the interval between the beginning of the budget year and the adoption of the budget. Interim appropriations so made shall be charged to the proper appropriations in the adopted budget.

(j) Finance Officer. – Except as otherwise provided, the local board shall designate (i) a part-time or full-time employee of the board other than the general manager or (ii) the finance officer of the appointing authority with consent of the appointing authority to be the finance officer for the local board. The Commission, for good cause shown, may allow the general manager of a board also to be the finance officer. Good cause includes, but is not limited to, the fact that the board operates no more than two stores, and any approval for the general manager also to be the finance officer shall apply until the board operates more than two stores; in any event, the approval shall be effective for 36 months.

(k) Duties and Powers of the Finance Officer. – The finance officer for a local board shall:

(1) Keep the accounts of the local board in accordance with generally accepted principles of governmental accounting and the rules and regulations of the Commission.

(2) Disburse all funds of the local board in strict compliance with this Chapter, the budget, and preaudit obligations, and disbursements as required by this section.

(3) As often as may be requested by the local board or the general manager, prepare and file with the board a statement of the financial condition of the local board.

(4) Receive and deposit all monies accruing to the local board, or supervise the receipt and deposit of money by other duly authorized employees.

(5) Maintain all records concerning the debt and other obligations of the local board, determine the amount of money that will be required for debt service

or the payment of other obligations during each fiscal year, and maintain all funds.

(6) Supervise the investment of idle funds of the local board pursuant to subsection (t) of this section.

The finance officer shall perform such other duties as may be assigned by law, by the general manager, budget officer, or local board, or by rules and regulations of the Commission.

(l) Accounting System. – Each local board shall establish and maintain an accounting system designed to show in detail its assets, liabilities, equities, revenues, and expenditures. The system shall also be designed to show appropriations and estimated revenues as established in the budget originally adopted and subsequently amended.

(m) Incurring Obligations. – No obligation may be incurred in a program, function, or activity accounted for in a fund included in the budget unless the budget includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the transaction for the current fiscal year. No obligation may be incurred for a capital project unless the budget authorizes the obligation and an unencumbered balance remains in the appropriation sufficient to pay the sums obligated by the transaction. If an obligation is evidenced by a contract or agreement requiring the payment of money or by a purchase order for supplies and materials, the contract, agreement, or purchase order shall include on its face a certificate stating that the instrument has been preaudited to assure compliance with this subsection. The certificate, which shall be signed by the finance officer or any deputy finance officer approved for this purpose by the local board, shall take substantially the following form:

"This instrument has been preaudited in the manner required by G.S. 18B-702.

_____

(Signature of finance officer)."

An obligation incurred in violation of this subsection is invalid and may not be enforced. The finance officer shall establish procedures to assure compliance with this subsection.

(n) Disbursements. – When a bill, invoice, or other claim against a local board is presented, the finance officer shall either approve or disapprove the necessary disbursement. If the claim involves a program, function, or activity accounted for in a fund included in the budget or a capital project or a grant project authorized by the budget, the finance officer may approve the claim only if:

(1) The finance officer determines the amount to be payable; and

(2) The budget includes an appropriation authorizing the expenditure and either (i) an encumbrance has been previously created for the transaction or (ii) an unencumbered balance remains in the appropriation sufficient to pay the amount to be disbursed.

A bill, invoice, or other claim may not be paid unless it has been approved by the finance officer or, under subsection (o) of this section, by the local board. The finance officer shall establish procedures to assure compliance with this subsection.

(o) Local Board Approval of Bills, Invoices, or Claims. – The local board may, as permitted by this subsection, approve a bill, invoice, or other claim against the local board that has been disapproved by the finance officer. It may not approve a claim for which no appropriation appears in the budget, or for which the appropriation contains no encumbrance and the unencumbered balance is less than the amount to be paid. The local board shall approve payment by formal resolution stating the board's reasons for allowing the bill, invoice, or other claim. The resolution shall be entered in the minutes together with the names of those voting in the affirmative. The chairman of the board or some other member designated for this purpose shall sign the certificate on the check or draft given in payment of the bill, invoice, or other claim. If payment results in a violation of law, each member of the board voting to allow

payment is jointly and severally liable for the full amount of the check or draft given in payment.

(p) Checks or Drafts Signed by Finance Officer. – Except as otherwise provided by law, all checks or drafts on an official depository shall be signed by the finance officer or a properly designated deputy finance officer. The chairman of the local board or general manager of the local board shall countersign these checks and drafts. The Commission may waive the requirements of this subsection if the board determines that the internal control procedures of the unit or authority will be satisfactory in the absence of dual signatures.

(q) Payment of a Bill, Invoice, Salary, or Claim. – A local board may not pay a bill, invoice, salary, or other claim except by a check or draft on an official depository or by a bank wire transfer from an official depository. Except as provided in this subsection, each check or draft on an official depository shall bear on its face a certificate signed by the finance officer or a deputy finance officer approved for this purpose by the local board (or signed by the chairman or some other member of the board pursuant to subsection (o) of this section). The certificate shall take substantially the following form:

"This disbursement has been approved in the manner required by G.S. 18B-702.

_____

(Signature of finance officer)."

No certificate is required on payroll checks or drafts on an imprest account in an official depository if the check or draft depositing the funds in the imprest account carried a signed certificate. No certificate is required for expenditures of fifty dollars ($50.00) or less from a petty cash fund, provided the expenditure is accounted for by a receipt for the expended item.

~~(b)~~(r) Borrowing Money. – A local board may borrow money only for the purchase of land, buildings, equipment and stock needed for the operation of its ABC system. A local board may pledge a security interest in any real or personal property it owns other than alcoholic beverages. A city or county whose governing body appoints a local board shall not in any way be held responsible for the debts of that board.

~~(c)~~(s) Audits. – A local board shall submit to the appointing authority and Commission an annual independent audit of its operations, performed in accordance with generally accepted accounting standards and in compliance with a chart of accounts prescribed by the Commission. The audit report shall contain a summary of the requirements of this Chapter, or of any local act applicable to that local board, concerning the distribution of profits of that board and a description of how those distributions have been made, including the names of recipients of the profits and the activities for which the funds were distributed. A local board shall also submit to any other audits and submit any reports demanded by the appointing authority or the Commission.

~~(d)~~(t) Deposits and Investments. – A local board may deposit ~~moneys~~monies at interest in any bank or trust company in this State in the form of savings accounts or certificates of deposit. Investment deposits shall be secured as provided in G.S. 159-31(b) and the reports required by G.S. 159-33 shall be submitted. A local board may invest all or part of the cash balance of any fund as provided in G.S. 159-30(c) and (d), and may deposit any portion of those funds for investment with the State Treasurer in the same manner as State boards and commissions under G.S. 147-69.3.

~~(e)~~(u) Compliance with Commission Rules. – The Commission shall adopt, and each local board shall comply with, fiscal control rules concerning the borrowing of money, maintenance of working capital, investments, appointment of a budget officer, appointment of a financial officer, daily deposit of funds, bonding of employees, auditing of operations, and the schedule, manner and other procedures for distribution of profits. The Commission may also adopt any other rules concerning the financial operations of local boards which are needed to assure the proper accountability of public funds. The Commission may vary these rules and regulations according to any other criteria reasonably related to the purpose or complexity of the financial

operations involved. The Commission has the authority to inquire into and investigate the internal control procedures of a local board and may require any modifications in internal control procedures which, in the opinion of the Commission, are necessary or desirable to prevent embezzlements or mishandling of public monies.

(v) Penalties. – If a board member or employee of a local board incurs an obligation or pays out or causes to be paid out any funds in violation of this section, the member or employee and the sureties on the official bond are liable for any sums so committed or disbursed. If the finance officer or any properly designated deputy finance officer gives a false certificate to any contract, agreement, purchase order, check, draft, or other document, the finance officer and the sureties on the official bond are liable for any sums illegally committed or disbursed thereby.

~~(f)~~(w) Applicability of Criminal Statutes. – The provisions of G.S. 14-90 and G.S. 14-254 shall apply to any person appointed to or employed by a local board, and any person convicted of a violation of G.S. 14-90 or G.S. 14-254 shall be punished as a Class H felon.

(x) Local Acts. – Notwithstanding the provisions of any local act, this section applies to all local boards."

SECTION 19. Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-704. Removal of local board members and employees.**

(a) Improper Influence. – Neither the Commission nor its individual members shall attempt to coerce any appointing authority to appoint a particular person as a member of a local board or attempt to coerce a local board to employ any particular applicant.

(b) Purpose. – This section is intended to provide a uniform system of removal for appointing authorities and the Commission.

(c) Cause for Removal. – (i) Disqualification of a local board member or employee under the law, (ii) a violation of the ABC laws, (iii) failure to complete training required by this Chapter or the Commission, or (iv) engaging in any conduct constituting moral turpitude or which brings the local board or the ABC system into disrepute is cause for the Commission to remove any member or employee of a local board. The employment or retention of any employee who is known to be disqualified under the law to hold a position with a local board is cause for the Commission to remove the board members involved.

(d) Removal Process. – The Commission or appointing authority shall provide, in writing, to the local board member or employee the findings of fact upon which the decision for removal is based. The Commission or appointing authority shall also provide the local board member or employee with notice of the availability of a hearing before the Commission to review the removal.

(e) Removal Hearing. – Any local board member or employee removed from office or discharged by the Commission or the appointing authority may request a hearing before the Commission. Such a request operates to stay the action of the Commission or the appointing authority with regard to the matter until after the hearing, unless the Commission finds that the public interest requires immediate action. At the hearing, the employee or the employee's counsel may examine all evidence used against the employee and present evidence in the employee's own behalf. A removal hearing is not subject to the provisions of Chapter 150B of the General Statutes. All hearings shall be conducted informally and in such manner as to preserve the substantial rights of the parties.

(f) Hearing Procedure. – The Commission shall hold the hearing required by subsection (e) of this section within 15 days of the member's or employee's request for a hearing. The standard of review by the Commission is de novo. The Commission or appointing authority shall be represented by a Commission hearing officer. The Commission shall discharge the member or employee if two-thirds of the Commission's members vote for removal. The Commission shall make findings of fact. The Commission may adopt the findings of fact of the Commission or the appointing authority, may add new findings of fact to the original findings

of fact, or may substitute new findings of fact for the original findings of fact. The Commission shall make conclusions of law and shall issue a written decision to the member or employee of the local board, and to the appointing authority, within 15 days of the hearing.

(g) Commission Authority. – The Commission shall have the sole power, in its discretion, to determine if cause exists for removal of a local board member or employee who has requested a hearing before the Commission. The Commission's decision in a removal hearing is final.

(h) Appeal. – A local board member or employee may appeal the Commission's final decision to the Court of Appeals. The standard of review for an appeal shall be abuse of discretion. The sole remedy for a local board member or employee shall be the reinstatement of the board member or employee to the local board with back pay. All awards for back pay shall be paid by the local board from which the board member or employee was removed.

(i) Removal Hearing Not a Substitute for Termination of Employee. – Nothing in this section replaces or is intended to replace a local board's policy regarding the termination of an employee for personnel reasons. The removal process under this section is reserved solely for the appointing authority or the Commission to remove a board member or employee for cause.

(j) Local Acts. – Notwithstanding the provisions of any local act, this section applies to all local boards."

SECTION 20. Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-705. Compliance with performance standards; remedies.**

(a) Local Board Compliance. – The Commission shall establish performance standards pursuant to G.S. 18B-203(a)(20). The Commission shall ensure that all local boards comply with established performance standards by conducting regular or special audits, conducting performance evaluations, or taking other measures, which may include inspections by Commission auditors or alcohol law enforcement agents.

(b) Performance Improvement Plans. – The Commission, upon determining that a local board is failing to meet performance standards established pursuant to G.S. 18B-203(a)(20), shall meet with the chair of the local board and the appointing authority and issue a statement of findings. The appointing authority, in consultation with the Commission and the local board, shall develop and deliver a performance improvement plan to the local board within 60 days of the meeting with the Commission. The performance improvement plan shall include, but not be limited to, recommendations for improved performance based on the performance standards established by the Commission. The plan shall also state a period of time in which the performance improvements are to occur and what action will be taken by the Commission if performance standards are not met within the given time limits. The appointing authority shall allow up to, but no more than, 12 months' time to the local board to implement and show improvement under the performance improvement plan. The local appointing authority, in consultation with the Commission and upon good cause shown, may allow up to an additional six-month period of time for the local board to meet all requirements in the performance improvement plan and to establish that the performance standards established by the Commission are met.

(c) Remedies. – If the Commission determines that the established performance standards identified in the statement of findings cannot be met after a performance improvement plan has been implemented and adequate time has been given, but in no case less than 12 months, the Commission shall take appropriate action to avoid insolvency. This action may include closing the board pursuant to G.S. 18B-801(d), closing a store or multiple stores, or merging the local board with another local board in order to maintain solvency. The Commission may also seize the assets of the local board and liquidate any assets necessary to satisfy any debt in order to maintain the solvency of the local board. Prior to taking action

pursuant to this subsection, the Commission shall issue a notice of intent to take such action to the appointing authority and the local board.

(d) Local Acts. – Notwithstanding the provisions of any local act, this section applies to all local boards."

SECTION 21. Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-706. Ethics requirements for local boards.**

(a) Each local board shall adopt a policy containing a code of ethics, consistent with the provisions of G.S. 18B-201, to guide actions by the local board members and employees of the local board in the performance of their official duties. The policy shall address at least all of the following:

(1) The need to obey all applicable laws regarding official actions taken as a local board member or employee.

(2) The need to uphold the integrity and independence of the local board member or employee's position.

(3) The need to avoid impropriety in the exercise of official duties.

(4) The need to faithfully perform the duties of the position.

(5) The need to conduct the affairs of the board in an open and public manner, including complying with all applicable laws governing open meetings and public records.

(b) Each member of a local board shall receive a minimum of two hours of ethics education within 12 months after initial appointment to the office and again within 12 months after each subsequent appointment to the office. The ethics education shall cover laws and principles that govern conflicts of interest and ethical standards of conduct for local ABC boards. The education may be provided by the Commission or another qualified source approved by the Commission. The local board shall maintain a record verifying receipt of the ethics education by each member of the local board. The local board may require appropriate ethics training and education for employees of the local ABC board.

(c) The Commission shall develop a model ethics policy that local ABC boards may adopt to be in compliance with this section."

SECTION 22. G.S. 18B-801(b) reads as rewritten:

"(b) Location of Stores. – A local board may choose the location of the ABC stores within its jurisdiction, subject to the approval of the Commission. In making its decision on a location, the Commission may consider:

(1) Whether the health, safety, or general welfare of the community will be adversely ~~affected; and~~affected.

(2) Whether the citizens of the community or city in which the proposed store is to be located voted for or against ABC stores in the last election on the question.

(3) The proximity of the new location to existing ABC stores operated by the local board or any other board."

SECTION 23. G.S. 18B-801(c) reads as rewritten:

"(c) Closing of Stores. – Subject to the provisions of ~~subsection (a),~~ subsection (a) of this section, a local board may ~~close,~~close a store, or the Commission may order a local board to ~~close,~~close any store when the local board or the Commission determines that:

~~(1) The operation of the store is not sufficiently profitable to justify its continuation;~~

(2) The store is not operated in accordance with the ABC law; or

(3) The continued operation of that store will adversely affect the health, safety, or general welfare of the community in which the store operates."

SECTION 24. G.S. 18B-803 reads as rewritten:

"**§ 18B-803. Store management.**

(a) Manager. – A local board shall provide for the management of each store operated by it. The board shall employ at least one manager for each store, who shall operate the store pursuant to the directions of that board.

(b) Bonding of Manager. – Each store manager shall be bonded in an amount not less than ~~five thousand dollars ($5,000),~~ fifty thousand dollars ($50,000) secured by a corporate surety, for the honest performance of his duties. A public employees' blanket position bond, honesty form, in the required amount satisfies the requirements of this subsection. The bond shall be payable to the local board and shall be approved by the appointing authority for the local board. The appointing authority may increase the amount of bond required for store managers under this subsection.

(c) Bonding of Other Employees. – A local board or the appointing authority may require any of its other employees who handle funds to obtain bonds. The amount and form of those bonds shall be determined by the local board.

(d) Local Acts. – Notwithstanding the provisions of any local act, this section applies to all local boards."

SECTION 25. G.S. 18B-1213 reads as rewritten:

"**§ 18B-1213. Obligations of purchaser.**

The purchaser of a ~~winery~~winery, and any successor to the rights of a winery, is obligated to all the terms and conditions of an agreement in effect on the date of the ~~purchase,~~purchase or other acquisition of the right to distribute a brand, except for good cause, which includes,

(1) Revocation of the wholesaler's permit or license to do business in this State,

(2) Bankruptcy or insolvency of the wholesaler,

(3) Assignment for the benefit of creditors or similar disposition of the assets of the wholesaler, or

(4) Failure by the wholesaler to comply substantially, without reasonable excuse or justification, with any reasonable and material requirement imposed upon ~~him~~ the wholesaler by the winery.

As used in this Article, "purchase" includes the sale of stock, sale of assets, merger, lease, transfer, or consolidation."

SECTION 26. G.S. 93B-9 reads as rewritten:

"**§ 93B-9. Age requirements.**

Any other provision notwithstanding, except certifications issued by the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission pursuant to Chapters 17C, 17E, 74E, and 74G of the General Statutes, no occupational licensing board may require that an individual be more than 18 years of age as a requirement for receiving a license."

SECTION 27. Section 6 of this act becomes effective January 1, 2011. Sections 12 and 15 of this act become effective October 1, 2010, and apply to general managers and employees hired on or after that date. Section 16 of this act becomes effective October 1, 2011. Section 18 of this act becomes effective May 1, 2011, and is applicable for local board fiscal years beginning July 1, 2011. The ABC Commission shall offer training and education to local boards to assist local boards in complying with Section 18 of this act, and such training and education shall be offered at least once annually after the effective date of this act; however, the Commission shall have no obligation to provide such training and education after December 31, 2013. Section 25 of this act is effective when it becomes law, and its provisions shall apply to all existing franchise agreements. A supplier's shipment of wine to a wholesaler in North Carolina following the effective date of Section 25 of this act shall constitute acceptance by the supplier of the terms of this act and shall be incorporated into the agreement between the supplier and wholesaler. Section 26 of this act is effective when it becomes law. The remainder of this act becomes effective October 1, 2010.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1717*
Committee Substitute Favorable 6/9/10
Committee Substitute #2 Favorable 6/16/10
Fourth Edition Engrossed 6/22/10
PROPOSED SENATE COMMITTEE SUBSTITUTE H1717-CSMA-37 [v.2]

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Short Title: Modernization of the State ABC System. (Public)

Sponsors:

Referred to:

May 17, 2010

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE THE NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL SYSTEM, TO ENSURE THE INTEGRITY OF THE THREE-TIER SYSTEM, TO REQUIRE MINIMUM AGE STANDARDS FOR LAW ENFORCEMENT, AND TO REQUIRE THAT THE CITY OF KANNAPOLIS, THE CITY OF SALISBURY, AND ROWAN COUNTY HAVE EQUAL REPRESENTATION ON THE ROWAN/KANNAPOLIS ABC BOARD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-101 reads as rewritten:

"**§ 18B-101. Definitions.**

As used in this Chapter, unless the context requires otherwise:

...

(6a) "Finance officer" means the local board employee, other than a general manager, that is responsible for keeping the accounts of the local board, receiving and depositing receipts, disbursing funds, and any other duties assigned by the local board or Commission.

(7) "Fortified wine" means any wine, of more than sixteen percent (16%) and no more than twenty-four percent (24%) alcohol by volume, made by fermentation from grapes, fruits, berries, rice, or honey; or by the addition of pure cane, beet, or dextrose sugar; or by the addition of pure brandy from the same type of grape, fruit, berry, rice, or honey that is contained in the base wine and produced in accordance with the regulations of the United States.

(7a) "General manager" means the local board employee that is responsible for the oversight of daily operations of the ABC system and any other duties assigned by the local board or Commission. The board may designate only one employee to be the general manager.

~~(7a)~~(7b) "Historic ABC establishment" means a restaurant or hotel that meets all of the following requirements:

a. Is on the national register of historic places or located within a State historic district.

b. Is a property designed to attract local, State, national, and international tourists located on a State Route (SR) and with a property line located within 1.5 miles of the intersection of a designated North Carolina scenic byway as defined in G.S. 136-18(31).
c. Is located within 15 miles of a national scenic highway.
d. Is located in a county in which the on-premises sale of malt beverages or unfortified wine is authorized in two or more cities in the county.

~~(7b)~~(7c) "Keg" means a portable container designed to hold and dispense 7.75 gallons or more of malt beverage.

...."

SECTION 2. G.S. 18B-201 reads as rewritten:

"**§ 18B-201. Conflict of ~~interest.~~interest; gifts.**

(a) Financial Interests Restricted. – No person shall be appointed to or employed by the Commission, a local board, or the ALE Division if that person or a member of that person's family related to that person by blood or marriage to the first degree has or controls, directly or indirectly, a financial interest in any commercial alcoholic beverage enterprise, including any business required to have an ABC permit. The Commission may exempt from this provision any person, other than a Commission member, when the financial interest in question is so insignificant or remote that it is unlikely to affect the person's official actions in any way. Exemptions may be granted only to individuals, not to groups or classes of people, and each exemption shall be in writing, be available for public inspection, and contain a statement of the financial interest in question.

(b) Self-dealing. – The provisions of G.S. 14-234 shall apply to the Commission and local boards.

(c) Dealing for Family Members. – Neither the Commission nor any local board shall contract or otherwise deal in any business matter so that a member, member's spouse or any person related to ~~him~~ the member by blood to a degree of first cousin or closer in any way financially benefits, directly or indirectly, from the transaction unless:

(1) The member who financially benefits from the transaction or whose spouse or relative financially benefits from the transaction abstains from participating in any way, including voting, in the decision;
(2) The minutes of the meeting at which the final decision is reached specifically note the member who is financially benefited or whose spouse or relative is financially benefited and the amount involved in each transaction;
(3) The next annual audit of the Commission or local board specifically notes the member and the amount involved in each transaction occurring during the year covered by the audit; and
(4) If the transaction is by a local board, the Commission is notified at least two weeks before final board approval of the transaction.

(d) Gifts Generally. – The provisions of G.S. 133-32 shall apply to the Commission and local boards.

(e) Conflicts of Interest for the Commission. – The provisions of Article 4 of Chapter 138A of the General Statutes shall apply to the Commission.

(f) Conflicts of Interest for Local Boards. – Except as permitted under subsection (h) of this section, a local ABC board member shall not knowingly use the local ABC board member's position on the board in any way that will result in financial benefit to the local ABC board member, the local ABC board member's spouse, any person related to the local ABC board

member by blood to a degree of first cousin or closer, or any business with which the local ABC board member is associated.

(g) For purposes of subsection (f) of this section, 'business with which associated' shall have the same meaning as in G.S. 138A-3(3). For purposes of this section, 'financial benefit' shall mean a direct pecuniary gain or loss, or a direct pecuniary loss to a business competitor.

(h) Notwithstanding subsection (f) of this section, a local ABC board member may participate in an action of the local ABC board under any of the following circumstances except as specifically limited:

(1) The financial benefit that accrues to the local ABC board member, the local ABC board member's spouse or any person related to the local ABC board member by blood to a degree of first cousin or closer, or a business with which the local ABC board member is associated is one that is accrued as a member of a profession, occupation, or general class and is no greater than that which could reasonably be foreseen to accrue to all members of that profession, occupation, or general class.

(2) The financial benefit derived by a local ABC board member, the local ABC board member's spouse or any person related to the local ABC board member by blood to a degree of first cousin or closer, or a business with which the local ABC board member is associated is one that would be enjoyed to an extent no greater than that which other citizens of the State would or could enjoy.

(3) The financial benefit derived by a local ABC board member, the local ABC board member's spouse or any person related to the local ABC board member by blood to a degree of first cousin or closer, or a business with which the local ABC board member is so remote, tenuous, insignificant, or speculative that a reasonable person would conclude under the circumstances that the local ABC board member's ability to protect the public interest and perform the local ABC board member's duties would not be compromised.

(4) When an action affects or would affect the local ABC board member's compensation as a local ABC board member.

(5) Before the local ABC board member participated in the action, the board member requested and received from the ABC Commission a written advisory opinion that authorized the participation. In authorizing the participation under this subdivision, the ABC Commission shall consider the need for the local ABC board member's particular contribution, such as special knowledge of the subject matter and the effective functioning of the local ABC board.

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

(7) When the local ABC board records in its minutes that it cannot obtain a quorum in order to take the action because the local ABC board member is disqualified from acting, the local ABC board member may be counted for purposes of a quorum but shall otherwise abstain from taking any further action.

(i) Nothing in this section shall allow participation in an action prohibited by G.S. 14-234 or G.S. 133-32.

(j) A local board member shall not improperly use or improperly disclose any confidential information.

(k) A local board member shall have an affirmative duty to promptly disclose in writing to the local board any conflict of interest or potential conflict of interest."

SECTION 3. G.S. 18B-202 reads as rewritten:

"**§ 18B-202. Discharge upon conviction.**

In addition to imposing any other penalty authorized by law, a judge may remove from office or discharge from employment any Commission or local board member or employee, or any ALE agent, who is convicted of a violation of any provision of this Chapter or of any felony and may declare that person ineligible for membership or employment with the Commission, any local board, or the ALE Division, for a period of not longer than three years. Conviction of a crime under this Chapter or of any felony shall also be grounds for the Commission to remove from office or discharge from employment any local board member or employee. In addition to imposing any other penalty authorized by law, a judge may prohibit an individual convicted of a violation of this Chapter, or of any felony, from participating in any contract to enforce the ABC laws for a local board if that individual is a designated officer of an agency which holds a contract to enforce the ABC laws for a local board. A judge may also prohibit an individual convicted of a violation of this Chapter, or of any felony, from being designated as an officer that enforces the ABC law under a contract with any local board for a period of not longer than three years."

SECTION 4. G.S. 18B-203(a) is amended by adding new subdivisions to read:

"**§ 18B-203. Powers and duties of the Commission.**

(a) Powers. – The Commission shall have authority to:

...

(20) Promulgate rules to establish performance standards for local boards. Performance standards established pursuant to this subdivision shall include, but not be limited to, standards that address enforcement of ABC laws, store appearance, operating efficiency, solvency, and customer service.

(21) Promulgate rules to establish mandatory training requirements for local board members, finance officers, and general managers. If personal attendance is required, the Commission shall not require more than four hours of training and shall provide up to two hours of training at convenient locations around the State in conjunction with ethics training.

(22) Provide for the purchase of spirituous liquor from another ABC board by mixed beverage permittees when an ABC system becomes insolvent, closes, or is closed by the Commission and the county or municipality in which the system is located has approved the sale of mixed beverages."

SECTION 5. G.S. 18B-501(f) reads as rewritten:

"(f) Contracts with Other Agencies. – Instead of hiring local ABC officers, a local board may contract to pay its enforcement funds to a sheriff's department, city police department, or other local law-enforcement agency for enforcement of the ABC laws within the law-enforcement agency's territorial jurisdiction. Enforcement agreements may be made with more than one agency at the same time. When such a contract for enforcement exists, the designated officers of the contracting law-enforcement agency shall have the same authority to inspect under G.S. 18B-502 that an ABC officer employed by that local board would have. An agency contracted to provide ABC law enforcement shall designate no more than five officers to conduct inspections pursuant to this section and G.S. 18B-502. If a city located in two or more counties approves the sale of some type of alcoholic beverage pursuant to the provisions of G.S. 18B-600(e4), and there are no local ABC boards established in the city and one of the counties in which the city is located, the local ABC board of any county in which the city is located may enter into an enforcement agreement with the city's police department for enforcement of the ABC laws within the entire city, including that portion of the city located in the county of the ABC board entering into the enforcement agreement."

SECTION 6. G.S. 18B-501 is amended by adding a new subsection to read:

"(f1) Accountability; Enforcement Reports. – To ensure accountability to the appointing authority and the Commission, every local board's ABC officers and those law enforcement agencies subject to an enforcement agreement entered into pursuant to subsection (f) of this section shall report to the local board, by the fifth business day of each month, on a form developed by the Commission, the following:

(1) The number of arrests made for ABC law, Controlled Substance Act, or other violations, by category, at ABC permitted outlets.

(2) The number of arrests made for ABC law, Controlled Substance Act, or other violations, by category, at other locations.

(3) The number of agencies assisted with ABC law or controlled substance related matters.

(4) The number of alcohol education and responsible server programs presented.

The local board shall submit a copy of the enforcement report to the appointing authority and the Commission not later than five business days after receipt of the enforcement report by the local board. The Commission shall publish this information, by local board and enforcement agency, on a public Internet Web site maintained by the Commission."

SECTION 7. G.S. 18B-501(g) reads as rewritten:

"(g) Discharge. – Local ABC officers and the designated officers of agencies which contract with local boards for enforcement of the ABC laws are subject to the discharge and ineligibility provisions of G.S. 18B-202."

SECTION 7.1. G.S. 18B-600(d) reads as rewritten:

"(d) City ABC Store Elections. – A city may hold an ABC store election only if:

(1) The city has at least ~~500~~ 1,000 registered voters; and

(2) The county in which the city is located does not operate ABC stores."

SECTION 8. G.S. 18B-600(e) reads as rewritten:

"(e) City Mixed Beverage Elections. – A city may hold a mixed beverage election ~~only if:~~if the city has at least 500 registered voters. Provided, that if a city that qualifies for an election under this subsection approves the sale of mixed beverages, mixed beverages permittees in the city may purchase liquor from the ABC store designated by the local ABC board that has been approved by the Commission for this purpose.

~~(1) The city has at least 500 registered voters; and~~

~~(2) Either:~~

~~a. The city already operates a city ABC store; or~~

~~b. A city ABC store election is to be held at the same time as the mixed beverage election; or~~

~~c. The city does not operate a city ABC store but:~~

~~1. The county operates an ABC store;~~

~~2. The county has already held a mixed beverage election; and~~

~~3. The vote in the last county election was against the sale of mixed beverages.~~"

SECTION 9. G.S. 18B-700(a) reads as rewritten:

"(a) Membership. – A local ABC board shall consist of three or five members appointed for three-year ~~terms, unless a different membership or term is provided by a local act enacted before the effective date of this Chapter, or~~ terms unless the board is a board for a merged ABC system under G.S. 18B-703 and a different size membership has been provided for as part of the negotiated merger. ~~One~~ If the board is a three-member board, one member of the initial board of a newly created ABC system shall be appointed for a three-year term, one member for a two-year term, and one member for a one-year term. If the board is a five-member board, one member of the initial board of a newly created ABC system shall be appointed for a three-year term, two members for two-year terms, and two members for one-year terms. As the terms of initial board members expire, their successors shall each be appointed for three-year terms. If a

board is initially a three-member board and the appointing authority determines a five-member board is preferable, the terms of the two new members shall be for three years. If a local board has five members and the appointing authority determines a three-member board is preferable, the appointing authority shall not reduce the size of the board except upon the expiration of a member's term and only with the approval of the Commission. The appointing authority shall designate one member of the local board as chairman."

SECTION 10. G.S. 18B-700 is amended by adding a new subsection to read:

"(a1) Mission. – The mission of local ABC boards and their employees shall be to serve their localities responsibly by controlling the sale of spirituous liquor and promoting customer-friendly, modern, and efficient stores."

SECTION 11. G.S. 18B-700(g) reads as rewritten:

"(g) ~~Salary.~~Compensation of Board Members. – A local board member ~~may be compensated as determined by the appointing authority.~~shall receive compensation in an amount not to exceed one hundred fifty dollars ($150.00) per board meeting unless a different level of monetary compensation is approved by the appointing authority. If a different level is approved by the appointing authority, the appointing authority shall notify the Commission of the approved level of compensation in writing. Any change in compensation approved by the appointing authority shall be reported to the Commission in writing within 30 days of the effective date of the change. No local board member shall receive any nonmonetary compensation or benefits unless specifically authorized by this section."

SECTION 12. G.S. 18B-700 is amended by adding a new subsection to read:

"(g1) Compensation of General Managers of Local Boards. – The salary authorized for the general manager, as defined in G.S. 18B-101, of a local board shall not exceed the salary authorized by the General Assembly for the clerk of superior court of the county in which the appointing authority was originally incorporated unless such compensation is otherwise approved by the appointing authority. The local board shall provide the appointing authority's written confirmation of such approval to the Commission. Any change in compensation approved by the appointing authority shall be reported to the Commission in writing within 30 days of the effective date of the change. The general manager of a local board may receive any other benefits to which all employees of the local board are entitled. The salary authorized for other employees of a local board may not exceed that of the general manager."

SECTION 13. G.S. 18B-700 is amended by adding a new subsection to read:

"(g2) Travel Allowance and Per Diem Rates. – Approved travel on official business by the members and employees of local boards shall be reimbursed pursuant to G.S. 138-6 unless the local board adopts a travel policy that conforms to the travel policy of the appointing authority and such policy is approved by the appointing authority. The local board shall annually provide the appointing authority's written confirmation of such approval to the Commission and a copy of the travel policy authorized by the appointing authority. Any excess expenses not covered by the local board's travel policy shall only be paid with the written authorization of the appointing authority's finance officer. A copy of the written authorization for excess expenses shall be submitted to the Commission by the local board within 30 days of approval."

SECTION 14. G.S. 18B-700(i) reads as rewritten:

"(i) Bond. – Each local board member and the employees designated as the general manager and finance officer of the local board shall be bonded in an amount not less than ~~five thousand dollars ($5,000),~~fifty thousand dollars ($50,000) secured by a corporate surety, for the faithful performance of his duties. A public employees' blanket position bond in the required amount satisfies the requirements of this subsection. The bond shall be payable to the local board and shall be approved by the appointing authority for the local board. The appointing authority may ~~exempt from this bond requirement any board member who does not handle~~

~~board funds, and it may also~~ increase the amount of the bond required for any member or employee who ~~does handle~~handles board funds."

SECTION 15. G.S. 18B-700 is amended by adding a new subsection to read:

"(k) Nepotism. – Members of an immediate family shall not be employed within the local board if such employment will result in one member of the immediate family supervising another member of the immediate family, or if one member of the immediate family will occupy a position which has influence over another member's employment, promotion, salary administration, or other related management or personnel considerations. This subsection applies to local board members and employees.

For the purpose of this subsection, the term 'immediate family' includes wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson, and granddaughter. Also included are the step-, half-, and in-law relationships. It also includes other people living in the same household, who share a relationship comparable to immediate family members, if either occupies a position which requires influence over the other's employment, promotion, salary administration, or other related management or personnel considerations."

SECTION 16. G.S. 18B-700 is amended by adding a new subsection to read:

"(l) Local Acts. – Notwithstanding the provisions of any local act, this section applies to all local boards."

SECTION 17. G.S. 18B-701 reads as rewritten:

"§ 18B-701. Powers and duties of local ABC boards.

(a) Powers. – A local board shall have authority to:

(1) Buy, sell, transport, and possess alcoholic beverages as necessary for the operation of its ABC stores;
(2) Adopt rules for its ABC system, subject to the approval of the Commission;
(3) Hire and fire employees for the ABC system;
(4) Designate one employee as manager of the ABC system and determine his responsibilities;
(5) Require bonds of employees as provided in the rules of the Commission;
(6) Operate ABC stores as provided in Article 8;
(7) Issue purchase-transportation permits as provided in Article 4;
(8) Employ local ABC officers or make other provision for enforcement of ABC laws as provided in Article 5;
(9) Borrow money as provided in G.S. 18B-702;
(10) Buy and lease real and personal property, and receive property bequeathed or given, as necessary for the operation of the ABC system;
(11) Invest surplus funds as provided in G.S. 18B-702;
(12) Dispose of property in the same manner as a city council may under Article 12 of Chapter 160A of the General Statutes; and
(13) Perform any other activity authorized or required by the ABC law.

(b) Duties. – A local board shall have the duty to comply with all rules adopted by the Commission pursuant to this Chapter and meet all standards for performance and training established by the Commission pursuant to G.S. 18B-203(a)(20) and (21). Failure to comply with Commission rules shall be cause for removal."

SECTION 18. G.S. 18B-702 reads as rewritten:

"§ 18B-702. Financial operations of local boards.

(a) Generally. – A local board may transact business as a corporate body, except as limited by this section. A local board shall not be considered a public authority under G.S. 159-7(b)(10).

(b) Budget Officer. – The general manager of the local board shall be the budget officer for the local board. In the absence of a general manager, a local board may impose the duties of

budget officer on the chairman or any member of the local board or any other employee of the board.

(c) Annual Balanced Budget. – Each local board shall operate under an annual balanced budget administered in accordance with this section. A budget is balanced when the sum of estimated gross revenues and both restricted and unrestricted funds are equal to appropriations. Expenditures shall not exceed the amount of funds received or in reserve for the purpose to which the funds are appropriated. It is the intent of this section that all monies received and expended by a local board should be included in the budget. Therefore, notwithstanding any other provision of law, no local board may expend any monies, regardless of their source, except in accordance with a budget adopted under this section. The budget of a local board shall cover a fiscal year beginning July 1 and ending June 30.

(d) Preparation and Submission of Budget and Budget Message. – Upon receipt of the budget requests and revenue estimates and the financial information supplied by the finance officer, the budget officer shall prepare a budget for consideration by the local board in such form and detail as may have been prescribed by the budget officer or the local board. The budget, together with a budget message, shall be submitted to the local board, the appointing authority, and the Commission not later than June 1. The budget and budget message should, but need not, be submitted at a formal meeting of the board. The budget message should contain a concise explanation of the goals fixed by the budget for the budget year, explain important features of the activities anticipated in the budget, set forth the reasons for stated changes from the previous year in appropriation levels, and explain any major changes in fiscal policy.

(e) Filing and Publication of the Budget. – On the same day the budget officer submits the budget to the local board, the budget officer shall make a copy for public inspection, and it shall remain available for public inspection until the budget is adopted. The budget officer shall make a copy of the budget available to all news media in the county. The budget officer shall also publish a statement that the budget has been submitted to the local board and is available for public inspection in the office of the general manager of the local board. The statement shall also give notice of the time and place of the budget hearing required by subsection (f) of this section.

(f) Budget Hearings. – Before adopting the budget, the board shall hold a public hearing at which time any persons who wish to be heard on the budget may appear.

(g) Adoption of Budget. – Not earlier than 10 days after the day the budget is presented to the board and not later than July 1, the local board shall adopt a budget making appropriations for the budget year in such sums as the board may consider sufficient and proper, whether greater or less than the sums recommended in the budget. The budget shall authorize all financial transactions of the local board. The budget may be in any form that the board considers most efficient in enabling it to make the fiscal policy decisions embodied therein, but it shall make appropriations by department, function, or project and show revenues by major source. The following directions and limitations shall bind the local board in adopting the budget:

(1) The full amount estimated by the finance officer to be required for debt service during the budget year shall be appropriated.

(2) The full amount of any deficit in each fund shall be appropriated.

(3) Working capital funds set aside pursuant to G.S. 18B-805 shall be established by rule of the Commission. "Working capital" means the total of cash, investments, and inventory less all unsecured liabilities. Gross sales means gross receipts from the sale of alcoholic beverages less distributions as defined in G.S. 18B-805(b)(2), (3), (4), and (5). Any expenditure to be charged against working capital funds shall be authorized by resolution of the local board, which resolution shall be deemed an amendment to the

budget setting up an appropriation for the object of expenditure authorized. The local board may authorize the budget officer to authorize expenditures from working capital funds subject to such limitations and procedures as it may prescribe. Any such expenditure shall be deemed an amendment and reported to the board at its next regular meeting and recorded in the minutes.

(4) Estimated revenues shall include only those revenues reasonably expected to be realized in the budget year.

(5) Sufficient funds to meet the amounts to be paid during the fiscal year under continuing contracts previously entered into shall be appropriated unless such contract reserves to the local board the right to limit or not to make such appropriation.

(6) The sum of estimated net revenues and appropriated fund balance in each fund shall be equal to appropriations in that fund. Appropriated fund balance in a fund shall not exceed the sum of cash and investments minus the sum of liabilities, encumbrances, and deferred revenues arising from cash receipts, as those figures stand at the close of the fiscal year next preceding the budget year.

The budget shall be entered in the minutes of the local board and within five days after adoption, and copies thereof shall be filed with the finance officer, the budget officer, the appointing authority, and the Commission.

(h) Amendments to the Budget. – Except as otherwise restricted by law, the local board may amend the budget at any time after adoption, in any manner, so long as the budget, as amended, continues to satisfy the requirements of this section. The local board by appropriate resolution may authorize the budget officer to transfer monies from one appropriation to another within the same fund subject to such limitations and procedures as it may prescribe. Any such transfers shall be reported to the local board at its next regular meeting and shall be entered in the minutes. Amendments to the adopted budget shall also be provided to the appointing authority and the Commission.

(i) Interim Budget. – In case the adoption of the budget is delayed until after July 1, the local board shall make interim appropriations for the purpose of paying salaries, debt service payments, and the usual ordinary expenses of the local board for the interval between the beginning of the budget year and the adoption of the budget. Interim appropriations so made shall be charged to the proper appropriations in the adopted budget.

(j) Finance Officer. – Except as otherwise provided, the local board shall designate (i) a part-time or full-time employee of the board other than the general manager or (ii) the finance officer of the appointing authority with consent of the appointing authority to be the finance officer for the local board. The Commission, for good cause shown, may allow the general manager of a board also to be the finance officer. Good cause includes, but is not limited to, the fact that the board operates no more than two stores, and any approval for the general manager also to be the finance officer shall apply until the board operates more than two stores; in any event, the approval shall be effective for 36 months.

(k) Duties and Powers of the Finance Officer. – The finance officer for a local board shall:

(1) Keep the accounts of the local board in accordance with generally accepted principles of governmental accounting and the rules and regulations of the Commission.

(2) Disburse all funds of the local board in strict compliance with this Chapter, the budget, and preaudit obligations, and disbursements as required by this section.

(3) As often as may be requested by the local board or the general manager, prepare and file with the board a statement of the financial condition of the local board.

(4) Receive and deposit all monies accruing to the local board, or supervise the receipt and deposit of money by other duly authorized employees.

(5) Maintain all records concerning the debt and other obligations of the local board, determine the amount of money that will be required for debt service or the payment of other obligations during each fiscal year, and maintain all funds.

(6) Supervise the investment of idle funds of the local board pursuant to subsection (t) of this section.

The finance officer shall perform such other duties as may be assigned by law, by the general manager, budget officer, or local board, or by rules and regulations of the Commission.

(l) Accounting System. – Each local board shall establish and maintain an accounting system designed to show in detail its assets, liabilities, equities, revenues, and expenditures. The system shall also be designed to show appropriations and estimated revenues as established in the budget originally adopted and subsequently amended.

(m) Incurring Obligations. – No obligation may be incurred in a program, function, or activity accounted for in a fund included in the budget unless the budget includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the transaction for the current fiscal year. No obligation may be incurred for a capital project unless the budget authorizes the obligation and an unencumbered balance remains in the appropriation sufficient to pay the sums obligated by the transaction. If an obligation is evidenced by a contract or agreement requiring the payment of money or by a purchase order for supplies and materials, the contract, agreement, or purchase order shall include on its face a certificate stating that the instrument has been preaudited to assure compliance with this subsection. The certificate, which shall be signed by the finance officer or any deputy finance officer approved for this purpose by the local board, shall take substantially the following form:

"This instrument has been preaudited in the manner required by G.S. 18B-702.

_____

(Signature of finance officer)."

An obligation incurred in violation of this subsection is invalid and may not be enforced. The finance officer shall establish procedures to assure compliance with this subsection.

(n) Disbursements. – When a bill, invoice, or other claim against a local board is presented, the finance officer shall either approve or disapprove the necessary disbursement. If the claim involves a program, function, or activity accounted for in a fund included in the budget or a capital project or a grant project authorized by the budget, the finance officer may approve the claim only if:

(1) The finance officer determines the amount to be payable; and

(2) The budget includes an appropriation authorizing the expenditure and either (i) an encumbrance has been previously created for the transaction or (ii) an unencumbered balance remains in the appropriation sufficient to pay the amount to be disbursed.

A bill, invoice, or other claim may not be paid unless it has been approved by the finance officer or, under subsection (o) of this section, by the local board. The finance officer shall establish procedures to assure compliance with this subsection.

(o) Local Board Approval of Bills, Invoices, or Claims. – The local board may, as permitted by this subsection, approve a bill, invoice, or other claim against the local board that has been disapproved by the finance officer. It may not approve a claim for which no appropriation appears in the budget, or for which the appropriation contains no encumbrance

and the unencumbered balance is less than the amount to be paid. The local board shall approve payment by formal resolution stating the board's reasons for allowing the bill, invoice, or other claim. The resolution shall be entered in the minutes together with the names of those voting in the affirmative. The chairman of the board or some other member designated for this purpose shall sign the certificate on the check or draft given in payment of the bill, invoice, or other claim. If payment results in a violation of law, each member of the board voting to allow payment is jointly and severally liable for the full amount of the check or draft given in payment.

(p) Checks or Drafts Signed by Finance Officer. – Except as otherwise provided by law, all checks or drafts on an official depository shall be signed by the finance officer or a properly designated deputy finance officer. The chairman of the local board or general manager of the local board shall countersign these checks and drafts. The Commission may waive the requirements of this subsection if the board determines that the internal control procedures of the unit or authority will be satisfactory in the absence of dual signatures.

(q) Payment of a Bill, Invoice, Salary, or Claim. – A local board may not pay a bill, invoice, salary, or other claim except by a check or draft on an official depository or by a bank wire transfer from an official depository. Except as provided in this subsection, each check or draft on an official depository shall bear on its face a certificate signed by the finance officer or a deputy finance officer approved for this purpose by the local board (or signed by the chairman or some other member of the board pursuant to subsection (o) of this section). The certificate shall take substantially the following form:

"This disbursement has been approved in the manner required by G.S. 18B-702.

_____

(Signature of finance officer)."

No certificate is required on payroll checks or drafts on an imprest account in an official depository if the check or draft depositing the funds in the imprest account carried a signed certificate. No certificate is required for expenditures of fifty dollars ($50.00) or less from a petty cash fund, provided the expenditure is accounted for by a receipt for the expended item.

~~(b)~~(r) Borrowing Money. – A local board may borrow money only for the purchase of land, buildings, equipment and stock needed for the operation of its ABC system. A local board may pledge a security interest in any real or personal property it owns other than alcoholic beverages. A city or county whose governing body appoints a local board shall not in any way be held responsible for the debts of that board.

~~(c)~~(s) Audits. – A local board shall submit to the appointing authority and Commission an annual independent audit of its operations, performed in accordance with generally accepted accounting standards and in compliance with a chart of accounts prescribed by the Commission. The audit report shall contain a summary of the requirements of this Chapter, or of any local act applicable to that local board, concerning the distribution of profits of that board and a description of how those distributions have been made, including the names of recipients of the profits and the activities for which the funds were distributed. A local board shall also submit to any other audits and submit any reports demanded by the appointing authority or the Commission.

~~(d)~~(t) Deposits and Investments. – A local board may deposit ~~moneys~~monies at interest in any bank or trust company in this State in the form of savings accounts or certificates of deposit. Investment deposits shall be secured as provided in G.S. 159-31(b) and the reports required by G.S. 159-33 shall be submitted. A local board may invest all or part of the cash balance of any fund as provided in G.S. 159-30(c) and (d), and may deposit any portion of those funds for investment with the State Treasurer in the same manner as State boards and commissions under G.S. 147-69.3.

~~(e)~~(u) Compliance with Commission Rules. – The Commission shall adopt, and each local board shall comply with, fiscal control rules concerning the borrowing of money, maintenance

of working capital, investments, appointment of a budget officer, appointment of a financial officer, daily deposit of funds, bonding of employees, auditing of operations, and the schedule, manner and other procedures for distribution of profits. The Commission may also adopt any other rules concerning the financial operations of local boards which are needed to assure the proper accountability of public funds. The Commission may vary these rules and regulations according to any other criteria reasonably related to the purpose or complexity of the financial operations involved. The Commission has the authority to inquire into and investigate the internal control procedures of a local board and may require any modifications in internal control procedures which, in the opinion of the Commission, are necessary or desirable to prevent embezzlements or mishandling of public monies.

(v) Penalties. – If a board member or employee of a local board incurs an obligation or pays out or causes to be paid out any funds in violation of this section, the member or employee and the sureties on the official bond are liable for any sums so committed or disbursed. If the finance officer or any properly designated deputy finance officer gives a false certificate to any contract, agreement, purchase order, check, draft, or other document, the finance officer and the sureties on the official bond are liable for any sums illegally committed or disbursed thereby.

~~(f)~~(w) Applicability of Criminal Statutes. – The provisions of G.S. 14-90 and G.S. 14-254 shall apply to any person appointed to or employed by a local board, and any person convicted of a violation of G.S. 14-90 or G.S. 14-254 shall be punished as a Class H felon.

(x) Local Acts. – Notwithstanding the provisions of any local act, this section applies to all local boards."

SECTION 19. Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-704. Removal of local board members and employees.**

(a) Improper Influence. – Neither the Commission nor its individual members shall attempt to coerce any appointing authority to appoint a particular person as a member of a local board or attempt to coerce a local board to employ any particular applicant.

(b) Purpose. – This section is intended to provide a uniform system of removal for appointing authorities and the Commission.

(c) Cause for Removal. – (i) Disqualification of a local board member or employee under the law, (ii) a violation of the ABC laws, (iii) failure to complete training required by this Chapter or the Commission, or (iv) engaging in any conduct constituting moral turpitude or which brings the local board or the ABC system into disrepute is cause for the Commission to remove any member or employee of a local board. The employment or retention of any employee who is known to be disqualified under the law to hold a position with a local board is cause for the Commission to remove the board members involved.

(d) Removal Process. – The Commission or appointing authority shall provide, in writing, to the local board member or employee the findings of fact upon which the decision for removal is based. The Commission or appointing authority shall also provide the local board member or employee with notice of the availability of a hearing before the Commission to review the removal.

(e) Removal Hearing. – Any local board member or employee removed from office or discharged by the Commission or the appointing authority may request a hearing before the Commission. Such a request operates to stay the action of the Commission or the appointing authority with regard to the matter until after the hearing, unless the Commission finds that the public interest requires immediate action. At the hearing, the employee or the employee's counsel may examine all evidence used against the employee and present evidence in the employee's own behalf. A removal hearing is not subject to the provisions of Chapter 150B of the General Statutes. All hearings shall be conducted informally and in such manner as to preserve the substantial rights of the parties.

(f) Hearing Procedure. – The Commission shall hold the hearing required by subsection (e) of this section within 15 days of the member's or employee's request for a hearing. The standard of review by the Commission is de novo. The Commission or appointing authority shall be represented by a Commission hearing officer. The Commission shall discharge the member or employee if two-thirds of the Commission's members vote for removal. The Commission shall make findings of fact. The Commission may adopt the findings of fact of the Commission or the appointing authority, may add new findings of fact to the original findings of fact, or may substitute new findings of fact for the original findings of fact. The Commission shall make conclusions of law and shall issue a written decision to the member or employee of the local board, and to the appointing authority, within 15 days of the hearing.

(g) Commission Authority. – The Commission shall have the sole power, in its discretion, to determine if cause exists for removal of a local board member or employee who has requested a hearing before the Commission. The Commission's decision in a removal hearing is final.

(h) Appeal. – A local board member or employee may appeal the Commission's final decision to the Court of Appeals. The standard of review for an appeal shall be abuse of discretion. The sole remedy for a local board member or employee shall be the reinstatement of the board member or employee to the local board with back pay. All awards for back pay shall be paid by the local board from which the board member or employee was removed.

(i) Removal Hearing Not a Substitute for Termination of Employee. – Nothing in this section replaces or is intended to replace a local board's policy regarding the termination of an employee for personnel reasons. The removal process under this section is reserved solely for the appointing authority or the Commission to remove a board member or employee for cause.

(j) Local Acts. – Notwithstanding the provisions of any local act, this section applies to all local boards."

SECTION 20. Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-705. Compliance with performance standards; remedies.**

(a) Local Board Compliance. – The Commission shall establish performance standards pursuant to G.S. 18B-203(a)(20). The Commission shall ensure that all local boards comply with established performance standards by conducting regular or special audits, conducting performance evaluations, or taking other measures, which may include inspections by Commission auditors or alcohol law enforcement agents.

(b) Performance Improvement Plans. – The Commission, upon determining that a local board is failing to meet performance standards established pursuant to G.S. 18B-203(a)(20), shall meet with the chair of the local board and the appointing authority and issue a statement of findings. The appointing authority, in consultation with the Commission and the local board, shall develop and deliver a performance improvement plan to the local board within 60 days of the meeting with the Commission. The performance improvement plan shall include, but not be limited to, recommendations for improved performance based on the performance standards established by the Commission. The plan shall also state a period of time in which the performance improvements are to occur and what action will be taken by the Commission if performance standards are not met within the given time limits. The appointing authority shall allow up to, but no more than, 12 months' time to the local board to implement and show improvement under the performance improvement plan. The local appointing authority, in consultation with the Commission and upon good cause shown, may allow up to an additional six-month period of time for the local board to meet all requirements in the performance improvement plan and to establish that the performance standards established by the Commission are met.

(c) Remedies. – If the Commission determines that the established performance standards identified in the statement of findings cannot be met after a performance

improvement plan has been implemented and adequate time has been given, but in no case less than 12 months, the Commission shall take appropriate action to avoid insolvency. This action may include closing the board pursuant to G.S. 18B-801(d), closing a store or multiple stores, or merging the local board with another local board in order to maintain solvency. The Commission may also seize the assets of the local board and liquidate any assets necessary to satisfy any debt in order to maintain the solvency of the local board. Prior to taking action pursuant to this subsection, the Commission shall issue a notice of intent to take such action to the appointing authority and the local board.

(d) Local Acts. – Notwithstanding the provisions of any local act, this section applies to all local boards."

SECTION 21. Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-706. Ethics requirements for local boards.**

(a) Each local board shall adopt a policy containing a code of ethics, consistent with the provisions of G.S. 18B-201, to guide actions by the local board members and employees of the local board in the performance of their official duties. The policy shall address at least all of the following:

(1) The need to obey all applicable laws regarding official actions taken as a local board member or employee.

(2) The need to uphold the integrity and independence of the local board member or employee's position.

(3) The need to avoid impropriety in the exercise of official duties.

(4) The need to faithfully perform the duties of the position.

(5) The need to conduct the affairs of the board in an open and public manner, including complying with all applicable laws governing open meetings and public records.

(b) Each member of a local board shall receive a minimum of two hours of ethics education within 12 months after initial appointment to the office and again within 12 months after each subsequent appointment to the office. The ethics education shall cover laws and principles that govern conflicts of interest and ethical standards of conduct for local ABC boards. The education may be provided by the Commission or another qualified source approved by the Commission. The local board shall maintain a record verifying receipt of the ethics education by each member of the local board. The local board may require appropriate ethics training and education for employees of the local ABC board.

(c) The Commission shall develop a model ethics policy that local ABC boards may adopt to be in compliance with this section."

SECTION 22. G.S. 18B-801(b) reads as rewritten:

"(b) Location of Stores. – A local board may choose the location of the ABC stores within its jurisdiction, subject to the approval of the Commission. In making its decision on a location, the Commission may consider:

(1) Whether the health, safety, or general welfare of the community will be adversely ~~affected; and~~affected.

(2) Whether the citizens of the community or city in which the proposed store is to be located voted for or against ABC stores in the last election on the question.

(3) The proximity of the new location to existing ABC stores operated by the local board or any other board."

SECTION 23. G.S. 18B-801(c) reads as rewritten:

"(c) Closing of Stores. – Subject to the provisions of ~~subsection (a),~~ subsection (a) of this section, a local board may ~~close,~~ close a store, or the Commission may order a local board to ~~close,~~ close any store when the local board or the Commission determines that:

~~(1) The operation of the store is not sufficiently profitable to justify its continuation;~~

(2) The store is not operated in accordance with the ABC law; or

(3) The continued operation of that store will adversely affect the health, safety, or general welfare of the community in which the store operates."

SECTION 24. G.S. 18B-803 reads as rewritten:

"**§ 18B-803. Store management.**

(a) Manager. – A local board shall provide for the management of each store operated by it. The board shall employ at least one manager for each store, who shall operate the store pursuant to the directions of that board.

(b) Bonding of Manager. – Each store manager shall be bonded in an amount not less than ~~five thousand dollars ($5,000),~~ fifty thousand dollars ($50,000) secured by a corporate surety, for the honest performance of his duties. A public employees' blanket position bond, honesty form, in the required amount satisfies the requirements of this subsection. The bond shall be payable to the local board and shall be approved by the appointing authority for the local board. The appointing authority may increase the amount of bond required for store managers under this subsection.

(c) Bonding of Other Employees. – A local board or the appointing authority may require any of its other employees who handle funds to obtain bonds. The amount and form of those bonds shall be determined by the local board.

(d) Local Acts. – Notwithstanding the provisions of any local act, this section applies to all local boards."

SECTION 25. G.S. 93B-9 reads as rewritten:

"**§ 93B-9. Age requirements.**

Any other provision notwithstanding, except certifications issued by the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission pursuant to Chapters 17C, 17E, 74E, and 74G of the General Statutes, no occupational licensing board may require that an individual be more than 18 years of age as a requirement for receiving a license."

SECTION 26. Section 4 of S.L. 2004-92 reads as rewritten:

"**SECTION 4.** ~~If an election is held pursuant to this act and the operation of ABC stores in the City of Kannapolis is approved, the~~The Rowan County ABC Board shall be renamed the Rowan/Kannapolis ABC Board. ~~The terms of the current members of the Rowan County ABC Board shall not be affected by this act, and the Rowan County Board of Commissioners shall continue to appoint three members for staggered, three year terms on the same schedule as is now followed.~~There shall be three board members appointed for staggered three-year terms. One member shall be appointed by each of the following governing bodies: Rowan County Board of Commissioners, Kannapolis City Council, and the Salisbury City Council. Appointments shall be made in the following order as current board member terms expire: Salisbury City Council, Kannapolis City Council, and the Rowan County Board of Commissioners. The chair of the Rowan/Kannapolis ABC Board shall be determined by a vote of the members of the Rowan/Kannapolis ABC Board. A member of the Rowan/Kannapolis ABC Board may be removed for cause at anytime by the appointing authority. Members and employees of the Rowan/Kannapolis ABC Board are subject to the removal provisions of G.S. 18B-202."

SECTION 27. Section 6 of this act becomes effective January 1, 2011. Sections 12 and 15 of this act become effective October 1, 2010, and apply to general managers and employees hired on or after that date. Section 16 of this act becomes effective October 1, 2011. Section 18 of this act becomes effective May 1, 2011, and is applicable for local board fiscal years beginning July 1, 2011. The ABC Commission shall offer training and education to local boards to assist local boards in complying with Section 18 of this act, and such training and

education shall be offered at least once annually after the effective date of this act; however, the Commission shall have no obligation to provide such training and education after December 31, 2013. Section 25 of this act is effective when it becomes law. Section 26 of this act is effective when it becomes law and applies to appointments and vacancies that occur on or after that date. The remainder of this act becomes effective October 1, 2010. Nothing in this Act shall be deemed to repeal or amend S.L. 1997-224 applicable to Mecklenburg County. Nothing in this Act shall be deemed to repeal or amend Chapter 889 of the 1985 Session Laws applicable to the Greensboro ABC Board.

Brenda Carden

SECTION 25 (a). There is created the Joint Alcohol Beverage Control Permitting and Law Enforcement Study Committee (Committee). The purpose of the Committee is to improve compliance with the ABC laws by consideration of the following issues:

(1) The role of local law enforcement in bolstering state efforts to enforce ABC laws, and the training requirements for these local law enforcement officers;

(2) The authority of local governments to participate in ABC permitting decisions;

(3) The authority of local governments to object to the issuance or renewal of ABC permits,

(4) The role of local governments as a party to Office of Administrative Hearing proceedings related to ABC permit issuances;

(5) The authority of local governments to work with ABC permit applicants in resolving building permit disputes prior to application with the ABC Commission.

SECTION 25 (b). The Committee shall consist of 13 (thirteen) voting members, appointed as follows:

(1) Six voting members appointed by the Speaker of the House of Representatives

a. An individual who represents NCLM

b. An individual who represents NCACC

c. An individual who is a police chief

d. An individual who represents local ABC Boards

e. Two members of the House of Representatives

(2) Six voting members appointed by the President Pro Tempore of the Senate

a. An individual who represents NCLM

b. An individual who is a sheriff

c. An individual who is an ABC permittee

d. An individual who is the owner of a private club, as defined in XXXX

e. Two members of the Senate

(3) The Chair of the ABC Commission shall serve as a voting member of the Committee

Section 25 (c). The Committee shall report to the 2011 Session of the North Carolina General Assembly, and shall terminate upon issuing its final report.

H

HOUSE BILL 1762*

Short Title:	Domestic Violence Training for Judges.	(Public)
Sponsors:	Representatives McLawhorn, Farmer-Butterfield, R. Warren, Ross (Primary Sponsors); Bell, Carney, Dockham, Faison, Fisher, Gill, Harrison, Hughes, Insko, Jackson, Parfitt, Pierce, Rapp, Tarleton, and Weiss.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary II.	

May 18, 2010

A BILL TO BE ENTITLED

AN ACT TO REQUEST THAT THE NORTH CAROLINA SUPREME COURT ESTABLISH MINIMUM STANDARDS OF DOMESTIC VIOLENCE EDUCATION AND TRAINING FOR DISTRICT COURT JUDGES, AND TO ENCOURAGE THE UNIVERSITY OF NORTH CAROLINA SCHOOL OF GOVERNMENT TO PROVIDE DOMESTIC VIOLENCE EDUCATION AND TRAINING FOR JUDGES AND MAGISTRATES, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMITTEE ON DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

SECTION 1. The North Carolina Supreme Court is respectfully requested to adopt rules establishing minimum standards of education and training for district court judges in handling civil and criminal domestic violence cases.

SECTION 2. The University of North Carolina School of Government is encouraged to provide education and training opportunities for district court judges and magistrates in the handling of civil and criminal domestic violence cases.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 2

SENATE BILL 866
House Committee Substitute Favorable 6/9/10

Short Title: Retiring of State Flags. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE RESPECTFUL RETIREMENT BY FIRE OF STATE FLAGS THAT ARE NO LONGER FITTING FOR DISPLAY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 144 of the General Statutes is amended by adding a new section to read:

"**§ 144-9. Retirement of State flag.**

An official flag of the State that is no longer a fitting emblem for display because it is worn, tattered, or otherwise damaged may be respectfully retired by fire."

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

SENATE BILL 866:
Retiring of State Flags

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 25, 2010
Introduced by:	Sen. Hoyle	**Prepared by:**	Kory Goldsmith
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 866 as passed by the House authorizes the retirement by fire of an official flag of the State that is no longer fit for display.***

The bill has been referred to Senate Judiciary II Committee for a recommendation on concurrence.

CURRENT LAW: Chapter 144 of the General Statutes establishes the official State flag of North Carolina and requirements for its display in certain public buildings and institutions.

BILL ANALYSIS: The PCS for Senate Bill 866 provides that an official flag of the State that is no longer a fitting emblem for display because it is worn, tattered, or otherwise damaged may be respectfully retired by fire.

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

BACKGROUND: With regard to the official Flag of the United States of America, 4 U.S.C. § 8(k) (2006) provides that "the flag, when it is in such condition that it is no longer a fitting emblem for display, should be destroyed in a dignified way, preferably by burning." A number of different organizations, including the American Legion, the Veterans of Foreign Wars, the Boy Scouts of America, and the Girl Scouts of the USA conduct flag retirement ceremonies.

Tim Dodge, counsel to House Judiciary III, substantially contributed to this summary.

S866-SMRC-82(e2) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 2

SENATE BILL 1115
Education/Higher Education Committee Substitute Adopted 6/23/10

Short Title: Carteret Schools May Administer Oath. (Local)

Sponsors:

Referred to:

May 13, 2010

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE PRINCIPALS IN THE CARTERET COUNTY PUBLIC SCHOOLS TO ADMINISTER OATHS FOR STUDENT ADMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-366 is amended by adding a new subsection to read:

"(i) Principals and their designees are authorized to administer oaths to those persons giving affidavits, statements made under oath, or affirmations under this section. Principals and their designees may not administer any other oath for other purpose unless otherwise authorized by law. Each statement made under oath or affirmation to a principal or the principal's designee under this section shall be made under the penalty of perjury in G.S. 14-209."

SECTION 2. This act applies only to Carteret County School System.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1115
Education/Higher Education Committee Substitute Adopted 6/23/10
PROPOSED COMMITTEE SUBSTITUTE S1115-PCS85374-RC-74

Short Title: Carteret Schools May Administer Oath. (Local)

Sponsors:

Referred to:

May 13, 2010

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE PRINCIPALS IN THE CARTERET COUNTY PUBLIC SCHOOLS TO ADMINISTER OATHS FOR STUDENT ADMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-366 is amended by adding a new subsection to read:

"(i) Principals and their designees are authorized to administer oaths to those persons giving affidavits, statements made under oath, or affirmations under this section. Principals and their designees may not administer any other oath for any other purpose unless otherwise authorized by law. Each statement made under oath or affirmation to a principal or the principal's designee under this section shall be made under the peralty of perjury in G.S. 14-209."

SECTION 2. This act applies only to the Carteret County School System.

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

SENATE BILL 1115:
Carteret Schools May Administer Oath

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 25, 2010
Introduced by:	Sen. Preston	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	PCS to Second Edition S1115-CSRC-74		

SUMMARY: ***SB 1115 is a local act that would authorize principals and their designees in Carteret County public schools to administer oaths or affirmations for student admission. Unless otherwise authorized by law, principals and designees may not administer other oaths.***

The PCS corrects a typographical error.

[As introduced, this bill was identical to H1728, as introduced by Rep. McElraft, which is currently in House Judiciary III.]

CURRENT LAW: G.S. 115C-366 addresses the assignment of students to particular schools. That statute requires a parent, guardian, or legal custodian to sign an affidavit or provide a statement made under oath or affirmation under the following circumstances.

Admission of Non-Domiciled Student

Generally, a student must be domiciled in a local school administrative unit (LEA) to attend its public schools, free of tuition. The statute creates certain exceptions permitting a student to attend the public schools of an LEA where the student is not domiciled if a number of conditions apply:

- The student must reside with an adult who is a domiciliary of that unit as a result of one of seven situations related to the parent or legal guardian (i.e. death, illness, incarceration, abandonment, abuse or neglect, physical or mental condition of parent or legal guardian, relinquishment of custody, loss of home, or specified military duty of parent or legal guardian).
- The student must not be under a term of suspension or expulsion that could have led to suspension or expulsion from the LEA.
- The caregiver adult and the student's parent, guardian, or legal custodian must complete and sign separate affidavits that do all of the following:
  - Confirm the qualifications establishing the student's residency.
  - Attest that the student's claim of residency is not primarily related to attendance at a particular school.
  - Attest that the caregiver adult has been given and accepts responsibility for educational decisions for the student.

If the student's parent, guardian, or legal custodian is unable or refuses to sign the affidavit, then the caregiver adult shall attest to that fact in the affidavit.

Upon receipt of the affidavits, the local board shall assign the student to an appropriate school as soon as practicable and pending the verification of eligibility. If the information contained in either or both affidavits is false, then the local board may remove the student from school unless the student is otherwise eligible for school attendance under other laws or local board policy.

If a person willfully and knowingly provided false information in the affidavit, the maker of the affidavit will be guilty of a Class 1 misdemeanor and will pay to the local board an amount equal to the cost of educating the student during the period of enrollment. The affidavits must include, in large print, the penalty for providing false information.

Student Transfer

When a student transfers into the public schools of a local school administrative unit, that local board must require the student's parent, guardian, or legal custodian to provide a statement made under oath or affirmation before a qualified official. The statement indicates whether the student is, at the time, (1) under suspension or expulsion from attendance at a private or public school in any state or (2) has been convicted of a felony in any state. This provision does not apply to the enrollment of a student who has never been enrolled in or attended a private or public school in any state.

Perjury is a Class F felony under G.S. 14-209.

BILL ANALYSIS: SB 1115 authorizes principals and their designees to administer oaths to those persons giving affidavits, statements made under oath, or affirmations under G.S. 115C-366. It also provides that each statement made under oath or affirmation to a principal or the principal's designee must be made under the penalty of perjury. This act applies only to the Carteret County School System.

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

BACKGROUND: Carteret County has 16 schools. Several of these schools do not have a notary public on staff. On March 3, 2010, the Carteret County Board of Education passed a resolution petitioning the North Carolina General Assembly to allow principals or their designees to administer oaths, statements made under oath, or affirmations in connection with the assignment of students.

**The summary was substantially contributed to by Kara McCraw, Committee Counsel to Senate Education/Higher Education.*

S1115-SMRC-84(CSRC-74) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 1165*

Short Title:	General Statutes Comm. Technical Corrections.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II.	

May 18, 2010

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE GENERAL STATUTES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 120-29.1 reads as rewritten:

"**§ 120-29.1. Approval of bills.**

(a) If the Governor approves a bill, the Governor shall write upon the same, below the signatures of the presiding officers of the two houses, the fact, date, and time of approval, as follows: "Approved _____.m. this _____ day of _____, _____ " and shall sign the same as follows: "_____ Governor". The Governor shall then return the approved bill to the enrolling clerk.

(b) If any bill becomes law because of the failure of the Governor to take any action, it shall be the duty of the Governor to return the measure to the enrolling clerk, who shall sign the following certificate on the measure and deposit it with the Secretary of State: "This bill having been presented to the Governor for ~~his~~ signature on the _____ day of _____, _____ and the Governor having failed to approve it within the time prescribed by law, the same is hereby declared to have become a law.

This _____ day of _____, _____, _____ Enrolling Clerk".

(c) If the Governor returns any bill to the house of origin with ~~his~~ objections, the Governor shall write such objections on the measure or cause the objections to be attached to the measure. When any such bill becomes law after reconsideration of the two houses, the principal clerk of the second house to act shall, below the objections of the Governor, sign the following certificate: "Became law notwithstanding the objections of the Governor, _____.m. this _____ day of _____, _____". The principal clerk of the second house to act shall fill in the time. The enrolling clerk shall deposit the measure with the Secretary of State.

(d) In calculating the period under Section 22(7) of Article II of the North Carolina Constitution, the day on which the bill is presented to the Governor shall be excluded and the entire last day of the period is included."

SECTION 2. The Revisor of Statutes may cause to be printed all explanatory comments of the drafters of S.L. 2009-222, 2009-267, and 2009-318 as the Revisor deems appropriate.

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

Judiciary II Committee Meeting

June 30, 2010

Evening Meeting

The Senate Judiciary II Committee met on the afternoon of June 30, 2010, at 5:30 pm in room 1124 of the Legislative Building with thirteen members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell called the meeting to order and explained the purpose.

Senator Hartsell: "This Committee, last year heard a bill entitled The Yadkin River Trust. That bill has actually passed the Senate twice. We have had some problems on the House side, no questions about it. Based upon, in some cases, in my judgment and I think the judgment of anybody who has looked at this, some relatively significant disinformation that has been distributed. Between the long and short Session, some interviews and activities have taken place, largely associated with ascertaining primarily the environmental harm that has been generated in this particular area.. There were other issues associated with it too. It started out as a brief piece, I think and I have not seen it. There have been something like thirty to forty folks interviewed including the lady who you may have heard about whose husband passed away. They have been able to identify PCBs. There are congeners in PCBs. There are 214 different congeners of PCBs all together. There are a number of them which have been specifically identified arising from a plant at Badin. There were some, very specifically identified, in high concentration in this one gentleman. This lady's husband died about a year and a half ago. There is evidence of other significant problems. These interviews relate to all of that. We have been attempting to, frankly, to get this information published. That is not to say that there have not been some efforts but there have been some problems with doing that. As a result, in order to get the public to know, what ever it is, we don't know. I'll be the first to tell you, I don't know what it is. But it has been put together and Ms. Vajda has been very candid about what we know is there. Yesterday, for instance, Erin Brovkovich spoke here in Raleigh in large part about this matter, and that's "kinda" affiliated with some of this. But be that as it may, what this is, the Committee under GS120-19.2 has the opportunity to invite but also authorize the issuance of subpoenas. We hope that we will not need to use the subpoena, but we may, and we have a certain period of time in which to do it. Ms. Vajda is aware that we are seeking to subpoena this information. In order for us to see this documentary evidence at our meeting on Tuesday, it is important for us to authorize the issuance of this today. Hopefully, we can get this voluntarily, to be honest with you. We are not sure we can, because other folks have made efforts to get it and it hasn't been available. The statute says what it says. I defer to Ms. Goldsmith. This has been done on rare occasions before, but it is essential that the Committee, in doing so, there are certain things that we have to do by the numbers and let me defer to Ms. Goldsmith. I might add, ironically, of course, another member of our staff, Ms. McGinnis, staffs the Environmental Committee, chaired by Senator Atwater, and that is her file on this. If you saw my file on this, it's two file drawers long."

Ms. Goldsmith: "Members of the Committee, I did provide to you a copy of the statute referenced by Senator Hartsell, which grants to standing committees of the General Assembly the authority to invite witnesses to appear and testify and subpoena them and if necessary, also to subpoena documents and materials. It does require a majority vote of the Committee. We have eighteen members of the Committee so it would require ten to have a majority. We would record it. We would have a roll call vote so that we could record that having been done. Even though the Committee authorizes the issuance of a subpoena, it would have to be signed either by the President Pro Tem of the Senate or the President of the Senate. So, Senator Basnight or the Lt. Governor would have to sign it before the subpoena itself could be issued. The subpoena can be delivered or served by the General Assembly police and there is a requirement of five days notice to the witness unless waived by the witness."

Senator Hartsell: "I might add that this has already been reviewed with Senator Basnight."

Senator Snow asked if a motion was needed. Senator Hartsell noted that we would need a motion read in each case and we would have to take a roll call vote on each.

Senator Snow was recognized and read the motion to subpoena Eszter Vajda, Journalist with UNC-TV and then read the motion to subpoena Tom Howe, Director and General Manager of UNC-TV.

Senator Hartsell noted that the Committee would have to take separate votes, but first questions of the Committee.

DISCUSSION:

Senator Forrester asked if PCBs had been found in any of the wells around the Alcoa area? Senator Hartsell answered that his awareness was that PCBs had been found in the sediments of Badin Lake. Senator Forrester than asked if the water in Badin Lake is used by people who drink well water? He noted that people swim in it. Senator Hartsell responded that there is presently a fish warning existing on Badin Lake. It was issued by the Department of Environment and Natural Resources ("DENR") a year and a half ago – the Division of Water Quality ("DWQ").

Senator Allran noted that he had served in the General Assembly for thirty years and he didn't remember ever doing this before. His opinion was that instead of making a motion and voting for this, the Committee should take this really seriously. He opined that subpoenaing people is the type of stuff that they do in Washington and that it bothered him. He had never known this to be done before. He thought that if they needed to come in and speak, that the Committee should just ask them or let them and maybe the Committee wouldn't have to subpoena them. His opinion was that this action was a heavy handed, Washingtonian type of thing where we branch out into other things and

start investigating people and then have cameras and press in and it will be a big blown up thing and he thought it was not very good.

Senator Berger: As he was late getting to the meeting, he asked that the purpose be summarized again. Senator Hartsell replied that we were simply seeking to get released information that we know exists but had not been able to be released at this point. He also noted that Ms. Vajda is aware of this and frankly wants to release it.

Senator Allran then asked, "why doesn't she?"

Senator Apodaca noted that he had dealt with something similar before and the press needed cover in order to cover certain things.

Senator Berger asked if there was a journalist privilege in North Carolina? Senator Hartsell stated that he was not aware of one.

Senator Allran stated that he thought this should be taken very, very seriously because this sets a precedent and if it is done now it can be done later. He didn't think the members were sent here to subpoena people and do investigations. Senator Hartsell noted that we had also made a request under GS 120-19 for this information and if it was secured then that was fine. That was a separate request. The problem was timing issues and other matters.

Senator Berger asked if folks had observed something on the program and were interested in knowing how UNC-TV got that information? Was there something that had actually been seen in the documentary that would lead to believing that Ms. Vajda had a confidential informant tell her something? Senator Hartsell was unaware of anything of that sort and thought that it was a documentary in the truest sense and that it was interviews, documents discovered, and background information. He knew of no confidential informants involved. He also stated that he had not seen it nor has anyone seen it. It was just known to exist. It has not been shown. Senator Berger asked why and Senator Hartsell noted that was the reason for the Subpoena unless it could be gotten otherwise.

Senator Jones stated that he was in favor of proceeding with this but wanted to know what would happen when it was received. Who would be allowed to see and hear it. Senator Hartsell noted that it was anticipated that it would be shown at our committee meeting on Tuesday, July 6, 2010, in room 643. Senator Hartsell agreed that the proceedings were a serious matter.

Senator Berger posed a scenario of another documentary being available that might sway public opinion in opposition to Alcoa -- Alcoa threatening to sue the TV station if they aired the program -- The committee learns that UNC-TV had the program that Alcoa was threatening a law suit on so the committee comes in with a subpoena so that Alcoa can't sue the station because they had not shown it on the air and the only reason it was being shown was because of the subpoenas. Senator Berger wondered if that was what

might be going on. Senator Hartsell noted that it was difficult to prove a negative. He stated that he did not know the rationale. Senator Berger wanted to know if we knew if Alcoa had threatened to sue the station if they aired the documentary? Senator Hartsell stated that he did not know that. He did know that there were snippets that might be available on TV, perhaps, next week; but there would be only portions of it, not all of it.

Senator Jones asked if it would be open to the public or just the members. Senator Hartsell answered that it would be a public meeting.

Senator Dorsett asked if it would be possible to control this and determine whether or not there was a possibility of doing without this. Senator Hartsell stated that was the intent.

Senator Forrester asked what would happen if it couldn't be done next week or couldn't get them here? Senator Hartsell noted that if we had authorization that it could be done next week.

Senator Allran hoped that this would be a last resort type of strategy. He questioned why UNC-TV had not aired a serious documentary on a serious subject and stated that he would like to ask that question of them. Senator Snow thought they could answer that question when they appeared before the committee. Senator Hartsell thought that the committee could do that. Senator Allran wanted to know why we didn't ask them the question first. Senator Hartsell stated that we had. Senator Bingham agreed that they had been asked many, many times. Senator Allran asked if UNC-TV would not give an answer? Senator Hartsell noted that if he answered Senator Allran's question, it would be hearsay. Senator Berger noted that if they were being threatened by Alcoa with a law suit, then the subpoena would give them the same protection as a court order.

Senator Forrester asked if the Lt. Governor and President Pro Tempore were supportive of the subpoenas. Senator Hartsell answered that they were. He also noted that we had had communication with the greater University and their counsel.

Senator Jones asked why, since the General Assembly funds UNC-TV, that the committee couldn't get them here? Senator Hartsell thought that was an extraordinarily interesting and logical question.

Senator Berger stated that Senator Hartsell and others had passionately worked on this issue. Senator Hartsell and the Governor had tried to be protective and had taken on a very powerful engine. Also, Senator Hartsell has been here a very, very long time and he (Senator Berger) would trust the judgment of Senator Hartsell. Therefore, he would support the issue.

Senator Dorsett noted that Senator Hartsell had had strong support from Commerce Secretary Keith Crisco.

Senator Allran noted that he appreciated all of the discussion.

Senator Hartsell then asked if there were any other questions from the committee or audience. There being none he felt that the committee was ready to vote.

ROLL CALL VOTE:

Senator Hartsell noted that Senator Snow had read and moved to issue the subpoenas and that we would take them separately. The first motion was to subpoena Eszter Vajda. The Committee Assistant, Mrs. Johnson, was asked to call the roll. The members were instructed to vote aye or nae. The roll was called and the vote was thirteen ayes and zero naes. (Exhibit I – Tally Sheet) All voted and the motion passed.

Senator Snow's second motion was to subpoena Tom Howe, the Director and General Manager of UNC-TV. The Committee Assistant, Mrs. Johnson, was asked to call the roll. The roll was called and the vote was thirteen ayes and zero naes. All voted and the motion passed. (Exhibit II – Tally Sheet)

Senator Hartsell thanked the Committee for their work. There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

§ 120-19. State officers, etc., upon request, to furnish data and information to legislative committees or commissions.

Except as provided in G.S. 105-259, all officers, agents, agencies and departments of the State are required to give to any committee of either house of the General Assembly, or any committee or commission whose funds are appropriated or transferred to the General Assembly or to the Legislative Services Commission for disbursement, upon request, all information and all data within their possession, or ascertainable from their records. This requirement is mandatory and shall include requests made by any individual member of the General Assembly or one of its standing committees or the chair of a standing committee. (Resolution 19, 1937, p. 927; 1993, c. 485, s. 37; 2001-491, s. 33.1.)

§ 120-19.2. Invitations to witnesses; when hearings and examinations held; subpoenas.

(a) Committees of the General Assembly may invite witnesses to appear and testify concerning pending legislation or other matters properly before the committee and may require the attendance of witnesses by subpoena as hereinafter provided. The committee may submit questions in writing to the witness in advance of his appearance. Witnesses may be permitted, in the discretion of the committee, to submit written, sworn statements in addition to or in lieu of sworn oral testimony before the committee.

(b) Hearings and examinations of witnesses concerning pending legislation or other appropriate matter may be conducted during sessions of the General Assembly, during recesses, and in the interim period between sessions, at such times as committees are authorized to convene.

(c) A subpoena for the purpose of obtaining the testimony of a witness may be issued by the chairman of a committee, upon authorization of the Speaker of the House or the Speaker pro tempore of the House for House committees, and the President of the Senate or the President pro tempore of the Senate for Senate committees, and by majority vote of the committee. A subpoena for the purpose of obtaining the testimony of a witness before a joint committee of the House and Senate may be issued by the joint action of the cochairmen of the joint committee, upon authorization of one of the above officers from each house and by majority vote of the joint committee. The subpoena shall be signed by the committee chairman and either the Speaker of the House, the President of the Senate, the President pro tempore of the Senate, or the Speaker pro tempore of the House and shall be directed to the witness, and state the name of the witness, and a description of any papers, documents, or records that he is required to bring with him; and the subpoena shall state the subject matter of the hearing before the committee, the name of the committee, and the name and address of the committee chairman; and the subpoena shall also clearly designate the date, time, and place at which the witness's presence is required.

(d) Any witness shall have five days' notice of hearing, unless waived by the witness, and subpoenas may be served by a member of the State Bureau of Investigation, the State Highway Patrol, or within their respective jurisdiction by any sheriff or deputy, or any municipal police officer or other law-enforcement officer. In addition, a subpoena

may be served in the manner provided for service of subpoenas under the North Carolina Rules of Civil Procedure.

(e) The form of subpoena shall generally follow the practice in the General Court of Justice in North Carolina with such additional information or modification as shall be approved by the Legislative Services Commission.

(f) Return of the subpoena shall be to the Legislative Services Officer, where a permanent record shall be maintained for five years, and one copy of the subpoena shall be immediately filed with the committee chairman and one copy transmitted to the Speaker of the House, the President of the Senate, the President pro tempore of the Senate, or the Speaker pro tempore of the House, as the case may be. (1973, c. 543.)

MOTION TO SUBPOENA ESZTER VAJDA

I move that the Senate Judiciary II Committee, pursuant to G.S. 120-19.2, subpoena Eszter Vajda, Senior Legislative Correspondent, UNC-TV, to appear before the Senate Judiciary II Committee in Raleigh, North Carolina, on the 6th day of July, 2010, at 9:00 a.m., to testify on matters before the Senate Judiciary II Committee concerning the Alcoa Corporation's activities in Stanly County, North Carolina in and near the Yadkin River and to bring all footage, (including all interviews, B-roll and camera masters) in her possession regarding the Alcoa Corporation's activities in Stanly County, North Carolina in and near the Yadkin River ("The Alcoa Story").

This the 30th of June, 2010.

_____

Senator

MOTION TO SUBPOENA TOM HOWE

I move that the Senate Judiciary II Committee, pursuant to G.S. 120-19.2, subpoena Tom Howe, Director and General Manager, UNC-TV, to appear before the Senate Judiciary II Committee in Raleigh, North Carolina, on the 6th day of July, 2010, at 9:00 a.m., Room 643 of the Legislative Office Building, 300 N. Salisbury Street, Raleigh, North Carolina, and as continued from day to day to testify on matters before the Senate Judiciary II Committee concerning the Alcoa Corporation's activities in Stanly County, North Carolina in and near the Yadkin River and to bring a copy of all footage, (including all interviews, B-roll and camera masters) in his possession regarding the Alcoa Corporation's activities in Stanly County, North Carolina in and near the Yadkin River ("The Alcoa Story").

This the 30th of June, 2010.

_____

Senator

Exhibit 1

ATTENDANCE

Committee: **Senate Judiciary II Committee** **Roll Call Vote** **June 30, 2010**

NAME: Eszter Vajda NAMES	Y		N													
Senator Hartsell, Chairman	✓															
Senator Allran, Vice Chair	✓															
Senator Jones, Vice Chair	✓															
Senator Vaughan, Vice Chair	✓															
Senator Apodaca	✓															
Senator Atwater	✓															
Senator Berger	✓															
Senator Bingham	✓															
Senator Boseman																
Senator Dannelly																
Senator Dorsett	✓															
Senator East	✓															
Senator Forrester	✓															
Senator Goodall																
Senator Jacumin																
Senator Queen	✓															
Senator Snow	✓															
Senator Swindell																
	13		0													

Exhibit 2

ATTENDANCE

Committee: **Senate Judiciary II Committee** **Roll Call Vote** **June 30, 2010**

NAME: Tom Howe NAMES	Y		N													
Senator Hartsell, Chairman	✓															
Senator Allran, Vice Chair	✓															
Senator Jones, Vice Chair	✓															
Senator Vaughan, Vice Chair	✓															
Senator Apodaca	✓															
Senator Atwater	✓															
Senator Berger	✓															
Senator Bingham	✓															
Senator Boseman																
Senator Dannelly																
Senator Dorsett	✓															
Senator East ✓	✓															
Senator Forrester	✓															
Senator Goodall																
Senator Jacumin																
Senator Queen	✓															
Senator Snow	✓															
Senator Swindell																
	13		0													

Principal Clerk
Reading Clerk

Corrected Notice – NOTE TIME and SB 836 removed

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	July 1, 2010	9:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 12	Ban Mobile Phone Use While Driving.	Senator Dannelly
SB 1165	General Statutes Comm. Technical Corrections.	Senator Hartsell
HB 144	Special Care Dentistry Collaboration.	Representative Bordsen Representative Mobley Representative Pierce Representative Farmer-Butterfield
HB 859	Amend Conditions of Probation.	Representative Faison Representative Warren Representative Spear Representative Guice
HB 1736	Local Delinquent Sewer Fees.	Representative Burr
HB 1762	Domestic Violence Training for Judges.	Representative Ross Representative Farmer-Butterfield Representative McLawhorn Representative Warren

Senator Fletcher L. Hartsell, Jr., Chair

Principal Clerk
Reading Clerk

PLEASE NOTE TIME CHANGE
SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	July 1, 2010	9:00 AM	1124 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 12	Ban Mobile Phone Use While Driving.	Senator Dannelly
SB 836	Oil Spill Liability, Response, & Preparedness	Senator Albertson
SB 1165	General Statutes Comm. Technical Corrections.	Senator Hartsell
HB 144	Special Care Dentistry Collaboration.	Representative Bordsen Representative Mobley Representative Pierce Representative Farmer-Butterfield
HB 859	Amend Conditions of Probation.	Representative Faison Representative Warren Representative Spear Representative Guice
HB 1736	Local Delinquent Sewer Fees.	Representative Burr
HB 1762	Domestic Violence Training for Judges.	Representative Ross Representative Farmer-Butterfield Representative McLawhorn Representative Warren

Senator Fletcher L. Hartsell, Jr., Chair

Senate Judiciary II Committee
Thursday, July 1, 2010, 9:00 AM
1124 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 12	Ban Mobile Phone Use While Driving.	Senator Dannelly
SB 1165	General Statutes Comm. Technical Corrections.	Senator Hartsell
HB 144	Special Care Dentistry Collaboration.	Representative Bordsen Representative Mobley Representative Pierce Representative Farmer-Butterfield
HB 859	Amend Conditions of Probation.	Representative Faison Representative Warren Representative Spear Representative Guice
HB 1736	Local Delinquent Sewer Fees.	Representative Burr
HB 1762	Domestic Violence Training for Judges.	Representative Ross Representative Farmer-Butterfield Representative McLawhorn Representative Warren

Presentations

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE
Thursday, July 1, 2010 at 9:00 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 9:00 AM on July 1, 2010, in Room 1124 of the Legislative Building with fifteen members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell sadly noted the death of Senator William Bunn, the young boy who was recently honored by the Senate, and the Committee observed a moment of silence in his honor.

Senator Hartsell recognized pages Rebecca Hawthorne, Zach Goldman, Vivlica Rodgers and Taylor Cary.

HB 1762 - Domestic Violence Training for Judges. - Senator Snow presented and explained the bill. Senator Dorsett moved for a favorable report. All voted and the motion carried.

HB 859 - Amend Conditions of Probation. - Senator Vaughan moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Snow presented the bill and recognized Representative Guice for the explanation. Questions from Senators Forrester, Jones and Swindell were answered by Representative Guice. Senator East moved for a favorable report to the Proposed Committee Substitute, unfavorable to the original bill. All voted and the motion carried.

SB 1165 - General Statutes Comm. Technical Corrections. - Senator Jones chaired the meeting. Senator Bingham moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Hartsell explained the bill. Senator Dannelly moved for a favorable report to the Proposed Committee Substitute, unfavorable to the original bill. All voted and the motion carried.

HB 1736 - Local Delinquent Sewer Fees. - Senator Jones chaired as Senator Hartsell excused himself due to having legal interest with the county. Representative Burr explained the bill. Questions from Senators East and Berger were answered by Representative Burr. Senator East moved for a favorable report. All voted and the motion carried.

HB 144 - Special Care Dentistry Collaboration - The bill had been heard in the previous meeting and the Proposed Committee Substitute had been adopted. As a technical correction was required, a new Proposed Committee Substitute was presented and Senator Snow moved for adoption. All voted and the motion carried. Senator Berger explained the bill. Mr. Harry Kaplan, North Carolina Association of Health Plans, Dr. Alec Parker, Dr. Bob Plage, Dr. Gary Oyster, Ms. Marge Foreman, North Carolina Association of Educators, and Mr. Mark Fleming, Blue Cross/Blue Shield of North Carolina all spoke on the bill. Senator Snow moved for a favorable report to the Proposed Committee Substitute, unfavorable to the original bill. All voted and the motion carried.

SB 12 - Ban Mobile Phone Use While Driving. - Senator Jones moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Senator Dannelly explained the bill. Mr. Harry Kaplan, AAA Carolinas, Mr. Henry Jones, Alliance of Automobile Manufacturers, Lisa Martin, North Carolina Home Builders Association and Mr. Thomas Moore, Sprint/Nextel all spoke on the bill. Senator Dorsett moved for a favorable report, unfavorable to the original bill with a referral to Appropriations. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Thursday, July 01, 2010

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS #2) **1736** Local Delinquent Sewer Fees.
Sequential Referral: None
Recommended Referral: None

H.B. **1762** Domestic Violence Training for Judges.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

H.B.(SCS #1) **144** Special Care Dentistry Collaboration.
Draft Number: PCS 50954
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Committee Clerk Comments:
HB 144 – Sen. Doug Berger will handle on floor
HB 1736 – Sen.
HB 1762 – Sen. Snow will handle on floor

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Thursday, July 01, 2010

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

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

S.B. **12** Ban Mobile Phone Use While Driving.

Draft Number:	PCS 85380
Sequential Referral:	None
Recommended Referral:	Appropriations/Base Budget
Long Title Amended:	Yes

S.B. **1165** General Statutes Comm. Technical Corrections.

Draft Number:	PCS 65093
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **859** Amend Conditions of Probation.

Draft Number:	PCS 3054
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 3

Committee Clerk Comments:
HB 859 will be handled by Sen. Snow

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — July 1, 2010
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	TPC
Floyd M. Lewis	General Statutes Commission
P. Bay Hall	"
Elizabeth Taylor	Kochanek Law Group
Margie Freeman	NCAE
Cody Thomas	NC Assn of REALTORS
Bill Scoggin	TES
Emily Williams	Policy Group
Mark Fleming	BCBSNC
David Crawford	AIA NC

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — **Name of Committee**

July 1, 2010 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jennifer Cohen	IFNC
WH Patterson Jr	NC Dental Soc.
Charles Blair	Dentist
Gary Quarles	Dentist
Alec Pierce	ASCDS
Robert PLAGE	Dentist
Henry Jones	Attorney - Raleigh
[illegible]	[illegible]
Hera Creasman	AT&T
Todd Barlow	NC Advocates for Justice
Anthony Allen	NCACC

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II
Name of Committee

July 1, 2010
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sheria Reid	SOG
[illegible]	NMRs
Julia Adams	The Arc of NC
Bill Rowe	NC Justice Center
Jay Alden	APAssoc.

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — July 1, 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chris Kulaga	CNL
[signature]	JD, AL, PA
[signature]	WCBS
Wendy Kelly	Doing Group
[signature]	Beer Assn.
Joey Stansbury	Goodell Office
Lindsay Clifton	Governor's office

S 1

SENATE BILL 12

Short Title:	Ban Mobile Phone Use While Driving.	(Public)
Sponsors:	Senators Dannelly; Dorsett, Forrester, Garrou, Goss, Jones, Malone, and Purcell.	
Referred to:	Commerce.	

January 29, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE USING A MOBILE PHONE OR ACCESSING ADDITIONAL TECHNOLOGY UNLAWFUL WHILE OPERATING A MOTOR VEHICLE ON A PUBLIC STREET OR HIGHWAY OR PUBLIC VEHICULAR AREA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-137.4 reads as rewritten:

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

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

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

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

(3) Mobile telephone. – As defined in G.S. 20-137.3(a)(2).

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

(5) Wireless telephone service. – As defined in G.S. 20-137.3(a)(3).

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

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

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

(1) The use of a mobile telephone for the sole purpose of communicating with any of the following regarding an emergency situation: an emergency response operator; a hospital, physician's office, or health clinic; a public or privately owned ambulance company or service; a fire department; or a law enforcement agency.

(2) Any of the following while in the performance of their official duties: a law enforcement officer; a member of a fire department; or the operator of a public or private ambulance.

(3) The use of a hands-free mobile telephone to make a call only and not for the purpose of accessing additional technology.

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

(f) Penalty. – A violation of this section by a person driving a school bus shall be a Class 2 misdemeanor and shall be punishable by a fine of not less than one hundred dollars ($100.00). A violation of this section by any other driver who is 18 years old or older and not subject to the provisions of G.S. 20-137.3 shall be an infraction and shall be punishable by a fine of one hundred dollars ($100.00) and the cost of court. No drivers license points or insurance surcharge shall be assessed as a result of a violation of this section. Failure to comply with the provisions of this section shall not constitute negligence per se or contributory negligence by the operator in any action for the recovery of damages arising out of the operation, ownership, or maintenance of a ~~school bus.~~motor vehicle."

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 12
PROPOSED COMMITTEE SUBSTITUTE S12-CSRV-62 [v.6]

6/30/2010 3:42:53 PM

Short Title: Ban Mobile Phone Use While Driving. (Public)

Sponsors:

Referred to:

January 29, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE IT UNLAWFUL TO USE A HANDHELD MOBILE PHONE WHILE OPERATING A MOTOR VEHICLE ON A PUBLIC STREET OR HIGHWAY OR PUBLIC VEHICULAR AREA AND TO APPROPRIATE FUNDS.

The General Assembly of North Carolina enacts:

SECTION 1. The catchline of G.S. 20-137.4 reads as rewritten:

"**§ 20-137.4. Unlawful use of a mobile ~~phone.~~ phone by school bus drivers.**"

SECTION 2. Article 3, Part 9 of Chapter 20 of the General Statutes is amended by adding a new section to read:

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

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

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

(3) Mobile telephone. – As defined in G.S. 20-137.3(a)(2).

(b) Offense. – Except as otherwise provided in this section, no person shall operate a motor vehicle on a public street or highway or public vehicular area while using a handheld mobile telephone while the vehicle is in motion. This prohibition shall not apply to the use of a handheld mobile telephone in a stationary vehicle.

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

(d) Exceptions. – The provisions of subsection (b) of this section shall not apply to the following:

(1) The use of a handheld mobile telephone for the sole purpose of communicating with any of the following regarding an emergency situation: an emergency response operator; a hospital, physician's office, or health clinic; a public or privately owned ambulance company or service; a fire department; or a law enforcement agency.

(2) Any of the following while in the performance of their official duties: a law enforcement officer; a member of a fire department; or the operator of a public or private ambulance.

(3) The use of a hands-free mobile telephone.

(e) Local Ordinances. – No local government may pass any ordinance regulating the use of handheld mobile telephones if the ordinance is in contradiction to this law.

(f) Penalty. – Unless a different penalty is prescribed under G.S. 20-137.3 or G.S. 20-137.4 for the offense in question, a violation of this section shall be an infraction and shall be punishable by a fine of one hundred dollars ($100.00) and the cost of court. No drivers license points or insurance surcharge shall be assessed as a result of a violation of this section. Failure to comply with the provisions of this section shall not constitute negligence per se or contributory negligence by the operator in any action for the recovery of damages arising out of the operation, ownership, or maintenance of a motor vehicle."

SECTION 3. There is appropriated from the General Fund to the Department of Transportation, Division of Motor Vehicles, the sum of ten thousand dollars ($10,000) for the 2010-2011 fiscal year for the implementation of Section 1 of this Act.

SECTION 4. Section 2 of this act becomes effective December 1, 2010, and applies to offenses committed on or after that date. Section 3 of this act becomes effective July 1, 2010. The remainder of this act is effective when it becomes law.

SENATE BILL 12:
Ban Mobile Phone Use While Driving

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 30, 2010
Introduced by:	Sen. Dannelly	**Prepared by:**	Brenda J. Carter
Analysis of:	S12-CSRV-62 PCS to 1st Edition		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 12 would prohibit a person from using a handheld mobile phone while operating a motor vehicle. Exceptions would apply allowing use of a hands-free mobile phone, use in an emergency situation, and use by law enforcement, fire department, or ambulance operator, while performing official duties. Unless a different penalty applies, violation would be an infraction punishable by a fine of $100 and the cost of court. No drivers license or insurance points would be assessed.***

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

"Mobile telephone" is a device used by subscribers and other users of wireless telephone service to access the service, and includes hand held and hands-free devices.

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 12 would prohibit the use of a handheld mobile telephone by a person operating a motor vehicle while the vehicle is in motion. "Mobile telephone" would be defined as it is in current law pertaining to mobile phone use by school bus drivers and persons under the age of 18. The bill would include the following exceptions to the prohibition on handheld mobile telephone use:

- Use in an emergency situation to communicate with an emergency response operator; a hospital, physician's office, or health clinic; an ambulance service; fire department or law enforcement agency.
- Use in the performance of official duties by a law enforcement officer, a member of a fire department, or the operator of an ambulance in the performance of official duties.
- Use of a hands-free device.

A violation of this prohibition would be an infraction punishable by a fine of $100 and court costs, unless a different punishment applies under the laws applicable to school bus drivers and drivers under 18. No drivers license points or insurance surcharge would be assessed.

The bill contains an appropriation of $10,000 to the Division of Motor Vehicles, effective July 1, 2010.

EFFECTIVE DATE: The bill would be effective December 1, 2010, and would apply to offenses committed on or after that date.

	Prohibition	Exceptions	Penalty
G.S. 20-137.3 ***[CURRENT LAW]***	Persons under the age of 18 may not use mobile phone or associated technology while operating a motor vehicle while the vehicle is in motion.	• In emergency situation to call emergency response operator; hospital, physician, or health clinic; ambulance; law enforcement • To call parent, legal guardian, or spouse	• Infraction • $25 fine • No drivers license points, insurance surcharge, or court costs
G.S. 20-137.4 ***[CURRENT LAW]***	Person operating a school bus, activity bus, or any vehicle transporting school children for compensation, may not use mobile phone or associated technology while the vehicle is in motion.	• In an emergency situation, defined as circumstances such as medical concerns, unsafe road conditions, matters of public safety, or mechanical problems that create a risk of harm for operator and passengers	• Class 2 misdemeanor (1-30 days community punishment if there are no prior convictions) • Minimum $100 fine • No drivers license points or insurance surcharge
PCS for Senate Bill 12 **Proposed G.S. 20-137.4B**	No person may use a handheld mobile phone while operating a motor vehicle while the vehicle is in motion.	• In emergency situation to call emergency response operator; hospital, physician, or health clinic; ambulance; law enforcement • Law enforcement officer, member of fire department, operator of ambulance, in the performance of official duties • Use of hands-free mobile phone	• Infraction • $100 fine and court costs • No drivers lic[illegible] points or insur[illegible] surcharge

Wendy Graf Ray, counsel to Senate Commerce, substantially contributed to this summary.

S12-SMRV-139(S12-CSRV-62) v2

at&t

Cynthia G. Marshall
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Raleigh, NC 27601-1395

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cynthia.marshall@att.com

May 24, 2010

Members of the North Carolina General Assembly
Legislative Building
16 West Jones Street
Raleigh, NC 27601

Dear Friend:

Last year, the General Assembly and Governor Perdue showed tremendous leadership and wisdom in prohibiting texting and driving in North Carolina. Your action, which is already saving lives, underscored the fact that no text message is so urgent as to be worth the risk of death or serious injury.

However, habits can be slow to change. That is why, to support your efforts, and those of your colleagues in other states, AT&T has launched a national public safety campaign called *Texting & Driving–It Can Wait.* Developed in cooperation with the wireless industry and the National Safety Council, the campaign emphasizes true stories of individuals who encountered tragedy due to texting and driving. The enclosed package contains some of the campaign materials, including print advertising and teen-teen and parent-teen pledges. Other materials, including television commercials, are available online at www.att.com/txtngcanwait.

In North Carolina, we kicked off this initiaitve with a special *Texting & Driving–It Can Wait* Awareness Day on April 16, 2010. On a single day, in events at three high schools and two universities, from Asheville to Wilmington, thousands of our state's young people were reminded that texting & driving is not only dangerous but against the law. At the events, many young people signed pledges to refrain from texting and driving and to hold each other accountable. Subsequent news coverage reached thousands more teens and adults.

Today we are beginning the second phase of our North Carolina plan to deliver this important public safety message, which we are calling *Texting & Driving–It Can Wait* Awareness Week. Working in conjunction with Secretary of Public Instruction June Atkinson, we have provided each high school in the state with promotional materials and asked the principals to join us in urging students to commit to using their wireless devices wisely and safely in the months and miles ahead.

A centerpeice of this effort is the enclosed window decal, which can be placed inside a vehicle as an ongoing reminder for drivers. I already have one in each of my cars and my teen-agers have signed the pledge.

If you should have any questions, or suggestions on how we can maximize the effectiveness of the *Texting & Driving–It Can Wait* campaign, please do not hesitate to call me or Herb Crenshaw, who can be reached at 919-835-1448.

Thank you again for your commitment to North Carolina. We appreciate the opportunity to work with you and all our state's leaders to help make a difference in communities, lives and futures from Murphy to Manteo.

Sincerely,

Cynt

Cynthia G. Marshall
Enclosures

USA Proud Sponsor of the U.S. Olympic Team

NAO 5-25-10

Dial back cell phone accidents

The following editorial appeared Sunday in The Winston-Salem Journal:

WINSTON-SALEM

Five words spoken by a father whose two sons suffered fatal injuries in a car wreck this month should be a clarion call to action for state legislators: "This didn't have to happen."

Police say Jayne Perkins of Arkansas was talking on a cell phone May 9 in Greensboro when her tractor-trailer plowed into the back of a car carrying Daryl Reynolds' two sons, 15-year-old Daryl Baucom and 11-year-old Isaiah Reynolds, both of Winston-Salem. Their mother and stepbrother were also injured in the crash.

Daryl Reynolds and his brother are calling on legislators to ban cell-phone use entirely while driving, especially in commercial vehicles. They will hold a June 5 march in Winston-Salem to raise public awareness of their cause.

Before more lives are lost, the legislature should finally enact laws banning the use of hand-held phones while driving, and making phone use while driving an aggravating factor in setting punishments for those who cause serious accidents while talking on their phones. These would be good steps toward eventually banning all phone use while driving – including the use of hands-free devices, which studies have shown are just as dangerous.

And state officials should develop an advertising campaign warning North Carolinians of the dangers of using phones while driving.

No conversation, save for placing a 911 call, is worth taking the chance that you'll kill or maim another driver and their passengers. But many of us continue to talk on our phones while driving.

An estimated 28 percent of all traffic accidents nationally are caused by cell-phone use. A Utah study found that driving while talking on the phone causes drivers to be as impaired as drunk drivers. And God save us from drunk drivers talking on cell phones.

Americans have been slow to put down their phones. Hand-held phone talking while driving is banned in only six states and Washington, D.C., for all drivers. North Carolina should show that it really is a progressive state by joining them.

Our legislature has already banned the practice for school-bus drivers and those under 18. But bills banning the use of hand-held phones by drivers have stalled in the legislature. Perhaps legislators don't want to put down their own phones. Perhaps they're worried that a ban would cost them votes. Perhaps they're worried that there are business interests that would object to a ban.

Perhaps they're worried that a ban would be hard to enforce. What's to stop drivers from cutting on their speaker-phone and holding the device below their windows? And the state's ban on texting while driving has only resulted in about 220 citations and 40 convictions since it took effect in December.

But the legislature has to start somewhere.

That needs to happen as a result of the wreck that took the lives of Daryl Baucom and Isaiah Reynolds. They were in the back seat when Perkins' big rig slammed into their car at 50 mph. "I looked up and all I saw were brake lights," Perkins told investigators.

She faces two counts of misdemeanor death by vehicle. All because of a cell-phone chat. It didn't have to

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 1165*

Short Title:	General Statutes Comm. Technical Corrections.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II.	

May 18, 2010

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE GENERAL STATUTES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 120-29.1 reads as rewritten:

"**§ 120-29.1. Approval of bills.**

(a) If the Governor approves a bill, the Governor shall write upon the same, below the signatures of the presiding officers of the two houses, the fact, date, and time of approval, as follows: "Approved _____.m. this _____ day of _____, _____ " and shall sign the same as follows: "_____ Governor". The Governor shall then return the approved bill to the enrolling clerk.

(b) If any bill becomes law because of the failure of the Governor to take any action, it shall be the duty of the Governor to return the measure to the enrolling clerk, who shall sign the following certificate on the measure and deposit it with the Secretary of State: "This bill having been presented to the Governor for ~~his~~ signature on the _____ day of _____, _____ and the Governor having failed to approve it within the time prescribed by law, the same is hereby declared to have become a law.

This _____ day of _____, _____, _____ Enrolling Clerk".

(c) If the Governor returns any bill to the house of origin with ~~his~~ objections, the Governor shall write such objections on the measure or cause the objections to be attached to the measure. When any such bill becomes law after reconsideration of the two houses, the principal clerk of the second house to act shall, below the objections of the Governor, sign the following certificate: "Became law notwithstanding the objections of the Governor, _____.m. this _____ day of _____, _____". The principal clerk of the second house to act shall fill in the time. The enrolling clerk shall deposit the measure with the Secretary of State.

(d) In calculating the period under Section 22(7) of Article II of the North Carolina Constitution, the day on which the bill is presented to the Governor shall be excluded and the entire last day of the period is included."

SECTION 2. The Revisor of Statutes may cause to be printed all explanatory comments of the drafters of S.L. 2009-222, 2009-267, and 2009-318 as the Revisor deems appropriate.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1165*
PROPOSED COMMITTEE SUBSTITUTE S1165-CSTE-5 [v.5]

6/28/2010 5:24:20 PM

Short Title: General Statutes Comm. Technical Corrections. (Public)

Sponsors:

Referred to:

May 18, 2010

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE GENERAL STATUTES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-809 reads as rewritten:

"**§ 7A-809. Reports.**

The Conference of Clerks of Superior Court shall, in consultation with the registers of deeds, annually study the status of the individual counties and judicial districts as to whether or not the clerks of superior court or the registers of deeds are implementing ~~Session Laws 2009-355~~ G.S. 132-1.10(f1) and report results of the study to the Joint Legislative Commission on Governmental Operations on or before March 1 of each year."

SECTION 2. G.S. 15-203 reads as rewritten:

"**§ 15-203. Duties of the Secretary of Correction; appointment of probation officers; reports; requests for extradition.**

The Secretary of Correction shall direct the work of the probation officers appointed under this Article. ~~He~~ The Secretary shall consult and cooperate with the courts and institutions in the development of methods and procedure in the administration of probation, and shall arrange conferences of probation officers and judges. ~~He~~ The Secretary shall make an annual written report with statistical and other information to the Department of Correction and the Governor. ~~He~~ The Secretary is authorized to present to the Governor written applications for requisitions for the return of probationers who have broken the terms of their probation, and are believed to be in another state, and ~~he~~ the Secretary shall follow the procedure outlined for requests for extradition as set forth in ~~G.S. 15-77.~~ G.S. 15A-743."

SECTION 3. G.S. 15A-534(h) reads as rewritten:

"(h) A bail bond posted pursuant to this section is effective and binding upon the obligor throughout all stages of the proceeding in the trial division of the General Court of Justice until the entry of judgment in the district court from which no appeal is taken or the entry of judgment in the superior court. The obligation of an obligor, however, is terminated at an earlier time if:

(1) A judge authorized to do so releases the obligor from his bond; or
(2) The principal is surrendered by a surety in accordance with G.S. 15A-540; or
(3) The proceeding is terminated by voluntary dismissal by the State before forfeiture is ordered under ~~G.S. 15A-544(b);~~ G.S. 15A-544.3; or
(4) Prayer for judgment has been continued indefinitely in the district court."

SECTION 4. G.S. 15A-1230(b) reads as rewritten:

"(b) Length, number, and order of arguments allotted to the parties are governed by ~~G.S. 84-14.~~ G.S. 7A-97."

SECTION 5. G.S. 15A-1342(e) reads as rewritten:

"(e) Out-of-State Supervision. – Supervised probationers are subject to out-of-State supervision under the provisions of ~~G.S. 148-65.1.~~ Article 4B of Chapter 148 of the General Statutes."

SECTION 6. G.S. 15A-1383(d) reads as rewritten:

"(d) Plans prepared under this Article are not "rules" within the meaning of Chapter 150B of the General ~~Statutes or within the meaning of Article 6C of Chapter 120 of the General Statutes.~~ Statutes."

SECTION 7. G.S. 20-183.7(f)(5) reads as rewritten:

"(5) A statement that a vehicle that fails an inspection may be reinspected at the same station within ~~30~~60 days of the inspection without payment of another inspection fee."

SECTION 8. The catchline of G.S. 36C-3-302 reads as rewritten:

"**§ 36C-3-302. Representation by holder of power of revocation or general ~~testamentary~~ power of appointment.**"

SECTION 9. G.S. 41-2(b) reads as rewritten:

"(b) The interests of the grantees holding property in joint tenancy with right of survivorship shall be deemed to be equal unless otherwise specified in the conveyance. Any joint tenancy interest held by a husband and wife, unless otherwise specified, shall be deemed to be held as a single tenancy by the entirety, which shall be treated as a single party when determining interests in the joint tenancy with right of survivorship. If joint tenancy interests among three or more joint tenants holding property in joint tenancy with right of survivorship are held in unequal shares, upon the death of one joint tenant, the share of the deceased joint tenant shall be divided among the surviving joint tenants according to their respective pro rata interest and not equally, unless the creating instrument provides otherwise.

This subsection shall apply to any conveyance of an interest in property created at any time that explicitly sought to create unequal ownership interests in a joint tenancy with right of survivorship. Distributions made prior to the enactment of this subsection that were made in equal amounts from a joint tenancy with the right of survivorship that sought to create unequal ownership shares shall remain valid and shall not be subject to modification on the basis of this ~~act.~~ subsection."

SECTION 10. G.S. 58-71-75 reads as rewritten:

"**§ 58-71-75. License renewal; criminal history record checks; renewal fees.**

(a) Annual Renewal. – A license of a bail bondsman and a license of a runner shall be renewed on July 1 of each year upon payment of the applicable annual renewal fee. In even-numbered years, in addition to paying the annual renewal fee, an applicant seeking renewal must submit an application for renewal in accordance with this section. The Commissioner is not required to print renewal licenses.

(b) Renewal Application. – In even-numbered years, a bail bondsman or runner seeking to renew a license shall provide the Commissioner, not less than 30 days prior to the expiration date of the bail bondsman's or runner's current license, all of the following:

(1) A renewal application containing all of the following:

a. Proof that the applicant is a resident of this State as required by G.S. 58-71-50(c).

b. Proof that the applicant meets the qualifications set out in G.S. 58-71-50(b)(5) through G.S. 58-71-50(b)(7).

c. The information required by G.S. 58-2-69.

(2) The annual renewal fee as provided in ~~subsection (c)~~ subsection (d) of this section.

(3) A complete set of fingerprints of the bail bondsman or runner and a fee to cover the cost of conducting the criminal history record check. The fingerprints shall be submitted in the manner prescribed by the Commissioner and shall be certified by an authorized law enforcement officer.

(c) Criminal History Record Check. – Upon receipt of a license renewal application in an even-numbered year, the Commissioner shall conduct a criminal history record check of the applicant seeking renewal in accordance with G.S. 58-71-51.

(d) Fee. – The renewal fee for a runner's license is sixty dollars ($60.00). The renewal fee for a bail bondsman's license is one hundred dollars ($100.00). A renewed license continues in effect until suspended or revoked for cause."

SECTION 11. The introductory language of G.S. 58-89A-106(a) reads as rewritten:

"(a) In order for a licensee to sponsor and maintain a health benefit plan that is not fully insured by one or more of the entities specified in subsection (a) of ~~G.S. 58-89A-109~~ G.S. 58-89A-105 on and after October 1, 2009, as authorized by subsection (e) of that section, the licensee shall meet all of the requirements listed in this subsection. A health benefit plan developed under this section is not required to provide coverage that meets the requirements of other provisions of this Chapter that mandate either coverage or the offer of coverage by the type or level of health care services or health care provider. The licensee shall:"

SECTION 12. G.S. 113-28 is repealed.

SECTION 13. G.S. 115C-102.6B(b) reads as rewritten:

"(b) The Board shall submit the plan to the State Chief Information Officer for approval of the technical components of the plan set out in G.S. 115C-102.6A(1) through (4). At least one-fourth of the members of any technical committee that reviews the plan for the State Chief Information Officer shall be people actively involved in primary or secondary education.

~~G.S. 115C-102.6A(c)(1) through (17)~~

The Board shall report annually by February 1 of each year to the Joint Legislative Education Oversight Committee on the status of the State School Technology Plan."

SECTION 14. G.S. 115D-5.1(f1) reads as rewritten:

"(f1) Notwithstanding any other provision of law, the State Board of Community Colleges may adopt guidelines that allow the Customized Training Program to use funds appropriated for ~~those programs~~ that program to support training projects for the various branches of the United States Armed Forces."

SECTION 15. G.S. 120-29.1 reads as rewritten:

"**§ 120-29.1. Approval of bills.**

(a) If the Governor approves a bill, the Governor shall write upon the same, below the signatures of the presiding officers of the two houses, the fact, date, and time of approval, as follows: "Approved _____.m. this _____ day of _____, _____ " and shall sign the same as follows: "_____ Governor". The Governor shall then return the approved bill to the enrolling clerk.

(b) If any bill becomes law because of the failure of the Governor to take any action, it shall be the duty of the Governor to return the measure to the enrolling clerk, who shall sign the following certificate on the measure and deposit it with the Secretary of State: "This bill having been presented to the Governor for ~~his~~ signature on the _____ day of _____, _____ and the Governor having failed to approve it within the time prescribed by law, the same is hereby declared to have become a law.

This _____ day of _____, _____, _____ Enrolling Clerk".

(c) If the Governor returns any bill to the house of origin with ~~his~~ objections, the Governor shall write such objections on the measure or cause the objections to be attached to the measure. When any such bill becomes law after reconsideration of the two houses, the principal clerk of the second house to act shall, below the objections of the Governor, sign the following certificate: "Became law notwithstanding the objections of the Governor, _____.m. this _____ day of _____, _____". The principal clerk of the second house to act shall fill in the time. The enrolling clerk shall deposit the measure with the Secretary of State.

(d) In calculating the period under Section 22(7) of Article II of the North Carolina Constitution, the day on which the bill is presented to the Governor shall be excluded and the entire last day of the period is included."

SECTION 16. G.S. 143B-499.8 reads as rewritten:

"**§ 143B-499.8. North Carolina Silver Alert System established.**

(a) There is established within the North Carolina Center for Missing Persons the Silver Alert System. The purpose of the Silver Alert System is to provide a statewide system for the rapid dissemination of information regarding a missing person or missing child who is believed to be suffering from dementia or other cognitive impairment.

(b) If the Center receives a report that involves a missing person or missing child who is believed to be suffering from dementia or other cognitive impairment, for the protection of the missing person or missing child from potential abuse or other physical harm, neglect, or exploitation, the Center shall issue an alert providing for rapid dissemination of information statewide regarding the missing ~~person.~~ person or missing child. The Center shall make every effort to disseminate the information as quickly as possible when the person's or child's status as missing has been reported to a law enforcement agency.

(c) The Center shall adopt guidelines and develop procedures for issuing an alert for missing persons and missing children believed to be suffering from dementia or other cognitive impairment and shall provide education and training to encourage radio and television broadcasters to participate in the alert. The guidelines and procedures shall ensure that specific health information about the missing person or missing child is not made public through the alert or otherwise.

(d) The Center shall consult with the Department of Transportation and develop a procedure for the use of overhead permanent changeable message signs to provide information on the missing person or missing child meeting the criteria of this section when information is available that would enable motorists to assist in the recovery of the missing ~~person.~~ person or missing child. The Center and the Department of Transportation shall develop guidelines for the content, length, and frequency of any message to be placed on an overhead permanent changeable message sign."

SECTION 17. G.S. 143C-8-6 reads as rewritten:

"**§ 143C-8-6. Recommendations for capital improvements set forth in the Recommended State Budget.**

(a) Budget Director's Recommendations. – The Director of the Budget shall recommend expenditures for repairs and renovations of existing facilities, and real property acquisition, new construction, or rehabilitation of existing facilities in the Recommended State Budget in accordance with G.S. 143C-3-5.

(b) Repairs and Renovations in the Recommended State Budget. – The Recommended State Budget shall contain for repairs and renovations of existing facilities: (i) the amount recommended for each State agency, (ii) a summary of the recommendations by project type, and (iii) the means of financing.

(c) Repairs and Renovations in the Budget Support Document. – The Budget Support Document shall contain for each repair and renovation project recommended in accordance with ~~143C-8-6(b):~~ subsection (b) of this section: (i) a project description and justification, (ii) a

detailed cost estimate, (iii) an estimated schedule for the completion of the project, and (iv) an explanation of the means of financing.

(d) Other Capital Projects in the Recommended State Budget. – The Recommended State Budget shall contain for each capital project involving real property acquisition, new construction, building area (sq. ft.) expansions, or the rehabilitation of existing facilities to accommodate new or expanded uses: (i) a project description and statement of need, (ii) an estimate of acquisition and construction or rehabilitation costs, and (iii) a means of financing the project.

(e) Other Capital Projects in the Budget Support Document. – The Budget Support Document shall contain for each capital project recommended in accordance with ~~143C-8-6(c):~~ subsection (d) of this section: (i) a detailed project description and justification, (ii) a detailed estimate of acquisition, planning, design, site development, construction, contingency and other related costs, (iii) an estimated schedule of cash flow requirements over the life of the project, (iv) an estimated schedule for the completion of the project, (v) an estimate of maintenance and operating costs, including personnel, for the project, covering the first five years of operation, (vi) an estimate of revenues, if any, likely to be derived from the project, covering the first five years of operation, and (vii) an explanation of the means of financing."

SECTION 18. G.S. 163-85(c) reads as rewritten:

"(c) Grounds for Challenge. – Such challenge may be made only for one or more of the following reasons:

(1) That a person is not a resident of the State of North Carolina, or

(2) That a person is not a resident of the county in which the person is registered, provided that no such challenge may be made if the person removed his residency and the period of removal has been less than 30 days, or

(3) That a person is not a resident of the precinct in which the person is registered, provided that no such challenge may be made if the person removed his residency and the period of removal has been less than 30 days, or

(4) That a person is not 18 years of age, or if the challenge is made within 60 days before a primary, that the person will not be 18 years of age by the next general election, or

(5) That a person has been adjudged guilty of a felony and is ineligible to vote under G.S. 163-55(2), or

(6), (7) Repealed by Session Laws 1985, c. 563, ss. 11.1, 11.2.

(7a) That a person is dead, or

(8) That a person is not a citizen of the United States, or

(9) With respect to municipal registration only, that a person is not a resident of the municipality in which the person is registered, or

(10) That the person is not who he or she represents himself or herself to be."

SECTION 19. The introductory language of G.S. 163-182 reads as rewritten:

"In addition to the definitions stated below, the definitions set forth in ~~Article 13A~~ Article 14A of Chapter 163 of the General Statutes also apply to this Article. As used in this Article, the following definitions apply:"

SECTION 20. The introductory language of Section 1 of S. L. 2009-129 reads as rewritten:

"**SECTION 1.** ~~G.S. 120-29(2)~~ G.S. 120-129(2) reads as rewritten:".

SECTION 21. Due to the amendment to G.S. 143-345.18 by Section 1(b) of S.L. 2009-446, designating the Department of Commerce as the lead State agency in matters pertaining to energy efficiency in place of the Department of Administration, the Revisor of

Statutes is authorized to recodify Part 3 of Article 36 of Chapter 143 of the General Statutes to a more suitable location.

SECTION 22. The Revisor of Statutes may cause to be printed all explanatory comments of the drafters of S.L. 2009-222, 2009-267, and 2009-318 as the Revisor deems appropriate.

SECTION 23. This act is effective when it becomes law.

State of North Carolina
General Statutes Commission
9001 Mail Service Center
RALEIGH, NORTH CAROLINA
27699-9001

MEMORANDUM

TO: Senate Judiciary II Committee

FROM: General Statutes Commission

DATE: June 28, 2010 **[REVISED]**

RE: Senate Bill 1165 (General Statutes Comm. Technical Corrections)

General Comments

Sections 1 through 22 of this bill contain corrections of a technical nature to the General Statutes that are recommended by the General Statutes Commission. These amendments include updating and correcting citations, correcting typographical, grammatical, redlining, and other obvious drafting errors, making conforming changes, correcting terminology, deleting obsolete provisions, conforming a catchline to match the G.S. section's actual content, making a reference to the Governor gender neutral, authorizing the relocation of statutes that, as a result of subsequent amendments, no longer fit their current location, and providing specific authorization for the printing of drafters comments.

Specific Comments

Section 1. This section amends G.S. 7A-809 to make a citation more precise. G.S. 7A-809 was enacted as S.L. 2009-355, s. 4, and was codified at the direction of the Revisor of Statutes. As enacted, it required the Conference of Clerks of Superior Court, together with the registers of deeds, to study annually and report on their implementation of "this act." In the context of a session law, "this act" normally means the entire session law, so in codifying the provision, the reference to "this act" was changed to a citation to the session law. However, clerks of court and registers of deeds were only given duties under a new subsection (f1) that was added to G.S. 132-1.10 by Section 3 of S.L. 2009-355 (this new subsection (f1) allows clerks of court and registers of deeds to remove on their own initiative social security and drivers license numbers from the web-site version of the records filed with them). In addition, citing to session laws in codified statutes is disfavored. This section accordingly replaces the citation to the session law with a citation to the specific G.S. reference.

Section 2. This section updates a citation in G.S. 15-203. When Chapter 15A of the General Statutes was enacted, former G.S. 15-77 was repealed and reenacted as G.S. 15A-743. In addition, the section makes references to the Secretary of Correction gender neutral.

Section 3. This section updates a citation in G.S. 15A-534(h)(3). Former G.S. 15A-544, which dealt with forfeiture of bail bonds, was repealed by S.L. 2000-133 and replaced by Part 2 of Article 26 of Chapter 15A of the General Statutes (G.S. 15A-544.1 et seq.). The equivalent citation to former G.S. 15A-544(b) in the new Part 2 is G.S. 15A-544.3.

Section 4. This section amends G.S. 15A-1230(b) to update a citation. Former G.S. 84-14 was recodified as G.S. 7A-97 by 1995 Sess. Laws, c. 431, s. 7.

Section 5. This section amends G.S. 15A-1342(e) to update a citation. Former G.S. 148-65.1 has been repealed. Its subject matter is now contained in different sections of Article 4B of Chapter 148 of the General Statutes.

Section 6. This section amends G.S. 15A-1383(d) to delete an obsolete reference. Former Article 6C of Chapter 120 of the General Statutes created a standing legislative committee to review administrative rules in a manner somewhat similar to the review done by the Rules Review Commission. The former Article included a definitions section (former G.S. 120-30.24) with a definition of "rule." Article 6C was repealed when the Governor's Administrative Rules Review Commission was created. That commission has in turn been replaced with the current Rules Review Commission, whose enabling statutes (G.S. 143B-30.1 et seq.) do not contain any definition of "rule." The only replacement reference would be to Chapter 150B of the General Statutes, which is already referenced. The obsolete reference to former Article 6C can simply be deleted.

Section 7. This section makes a conforming amendment to G.S. 20-183.7(f). S.L. 2009-364 ("An Act to Increase the Period of Time Allowed for Reinspection After Failing a Motor Vehicle Inspection . . . .") amended G.S. 20-183.3(c) and G.S. 20-183.7(a) to extend from 30 to 60 days the time within which a motor vehicle that failed an emissions inspection can be reinspected without additional fee. G.S. 20-183.7(f) requires inspection stations to post a sign with specified information about inspection fees. This section amends G.S. 20-183(f)(5) so that the contents of the information sign will reflect the change from 30 to 60 days.

Section 8. This section amends the catchline of G.S. 36C-3-302, which was amended last year by S.L. 2009-222, s. 2, to conform the catchline to the current content of the body of the statute.

Section 9. This section amends G.S. 41-2(b) to make a terminology correction by changing "act" to "subsection." G.S. 41-2 was amended last year by S.L. 2009-268 to add subsection (b). The new subsection ends with the phrase "on the basis of this act." In a codified statute, however, a reference to "this act" lacks context unless the statute, or the unit it is part of,

has a short title with "Act" in the short title. That is not the case with G.S. 41-2. From context, the intended reference is to the new subsection (b).

Section 10. This section amends G.S. 58-71-75(b)(2) to correct an obvious error. That provision refers to the "annual renewal fee as provided in subsection (c) of this section." The renewal fee is, however, in subsection (d).

Section 11. This section amends the introductory language of G.S. 58-89A-106(a) to correct a typographical error in a citation. The first sentence of subsection (a) refers to "entities specified in subsection (a) of G.S. 58-89A-109." There is no G.S. 58-89A-109, however. The intended reference was to G.S. 58-89A-105.

Section 12. This section repeals G.S. 113-28, which has become obsolete. G.S. 113-28 allowed the State to reimburse the federal government at the rate of $ 1 per man per day, under conditions and limits described in the statute, for work done under "an act of Congress entitled, 'An act for the relief of unemployment through the performance of useful public work, and for other purposes' approved March 31, 1933." All parts of the federal act cited have been repealed, and there was no replacement.

Section 13. This section amends G.S. 115C-102.6B to delete "garbage language." G.S. 115C-102.6B(b) was amended last year by both S.L. 2009-451, s. 7.31, and S.L. 2009-571, s. 37. S.L. 2009-571, s. 37, made a citation update in a sentence in the first paragraph of subsection (b) that was deleted by the other session law, resulting in "garbage language."

Section 14. This section makes a grammatical conforming amendment to G.S. 115D-5.1(f1). S.L. 2009-570, s. 41, amended G.S. 115D-5.1(f1) to delete a previously existing reference to a second program, so that the subsection now covers only one program. The phrase "funds appropriated for those programs" should have been changed at the time to "funds appropriated for that program." This section makes that change.

Section 15. This section amends G.S. 120-29.1 in two places to eliminate the word "his" in references to the Governor's signature on a bill and the Governor's objections to a vetoed bill. The word "his" is not necessary to the meaning in this context, and our current Governor is a woman.

Section 16. This section amends G.S. 143B-499.8 to correct a drafting error.

G.S. 143B-499.8 was enacted by S.L. 2007, s. 5. The statute allows the issuance of an alert, called a "silver alert," for "missing persons" believed to be suffering from dementia or other cognitive impairment. The statute is located in Part 5A of Article 11 of Chapter 143B, which has a definitions section, G.S. 143B-496, that defines "missing person" as "any individual *who is 18 years of age or older*, whose temporary or permanent residence is in North Carolina, or is believed to be in North Carolina, whose location has not been determined, and who has been

reported as missing to a law-enforcement agency" (emphasis added). As enacted, a silver alert could only be issued under G.S. 143B-499.8 for a person 18 years or over.

In 2008, the General Assembly enacted S.L. 2008-83, which was entitled in part "An Act to Authorize a Silver Alert to Be Issued for a Person of Any Age . . . ." Section 1 of the 2008 act amended G.S. 143B-499.8 by deleting a phrase in subsection (b) where, in one place, there was a reference to a person who was 18 years of age or older. S.L. 2008-83 did not, however, do anything to address the effect of the age limitation in the definition of "missing person."

In 2009, the General Assembly enacted 2009-143, entitled "An Act to Clarify a Silver Alert May Be Issued for a Person of Any Age Who Is Believed to Be Suffering from Dementia or Other Cognitive Impairment." This act amended G.S. 143B-499.8 to change a reference to "missing adult" in subsection (d) to "missing person." Like the 2008 act, however, the 2009 act did not address the age limitation in the definition of "missing person."

G.S. 143B-496 also contains a definition of "missing child," and Part 5A of Article 11 of Chapter 143B has numerous references to "missing person or missing child," "missing child or missing person," "missing persons or missing children," etc., in places where the Part applies to missing individuals whatever their age. "Missing child" is defined as "a juvenile as defined in G.S. 7B-101 whose location has not been determined, who has been reported as missing to a law-enforcement agency, and whose parent's, spouse's, guardian's or legal custodian's temporary or permanent residence is in North Carolina or is believed to be in North Carolina."

To deal with the problem caused in G.S. 143B-499.8 by the definition of "missing person" in light of the General Assembly's intent as stated the titles of S.L. 2008-83 and S.L. 2009-143, while conforming to the style of the remainder of Part 5A of Article 11 of Chapter 143B, this section inserts references to "missing children" or "missing child," as appropriate, throughout G.S. 143B-499.8.

Section 17. This section amends G.S. 143C-8-6 to correct the style of an internal citation in subsection (c) and to correct a citation in subsection (e). Both subsections (c) and (e) contain internal citations to "143C-8-6" without the "G.S." designation. Although adding the "G.S." designation would correct that problem, the more usual style for internal citations in the General Statutes is to refer to "this section," or "subsection ___ of this section," etc. The amendment to subsection (c) simply conforms the citation style. The internal citation in subsection (e), however, has an additional, typographical, error in the internal citation; the citation should be to subsection (d), not subsection (c). The amendment to subsection (e) corrects that typographical error and also conforms the citation style.

Section 18. This section amends G.S. 163-85(c) to add the missing conjunction "or" at the end of subdivisions (7a) and (9).

Section 19. This section amends G.S. 163-182 to update a citation in the introductory language. Article 13A of Chapter 163 was recodified as Article 14A by S.L. 2009-159, s. 21(h).

Section 20. This section amends the amendatory language of Section 1 of S.L. 2009-129 to correct a typographical error in the identification of the G.S. section that was being amended. G.S. 120-29, the citation that is cited in the session law, deals with the journals of the General Assembly. The definition that was being amended is actually in G.S. 120-129.

Section 21. This section authorizes the Revisor of Statutes to move Part 3 of Article 36 of Chapter 143 of the General Statutes to a more suitable location in the General Statutes. That Part is currently located in an article that deals only with the Department of Administration. The Department of Administration originally performed the duties prescribed under Part 3, but S.L. 2009-446, s. 1, transferred these to the Department of Commerce. As a result, Part 3 is now awkwardly located and should be recodified.

Section 22. This section authorizes the printing of drafters comments to the amendments to Chapter 36C of the General Statutes that were enacted last year in S.L. 2009-222, 2009-267, and 2009-318, which were all recommendations of the North Carolina Bar Association. Authorization to print these comments was inadvertently omitted from those acts.

Section 23. This section makes the bill effective when it becomes law.

HOUSE BILL 144*

Committee Substitute Favorable 3/19/09
Senate Health Care Committee Substitute Adopted 6/3/10

Short Title: No Set Fee/Noncovered Dental Srvcs. (Public)

Sponsors:

Referred to:

February 12, 2009

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT HEALTH BENEFIT PLANS AND INSURERS FROM LIMITING OR FIXING THE FEE A DENTIST MAY CHARGE PATIENTS FOR SERVICES UNLESS THE SERVICES ARE COVERED FOR REIMBURSEMENT UNDER THE PLAN OR INSURER CONTRACT WITH THE DENTIST.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-50-290. Health benefit plans or insurers contracting for provision of dental services; no limitation on fees for noncovered services.**

(a) No contract between a health benefit plan or insurer and a dentist for the provision of dental services to plan members or insurance subscribers may require that a dentist provide services at a fee limited or set by the plan or insurer, unless the services are reimbursed as covered services under the contract.

(b) This section applies to dental plans and dental insurance policies offered by health benefit plans or insurers which provide for coverage of dental services not in connection with or incidental to coverage under a basic medical plan or health insurance policy, and this section shall further apply to Dental Service Corporations regulated under Article 65 of this Chapter."

SECTION 2. G.S. 58-65-2 reads as rewritten:

"**§ 58-65-2. Other laws applicable to service corporations.**

The following provisions of this Chapter are applicable to service corporations that are subject to this Article:

G.S. 58-2-125.	Authority over all insurance companies; no exemptions from license.
G.S. 58-2-150.	Oath required for compliance with law.
G.S. 58-2-155.	Investigation of charges.
G.S. 58-2-160.	Reporting and investigation of insurance and reinsurance fraud and the financial condition of licensees; immunity from liability.
G.S. 58-2-162.	Embezzlement by insurance agents, brokers, or administrators.
G.S. 58-2-185.	Record of business kept by companies and agents; Commissioner may inspect.
G.S. 58-2-190.	Commissioner may require special reports.
G.S. 58-2-195.	Commissioner may require records, reports, etc., for agencies, agents, and others.

G.S. 58-2-200.	Books and papers required to be exhibited.
G.S. 58-3-50.	Companies must do business in own name; emblems, insignias, etc.
G.S. 58-3-100(c),(e).	Insurance company licensing provisions.
G.S. 58-3-115.	Twisting with respect to insurance policies; penalties.
G.S. 58-7-46.	Notification to Commissioner for president or chief executive officer changes.
Part 7 of Article 10.	Annual Financial Reporting.
G.S. 58-50-35.	Notice of nonpayment of premium required before forfeiture.
G.S. 58-50-290.	Health benefit plans or insurers contracting for the provision of dental services; no limitation on fees for noncovered services.
G.S. 58-51-15(a)(2)b.	Accident and health policy provisions.
G.S. 58-51-17	Portability for accident and health insurance.
G.S. 58-51-25.	Policy coverage to continue as to mentally retarded or physically handicapped children.
G.S. 58-51-95(h),(i),(j).	Approval by Commissioner of forms, classification and rates; hearings; exceptions."

SECTION 3. This act is effective when it becomes law and applies to contracts between dentists and heath benefit plans or insurers delivered, amended, or renewed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 144*
Committee Substitute Favorable 3/19/09
Senate Health Care Committee Substitute Adopted 6/3/10
PROPOSED SENATE COMMITTEE SUBSTITUTE H144-PCS50954-RC-80

Short Title: No Set Fee/Noncovered Dental Srvcs. (Public)

Sponsors:

Referred to:

February 12, 2009

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT HEALTH BENEFIT PLANS AND INSURERS FROM LIMITING OR FIXING THE FEE A DENTIST MAY CHARGE PATIENTS FOR SERVICES UNLESS THE SERVICES ARE COVERED FOR REIMBURSEMENT UNDER THE PLAN OR INSURER CONTRACT WITH THE DENTIST.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-50-290. Health benefit plans or insurers contracting for provision of dental services; no limitation on fees for noncovered services.**

(a) No agreement between an insurer or an entity that writes stand-alone dental insurance and a dentist for the provision of dental services on a preferred or in-network basis to plan members or insurance subscribers in connection with coverage under a stand-alone dental plan, but not in connection with or incidental to coverage under a medical plan or health insurance policy, may require that a dentist provide services at a fee limited or set by the plan or insurer, unless the services are reimbursed as covered services under the contract.

(b) For purposes of this section, "covered services" means a service for which reimbursement is available under an insurer's policy, without regard to contractual limitations by a deductible, copayment, coinsurance, waiting period, annual or lifetime maximum, frequency limitation, alternative benefit payment, or other limitation."

SECTION 2. G.S. 58-65-2 reads as rewritten:

"**§ 58-65-2. Other laws applicable to service corporations.**

The following provisions of this Chapter are applicable to service corporations that are subject to this Article:

G.S. 58-2-125.	Authority over all insurance companies; no exemptions from license.
G.S. 58-2-150.	Oath required for compliance with law.
G.S. 58-2-155.	Investigation of charges.
G.S. 58-2-160.	Reporting and investigation of insurance and reinsurance fraud and the financial condition of licensees; immunity from liability.

G.S. 58-2-162.	Embezzlement by insurance agents, brokers, or administrators.
G.S. 58-2-185.	Record of business kept by companies and agents; Commissioner may inspect.
G.S. 58-2-190.	Commissioner may require special reports.
G.S. 58-2-195.	Commissioner may require records, reports, etc., for agencies, agents, and others.
G.S. 58-2-200.	Books and papers required to be exhibited.
G.S. 58-3-50.	Companies must do business in own name; emblems, insignias, etc.
G.S. 58-3-100(c),(e).	Insurance company licensing provisions.
G.S. 58-3-115.	Twisting with respect to insurance policies; penalties.
G.S. 58-7-46.	Notification to Commissioner for president or chief executive officer changes.
Part 7 of Article 10.	Annual Financial Reporting.
G.S. 58-50-35.	Notice of nonpayment of premium required before forfeiture.
G.S. 58-50-290.	Health benefit plans or insurers contracting for the provision of dental services; no limitation on fees for noncovered services.
G.S. 58-51-15(a)(2)b.	Accident and health policy provisions.
G.S. 58-51-17	Portability for accident and health insurance.
G.S. 58-51-25.	Policy coverage to continue as to mentally retarded or physically handicapped children.
G.S. 58-51-95(h),(i),(j).	Approval by Commissioner of forms, classification and rates; hearings; exceptions."

SECTION 3. This act is effective when it becomes law and applies to contracts between dentists and heath benefit plans or insurers delivered, amended, or renewed on or after that date.

HOUSE BILL 144:
No Set Fee/Noncovered Dental Srvcs

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 30, 2010
Introduced by:	Reps. Farmer-Butterfield, Pierce, Bordsen, Mobley	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	PCS to Third Edition H144-CSRC-80		

SUMMARY: House Bill 144 would prohibit agreements between a dentist and an insurer or an entity that writes stand alone dental insurance that limit fees for dental services unless the services are reimbursed as covered services under the contract. The Proposed Committee Substitute adds a definition of 'covered services'.

The act is effective when it becomes law and applies to contracts between dentists and plans delivered, amended or renewed on or after that date.

BILL ANALYSIS:

Section 1 would enact G.S. 58-50-290 to prohibit fee limitations in agreements between a dentist and an insurer or between a dentist and an entity that writes stand alone dental insurance for the provision of dental services on a preferred or in-network basis unless the service in question is covered service under he contract.

\ "covered service" is defined as services for which reimbursement is available under an insurer's policy, without regard to contractual limitations by a deductible, co-payment or other limitation.

Section 2 provides that the prohibition contained in new G.S. 58-50-290 applies to dental service corporations.

EFFECTIVE DATE: This act is effective when it becomes law and applies to contracts between dentists and health benefit plans or insurers delivered, amended, or renewed on or after that date.

Ten Popkin, counsel to Senate Health Care Committee, substantially contributed to this summary.

H144-SMRC-88(CSRC-80) v1

HOUSE BILL 859
Committee Substitute Favorable 5/7/09

Short Title: Amend Conditions of Probation. (Public)

Sponsors:

Referred to:

March 30, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS GOVERNING THE CONDITIONS OF PROBATION.

The General Assembly of North Carolina enacts:

SECTION 1. 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 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.

(14) 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.

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)."

SECTION 2. 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 supervision by officers assigned to the Intensive Supervision Program established pursuant to G.S. 143B-262(c), and abide by the rules adopted for that Program. Unless otherwise ordered by the court, intensive supervision also requires multiple contacts by a probation officer per week, a specific period each day during which the offender must be at his or her residence, and that the offender remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip the offender for suitable employment.

(3c) Remain at his or her residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study, or vocational training. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically 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 and pay any fee required by law or ordered by the court for participation in the community or reparation service program.

~~(7) Submit at reasonable times to warrantless searches by a probation officer of his or her person and of his or her vehicle and premises while the probationer is present, for purposes specified by the court and reasonably related to his or her probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful. Whenever the warrantless search consists of testing for the presence of illegal drugs, the probationer may also be required to reimburse the Department of Correction for the actual cost of drug screening and drug testing, if the results are positive.~~

~~(8) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for him or her by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used.~~

(8a) Purchase the least expensive annual statewide license or combination of licenses to hunt, trap, or fish listed in G.S. 113-270.2, 113-270.3, 113-270.5, 113-271, 113-272, and 113-272.2 that would be required to engage lawfully in the specific activity or activities in which the defendant was engaged and

which constitute the basis of the offense or offenses of which he was convicted.

(9) If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court should encourage the minor and the minor's parents or custodians to participate in rehabilitative treatment and may order the defendant to pay the cost of such treatment.

(9a) 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 3. This act becomes effective December 1, 2009, and applies to persons sentenced to probation on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 859
Committee Substitute Favorable 5/7/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H859-CSLH-32 [v.3]

6/22/2010 12:51:43 PM

Short Title: Amend Concealed Weapon & Handgun Permit Laws. (Public)

Sponsors:

Referred to:

March 30, 2009

A BILL TO BE ENTITLED

AN ACT TO EXEMPT CERTAIN RETIRED PROBATION AND PAROLE CERTIFIED OFFICERS FROM THE FIREARM SAFETY AND TRAINING COURSE REQUIREMENT FOR PURPOSES OF THE CONCEALED HANDGUN PERMIT AND TO PROVIDE THAT THE PROHIBITION AGAINST CARRYING A CONCEALED WEAPON DOES NOT APPLY TO STATE PROBATION AND PAROLE CERTIFIED OFFICERS WHEN THEY ARE OFF-DUTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-415.10 is amended by adding a new subdivision to read:

"(4b) Qualified retired probation or parole certified officer. – An individual who retired from service as a State probation or parole certified officer, other than for reasons of mental disability, who has been retired as a probation or parole certified officer two years or less from the date of the permit application and who meets all of the following criteria:

a. Immediately before retirement, the individual met firearms training standards of the Department of Correction and was authorized by the Department of Correction to carry a handgun in the course of duty.

b. The individual retired in good standing and was never a subject of a disciplinary action by the Department of Correction that would have prevented the individual from carrying a handgun.

c. The individual has a vested right to benefits under the Teachers' and State Employees' Retirement System of North Carolina established under Article 1 of Chapter 135 of the General Statutes.

d. The individual is not prohibited by State or federal law from receiving a firearm."

SECTION 2. G.S. 14-415.12A(a) reads as rewritten:

"(a) A person who is a qualified sworn law enforcement ~~officer or~~officer, a qualified former sworn law enforcement ~~officer~~ officer, or a qualified retired probation or parole certified officer is deemed to have satisfied the requirement under G.S. 14-415.12(a)(4) that an applicant successfully complete an approved firearms safety and training course."

SECTION 3. G.S. 14-269(b) is amended by adding a new subdivision to read:

"(6) State probation or parole certified officers, when off-duty, provided that an officer does not carry a concealed weapon while consuming alcohol or an

unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the officer's body."

SECTION 4. This act becomes effective December 1, 2010. Sections 1 and 2 of this act apply to probation and parole officers who retired before, on, or after December 1, 2010.

HOUSE BILL 859:
Amend Conditions of Probation

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 28, 2010
Introduced by:	Reps. Guice, Spear, R. Warren, Faison	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	H859-CSLH-32 PCS to 2nd Edition		

SUMMARY: ***This proposed committee substitute for House Bill 859 would exempt certain retired probation and parole officers from the firearm safety and training course for purposes of obtaining a concealed handgun permit. It would also provide that the prohibition against carrying a concealed weapon does not apply to off-duty probation or parole certified officers.***

CURRENT LAW: Under G.S. 14-415.12, an applicant for a concealed handgun permit must successfully complete an approved firearms safety and training course which involves the actual firing of handguns and instruction in State laws governing the carrying of a concealed handgun and the use of deadly force. G.S. 14-415.12A provides an exemption for qualified sworn law enforcement officers; qualified former sworn law enforcement officers; and certain persons licensed or registered by the North Carolina Private Protective Services Board as armed security guards

G.S. 14-269 makes it unlawful to carry a concealed weapon, except as specifically provided. One exception applies to sworn law enforcement officers when off-duty, provided the officer does not carry a concealed weapon while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the officer's body.

BILL ANALYSIS: Section 1 defines 'qualified retired probation or parole certified officer' as a person who has been retired as a probation or parole certified officer for not more than 2 years and who meets all of the following criteria:

- Immediately before retirement, met Department of Correction (DOC) firearms training standards and was authorized by DOC to carry a handgun in the course of duty.
- Retired in good standing and was never the subject of a disciplinary action that would have prevented the carrying of a handgun.
- Has a vested right to State retirement benefits.
- Is not prohibited by State or federal law from receiving a firearm.

Section 2 amends the law concerning firearms safety and training for purposes of obtaining a concealed handgun permit, to provide an exemption for qualified retired probation or parole certified officers as defined in Section 1 of the bill. The retired officers would be deemed to have satisfied the requirement to successfully complete the course.

Section 3 amends the law prohibiting the carrying of concealed weapons, to allow off-duty probation or parole certified officers to carry concealed weapons so long as they are not consuming alcohol or unlawful controlled substances and there is not alcohol or unlawful controlled substance remaining in he officer's body.

EFFECTIVE DATE: The bill would be effective December 1, 2010 and apply to officers who retired before, on, or after that date.

H859-SMRV-137(H859-CSLH-32) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 3

HOUSE BILL 1736

Committee Substitute Favorable 5/27/10
Committee Substitute #2 Favorable 6/9/10

Short Title: Local Delinquent Sewer Fees. (Local)

Sponsors:

Referred to:

May 18, 2010

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF LOCUST AND THE TOWNS OF NEW LONDON AND STANFIELD TO ATTACH PERSONAL PROPERTY, GARNISH WAGES, AND PLACE LIENS ON CERTAIN REAL PROPERTY TO COLLECT UNPAID FEES FOR SEWER SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. A city may adopt an ordinance providing that a fee charged by the city for sewer services and remaining unpaid for a period of 90 days may be collected in any manner by which delinquent personal or real property taxes can be collected. If the ordinance states that delinquent fees may be collected in the same manner as delinquent real property taxes, the delinquent fees are a lien on the real property owned by the person contracting with the city for the service, and the ordinance shall provide for an appeals process. If a lien is placed on real property, the lien shall be valid from the time of filing in the office of the clerk of superior court of the county in which the service was provided and shall include a statement containing the name and address of the person against whom the lien is claimed, the name of the city claiming the lien, the specific service that was provided, the amount of the unpaid charge for that service, and the date and place of furnishing that service. A lien on real property is not effective against an interest in real property conveyed after the fees become delinquent if the interest is recorded in the office of the register of deeds prior to the filing of the lien for delinquent water or sewer services. No lien under this act shall be valid unless filed in accordance with this section after 90 days of the date of the failure to pay for the service or availability fees and within 180 days of the date of the failure to pay for the service or fees. The lien may be discharged as provided in G.S. 44-48.

The city shall adopt an appeals process providing notice and an opportunity to be heard in protest of the imposition of such liens. The county tax office, once notified of the city's lien, shall include the lien amount on any tax bills printed subsequent to the notification. The county tax office shall add or remove liens from the tax bill at the request of the city (such as in the case of an appeal where the city decides to cancel the lien).

SECTION 2. This act applies to the City of Locust and to the Towns of New London and Stanfield.

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

HOUSE BILL 1736:
Local Delinquent Sewer Fees

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 30, 2010
Introduced by:	Rep. Burr	**Prepared by:**	Kory Goldsmith
Analysis of:	Third Edition		Committee Counsel

SUMMARY: House Bill 1736 authorizes the City of Locust and the Towns of New London and Stanfield, which are located in Stanly County, to collect delinquent fees for sewer services in the same manner that property taxes are collected.

CURRENT LAW: Municipalities are authorized to acquire, construct, establish, maintain, own, operate, and contract for the operation of a "public enterprise," which includes wastewater collection, treatment, and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities. [G.S. 160A-311-312]. Municipalities are also authorized to establish a schedule of rates and fees for the use of or the services furnished by any pubic enterprise. [G.S. 160A-314]. A city has the authority to collect delinquent accounts by any remedy provided by law for collecting and enforcing private debts. [G.S. 160A-314(b)]. A city may also discontinue service to any customer whose account remains delinquent for more than 10 days. [G.S. 160A-314(b)]. There are also other statutory provisions that address the collection of fees for government services, including:

- *Ambulance Services* – G.S. 44-51.4 allows a local government to collect an account 90 days delinquent through the use of attachment and garnishment proceedings set forth for the collection of property taxes. G.S. 44-55.1 also allows the placement of a lien on real property for unpaid ambulance fees.
- *Solid Waste Fees* – G.S. 153A-293 authorizes a county to enact an ordinance providing that a solid waste fee may be billed and collected as a property tax.

Property taxes may be collected in the following ways:

- Placement of a lien on real and personal property, which is superior to all other liens.
- Sale of real or personal property.
- Attachment and garnishment of wages and bank accounts.

BILL ANALYSIS: House Bill 1736 would authorize the City of Locust and the Towns of New London and Stanfield to adopt an ordinance providing that the city or town may collect any fee for sewer service that is 90 days past due as if it were a property tax. For liens placed on real property, the lien is valid from the time of filing. The lien must be filed with the clerk of superior court in the county in which the service was provided and must provide a statement of the name and address of the person against whom the lien is claimed, the name of the city claiming the lien, the specific service provided for which the fee is delinquent, the amount of the unpaid charge, and the date and place of the service provided. The lien must be filed after the charge is 90 days past due and within 180 days of the failure to pay the charge. The ordinance must include an appeals process. The county tax office must include the lien on any tax bills printed subsequent to its notification, and remove the lien from the bill at the request of the City.

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

BACKGROUND: The following local legislation regarding delinquent water and sewer fees has been enacted:

- S.L. 1993-768: Authorizes City of Durham to collect delinquent water and sewer fees resulting from leaking or broken pipes of the real property owner in the same manner as property taxes.
- S.L. 2003-270: Authorizes Columbus[1], Davie, Duplin, and Lenoir Counties, the municipalities in these counties, and water and wastewater authorities in these counties to collect delinquent water and sewer fees in the same manner as delinquent property taxes.
- S.L. 2009-402 Authorizes Montgomery County to collect delinquent water and sewer fees in the same manner as delinquent property taxes.

Giles Perry, counsel to House Local Government I, Trina Griffin, counsel to House Finance, and Cindy Avrette, counsel to Senate Finance substantially contributed to this summary.

H1736-SMRC-87(e3) v1

[1] The authority for Columbus County was removed in 2004. However, the municipalities within Columbus County maintain the authority.

HOUSE BILL 1762*

Short Title:	Domestic Violence Training for Judges.	(Public)
Sponsors:	Representatives McLawhorn, Farmer-Butterfield, R. Warren, Ross (Primary Sponsors); Bell, Carney, Dockham, Faison, Fisher, Gill, Harrison, Hughes, Insko, Jackson, Parfitt, Pierce, Rapp, Tarleton, and Weiss.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary II.	

May 18, 2010

A BILL TO BE ENTITLED

AN ACT TO REQUEST THAT THE NORTH CAROLINA SUPREME COURT ESTABLISH MINIMUM STANDARDS OF DOMESTIC VIOLENCE EDUCATION AND TRAINING FOR DISTRICT COURT JUDGES, AND TO ENCOURAGE THE UNIVERSITY OF NORTH CAROLINA SCHOOL OF GOVERNMENT TO PROVIDE DOMESTIC VIOLENCE EDUCATION AND TRAINING FOR JUDGES AND MAGISTRATES, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMITTEE ON DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

SECTION 1. The North Carolina Supreme Court is respectfully requested to adopt rules establishing minimum standards of education and training for district court judges in handling civil and criminal domestic violence cases.

SECTION 2. The University of North Carolina School of Government is encouraged to provide education and training opportunities for district court judges and magistrates in the handling of civil and criminal domestic violence cases.

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

HOUSE BILL 1762:
Domestic Violence Training for Judges

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 25, 2010
Introduced by:	Reps. McLawhorn, Farmer-Butterfield, R. Warren, Ross	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 1762 requests that the North Carolina Supreme Court establish minimum standards of domestic violence education and training for district court judges and encourages the University of North Carolina School of Government to provide domestic violence education and training for judges and magistrates, as recommended by the Joint Legislative Committee on Domestic Violence.***

[As introduced, this bill was identical to S1241, as introduced by Sen. Graham, which is currently in Rules and Operations of the Senate.]

BILL ANALYSIS:

Section 1 requests the North Carolina Supreme Court to adopt rules establishing minimum standards of education and training for district court judges in handling civil and criminal domestic violence cases.

Section 2 encourages The University of North Carolina School of Government to provide education and training opportunities for district court judges and magistrates in the handling of civil and criminal domestic violence cases.

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

H1762-SMRC-81(e1) v2

**Susan Sitze, Counsel to House Ways and Means/Broadband Connectivity, and Brad Krehely, Counsel to House Judiciary II, contributed substantially to the drafting of this summary.*

Senate Judiciary II Committee
Tuesday, July 6, 2010, 9:00 AM
643 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 836	Oil Spill Liability, Response, & Preparedness	Senator Albertson
HB 1377	Taxpayer Optimization Act.	Representative Folwell Representative Brown Representative McElraft Representative Moore

Presentations

Receipt and consideration of information related to the Yadkin River in and near Stanly County.

Other Business

Adjournment

SENATE JUDICIARY II COMMITTEE
Tuesday, July 6, 2010
9:00 am and Evening Meeting
Room 643, Legislative Office Building

MINUTES

The Senate Judiciary II Committee met at 9:00 AM on July 6, 2010, in Room 643 of the Legislative Office Building with thirteen members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Senator Hartsell recognized pages Izzy-Vaughan-Jones, Courtney Jennings, David Torres, Nick Hall, Tayte Kean, Jenny Summer, Dixon Holland and Katie McDonnell and thanked them for their service.

Senator Hartsell noted that Senate Bill 836 would not be heard at this meeting.

HB 1377 - Taxpayer Optimization Act. - Senator Jacumin moved to adopt the Proposed Committee Substitute for purposes of discussion. All voted and the motion carried. Representative Folwell explained the bill. Ms. Kory Goldsmith, Staff Attorney, gave additional explanation. Questions from Senators Jones, Dannelly, and Queen were answered by Ms. Goldsmith, and Ms. Margaret Foreman, North Carolina Association of Educators. Senator Swindell moved for a favorable report to the Proposed Committee Substitute, unfavorable to the original bill. All voted and the motion carried.

The meeting was recessed for ten minutes.

Senator Hartsell noted that UNC-TV had been subpoenaed for information related to the Yadkin River in and near Stanly County. Due to technical problems the meeting was then recessed until fifteen minutes after Session.

Evening Meeting:

Senator Hartsell called the meeting to order at 6:07 pm and gave an explanation for the meeting.

In recapping the agenda he noted that on the previous Thursday the Committee had unanimously voted to authorize the issuance of subpoenas to UNC-TV and to Eszter Vajda. The Committee sought copies of all footage in their possession regarding the Alcoa Corporation's activities in Stanly County, North Carolina near the Yadkin River. UNC-TV voluntarily delivered the requested materials on Monday, June 5, 2010. He noted that although he had not reviewed all the materials, he understood that they consisted of thirteen DVDs, and a rough inventory of the raw footage. He also noted that Ms. Vajda, who was in attendance, had been served with a subpoena on July 1, 2010. Each member had a copy of GS120-19.2 and a copy of an affidavit executed by Ms. Vajda which he then read. – **(Exhibit I.)** Senator Jones moved to accept the sworn statement in lieu of sworn testimony. All voted and the motion carried. Senator Hartsell

then explained that there were technical problems with the operating systems that caused a delay in the morning's proceedings. Senator Hartsell noted that he had received a request from Mr. Chuck Neely, Attorney representing Alcoa, asking that representatives from Alcoa be given the opportunity to speak. He agreed to hear them at the conclusion of the viewing of the DVD.

The Committee then viewed the DVD that was delivered by Ms. Vadja. (**Exhibit II.**) An electronic copy of this may be accessed from the North Carolina Legislative Librarian.

Mr. Chuck Neely was recognized and he deferred to Mr. William J. O'Rourke, Vice-President of Environmental Health and Safety, for Alcoa Corporation. Mr. O'Rourke made a statement on behalf of Alcoa and then along with Mr. Gene Ellis, Consultant for Alcoa, answered questions from Senators Vaughan, Berger, Jones, Atwater, Apodaca, Queen, Allran, Snow and Hartsell.

Senator Hartsell adjourned the meeting at 8:07 pm.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

INDEX OF ADDENDA TO MINUTES OF THE SENATE JUDICIARY II COMMITTEE MEETING ON JULY 6, 2010

I. 13 DVD's hand-delivered by Shannon Vickery, Director of Production for the University of North Carolina Center for Public Television (UNC-TV) to Senator Fletcher L. Hartsell, Jr., Chairman of the Senate Judiciary II Committee, on July 5, 2010, pursuant to a request made by Senator Hartsell under G.S. 120-19, containing all video in UNC-TV's possession regarding the work of Eszter Vajda in the production of a series of feature stories for North Carolina Now on the Alcoa Corporation's activities in Stanly County, North Carolina in and near the Yadkin River.

II. 1 DVD entitled "The Alcoa Story – Rough Cut" hand-delivered by Eszter Vajda, Senior Legislative Correspondent for UNC-TV, to the Senate Judiciary II Committee on July 6, 2010, pursuant to a subpoena issued under authority of G.S. 120-19.2 and a request made by Senator Fletcher L. Hartsell, Jr., pursuant to G.S. 120-19.

III. Excerpt of proceedings of the North Carolina Senate Judiciary II Committee meeting of July 6, 2010, transcription made available and hand-delivered to Senator Fletcher L. Hartsell, Jr., Chairman of the Senate Judiciary II Committee, on July 8, 2010, by Michael Taylor, lobbyist for Stanly County, North Carolina.

IV. Letter with attachments from William J. O'Rourke, Vice President for Sustainability, Environment, Health & Safety for Alcoa, hand-delivered by Charles B. Neely, Jr., lobbyist for Alcoa, to Senator Fletcher L. Hartsell, Jr., Chairman of the Senate Judiciary II Committee, on September 21, 2010.

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND COMMITTEE HEARING
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	July 6, 2010	9:00 - 11:00 AM	643 LB

The following will be considered:

Committee Hearing – Receipt and consideration of information related to the Yadkin River in and near Stanly County.

BILL NO.	SHORT TITLE	SPONSOR
SB 836	Oil Spill Liability, Response, & Preparedness	Senator Albertson
HB 1377	Taxpayer Optimization Act.	Representative Folwell Representative Brown Representative McElraft Representative Moore

Senator Fletcher L. Hartsell, Jr., Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY II COMMITTEE REPORT
Senator Fletcher L. Hartsell, Jr., Chair

Tuesday, July 06, 2010

Senator HARTSELL, JR.,
submits the following with recommendations as to passage:

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

H.B. **1377** Taxpayer Optimization Act.

Draft Number:	PCS 50968
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — **July 6, 2010**
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dennis Patterson	DSA
David Kelly	EDF
Connie Wilson	NC Water Right Comm.
Larry Jones	
MARK COEN	USA
Henry Booke	
Nancy McFarlane	
LARRY DRYE	
Jim Harrison	Town of Badin
Vanessa Mullinix	
Joyce Fitzpatrick	Fitzpatrick Communications

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — **July 6, 2010**
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Robert Brown	FUZ comm
Bill Bunker	ALCOA
David Orsbon	Intern
Dan Crawford	CCNC
Cindy Meeks	NCCN
Dana Fenton	City of Charlotte
Earl H. Robbins, Jr.	ALCOA
Kim Crouch	NC Bar Assn.
Elizabeth Biser	DENR
Robin Smith	DENR
Tommy DeVito	Rep. Glazier office

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — **July 6, 2010**
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Shannon Vickery	UNC-TV 10 TW Alexander Drive RTP, NC 27709
Brooks Skinner	UNC-TV "
Galen K Black	UNC-TV " " "
Judy Chriscoe	Sen. Bingham's LA
Doug Hoell	NCEM - CCPS
Mia Bailey	Electricities
Jan Prayer	EDF
Kimberlee Rankin	Sierra Club
Brian Demesey	MWC
Lou Rabbett	CYPC
Kathryn Winstead	NC SOS

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — **July 6, 2010**

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gabrielle K	NSS
[illegible]	NSS
Katherine Joyce	NCASA
DAVID BARNES	Poyner Spruill
Jackson Barnes	
Julia Adams	The Arc of NC
[illegible]	Estate : Weld
Mike Taylor	Stanly County
I. FAISON HICKS	Dept of Justice
Mona Lisa Wallace	Wallace & Graham
[illegible]	Wallace & Graham

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — **July 6, 2010**
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joye Peters	JP Assoc
Amy Fuller	Hunton & Wms —
George Everett	Duke Energy
Kathy Hawkins	"
Scott Gardner	"
Preston Howard	MCIC
Elizabeth Ireland	Covenant w/ NC's Children
John Monaghan	Piedmont Natural Gas
Erica Nelson	NCCCP
Paul Pulley	NCAJ

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 836*
House Committee Substitute Favorable 8/6/09
House Committee Substitute #2 Favorable 6/10/10
House Committee Substitute #3 Favorable 6/22/10
Fifth Edition Engrossed 6/23/10

Short Title: Oil Spill Liability, Response, & Preparedness. (Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO: (1) CLARIFY LIABILITY FOR DAMAGES CAUSED BY THE DISCHARGE OF NATURAL GAS, OIL, OR DRILLING WASTE INTO STATE COASTAL FISHING WATERS OR OFFSHORE WATERS; (2) PROVIDE FOR THE REVIEW OF INFORMATION REQUIRED FOR A PROPOSED OFFSHORE FOSSIL FUEL FACILITY IN ORDER TO DETERMINE CONSISTENCY WITH STATE GUIDELINES FOR THE COASTAL AREA; (3) DIRECT THE COASTAL RESOURCES COMMISSION TO REVIEW EXISTING LAWS AND REGULATIONS THAT PERTAIN TO OFFSHORE ENERGY EXPLORATION AND PRODUCTION IN LIGHT OF THE EXPLOSION, SINKING, AND SUBSEQUENT DISCHARGE OF OIL FROM THE BRITISH PETROLEUM DEEPWATER HORIZON OFFSHORE DRILLING RIG; (4) DIRECT THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY TO IMMEDIATELY REVIEW AND UPDATE THE STATE OIL SPILL CONTINGENCY PLAN IN ORDER TO PREPARE THE STATE IN THE EVENT THAT OIL DISCHARGED FROM THE BRITISH PETROLEUM DEEPWATER HORIZON OFFSHORE DRILLING RIG IS TRANSPORTED BY CURRENTS OR OTHER MECHANISMS TO THE NORTH CAROLINA COAST; AND (5) DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO REVIEW LIMITATIONS ON RECOVERY BY THE STATE FOR DAMAGE TO PUBLIC RESOURCES AND FOR THE COST OF OIL OR OTHER HAZARDOUS SUBSTANCE CLEANUP ESTABLISHED PURSUANT TO G.S. 143-215.89.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 143-215.89 reads as rewritten:

"**§ 143-215.89. Multiple liability for necessary ~~expenses.~~expenses; limit on State recovery.**

(a) Any person liable for costs of cleanup of oil or other hazardous substances under this Part shall have a cause of action to recover such costs in part or in whole from any other person causing or contributing to the discharge of oil or other hazardous substances into the waters of the State, including any amount recoverable by the State as necessary expenses.

(b) The total recovery by the State for damage to the public resources pursuant to G.S. 143-215.90 and for the cost of oil or other hazardous substances cleanup, arising from any discharge, shall not exceed the applicable limits prescribed by federal law with respect to the United States government on account of such discharge. The limitations on recovery referenced in this subsection shall not apply to damages recoverable pursuant to G.S. 143-215.94CC."

SECTION 1.(b) G.S. 143-215.94BB reads as rewritten:

"**§ 143-215.94BB. Definitions.**

In addition to the definitions set out in G.S. 143-215.77, ~~as used in this Part,~~ the following definitions shall ~~apply:~~apply to this Part:

(1) "Damages" are damages for any of the following:

a. Injury or harm to real or personal property, which includes the cost of restoring, repairing, or replacing any real or personal property damaged or destroyed by a discharge under this section, any income lost from the time such property is damaged to the time such property is restored, repaired, or replaced, and any reduction in value of such property caused by such discharge by comparison with its value prior thereto.

b. Business loss, including loss of income or impairment of earning capacity due to damage to real or personal property or to damage or destruction of natural resources upon which such income or earning capacity is reasonably dependent.

c. Interest on loans obtained or other financial obligations incurred by an injured party for the purpose of ameliorating the adverse effects of a discharge pending the payment of a claim in full as provided by this Article.

d. Costs of cleanup, removal, or treatment of natural gas, oil, or drilling waste discharges.

e. Costs of restoration, rehabilitation, and, where possible, replacement of wildlife or other natural resources damaged as a result of a discharge.

f. When the injured party is the State or one of its political subdivisions, in addition to any injury described in subparagraphs (a) to (e), inclusive, damages include all of the following:

1. Injury to natural resources or wildlife, including recreational or commercial fisheries, and loss of use and enjoyment of public beaches and other public resources or facilities within the jurisdiction of the State or one of its political subdivisions.

2. Costs to assess damages to natural resources, wildlife, or habitat.

3. Costs incurred to monitor the cleanup of the natural gas, oil, or drilling waste spilled.

4. Loss of State or local government tax revenues resulting from damages to real or personal property proximately resulting from a discharge.

(2) For the purposes of this Part, "oil" and "drilling wastes" include, but are not limited to: petroleum, refined or processed petroleum, petroleum by-products, oil sludge, oil refuse, oil mixed with wastes and chemicals, or other materials used in the exploration, recovery, or processing of oil. "Oil" does not include oil carried in a vessel for use as fuel in that vessel.

(3) "Natural gas" includes natural gas, liquefied natural gas, and natural gas by-products. "Natural gas" does not include natural gas carried in a vessel for use as fuel in that vessel.

(4) "Exploration" means undersea boring, drilling, ~~and soil sampling.~~soil sampling, and any other technique employed to assess and evaluate the presence of subterranean oil and natural gas deposits.

(5) "Injured party" means any person who suffers damages from natural gas, oil, or drilling waste which is discharged or leaks into marine waters, or from offshore exploration. The State, or a county or municipality, may be an injured party.

(6) "Responsible person" means any of the following:

a. The owner or transporter of natural gas, oil, or drilling waste which causes an injury covered by this Part.

b. The owner, operator, lessee of, or person who charters by demise, any offshore well, undersea site, facility, oil rig, oil platform, vessel, or pipeline which is the source of natural gas, oil, drilling waste, or is the source or location of exploration which causes an injury covered by this Part.

"Responsible party" does not include the United States, the State, any county, municipality or public governmental agency; however, this exception to the definition of "responsible person" shall not be read to exempt utilities from the provisions of this Part.

(7) "Offshore waters" shall include both the territorial sea extending seaward from the coastline of North Carolina ~~to the State and federal boundary, and United States jurisdictional waters of the Atlantic Ocean adjacent to the territorial sea of the State.~~or any other coastal state bordering the Atlantic Ocean, including the Gulf of Mexico, and the exclusive economic zone extending seaward from the territorial sea of each such state.

(8) "Natural resources" shall include "marine and estuarine resources" and "wildlife resources" as those terms are defined in G.S. 113-129(11) and G.S. 113-129(17), respectively.

(9) "Coastal fishing waters" has the same meaning as in G.S. 113-129.

(10) "Exclusive economic zone" has the same meaning as in section 1001(8) of the Oil Pollution Act of 1990, 33 U.S.C. § 2701(8)."

SECTION 1.(c) G.S. 143-215.94CC reads as rewritten:

"**§ 143-215.94CC. Liability under this section; exceptions.**

(a) Any responsible person shall be strictly liable, notwithstanding any language of limitation found in G.S. 143-215.89, for all cleanup and removal costs and all direct or indirect damages incurred within the territorial jurisdiction of the State by any injured ~~party, which~~party that arise out of, or are caused ~~by,~~by any of the following:

(1) ~~the discharge or leaking~~ The discharge, as defined in G.S. 143-215.77, of natural gas, oil, or drilling waste into or onto ~~"coastal fishing waters" as defined in G.S. 113-129(4), or offshore waters, or by any exploration in or upon~~ coastal fishing waters or offshore waters, from any of the following ~~sources:~~sources wherever located:

~~(1)~~a. Any ~~offshore~~ well or undersea site at which there is exploration for or extraction or recovery of natural gas or oil.

~~(2)~~b. Any ~~offshore~~ facility, oil rig, or oil platform at which there is exploration for, or extraction, recovery, processing, or storage of, natural gas or oil.

~~(3)~~c. Any vessel ~~offshore~~ in which natural gas, oil, or drilling waste is transported, processed or stored other than for purposes of fuel for the vessel carrying it.

~~(4)~~d. Any pipeline ~~located offshore~~ in which natural gas, oil, or drilling waste is transported.

(2) Any exploration in or upon coastal fishing waters.

(3) Any technique or method used for cleanup and removal of any discharge of natural gas, oil, or drilling waste from any source listed in subdivision (1) of this subsection into or onto coastal fishing waters, including, but not limited to, chemical dispersants.

(b) A responsible person is not liable to an injured party under this section for any of the following:

(1) Damages, other than costs of removal incurred by the State or a local government, caused solely by any act of war, hostilities, civil war, or insurrection or by an unanticipated grave natural disaster or other act of God of an exceptional, inevitable, and irresistible character, which could not have been prevented or avoided by the exercise of due care or foresight.

(2) Damages caused solely by the negligence or intentional malfeasance of that injured party.

(3) Damages caused solely by the criminal act of a third party other than the defendant or an agent or employee of the defendant. In any action arising under the provisions of this Article wherein this exception is raised as a defense to liability, the burden of proving that the alleged third-party intervention occurred in such a manner as to limit the liability of the person sought to be held liable shall be upon the person charged.

(4) Natural seepage not caused by a responsible person.

(5) Discharge ~~or leaking~~ of oil or natural gas from a private pleasure boat or commercial fishing vessel having a fuel capacity of less than 500 gallons.

(6) Damages which arise out of, or are caused by, a discharge ~~which~~ that is authorized by and in compliance with a State or federal permit.

(7) Damages that could have been reasonably mitigated by the injured party in accordance with common law.

(c) A court of suitable jurisdiction in any action under this Part may award reasonable costs of the suit and attorneys' fees, and the costs of any necessary expert witnesses, to any prevailing plaintiff. The court may award reasonable costs of the suit and attorneys' fees to any prevailing defendant only if the court finds that the plaintiff commenced or prosecuted the suit under this Part in bad faith or solely for purposes of harassing the defendant."

SECTION 1.(d) G.S. 143-215.94JJ reads as rewritten:

"**§ 143-215.94JJ. Federal law.**

Nothing in this Part shall authorize State agencies to impose any duties or obligations in conflict with limitations on State authority established by federal law at the time such agency action is taken. Likewise, no additional liability is established by this Part to the extent that, at the time of the injury, federal law establishes limits on liability which preempt State law. The federal limits on liability established in the Oil Pollution Act of 1990, 33 U.S.C.A. §§ 2701 to 2762, shall not apply to discharges or pollution by oil within the territorial jurisdiction of the State."

SECTION 2. Part 4 of Article 7 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"**§ 113A-119.2. Review of offshore fossil fuel facilities.**

(a) In addition to the definitions set out in G.S. 113A-103, as used in this section, the following definitions shall apply:

(1) "Coastal fishing waters" has the same meaning as in G.S. 113-129.

(2) "Discharge" has the same meaning as in G.S. 143-215.77.

(3) "Offshore fossil fuel facility" means those facilities for the exploration, development, or production of oil or natural gas which, because of their size, magnitude, or scope of impacts, have the potential to affect any land or

water use or natural resource of the coastal area. For purposes of this definition, offshore fossil fuel facilities shall include, but are not limited to:

a. Structures, including drill ships and floating platforms and structures relocated from other states or countries, located in coastal fishing waters.

b. Any equipment associated with a structure described in sub-subdivision a. of this subdivision, including, but not limited to, pipelines and vessels that are used to carry, transport, or transfer oil, natural gas, liquid natural gas, liquid propane gas, or synthetic gas.

c. Onshore support or staging facilities associated with a structure described in sub-subdivision a. of this subdivision.

(4) "Oil" has the same meaning as in G.S. 143-215.77.

(b) In addition to any other information necessary to determine consistency with State guidelines adopted pursuant to G.S. 113A-107, the following information is required for the review of an offshore fossil fuel facility located in coastal fishing waters:

(1) All information required to be included in an Exploration Plan required pursuant to Subpart B of Part 250 of 30 C.F.R. (July 1, 2009 edition).

(2) All information required to be included in an Oil-Spill Response Plan required pursuant to Subpart B of Part 254 of 30 C.F.R. (July 1, 2009 edition).

(3) An assessment of alternatives to the proposed offshore fossil fuel facility that would minimize the likelihood of an unauthorized discharge.

(4) An assessment of the potential for an unauthorized discharge to cause temporary or permanent violations of the federal and State water quality standards, including the antidegradation policy adopted pursuant to section 303(d) of the federal Clean Water Act (33 U.S.C. § 1313(d)).

(5) Any other information that the Commission determines necessary for consistency review."

SECTION 3. In light of the recent events pertaining to the British Petroleum Deepwater Horizon offshore drilling rig, the Coastal Resources Commission shall review existing statutes and modify existing rules that pertain to offshore energy exploration and production and make recommendations, if any, to the Environmental Review Commission on or before April 1, 2011.

SECTION 4. The Department of Crime Control and Public Safety shall immediately review the potential impacts of oil leaking from the British Petroleum Deepwater Horizon offshore drilling rig on the North Carolina coast and shall update the Oil Spill Contingency Plan, required by G.S. 143-215.94HH, as necessary to ensure the State's preparedness in the event the oil leaking from the British Petroleum Deepwater Horizon offshore drilling rig is transported by currents or other mechanisms to the North Carolina coast or the State's waters. In updating the plan, the Department shall assess the actions that are being implemented to manage and mitigate economic and environmental impacts resulting from the spill, determine which solutions have proven successful, identify the best management practices available to address the impacts, and identify the resources necessary to carry out the Oil Spill Contingency Plan.

SECTION 5. The Department of Environment and Natural Resources shall review the limitations on recovery by the State for damage to public resources and for the cost of oil or other hazardous substance cleanup established pursuant to G.S. 143-215.89. The Department shall report the results of its review, including any recommendations for changes to the limitations, to the Environmental Review Commission on or before December 1, 2010.

SECTION 6. This act is effective when it becomes law. Sections 1(a), 1(b), 1(c), and 1(d) of this act apply to any damages, as defined in G.S. 143-215.94BB, incurred on or after that date.

HOUSE BILL 1377
Second Edition Engrossed 5/14/09

Short Title:	Taxpayer Optimization Act.	(Public)
Sponsors:	Representatives Folwell, McElraft, Brown, Moore (Primary Sponsors); and Starnes.	
Referred to:	State Government/State Personnel, if favorable, Judiciary II.	

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE CERTAIN SALES OF STATE PROPERTY SUBJECT TO UPSET BIDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 146-27 reads as rewritten:

"**§ 146-27. The role of the Department of Administration in sales, leases, and rentals.**

(a) General. – Every sale, lease, rental, or gift of land owned by the State or by any State agency shall be made by the Department of Administration and approved by the Governor and Council of State. A lease or rental of land owned by the State may not exceed a period of 99 years. The Department of Administration may initiate proceedings for sales, leases, rentals, and gifts of land owned by the State or by any State agency.

(b) Large Disposition. – If a proposed disposition is a sale or gift of land with an appraised value of at least twenty-five thousand dollars ($25,000), the sale or gift shall not be made until after consultation with the Joint Legislative Commission on Governmental Operations.

(b1) Upset Bids. – If a proposed disposition of land or other real property with a value of at least twenty-five thousand dollars ($25,000) is a sale or other transfer to a private entity that operates or is established to operate for profit, the proposed disposition shall be subject to upset bids, unless other, non-monetary consideration associated with the transaction has been made public. If other consideration is offered such that upset bids are not required, notice of the sale and other consideration shall be posted and published in a manner similar to that provided in G.S. 1-339.17. The Department of Administration shall adopt a procedure for upset bids that is based on the upset bid procedure set forth in Part 2 of Article 29A of Chapter 1 of the General Statutes.

(c) Expired effective September 1, 2007."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1377
Second Edition Engrossed 5/14/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1377-CSLE-52 [v.2]

7/2/2010 12:26:31 PM

Short Title: Safe Schools Act. (Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO ENACT THE SAFE SCHOOLS ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-325(o) reads as rewritten:

"(o) Resignation. –

(1) If a career employee has been recommended for dismissal for a reason that is a mandatory reporting ground to the Licensure Section of the Department of Public Instruction and the employee chooses to resign without the written agreement of the superintendent, then:

a. The superintendent shall report the matter to the Licensure Section of the Department of Public Instruction.

b. The employee shall be deemed to have consented to (i) the placement in the employee's personnel file of the written notice of the superintendent's intention to recommend dismissal and (ii) the release of the fact that the superintendent has reported this employee to DPI's Licensure Section to prospective employers, upon request. The provisions of G.S. 115C-321 shall not apply to the release of this particular information.

c. Within five working days of written notification from the superintendent, the State Board of Education shall provide the licensee with a review hearing to initiate revocation.

(2) A teacher, career or probationary, who is not recommended for dismissal should not resign without the consent of the superintendent unless he or she has given at least 30 days' notice. If ~~the~~ a teacher who is not recommended for dismissal does resign without giving at least 30 days' notice, the board may request that the State Board of Education revoke the teacher's certificate for the remainder of that school year. A copy of the request shall be placed in the teacher's personnel file."

SECTION 2. This act becomes effective July 1, 2010, and applies to employees who resign on or after that date.

VISITOR REGISTRATION SHEET - Evening meeting

SENATE JUDICIARY II — **July 6, 2010**

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jon Allen	NMRS
Jim Mann	Stanly County
Preston Howard	NCIC
Ryan Updike	Brooks Pierce
Cameron Hunley	Electricities
Daniel Baum	Troutman Sanders
Cody Thomas	NCAR
Jessica Hayes	NCHBA

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — **July 6, 2010**

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tony M. Dennis	Stanly County Comm.
Andy Lucas	Stanly County 1000 N. First Street, Albemarle 28001 NC
Brooks Sloniman	UNC-TV 10 Tw Alexander Dr RTP, NC
[illegible]	NC Water Rights Committee
Virginia Dunn	NC Water Rights Comm
DEAN NAUJOKS	YADKIN RIVERKEEPER
Judy Chriscoe	NCGA
Carl Mackensen	Sierra Club
Dan Conrad	NCCN
[illegible]	RLA
Earl H. Robbins, Jr	ALCOA INC

VISITOR REGISTRATION SHEET

SENATE JUDICIARY II — **July 6, 2010**
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
LEE CALIFF	ALCOA 1909 K ST NW WASHINGTON, DC 20006
Doug Heron	WM
Angie Harris	Williams Mullen
BILL BUNKER	ALCOA BADIN NC
Linda Dunker	NCAE
Vanessa Millinix	Stanly County Resident
LARRY DRYE	
Jim HARRISON	BADIN TOWN

§ 120-19. State officers, etc., upon request, to furnish data and information to legislative committees or commissions.

Except as provided in G.S. 105-259, all officers, agents, agencies and departments of the State are required to give to any committee of either house of the General Assembly, or any committee or commission whose funds are appropriated or transferred to the General Assembly or to the Legislative Services Commission for disbursement, upon request, all information and all data within their possession, or ascertainable from their records. This requirement is mandatory and shall include requests made by any individual member of the General Assembly or one of its standing committees or the chair of a standing committee. (Resolution 19, 1937, p. 927; 1993, c. 485, s. 37; 2001-491, s. 33.1.)

§ 120-19.2. Invitations to witnesses; when hearings and examinations held; subpoenas.

(a) Committees of the General Assembly may invite witnesses to appear and testify concerning pending legislation or other matters properly before the committee and may require the attendance of witnesses by subpoena as hereinafter provided. The committee may submit questions in writing to the witness in advance of his appearance. Witnesses may be permitted, in the discretion of the committee, to submit written, sworn statements in addition to or in lieu of sworn oral testimony before the committee.

(b) Hearings and examinations of witnesses concerning pending legislation or other appropriate matter may be conducted during sessions of the General Assembly, during recesses, and in the interim period between sessions, at such times as committees are authorized to convene.

(c) A subpoena for the purpose of obtaining the testimony of a witness may be issued by the chairman of a committee, upon authorization of the Speaker of the House or the Speaker pro tempore of the House for House committees, and the President of the Senate or the President pro tempore of the Senate for Senate committees, and by majority vote of the committee. A subpoena for the purpose of obtaining the testimony of a witness before a joint committee of the House and Senate may be issued by the joint action of the cochairmen of the joint committee, upon authorization of one of the above officers from each house and by majority vote of the joint committee. The subpoena shall be signed by the committee chairman and either the Speaker of the House, the President of the Senate, the President pro tempore of the Senate, or the Speaker pro tempore of the House and shall be directed to the witness, and state the name of the witness, and a description of any papers, documents, or records that he is required to bring with him; and the subpoena shall state the subject matter of the hearing before the committee, the name of the committee, and the name and address of the committee chairman; and the subpoena shall also clearly designate the date, time, and place at which the witness's presence is required.

(d) Any witness shall have five days' notice of hearing, unless waived by the witness, and subpoenas may be served by a member of the State Bureau of Investigation, the State Highway Patrol, or within their respective jurisdiction by any sheriff or deputy, or any municipal police officer or other law-enforcement officer. In addition, a subpoena

may be served in the manner provided for service of subpoenas under the North Carolina Rules of Civil Procedure.

(e) The form of subpoena shall generally follow the practice in the General Court of Justice in North Carolina with such additional information or modification as shall be approved by the Legislative Services Commission.

(f) Return of the subpoena shall be to the Legislative Services Officer, where a permanent record shall be maintained for five years, and one copy of the subpoena shall be immediately filed with the committee chairman and one copy transmitted to the Speaker of the House, the President of the Senate, the President pro tempore of the Senate, or the Speaker pro tempore of the House, as the case may be. (1973, c. 543.)

Exhibit 1

STATE OF NORTH CAROLINA

WAKE COUNTY

AFFIDAVIT

The undersigned affiant, ESZTER VAJDA, being first duly sworn, hereby deposes and says:

1. I am over the age of eighteen, suffer no legal disabilities, have personal knowledge of the facts set forth below, and am competent to testify.

2. I am employed as a Senior Legislative Correspondent for UNC-TV. While on assignment for UNC-TV on a matter of public interest, I conducted a journalistic investigation of Alcoa Corporation's activities in Stanly County, North Carolina, in and near the Yadkin River. That investigation resulted in more than 200 hours of raw interview footage of more than two dozen individuals. It was my hope that as part of my job I would one day be able to tell the story of my investigation by way of a documentary.

3. On July 1, 2010, I was served with a subpoena issued by the Senate Judiciary II Committee (the "Committee") directing me to appear before the Committee in Raleigh, North Carolina, on the 6th day of July, 2010, at 9:00 a.m., in Room 643 of the Legislative Office Building, 300 N. Salisbury Street, Raleigh, North Carolina. A separate letter from Senator Fletcher L. Hartsell, Jr. ("Senator Hartsell") issued pursuant to G.S. 120-19, directed me to deliver to him on July 5, 2010, a copy of all footage in my possession regarding Alcoa Corporation's activities in Stanly County, North Carolina, in and near the Yadkin River.

4. On July 2, 2010, at the request of my employer, I delivered to UNC-TV the more than 200 hours of raw interview footage referenced in paragraph 2 of this Affidavit. Upon information and belief, it is my understanding that on July 5, 2010, in response to a separate letter and at his request, UNC-TV delivered a copy of these same materials to Senator Hartsell.

5. I understood from my managers at UNC-TV that the station lacked the resources to produce and air a documentary of the story that I had researched and that is referenced in Paragrah 2. Because I believe in the story and because I continued to hope that one day the station might have the resources to produce it as a documentary, I have worked over the past four months with the raw footage, on my own equipment, to develop a program ("the Program") that might become that documentary. Mindful of the station's limited resources, I produced the Program on my own time. The Program is approximately one hour in length and as of today is still not final.

6. I believe that because I am a journalist, the law of North Carolina provides me with a qualified privilege against the forced disclosure of confidential or nonconfidential information that I obtained or prepared in formulating my work. I believe, after consulting with independent counsel, that this law applies to the proceedings of the Committee for which I have received subpoenas.

7. I believe very strongly in the fundamental constitutional right of freedom of the press, and therefore have approached this matter with caution and considerable thought.

8. I understand that my journalist's privilege can be overcome if this committee meets three requirements set out in the statute, N.C.G.S. 8-53.11. In this situation I believe that the Committee, as a representative body of the people of North Carolina, has met the test set forth in the statute.

9. Without waiving the right to exercise my journalist's privilege should I ever again be subpoenaed by the Committee or any other judicial or quasi-judical body, I have delivered the Program pursuant to the subpoena and pursuant to the letter by copying the Program file from my hard drive to a hard drive under the use and control of the General Assembly.

10. Pursuant to G.S. 120-19.2(a), I request that the Committee permit me to submit this sworn statement in lieu of sworn oral testimony.

This the 6th day of July, 2010.

Eszter Vajda

Wake County, North Carolina

Sworn to and subscribed before me this day by ESZTER VAJDA.

The 6th day of July, 2010.

Notary Public

My Commission expires: 9/14/14

LUCY B ANDERS
NOTARY PUBLIC
WAKE COUNTY, NC
My Commission Expires 9-14-2014

NORTH CAROLINA GENERAL ASSEMBLY
Legislative Services Office

George R. Hall, Legislative Services Officer

rch Division
300 N. Salisbury Street, Suite 545
Raleigh, NC 27603-5925
Tel. 919-733-2578 Fax 919-715-5460

O. Walker Reagan
Director

MEMORANDUM

TO: Senator Fletcher L. Hartsell, Jr.

FROM: Kory Goldsmith, Counsel to Senate Judiciary II Committee KG

DATE: July 2, 2010

RE: Waiver of Notice and Acknowledgment of Receipt by Eszter Vajda

Pursuant to G.S. 120-19.2(d), a witness may waive his or her five day's notice of hearing. As you know, on June 30, 2010, the Senate Judiciary II Committee authorized the issuance of a subpoena to Eszter Vajda. Ms Vajda was served on July 1, 2010. At that time, she waived the five day notice and also acknowledged receipt of your request pursuant to G.S. 120-19. The original waiver is enclosed and should be kept with the Committee's records.

ıse let me know if you have any questions.

Enclosure

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

WAIVER OF NOTICE AND ACKNOWLEDGEMENT OF RECEIPT

Pursuant to G.S. 120-19.2(d), I hereby waive my right to five days' notice of my required attendance at the meeting of the Senate Judiciary II Committee scheduled for 9 a.m., July 6, 2010, in Room 643 of the Legislative Office Building.

I also acknowledge that I have received a letter dated June 30, 2010, from Senator Fletcher L. Hartsell, Jr. and pursuant to G.S. 120-19, directing me to provide a copy of all footage, (including all interviews, B-roll and camera masters) in my possession regarding the Alcoa Corporation's activities in Stanly County, North Carolina in and near the Yadkin River ("The Alcoa Story").

This the 14 day of July, 2010.

Eszter Vajda

Witness: JEFF WEAVER

Subject: CHINESE CONTROL OF THE YADKIN?

If Alcoa receives a 50-year license to control the Yadkin River, it can sell that license to any other company, even one controlled by a foreign government. Based on the press release below, it is not farfetched to think that if Alcoa sells the license to its business partner, the Governor of North Carolina would have to ask the Chinese Government for permission to use our own water. We need your help to make sure this doesn't happen. Please vote "YES" on SB 967.

Small Cap Watch

Alcoa Inc. and Aluminum Corporation of China ("Chinalco") to Explore Strategic Ventures

Chinalco and Alcoa jointly announced today that the two companies intend to explore opportunities to expand their commercial relationship by identifying strategic ventures that will benefit from the companies' complementary strengths in bauxite, alumina, aluminum and fabricated products.

"Alcoa is a respected leader in our industry and a valuable friend. We intend to grow our friendship and find ways to complement each other's business on a global basis," said Mr. Xiao Yaqing, President of Chinalco. "Alcoa is the founder of the modern aluminum industry, and Chinalco is one of the fastest-growing companies in the industry. As partners we will have many opportunities to prosper and revitalize the market."

Klaus Kleinfeld, CEO and President of Alcoa, highlighted some of those opportunities for a strategic relationship: "As governments stimulate their economies during the downturn, particularly infrastructure stimulus programs in China and the United States, the demand for high quality, high performing aluminum technologies will grow dramatically. And when the global economy recovers, the pent-up consumer and industrial demand will create a broad array of opportunities in both developed and developing regions for Chinalco and Alcoa."

Stressing the advantages of aluminum to address the current megatrends of population growth, urbanization and climate change, Kleinfeld said: "Because aluminum is a very strong, but lightweight, material that is fully recyclable it is increasingly vital in the construction industry's shift towards "green buildings" in the modern urban environment and it satisfies the quest by the transportation industry for lightweight, fuel efficient

vehicles. We estimate global aluminum demand will increase 6% CAGR over the next decade, with the highest growth in Asia."

Mr. Xiao highlighted his confidence that an expanded commercial relationship between Alcoa and Chinalco will have significant benefits for the two companies. "The cooperation between Chinalco and Alcoa began in 2001 when Chinalco completed the initial public offering of one of its subsidiaries, Chalco, in Hong Kong and New York. We strengthened our relationship in 2008 with the formation of Shining Prospect Pte. Ltd. We have appreciated Alcoa's valuable support and cooperation to date, and we continue to do so. We look forward to exploring opportunities for future cooperation in respect of business ventures where both Alcoa and Chinalco can combine their respective strengths and expertise. Looking to the future we see many such opportunities to build on, and deepen, that strong base of collaboration and cooperation."

In connection with these matters, Alcoa and Chinalco have also entered into an agreement by which Chinalco will redeem the convertible note issued by Shining Prospect Pte. Ltd., a wholly-owned subsidiary of Chinalco, to Alcoa last year for the funding of Shining Prospect's purchase of ordinary shares in the London-listed Rio Tinto plc. The original principal amount of the note would have been payable on February 1, 2011. Under the terms of the agreement entered into today, the note will be redeemed by Chinalco for a total of US$1.021 billion payable to Alcoa in three installments (over a period ending on July 31, 2009), and Alcoa's lien on and indirect interest in Rio Tinto shares held by Shining Prospect will end. The total redemption amount represents the discounted net present value of the principal amount of the note (and the total redemption amount will be further discounted if any installment payment is made earlier than contemplated by the agreement). The agreement also provides that Alcoa's pro rata portion of the dividends paid by Rio Tinto to date since the issuance of the note as and when recovered by Shining Prospect will be paid to Alcoa.

About Alcoa

Alcoa is the world leader in the production and management of primary aluminum, fabricated aluminum and alumina combined, through its active and growing participation in all major aspects of the industry. Alcoa serves the aerospace, automotive, packaging, building and construction, commercial transportation and industrial markets, bringing design, engineering, production and other capabilities of Alcoa's businesses to customers.

In addition to aluminum products and components including flat-rolled products, hard alloy extrusions, and forgings, Alcoa also markets Alcoa® wheels, fastening systems, precision and investment castings, and building systems. The Company has been named one of the top most sustainable corporations in the world at the World Economic Forum in Davos, Switzerland and has been a member of the Dow Jones Sustainability Index for seven consecutive years. More information can be found at www.alcoa.com

About Chinalco

Aluminum Corporation of China (CHINALCO), a State-owned enterprise, is one of China's largest diversified metals and mining companies. It conducts the exploration, mining and processing of mineral resources and provides engineering and technical services to the mining industry. Headquartered in Beijing, China, Chinalco and its subsidiaries have operations across 22 provinces in China and 15 overseas offices across 10 countries. Between 2001 and 2007, Chinalco's assets increased by a factor of approximately 4.7, representing a compound annual growth rate of approximately 29%. By the end of 2007, Chinalco was the world's second largest alumina producer and the third largest primary aluminum producer. In 2008, Chinalco became a Fortune Global 500 company.

Senate JII Committee | Draft Remarks
July 6, 2010

Mr. Chairman and Committee Members:

Thank you for the opportunity to appear today.

What we just saw is not an accurate picture of Alcoa's long history in North Carolina. It doesn't tell you the truth about our company or our environmental record.

Let me share with you a few important points you need to know:

Alcoa is a company that has a history of doing the right thing. We have been named one of the most sustainable and environmentally responsible companies in the world – and we are proud of that reputation. Environmental responsibility and the health and safety of our employees are core values at Alcoa – and we do not take those responsibilities lightly.

My job __

When we started our operations in North Carolina – nearly 100 years ago – it was long before there were any environmental regulations and long before anyone understood all of the environmental impacts that we know about today.

1) When Alcoa started to learn about the environmental impacts of our operations, we stepped up and started working together with state and federal officials to identify and address these issues in a responsible manner. Since then, we have spent more than $10 million on remediation efforts at the Badin site. We are fully compliant with North Carolina and federal environmental laws and are proud of our collaboration with state regulatory authorities.

2) As part of our commitment to protect the environment, we studied the sediments in Badin Lake near our plant. And when we found low levels of PCBs in the sediments during a 1997 study, we immediately notified the State and the local community. The State determined that the sediments – which were already similar to post-cleanup levels recommended by the EPA – did not pose a risk.

Since then, we have continued to monitor the sediments to make sure they do not spread. And they have not. That is one reason why state health officials suggested looking upstream for sources of PCB contamination following the Badin Lake fish study.

Our opponents have claimed that the PCBs in Badin Lake can be directly tied back to Alcoa's operations. But Dr. John Rodgers, the Clemson professor who supposedly made that connection, backed off his claims when under oath.

In a deposition, Dr. Rodgers admitted that the work in his July 27, 2009 study was not a "definitive fingerprint" that could link the PCBs in the fish to Alcoa's operation. Dr. Rodgers went on to say that there was data inconsistent with a relationship between PCBs from Alcoa's plant and the fish in Badin Lake ... and said there could be other sources of PCBs responsible for the PCBs in the fish.

The NC Division of Waste Management went even further in a February 25, 2009 memo about the Badin Lake fish study. That memo said the source of the PCBs could not be determined with any certainty and noted that:

- The small pocket of PCBs in sediments near Alcoa's plant were analyzed and "did not pose a significant health risk."

- The Southwest region of Badin Lake, where the Alcoa facility is located, found only one fish tissue sample that was above the standard for PCBs."

- Numerous congeners not used at the Alcoa facility were detected in the fish tissue samples collected in Badin Lake

It is important to recognize that there are more than 4,500 square miles that drain into the Yadkin Project – and the State has already found similar concentrations of PCBs in fish upstream of Badin Lake, near Mocksville.

The bottom line: Alcoa complies with North Carolina's environmental laws and we've gone above and beyond many regulatory requirements.

3) Throughout the relicensing process, we worked with state agencies, environmental groups and others to craft an agreement that will improve water quality in the Yadkin River, provide for long-term conservation of land and protect the environment. We conducted more than 20 technical studies and spent considerable time addressing these issues. We spent over $20 million dollars on these environmental tests on the Yadkin Project and on the relicensing process.

We committed to spend $240 million to upgrade the Project, $80 million of which is solely to increase dissolved oxygen in the Yadkin. We have already expended over $40 million on this upgrade effort.

4)Environmental points from video.

5) Thanks. Happy to take questions.

Senator Marc Basnight
President Pro Tempore of the North Carolina Senate
16 W. Jones St., Room 2007
Raleigh, NC 27601

Senator Fletcher L. Hartsell, Jr.
Chairman of the Senate Judiciary II Committee
300 N. Salisbury St., Room 518
Raleigh, NC 27603

July 5th, 2010

Senator Basnight and Senator Hartsell:

This letter is on behalf of Capitolbeat, the national association of statehouse reporters and editors. We are profoundly concerned about the orders and subpoenas you recently issued to UNC-TV and Senior Legislative Correspondent Eszter Vajda, a member of our Board, in reference to her investigative report on Alcoa's Yadkin River Dam.

We understand that this specific circumstance is complex and involves issues beyond those surrounding press freedoms. We also take note that UNC-TV is a state agency, and could therefore be construed to be subject to the same legislative reporting laws that apply to other agencies. However, we strongly disagree with that interpretation. Even though the station is part of state government, its journalists and its work products are still entitled to not only First Amendment protections, but the protection of the state's shield law as well.

Whatever the larger circumstances of the case may be, we must object to the legislative use of a subpoena to compel a journalist to testify and produce her work. Such action is counter to our nation's tradition of press freedoms, and noxious to the idea of a free press. Furthermore, it sets a dangerous precedent. Journalists should never be compelled to serve as the investigative arm of a government agency.

As your subpoenas indicate, North Carolina G.S. 120-19 gives the General Assembly the right to demand information from state agencies. If you truly believe UNC-TV to be subject to that law, then the subpoenas are superfluous. But we believe that the shield law, G.S. 8-53.11, clearly supersedes both the orders and the subpoenas.

Senator Hartsell, you helped draft the shield law in 1999, and both of you supported the legislation when the General Assembly passed it. We ask that you withdraw your orders and subpoenas immediately.

Respectfully,

Laura Leslie,
President, Capitolbeat

Cc: Eszter Vajda, correspondent, UNC-TV
Tom Howe, General Manager, UNC-TV
John Bussian, Counsel, NC Press Association
Gary Robertson, President, NC Capitol Press Corps

Quick Facts Alcoa FERC Lease

- 1958 Carolina Aluminum (now Alcoa) **promised 1,000 jobs** for the Badin Aluminum Smelting Works which allowed them to receive a 50-year license from the Federal Energy Regulatory Commission (FERC). **Aloca now employs around 20 people** to generate power and minimally maintain the property.

- Carolina Aluminum agreed in 1958 to allow FERC to recapture the land in order to receive the license agreeing to a **"net investment price"** that is in **Alcoa's 2006 FERC application at $24.16 million**

- The Federal Power Act (FPA) provides that upon the expiration of the license the transfer price is not to exceed fair value. **The tax value on Alcoa property at Badin Lake as of January 1, 2010 was $198, 979,950.**

- If Alcoa's FERC relicensing is denied, **the federal government, NOT THE STATE**, will deal with the Alcoa on the value and require the new licensee to compensate Alcoa.

- **Estimated Net Annual Revenue** from power generation for Alcoa in 2001 was **$25MM to $35MM and many experts believe that is on the very conservative side**

- **Please vote to simply establish a trust so that the General Assembly has proper input in the future should Alcoa not receive relicensing from FERC**

Connie Wilson, Lobbyist
NC Water Rights Committee
919-274-0557

PARKER POE

PARKER POE ADAMS & BERNSTEIN LLP

MEMORANDUM

May 19, 2009

TO: NORTH CAROLINA HOUSE OF REPRESENTATIVES

FM: AL ADAMS, TRACY KIMBRELL, MIKE TAYLOR,
BRUCE THOMPSON
LOBBYISTS FOR STANLY COUNTY

RE: ALCOA AND BADIN LAKE FISH CONSUMPTION ADVISORY

The North Carolina Department of Health and Human Services ordered a fish consumption advisory on February 11, 2009, after finding elevated levels of PCBs in Badin Lake which is one of the reservoirs that make up the Yadkin Hydroelectric Project controlled by Alcoa. For years, Alcoa manufactured aluminum at the Badin Works which is located on the shores of Badin Lake.

A "fish tissue study" conducted by the state revealed that there are human and ecological health concerns in Badin Lake. The proper response to these concerns is to post notice to the citizens of the dangers associated with the consumption of fish from the lake. Instead, Alcoa chose to challenge and undercut the state's findings by filing an appeal of the advisory and demanding that no signs warning the public be posted at the lake.

Fortunately, the North Carolina Department of Health and Human Services stood up to Alcoa and has prepared the attached advisory which will be printed onto signs and posted at Badin Lake. The advisory clearly states that "elevated levels of . . . PCBs have been found in some catfish and largemouth bass."

It is important for you to keep Alcoa's response to this problem in mind when you consider SB 967 (Creation of Yadkin River Trust). When Alcoa had an opportunity to warn our citizens of a potential health threat, it chose instead to delay the posting of a warning that may save someone's life.

ADDENDUM I

Excerpt of Proceedings
of
THE NORTH CAROLINA SENATE JUDICIARY II COMMITTEE HEARING

JULY 6, 2010

Transcription made available
to
SENATE JUDICIARY II COMMITTEE
by
STANLY COUNTY

This is not an official record of the Committee, but is being included for informational purposes only.

ADDENDUM

Excerpt of Proceedings
of
The North Carolina Senate Judiciary II Committee
Hearing
held
Tuesday, July 6, 2010

North Carolina State Legislature Building

In re:
The Yadkin River Project
Alcoa, Badin Lake

Question and Answer Session
of
Mr. Bill O'Rourke of Alcoa

Agenda Item:
Receipt and consideration of information related to Yadkin River in and near Stanly County

Transcribed by: MARGARET M. POWELL, CVR
6212 Splitrock Trail
APEX, NORTH CAROLINA 27539
(919) 779-0322

PROCEEDINGS (Approximately 6:00 p.m.)

CHAIRMAN HARTSELL: First let me welcome you back again to apologize for the situation this morning. I want to explain it to everybody.

Let's go back to the agenda item entitled "Receipt and Consideration of Information related to the Yadkin River in or near Stanly County." As I'm sure you'll remember, last Thursday, a majority of the Committee voted to authorize, in fact, the Committee unanimously voted to authorize the issuance of subpoenas to UNC TV and to Eszter Vajda. The Committee sought copies of all footage in their possession regarding the Alcoa Corporation activities in a Stanly County, North Carolina, near the Yadkin River.

I want to report again that UNC TV voluntarily delivered the requested materials yesterday, early yesterday morning, July 5th 2010. Although I still have not reviewed these materials, I understand they consist of 13 DVDs and a rough inventory of the raw footage.

With regard to Ms. Vajda, who is here, she was served with a subpoena, and I might add at the same time there was subpoenas that sent, we sent, actually what are in effect public records

request, two each, so it's kind of an ironic situation. However, Ms. Vajda was served with a subpoena on July the 1st.

Before we proceed with this further, I would like to direct you to the attention -- you have on your desk a copy of GS 120 19.2. If you look at Subsection A, this provision allows committees to require attendance of witnesses by subpoena. In the last sentence it provides that committees may allow sworn statements in lieu of oral testimony.

In addition to your copy of 120 19.2, you should also have a copy of an affidavit executed by Ms. Vajda. Just -- I'm a little hesitant to read things, but I think I'll do that just for the record:

(Chairman reads affidavit of Ms. Eszter Vajda.)

CHAIRMAN HARTSELL: Now, I think it is incumbent upon me to explain what happened this morning for which I apologize. There's a long explanation and there's a short one; I will give you the long one first and then I will give you the short one.

Apparently, there were issues relating to the size and the format of the files, which caused

unexpected difficulties that took some time to resolve. Once we received the file, it could not be played until we obtained the appropriate hardware.

The short answer we had to go from a Windows or an Apple to a Windows operating system and that's what took place.

Okay. Since we do not need to hold a hearing or take sworn testimony, we will proceed with the remainder of the Committee by hearing the program and then taking any Committee members' questions following that.

And I will acknowledge to the Committee that last evening I received a request from Mr. Neely asking that representatives from Alcoa be given the opportunity to speak and we will do so at the conclusion of the -- that opportunity will be given in like manner just as we would in any other committee meeting.

Okay. I think we are prepared to begin. I want to ask my instructor have I done everything I need to do?

UNIDENTIFIED VOICE: I believe the Committee is ready to view the video.

CHAIRMAN HARTSELL: I would like to thank Mr. Ross for his invaluable assistance in making

this technology work. Thank you.

(Video played.)

CHAIRMAN HARTSELL: Thank you Chuck?

MR. NEELY: Thank you very much. (Alcoa.) (Indiscernible comments of introduction of Mr. O'Rourke.)

CHAIRMAN HARTSELL: Okay. Mr. O'Rourke, if you would identify yourself as a spokesman for Alcoa?

MR. O'ROURKE: My name is Bill O'Rourke, I'm a Vice President of Environment Health and Safety for Alcoa Corporation.

Mr. Chairman and Committee Members, I want to thank you for the opportunity to be here. I really appreciate the opportunity to view this movie with you for the first time.

I clearly heard the insinuations of the environment, health and safety irresponsibility and cover-up. What we just saw is not an accurate picture of Alcoa nor Alcoa's long history with the State of North Carolina. It doesn't tell you the truth about our company or our environmental record.

I would like to share with you a few important points about Alcoa.

Alcoa is a company with a very rich history of doing what's right. We've been named one of the most sustainable and environmentally responsible corporations in the world.

Most of you are familiar with the Dow Jones Sustainability Index, it's a very reputable index that's global in nature, and Alcoa has been on it every year since its inception seven years ago.

On June 25th, we filed our application to be considered again for the eighth consecutive year. I read that application and will tell you at the end of it I'm rather proud of what we're able to do as a corporation on a global nature.

Environment, health and safety is an articulated corporate value in Alcoa. We have seven articulated corporate values, and I understand so do many other corporations. What does distinguish us though is we do actually articulate environment, health and safety as one of our values.

Those values for some corporations are just words written on a piece of paper. I do believe in my heart that we do taken seriously in Alcoa, especially the environment, health and safety value. We are proud of our record. Sure, we're not perfect, but we're improving all the time, and we take

every allegation and every complaint seriously and address it completely.

Let me talk about North Carolina. When we started our operations in North Carolina nearly a hundred years ago, it was long before there were any environmental laws and certainly no environmental laws on PCBs because they weren't even invented. Not all of us understood the implications of the environmental laws or the impacts of them, which we do know today.

When Alcoa started to learn about value impacts of our operations, we stepped up and started working together with state and federal officials. That's our process. It's the government regulations which are in place which are required to have us in compliance, and we take that seriously.

We worked with the officials to identify and address any issues that were raised in a very responsible manner.

Since then, we've spent more than $10 million on remediation efforts at the Badin Plant, and we believe we have cleaned it up. We are fully compliant with North Carolina and federal environmental laws. I think it's important that I say that again. We are fully compliant with North Carolina and federal environmental laws.

We are proud of our collaboration with the state and federal authorities to be in that position. We're proud of our cleanup record.

The statement of compliance is rather inconsistent with some of the items that I've heard in that movie, and I urge you to look closer at Alcoa's record and Alcoa's situation.

As part of our commitment to protect the environment, we studied the sentiments in Badin Lake. This was near our plant. We found low levels of PCBs in the sediments in a 1977 study. Immediately, we let the state officials know what we found, we let the community know what we found. That's the Alcoa I know. When you find something wrong, you disclose it and then you deal with it.

The state dealt with it. The State determined that the sentiments, which are already similar to post cleanup levels in most lakes in the region, they did not pose a risk. That was a state determination.

Since we found the low levels of PCB in 1977, we continued to monitor, we monitored those sediments to make sure they don't spread and they are not spreading. That's one reason why the state health officials even suggested that we look upstream

for sources of PCB contamination following the Badin Lake Fish Study.

The movie claimed that the PCBs in Badin Lake can be directly tied back to Alcoa's operations. But Dr. John Rodgers, the Clemson professor who was cited and quoted in the movie who supposedly made that connection, backed off from his claims when he was under oath.

In a deposition, Dr. Rodgers admitted that the work in his July 27th 2009, study was not a definitive fingerprint, it couldn't link the PCBs in the fish back to Alcoa's operation.

Dr. Rodgers went on to say that there was data inconsistent with the relationship between the PCBs from Alcoa's plant and the fish in Badin Lake. And he said there could be other sources of PCB which are responsible for the PCB levels in the fish in that lake.

The North Carolina Division of Waste Management went even further. In a February 25th 2009 memo about Badin Lake Fish Study, that memo said the source of PCBs could not be determined with any certainty and they noted that there's a small pocket of PCBs in sediments near Alcoa's plant that will analyzed and did not pose a significant health risk.

The Southwest region of Badin Lake where the Alcoa facility is located found only one fish tissue sample, one, that was above the standard for PCBs.

Numerous congeners not used at the Alcoa facility were detected in the fish tissue samples collected in Badin Lake. It's important to recognize that there are 4,500 square miles that drain into the Yadkin Project, and the state has already found similar concentrations of PCBs in fish upstream of Badin Lake near Mocksville.

The bottom line is Alcoa complies with North Carolina environmental laws. We've gone beyond the regulatory requirements. Still opponents seem to be focusing attention away from a real issue of relicensing.

Throughout the relicensing process, we have worked with state agencies, environmental groups and others to craft an agreement that will improve water quality in the Yadkin River, provide for long-term conservation of land, and protect the environment. We've conducted more than 20 technical studies and spent considerable time addressing these issues.

We've spent over $20 million on

these environmental tests on the Yadkin project and relicensing. That's in addition to the 10 million of cleanup efforts at the Badin Plant.

We are committed to spend $240 million to operate the project, the dam project, 80 million of which is solely to increase the dissolved oxygen in the Yadkin, and 40 million of that has already been spent.

I want to address just a couple of issues that I saw in the movie.

We were accused of some OSHA violations and citations. I did a quick look at how many OSHA citations Alcoa has received since July 5th of 2005, that's a six-year period up to today.

In the whole United States, we have received 60 citations, that's about ten per year. That's in the nation.

In North Carolina, we have received three. These are public records, you can check.

Look at the primary metals industry of North Carolina. In that industry alone, there have been 335 OSHA citations or North Carolina Department of Labor citations, they sometimes inspect together or have the inspections together.

So that means that Alcoa has less

than one percent of the citations in North Carolina in the last six years. That's pretty low and a little different than we heard insinuated in the movie.

Alcoa was lost workday rate, for those who know or are familiar with that, is 0.07 through this year as of this date. Our total reportable rate is 1.2. That's how many injuries you have per hundred workers or 200,000 man hours per year. That's a rather stellar record.

Still, we've had fatalities and we need to clean those up, and we are focusing on those. But are lost workday rate, total reportable rate, is something to be proud of.

At many of our plants it's more dangerous to drive to work than it is to work there.

This is a stellar record that has been in place since 1987 and has improved every year since then, and I'm rather proud of it.

Let me mention something else that was referenced in the movie.

Some of the litigation. People have the right to bring claims. Of course they have the right to bring claims, we know that, in all of the states.

I checked on one of the cases that

we had recently. It is *Pryor et al. versus Alcoa* it was seven named defendants [sic] in Blount County, Tennessee. They asked for relief. A class action relief declared and medical surveillance be made available to employees and retirees.

In this case seven named plaintiffs were in the case, but six had to be excluded because they weren't residents of the district where the case was brought, so that left the case with Mr. Pryor. In Mr. Pryor's case, his only allegation, since they dismissed the class, was that he wanted medical surveillance.

Alcoa has been providing medical surveillance for decades to active employees and retirees. When some of the recent cases were raised, we sent letters to 27,000 retirees around the country requesting them to get the medical surveillance that they were entitled to get.

Mr. Pryor, who brought this action against us, chose not to get the medical surveillance. So, we advised them that we were going to move for dismissal, so they asked us if we would settle the case instead by each of as being half of the attorneys' fees, which turned out to be $600 for each side. That settlement is sitting on the desk of the Blount

County District Court Judge.

There was an allegation that the Mohawks near Messina, New York, got a decision against Alcoa. There is no such decision yet. It's called the St. Regis Mohawk Tribe. We are dealing with them on a regular basis. We are working with the EPA. The EPA continues to collect data and information, they've been collecting this data and information for 20 years now because they want to get this decision right.

There are PCBs in that river as there is in Badin Lake, as there is, by the way, everywhere, these things are ubiquitous. If you remember, in the early 1950's corporations were encouraged to use PCBs, it's a flame retardant. It was considered a safety measure in plants, so everybody started to use them in their operations.

It was in 1977 that the health risks were identified, so companies like Alcoa discontinued immediately.

What we did in Badin was to stop the point source. There were still PCBs in the plant that could find their way into the lake, we stopped that immediately, and that's why we didn't have a continued run-up.

In some of our other operations, we

were a little slow and had more cleanup to do. But in Badin Lake, we were able to do that as a first step, and the next step is to do the testing and the analysis that has to be done.

I also want to mention that we do have what I consider to be a world-renowned health and industrial hygiene program in the company. In the 1990's, we went to Yale University's Medical School an said, "Would you be our corporate medical director?" Within a week they said they would like to do that, and they put five -- one full-time and four part-time M.D.'s on our health account. We have since had one of those M.D.'s move to Stanford University. We call it our Stanford-Yale partnership, and they have data and information that watches all of these pieces of information that you saw in the video. We watch for arsenic and hydrogen fluoride, polyaromatichydrocarbons. We don't want them, either. We have a respiratory program for our employees, we don't want them breathing those fumes, that's inappropriate, and we know that, and we do conduct the tests.

I'm very proud of being at Alcoa, I am probably in my last job in Alcoa, and I've held quite a number of them, including corporate auditor in

which we conduct environmental audits and health and safety audits at all of our locations around the world. We check for compliance with the law, respirator-fit tests, health and safety programs.

And now I'm now probably in my last job in Alcoa, and I'm very proud to be in this one because this is the right one. This is a values job in Alcoa and I'm proud to be here.

Again, Mr. Chairman, Committee, I appreciate the opportunity to be here, it's very gracious of you. Thank you.

CHAIRMAN HARTSELL: Questions of the Committee? Senator Vaughan?

SENATOR VAUGHAN: It looks like you conducted a number of studies. In any of your studies, has there been a connection between the PCBs produced by Alcoa at Badin Lake and any cancer or any other diseases?

MR. O'ROURKE: We have had no definitive analysis of that.

Again, as I said, if people believe that that's happening, then they need to raise that issue. And it's been done. Alcoa faces that periodically, I'd say once or twice a decade we have people that are around locations where we exist, and

they'll say there is a higher incidence of pituitary adenoma in Evansville, Indiana, for example.

We immediately take that allegation and hand it off to our medical department, which is now Yale University and Stanford University. They have to form a team of experts that are outside. They need a peer review team of outsiders, and they need to conduct that study and report their results. The whole study gets reported and that comes out, yes.

SENATOR VAUGHAN: Follow-up Mr. Chairman?

Would you provide those to this Committee?

MR. O'ROURKE: Of course.

SENATOR VAUGHAN: Thank you.

CHAIRMAN HARTSELL: Senator Berger?

SENATOR BERGER: I have a series of questions about worker injury claims. You chose to identify one that I assume was publicly disclosed, the outcome, in Tennessee. Can you share with this Committee how many worker injury lawsuits you have settled in the State of North Carolina?

MR. O'ROURKE: I -- I don't have that information, no, but I would be very surprised if it's out of the norm of other corporations or

industries just because of the incident record that we've had at Badin.

SENATOR BERGER: Follow-up?

MR. O'ROURKE: I would be glad to share that with you though.

SENATOR BERGER: Follow-up?

CHAIRMAN HARTSELL: Follow up.

SENATOR BERGER: Well, will you be in a position to share with this Committee how many suits have been settled? And the reason I ask that question is I was a Judge at the Industrial Commission for ten years, and I can tell you that I know from direct knowledge from the agency that Alcoa had a high number of lawsuits filed against it. Is that something you can provide to this Committee?

MR. O'ROURKE: Yes, sir.

SENATOR BERGER: Follow-up?

CHAIRMAN HARTSELL: Follow up.

SENATOR BERGER: Can you also share with this Committee what the average amount that you settled those lawsuits for? I mean, you gave a an example to this Committee that somebody essentially filed a frivolous lawsuit and you had to pay $600. Can you tell us what your average payout is in these lawsuits, as well?

MR. O'ROURKE: I don't know that, I can go back to the office ---

SENATOR BERGER: Okay. Will you make that information available to this Committee?

MR. O'ROURKE: (Certainly.)

SENATOR BERGER: One more follow-up.

CHAIRMAN HARTSELL: Follow up.

SENATOR BERGER: Now, I understand when you do settlement ---

MR. O'ROURKE: Some of that may be confidential.

SENATOR BERGER: Well, that's my next question.

MR. O'ROURKE: I'm not a lawyer.

SENATOR BERGER: I understand in an individual case where you would not want to know how an individual worker got paid out. But, aside from that, would you be willing to release all of the attorneys that have entered into settlements with your company to disclose the facts and evidence that they gathered in those cases for public review as long as the actual amount that any particular worker got remained confidential with Alcoa in the interest of openness and full disclosure so that the public can fully see what's

going on here? Would you release all of those attorneys from those? Would Alcoa be willing to release all those attorneys from those confidentiality agreements?

MR. O'ROURKE: These would be cases that are pertinent to the relicensing issue?

SENATOR BERGER: Well, I think the issue for us and I think the thrust of this program is if you're going to be entrusted as the protector of this water, then your record and history will have a full bearing on whether you should be able to have that responsibility. So, I'm talking about lawsuits, worker injury lawsuits.

It's my understanding you all -- you -- you opened up and the only lawsuit you shared with this Committee was a lawsuit in which you said, "We only had to pay out $600." Your point was to say, "These lawsuits are frivolous."

Well, why don't you tell people how many lawsuits you've had what the average settlement is and let them see what the facts were in those cases as long as the amount that any individual worker negotiated is kept secret?

MR. O'ROURKE: We will respect the confidentiality and get you that information, the

collective information; yes.

SENATOR BERGER: Will you release the lawyers to be able to disclose the evidence that they got against you in their cases for public consumption? Are you going to hold them to those confidentiality agreements?.

MR. O'ROURKE: I won't do that today, I can't do that today because I don't know what the lawyers have negotiated. I also don't know if there is health and safety information or medical information or other information to be kept confidential for other reasons.

CHAIRMAN HARTSELL: Okay. I think I saw Senator Jones's hand.

SENATOR JONES: Thank you for coming, I appreciate your coming today.

In your three citations that were issued, would any of those cause health risks to anyone, the cause of those violations would it cause damage to anyone?

MR. O'ROURKE: One was an allegation or a citation against an extrusion plant that wasn't even in a the Badin Plant.

Second was you may recall that there was a contract diver that died around the Falls

Dam, I believe. There is always an investigation after that and that was the second citation, and along with it was a fine of $6,300.

The third I'm not aware of, but I don't believe it was a health claim. I believe it was a worker safety issue.

SENATOR JONES: All right. Thank you. One follow up.

CHAIRMAN HARTSELL: Follow up.

SENATOR JONES: I know with all my testing fish, does it cost a great deal of money to test fish to find out how much PCBs are in it? I know we've got an issue here about what's in that lake and how often and who's going to test these fish. Is it a huge cost in that?

MR. O'ROURKE: The whole fish study has to be identified of how you're going to do, how you're are going to conduct the tests. Sometimes you take the fish and you make sure they stay in the same region. You conduct some of them that are kept inside of a cage for a period of time and then test again in another period of time. You have to locate the areas where you're going to do it.

We have already spent $20 million on fish testing and other licensing issues that are

there, and that's why we have been resistant.

If the State would come in or the Federal Licensing Board would come in and say we need these additional tests for these reasons, that would be fine. The actual cost for the test is probably not that large.

However, let me make another comment. My understanding is under the law of the State of North Carolina you need a certain number of fish to be tested and they need to have a certain level of contaminants that are found in that test.

The current fish advisory that we have on Badin Lake was not based on that number of fish but on less fish. So why would you want to conduct another series of tests if, indeed, we're not going to follow the requirements of how many fish have to have the contaminant levels in them to determine if there is a fish advisory or not? We are reluctant to do that.

SENATOR JONES: All right. And my follow-up to that would be who selects the number of fish to test? I mean, if you want to do it correctly, I guess, and I've got a hundred fish, I want to make sure I've got a hundred in there to do it with. But who ---

MR. O'ROURKE: We deal with the

State authorities and they determine. We come up with a program and go back and forth on how many, which species, how often, what time, and location. And after all that is approved, then you launch the fish study, which usually takes a period of time.

SENATOR JONES: And my last question.

I have never been to Badin, I just know about where it's located. The plant and there, I you said it's going to be closed, it's closed at this time, and that will not be reopening I don't guess.

So we have a dam there that was built, I think it says, about 50 years ago and was built with the intention of hiring about 900 people, but they only got up to about 370, so I guess someone, I don't know whether it's the state, someone violated part of that somewhere on the intent of the number of jobs that was going to be created by the plant.

Now we have a dam there that was built because of the plant, is that correct?

MR. O'ROURKE: The dam was built in 1917. The plant was built shortly thereafter. The electricity from the dam was used in part for running of the operation, that's correct.

More dams were built, the series of

four, with the last one being built in 1963 and the licensing starting in about 1958.

We in Alcoa like to consider our power to be a separate business from our operations. In fact, we have now about 63 percent of our power is hydropower for the smelting operations around the world. We operate hydro assets in Iceland, are part owner of three dams in Brazil, and really believe in clean, renewable energy coming from these dams.

SENATOR JONES: But when you built the dams, did you have in mind the process you are using now for this power to go elsewhere?

MR. O'ROURKE: We have operations elsewhere. It was insinuated in the movie that you can take that power and put it on the grid it, and we can run it down to Mount Holly, South Carolina, and run the smelter there from that power. We have other operations that are around; yes, we can move that power around and, in effect, run our facilities with that power. That's why we have the Energy Department.

CHAIRMAN HARTSELL: Senator Vaughan again?

SENATOR VAUGHAN: In your opinion based on all your research, is it safe to drink the water in Badin Lake now?

MR. O'ROURKE: Yes, it's safe to drink the water in Badin Lake, it's safe to swim in Badin Lake.

If I could elaborate? Thank you.

The amount of PCBs in Badin Lake right now is lower than the targeted clean level at most lakes and the Great Lakes and the Saint Lawrence River and the Hudson River, it's the targeted cleanup level.

If you go to your grocery store, take some fish out of the freezer and have that analyzed, you're going to find PCBs.

If you find a polar bear in the polar ice caps and do an autopsy on it, you're going to find PCBs. These things are ubiquitous.

At the level in a Badin Lake as has been determined by the State is at a safe level, yes.

SENATOR VAUGHAN: And it's safe to work at your plant?

MR. O'ROURKE: Indeed, indeed. It might be safer to work at that plant than to drive to work. I believe that.

CHAIRMAN HARTSELL: Okay. Go back to Senator Berger, and then we'll come over here.

SENATOR BERGER: You discussed the

testimony or a quote from the film with regard to Dr. Rodgers and his opinion that there was a relationship between the PCBs being released by the Alcoa plant and the PCBs being found in the fish in this lake, I think it's Badin Lake.

You used the phrase -- you quoted this doctor as not agreeing that there was a definitive fingerprint. Can you -- can you tell me what evidence you think has to exist to be able to show a relationship between the PCB, PCBs, being released from the company and the PCBs being found in the lake?

MR. O'ROURKE: There are certain congeners that are sort of fingerprints that are inside the PCBs that can be conducted in tests. And even in his test he said under oath, that certain of those congeners did not link directly back to the Badin Lake or the Badin plant.

Now we did use PCBs in the plant and we released PCBs into Badin Lake, it was legal at the time that we did it. But we did it around the outfall, was the place where they went. And around there that's where we've done most of our testing to make sure that that's clean and not moving.

SENATOR BERGER: Follow-up?

CHAIRMAN HARTSELL: Follow up.

SENATOR BERGER: Is it your testimony here today that ultimately in the deposition testimony Dr. Rodgers gave that he went through his opinion that there was a causal relationship between the PCB in the Alcoa Plant and the PCB in the lake? Is that what you're saying, or are you just pointing out concessions he made a to your lawyer on cross-examination?

MR. O'ROURKE: I'm pointing out statements that he made while he was under oath. The statements under oath were a lot more qualified than they were when he was talking not under -- under oath.

SENATOR BERGER: Follow up.

I mean, I have not read his deposition, but I will just ask this question. I mean, isn't it true that he still stood by his professional expert opinion that there was a causal relationship between the PCBs being released by the Alcoa Plant and Badin Lake?

MR. O'ROURKE: I haven't read his entire testimony, either, I was given these statements. And I would say if he stuck to his guns that's pretty inconsistent with these statements.

CHAIRMAN HARTSELL: Okay. Senator Atwater?

SENATOR ATWATER: Mr. O'Rourke, I, too, want to thank you for your presence here today. And I -- it piqued my interest when you were speaking about Stanford University and Yale University. I have some experience in another life, administrative experience, about occupational health studies with universities and union and corporate people.

And I wanted to ask you in those studies that you -- you have requested occupational health assessment studies, environmental health studies, from those universities about your plants?

MR. O'ROURKE: Definitely. Definitely.

SENATOR ATWATER: And in those studies, is the research team comprised of M.D.'s, Ph. D.'s, Ph.D. epidemiologists, M.D. epidemiologists, bio-statisticians, environmental scientists, industrial hygienists and so on?

MR. O'ROURKE: Our staff at Yale includes Dr. Mark Cullen, who runs the environmental and health program at Yale. He has an epidemiologist on his staff, an internist and a statistician.

And now we are linking it with Stanford University, and they're bringing their background into that as well.

I can give you an example of what they recommended recently. There's a belief now that for small particulate matter, smaller than two and a half microns, pm 2.5, is causing cardiovascular disease. Not respiratory, cardiovascular. Well, that would be really significant if that's the case because we have small particulate in our plants.

So we now have a research study that's been designed by the Ph.D.'s and M.D.'s and epidemiologists and statisticians, but they're sending our industrial hygienists off to plants in the United States to conduct samples. So they're hanging samples [sic] on employees now, taking tests and then feeding that information back to Yale statisticians to be able to look at the information and find out is there a causal effect here or not.

If there is, we better find a better respirator or make sure more people are wearing their respirators, and the dust situation. If there isn't, it would be nice to know that, too, that there isn't causation.

Now, the reason they want us to conduct the study is that our database includes information about people who have treatable diseases like diabetes and hypertension, people who are obese

and people are smokers, they cause cardio-vascular deceases as well. We can take that database and actually exclude those effects from the pm 2.5 and really isolate that as a cause or not.

So this is the kind of Alcoa that I know, this is proactive. We want to find out if our employees are being hurt by breathing something that's inappropriate; and if they are, let's fix that right away.

SENATOR JONES: One follow-up.

CHAIRMAN HARTSELL: Follow-up.

SENATOR ATWATER: Thank you.

Additionally, would you share with us some of the medical occupational exposure studies that they've been able to determine, you know, what's at risk in terms of health versus relative to exposure?

MR. O'ROURKE: Sure. I had mentioned our lost workday rate, total reportable rate, they are -- the are stellar, but still we want to have zero incidents in our operations. So, we've gone to them and said, "What can we do to lower the incidence even more?"

And they're able to take a lot of our data and information and come back and give us reports.

For example, people with hypertension and diabetes are being hurt about one-third more often than people without at our locations. And they are suggesting that we must not have the environment where these people can take care of their disease the right way and they must get out of balance. So, we've been able to put programs in place to address that.

They've looked at overturn issues, and we found out that people that work more than twelve and a half hours of overtime a day [sic] or 60 hours a week were getting hurt 25 percent more than the rest of the population. So there's something you can act, too.

So, now to work more than that requires the business union's president's signature that says, "I authorize the overtime, I understand the risk and I authorize the overtime for this period of time."

But that's helpful. They have been able to look at smokers and obesity as well in the workplace and find higher incidents of worker safety and worker health issues based on the condition of our employees. So we've launched wellness programs at 60 percent of our locations, smoke cessation programs at about half of our locations, trying to get these people

to deal with the cause and the root cause of their symptoms and their problems.

SENATOR ATWATER: One final?

CHAIRMAN HARTSELL: Senator Atwater?

SENATOR: One brief follow-up question. Thank you, sir.

CHAIRMAN HARTSELL: Sure.

SENATOR ATWATER: Do your studies have a component of looking longitudinally at your employees at relative to deaths, researching their death certificates, specific maladies, cancer sites and so on and statistically relating that to the exposure, environmental exposures, they've had in your plant?

MR. O'ROURKE: We are doing that now, and the database is only 20 years old, but that's almost a generation of workers. And we probably have an elaborate database, which in ten years will probably be the best and we'll be able to track morbidity and mortality all the way through the workforce, yes.

SENATOR ATWATER: Again, thank you.

MR. O'ROURKE: Thank you.

CHAIRMAN HARTSELL: Senator Apodaca?

SENATOR APODACA: Thank you,

Mr. Chairman. A quick inquiry of the Chair. Is it permissible to ask questions other than on the health issues dealing with this?

CHAIRMAN HARTSELL: Certainly.

SENATOR APODACA: Thank you.

And I, too, want to thank you for showing up today. We're somewhat tired of seeing Mr. Neely, it's good to see a new face.

My question is how many other facilities does Alcoa, and I mean dams, currently own in the U.S. or operate in the U.S. that do not have production facilities tied to them at this time?

MR. O'ROURKE: In the United States, we only have the series of dams run along the -- there's the four that are associated with the project, and then there's two on the edge of Tennessee. So that's six that are pretty much close together. And that would be it.

SENATOR APODACA: Follow-up question.

CHAIRMAN HARTSELL: Follow-up.

SENATOR APODACA: Yes. On the ones in Tennessee, where are they in the licensing process or are they in the middle of a contract, do you know?

MR. O'ROURKE: I would have to

defer, but I can probably do it quickly.

In 2005, the license was received for those four dams.

SENATOR APODACA: Another follow-up?

CHAIRMAN HARTSELL: Follow up.

SENATOR APODACA: When did you close that facility prior to the licensing?

MR. O'ROURKE: The Tennessee facility?

It still manufactures (can sheath) in our Knoxville, Tennessee, facility. We have curtailed the smelter for now because this economic crisis hit Alcoa and the aluminum industry harder than most; so when we curtailed production, we curtailed that. Hopefully, business can turn around and business conditions and that can start again .

SENATOR APODACA: One last question.

CHAIRMAN HARTSELL: Certainly.

SENATOR APODACA: Is it now Alcoa's policy or corporate policy to move all new facilities outside the United States?

MR. O'ROURKE: I would say no and the answer to that is a lot of the growth in the

markets are here in this country. We are currently looking -- well, we announced the sales agreement for an aluminum window manufacturer that's located in Pennsylvania. That, if it gets all of its approvals, will go into our building and construction business in September.

We're looking very closely to the U.S. car manufacturers now. They have the new (Cap A) regulations that are going to require them to light-weight of their vehicles. And when they do that, the quickest way to do it is to switch to aluminum. So we are hoping to get aluminum-intensive vehicles in this country.

Right now, the biggest aluminum-intensive vehicles are the Audi A-8. But we need it on production cars, the Fords and General Motors and Chryslers here.

So where the market is that's where we will be.

SENATOR APODACA: Follow up?

CHAIRMAN HARTSELL: Certainly.

SENATOR APODACA: The last 30 facilities Alcoa has built, where were they?

MR. O'ROURKE: I would say half are outside of the United States.

SENATOR APODACA: (Indiscernible.)

MR. O'ROURKE: Right.

SENATOR APODACA: Thank you.

CHAIRMAN HARTSELL: Senator Queen?

SENATOR QUEEN: Yes.

I just had a question concerning the filming and the work done on this documentary. It was done at our public TV station by an employee of the public TV station and it hasn't really gone forward in a public way, this is I think the first public showing of it.

Was anybody at Alcoa involved in putting pressure on keeping this documentary from going forward in any way?

MR. O'ROURKE: To my knowledge that answer is no. Going forward, I think you would mean -- by "going forward," if you meant it goes through the appropriate editorial process, the solicitation of opinions from other people, the correction of any distortion or misstatement of facts, such as Alcoa is a multi-trillion dollar organization, which I wish wee were, that process I would hope would have been followed.

SENATOR QUEEN: Was there any -- I guess I just dealing in the vernacular here, I'm an

architect not a lawyer here. But was there efforts on behalf of Alcoa in discussions to our public TV stations about what sort of documentary they were doing and any relationship or support you may have or threats of any kind. legally or otherwise, if such and such is not done to your satisfaction? Do you know of any such discussions?

MR. O'ROURKE: I know of none. I know there were discussions that went on and they talked about it. But threats, I know of none.

SENATOR QUEEN: Do you think folks involved could perceive those as threats, those sorts of discussions that you say you've had?

MR. O'ROURKE: I don't think I could put myself in their shoes and perceive that.

SENATOR QUEEN: Okay.

CHAIRMAN HARTSELL: Senator Allran?

SENATOR ALLRAN: Thank you, Mr. Chairman.

I'll mention this to you, sir, since you are here--maybe we should get this information some other way--but as I watched the information about Badin Lake, I just wondered about how the water in the other lakes in North Carolina compares.

I know that -- I live on Lake Hickory, and we're not exactly known for having the purest water in the world.

I know that there was an admission that your arsenic levels were higher, but there was a reason given. And then there was the mention of the PCBs.

I would be interested to know how the other lakes in North Carolina compare for purposes of toxins.

MR. O'ROURKE: I would encourage you to investigate that question and I think what you will find is that the PCB level and concentration in Badin Lake is equivalent to that of most of the other lakes in North Carolina.

CHAIRMAN HARTSELL: Follow up?

SENATOR ALLRAN: I think we need to find that out so that we can get a comparison with other lakes, not just talking about one lake.

But my other question, and I might be asking the wrong person to ask you this, but since the primary purpose of Alcoa is to produce aluminum not to manage hydroelectric, now that you're not producing aluminum anymore on the lake, it seems to me sort of misplaced to be issuing the relicensure to you since

you're not doing the purpose for which it was issued in the first place.

MR. O'ROURKE: If you read our corporate charter, it says, "Alcoa is in business to make money and a profit for the shareholders, to respect its employees and the communities where we operate."

We make money in areas outside of aluminum. We also have diverted on periods of our life, 122-year life, we've gone into plastics, we've gone into wiring harnesses for automobiles and trucks, we've gone into other areas.

We've now decided that power is a big business and power is a business that we should be in. We've named a new president of our power organization, and he runs those assets on a global basis. So it does fit the broader purpose of Alcoa.

SENATOR ALLRAN: Another question. Well, like I just said, I figured you weren't the right person to ask that question to.

But Duke Power is a utility, Progress Energy is a utility. Are you a utility?

MR. O'ROURKE: Alcoa as a corporate ---

SENATOR ALLRAN: Right.

MR. O'ROURKE: No.

SENATOR ALLRAN: Well, well Walmart might want to run that also, and so might Ford. I mean, there are a lot of corporations that might want to run a water company, but they don't get too, only utilities do, normally.

It was said in the documentary that your investment had been recouped through amortization; is that true?

MR. O'ROURKE: Our investment had been recouped ---

SENATOR ALLRAN: --- through amortization.

MR. O'ROURKE: --- through amortization of the investment?

SENATOR ALLRAN: Correct. That's what was said in the documentary. Is that true?

MR. O'ROURKE: Have we recovered our investment that we made in the dams along the river?

SENATOR ALLRAN: Correct.

MR. O'ROURKE: I would say over the long period that we've been there, I would sure hope so, I sure hope we're still not running at a loss. We are planning to spend $240 million more on these dams,

which will put us in a non profit situation for about a five-year period. But, after that, we hope to be able to make money.

SENATOR ALLRAN: So then if you were not to be relicensed because to a large extent you are an anomaly because you are not a utility and you're anomalous relative to the other people running these hydroelectrics, then it would be true to say that you would not be losing any money because you recouped it and more over the period of time that you have been licensed?

MR. O'ROURKE: I would look at it going forward. I would look at it from here to what is your return on your investment that you're making today. So, today we want to make an investment in those dams, $240 million. As we mentioned before, we get revenue on electricity from the dams of about $44 million, and of that we get a profit of about eight. So it's going to take a few years to recoup the investment that we put into the dams.

SENATOR ALLRAN: Why though if you were originally licensed to do the project with those four dams and to manage the hydroelectric -- if the purpose was to produce aluminum and you are not doing that anymore, why should you be satisfied if a

different type of corporation than everybody else who might want to do that when normally and regularly hydroelectric is managed by utilities, which are highly regulated on behalf of the people?

MR. O'ROURKE: We have been following the regulations on that dam for the 50-year term of the license and since then under the annual renewals, and we believe that we have been doing that properly.

CHAIRMAN HARTSELL: Okay. Senator Snow hasn't asked a question, so let me ---

SENATOR SNOW: I was looking in 2009 the Department of Health and Human Services in North Carolina ordered a fish consumption advisory for the lake saying the had found elevated levels of PCBs in the water and in smallmouth bass and in catfish. Is that right?

MR. O'ROURKE: I believe there was one fish that had a PCB level that was above the safe limit.

SENATOR SNOW: The Department of Health and Human Services, that was what they found though, wasn't it? They did find elevated PCBs in fish?

MR. O'ROURKE: Yes.

SENATOR SNOW: And is it true that after that finding that you resisted by appealing any posting of signs warning the public about those findings?

MR. O'ROURKE: I would say that that is an inaccurate portrayal. What Alcoa did was when the -- when the authorities came to us and said, "We're going to post a fish advisory," our concern was let's make that advisory be accurate, let's make sure that we let the community know exactly what was found, exactly where the advisory ought to be posted, *et cetera*. We worked with the authorities to come up with a common language which we eventually agreed upon. And within I believe it was two weeks after agreement of that language the signs were made, the signs were posted where we agreed they should be posted, and it had the language that we have a common agreement on.

So to construe that as us fighting it I think is the opposite of what we actually did, we wanted it to be accurate and complete.

SENATOR SNOW: But the department did, in fact, put the signs up eventually, is that right?

MR. O'ROURKE: And then we agreed with the wording that was on it and the location of it,

yes.

CHAIRMAN HARTSELL: Senator Jones? We going to try to close out.

SENATOR JONES: All right. This will be my final question. There may be two parts to this.

But I know that you are an intelligent individual. You're not seen that by no means that no one at the plant at Badin has ever -- did not die from cancer caused by the plant? Is (that) what you're saying?

MR. O'ROURKE: I don't know that. I wouldn't say that nobody died from cancer at the plant. I wouldn't say that the causation between cancer and an individual employee at that plant has been found. That's what I would say. Correct.

CHAIRMAN HARTSELL: Senator Berger?

SENATOR BERGER: Follow-up?

CHAIRMAN HARTSELL: Follow up.

SENATOR BERGER: So, the things that generate the aluminum there at the plant would not have caused cancer?

MR. O'ROURKE: There are some known carcinogens that are in the process. We've identified them, we want to know about them, and then we want to

protect our employees from them. So we identified the employees that work in these areas, we explained to them the need to wear respirators, and then we actually tested them to make sure they're wearing the respirators the right way. And then they have continuous monitoring so the medical department can determine that they aren't having any symptoms or cases or causes, that's correct.

SENATOR BERGER: This is the last one.

So, therefore, before they put the respirators on, and some of these people 34 years old, some were 50, whatever, about the time the plant got started, could they have contracted anything during that time that might have caused death later?

MR. O'ROURKE: Of course. I had grandparents who worked in steel mills before any of the health and safety regulations were in place; and during those days, God only knows what they were wearing or breathing or how they were protected. When the laws came into place they not only required certain respirators on others, they required monitoring on a regular basis.

So even the employees that had been there for years and years were requested to get into

the medical department and get tested to find out if you had this disease or that disease or another disease and if it can be treated.

CHAIRMAN HARTSELL: Senator Berger?

SENATOR BERGER: I what to get a sense of the level of proof you think has to exist for this Committee to believe there's a causal relationship between exposures to harmful substances and contracting a disease.

Now, I've heard you say. "Well, there has not been a finding that a worker has been exposed to a particular chemical and contracted cancer." I've heard you say there has been nobody -- there has been no definitive fingerprint to show that there is a relationship between exposure to PCBs released by your plant and any cancers.

But I did hear you say, "But we can explain the relationship between arsenic, the high level of arsenic in Stanly County, we can explain that, we can tell you, and it has to do with other substance."

So, can you give us some understanding of how you can know that that is the cause of the high rate of arsenic in Stanly County? Because I think that would give us a sense of what it

is you believe the level of proof you have. So, tell us what evidence you had to draw that conclusion and put that out there as the explanation for why Stanly County has this much higher rate of arsenic than the general population here in North Carolina.

MR. O'ROURKE: I can say that we conduct our water monitoring samples on a regular basis. That sampling gets reviewed by the state and other authorities on a regular basis. If they find that contamination that's in the groundwater or other areas of the plant, that gets reported.

And the reason we can't find a direct causation is because people have not been able to find that in those reports.

SENATOR BERGER: Follow up? (If nobody needs to ask a question, I'll waive.)

Your CEO on this documentary said he had an explanation for why Stanly County has a high rate of arsenic showing up relative to everybody else and he attributed it to some other substance, pyrite. So what is -- tell us how you all drew that conclusion that you can prove that the pyrite is the reason that there is the high rate.

MR. O'ROURKE: I don't think he pointed to pyrite as the culprit. He pointed to it as

a possible other reason for that being the case. He did say that we have done the studies and the sampling of our groundwater and our emissions at our plant and we haven't found it there. And if we haven't found it there, it must be somewhere else.

MR. ELLIS: I would just have to make the clarification, Mr. Chairman, that was not our CEO in the video.

CHAIRMAN HARTSELL: Mr. Ellis?

MR. ELLIS: (Unless I got a real promotion.)

The information that I conveyed in the video is directly from a geologist who works for the State of North Carolina in a meeting of September, I think it was, 2007.

CHAIRMAN HARTSELL: Follow up only.

SENATOR BERGER: Again, what was it that made you believe that geologist versus other witnesses, such as Dr. Rodgers who -- I mean, he was dealing with PCB. But what was it that made you know that the geologist was correct as opposed to those that would argue it's from your plant?

MR. ELLIS: He's certainly has the expertise in that area, and my recollection was that

maybe 20 years with the State working on these kinds of issues. His follow-up statement was that he would be hard-pressed to attribute that level of arsenic to Alcoa.

SENATOR BERGER: Well, what was this geologist's name?

MR. ELLIS: I can't remember right offhand, but I can get that for you.

SENATOR BERGER: Can you get that information for us?

MR. ELLIS: I can, sir.

UNKNOWN SPEAKER: I feel compelled to mention that (?) gold mines where this was located were in Rowan and Cabarrus Counties, and we don't have those levels. I felt compelled to mention that.

CHAIRMAN HARTSELL: I feel we have had a lot of discussion. I need to ask just a couple.

Do you have groundwater monitoring wells surrounding the plant in Badin?

MR. O'ROURKE: We monitor groundwater on a regular basis, yes.

CHAIRMAN HARTSELL: How long have they been in existence?

MR. O'ROURKE: I can't answer that question.

CHAIRMAN HARTSELL: How many of them are there?

MR. O'ROURKE: I can't answer that question, either. I can get that for you, Mr. Chairman.

CHAIRMAN HARTSELL: Have the results of testing the groundwater monitoring wells for however long they have existed been provided to the State or otherwise?

MR. O'ROURKE: Yes. As required.

CHAIRMAN HARTSELL: As required?

MR. O'ROURKE: Yes.

CHAIRMAN HARTSELL: Two, do you have the epidemiological documents showing a high incidence of kidney and/or bladder cancer in the employees at the Badin Works compared to the population as a whole?

MR. O'ROURKE: We do not.

CHAIRMAN HARTSELL: And are you aware of the testimony in deposition in the Washington State case where Mr. Ellis testified that the environmental cleanup cost would be 50 Million as opposed to the 10 million which you identified?

MR. O'ROURKE: That was an investment of potential liability for remedial actions

at the plant. If you go to our Annual Report in the management summary, you'll see a discussion of our current remediation issues. The largest at that time would have been the Messina operation, that is the largest estimate, that still hasn't been decided.

The Point Comfort operation, which was a mercury release which has been decided, has been cleaned and has gotten a release from the EPA.

And a third was Badin, which was estimated at 50 and we've spent 20 on the relicensing, ten at the plant. But, again, at that time, it was an estimate.

CHAIRMAN HARTSELL: But the 20 on relicensing wasn't on environmental cleanup, was it?

MR. O'ROURKE: Some of it was associated with the testing that was done in the lake, Mr. Chairman.

CHAIRMAN HARTSELL: So there's a difference in that deposition testimony and the facts just like there may have been an element of a difference in deposition a testimony from Dr. Rodgers and what you consider to be the facts. Is that a fair statement?

SENATOR BERGER: There could be a factual difference.

CHAIRMAN HARTSELL: I'm just saying your conclusions drawn are little different, are they not, in terms of the relative testimony?

MR. O'ROURKE: I think the statement that was made at the time that there was a $50 million estimate of cleanup on the remediation costs at Badin was an accurate forecast of what that could have been at the time.

CHAIRMAN HARTSELL: Senator Allran, one question.

SENATOR ALLRAN: Thank you, Mr. Chairman.

Could I ask a question of staff or pose it to you, Mr. Chairman?

CHAIRMAN HARTSELL: Sure.

SENATOR ALLRAN: Could we ask the staff just to go to DENR and get for us the various levels of these toxins in all the lakes so that we can compare Badin Lake to the other lakes with regard to the what we've been talking about, PCBs and arsenic, whatever these things are that ---

CHAIRMAN HARTSELL: To the extent they are available, we'll be glad to do that.

SENATOR ALLRAN: I would think we would have ---

CHAIRMAN HARTSELL: Our Committee staff also staffs the Environment Committee chaired by Senator Atwater.

UNKNOWN SPEAKER: We will be happy to request that information from the Department.

CHAIRMAN HARTSELL: Okay. Folks, Mr. O'Rourke, I will say again thank you so much for coming. Chuck, thank you for bringing him.

MR. O'ROURKE: Mr. Chairman, I appreciate the time and the professionalism of you and your Committee. Thank you.

CHAIRMAN HARTSELL: With that, we are adjourned.

(Senate Judiciary II Committee Meeting adjourned at approximately 8:08 p.m.)

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STATE OF NORTH CAROLINA

COUNTY OF WAKE

C E R T I F I C A T E

I, Margaret M. Powell, Certified Verbatim Reporter and Notary Public, do hereby certify that the foregoing excerpt of the question and answer session of the hearing before The North Carolina Senate Judiciary II Committee in the matter of The Yadkin River Project was transcribed by me and that the foregoing pages constitute a true and accurate record of the audible portions of the Proceedings taken from an N.C. General Assembly CD labeled "Judiciary II 7-06-10."

I further certify that I am neither counsel for, related to nor employed by any of the parties to this action in which this matter was heard; and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, and am not financially or otherwise interested in the outcome of the action.

July 8, 2008 /s/Margaret M. Powell

Margaret M. Powell, CVR

Notary Public No. 19970780127

ADDENDUM II

Responses of Alcoa
of
THE NORTH CAROLINA SENATE JUDICIARY II COMMITTEE HEARING

JULY 6, 2010

Responses made available
to
SENATE JUDICIARY II COMMITTEE
by
ALCOA

This is not an official record of the Committee, but is being included for informational purposes only.

ALCOA

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September 9, 2010

Honorable Fletcher L. Hartsell, Jr.
Chairman, Judiciary II Committee
North Carolina General Assembly
Room 518, Legislative Office Building
Raleigh, NC 27603

Dear Senator Hartsell:

Over the past several weeks, Alcoa has reviewed the video, questions and testimony from the July 6,2010 Senate Judiciary II Committee meeting in an effort to provide information that was requested by the Committee members. Alcoa has been a good corporate citizen for more than 120 years, including nearly 100 years in North Carolina, is proud of both its environmental and worker safety records and wants to ensure there is a fair exposition of the matters discussed by your Committee. We appreciate this opportunity to do that.

Alcoa's Environmental Leadership

Alcoa is recognized as a national and global leader on sustainability issues and has invested hundreds of millions of dollars in the generation of clean, renewable energy. Alcoa was named a founding member of the Dow Jones Sustainability Index, has been recognized as one of the "100 Most Sustainable Corporations in the World" and is ranked #1 by FORTUNE for "Social Responsibility" in the Metals industry. Alcoa is also a founding member of the US Climate Action Partnership, which supports reductions of greenhouse gas emissions, and is leading by example. Alcoa has voluntarily reduced greenhouses gas emissions by 44% (compared to 1990 levels) despite continuous growth. Alcoa is a major supporter of recycling initiatives across the country and has partnered with the Aluminum Association to increase the recycling rate of aluminum cans to 75% by 2015. Alcoa encourages employees to take an active role in protecting the environment. In 1998, Alcoa challenged employees to personally plant 1 million trees by 2010. We reached that goal in two years, and then started the "10 Million Trees" program. Alcoa employees remain on track to personally plant 10 million trees by 2020. For the past eight years, Alcoa has published a sustainability report, transparently reporting on its environmental, social and business performance. A copy can be viewed at www.alcoa.com.

Alcoa's Environmental Record at Badin Works

The Badin Works smelter began operations in 1917. During the ensuing decades, Alcoa's operation of the Badin smelter and Alcoa Power Generating Inc.'s operation of the Yadkin hydro project have provided many benefits to local communities and the state. During the smelting years, Alcoa's manufacturing operations had waste discharges and releases that we later realized would require investigation, analysis and, in some cases, remediation. Alcoa has worked closely with state and federal officials for more than 20 years to identify, investigate, and remediate old waste sites on its property in Stanly County. The company has already spent

more than $10 million to remediate old waste sites that were identified through the Resource Conservation and Recovery Act (RCRA), a federal program implemented by the State of North Carolina to regulate the management of industrial and hazardous waste and managed under the supervision of the NC Department of Environment and Natural Resources, Division of Waste Management (DWM).

During its RCRA investigation and under DWM oversight, Alcoa hired an independent consultant to test the groundwater on its property for a variety of contaminants. The results demonstrated that there is no imminent threat to human health or the environment associated with these sites, a conclusion with which DWM agrees. Alcoa is proactively working with the State of North Carolina to evaluate potential remedial options, if needed, for groundwater to meet applicable North Carolina standards.

In accordance with the RCRA process, Alcoa is working with DWM on a Corrective Measures Study that will specify any needed additional remedial measures and ongoing monitoring the company will perform beyond what has already been completed. Alcoa submitted a work plan to DWM outlining the conduct of the study. The plan involves additional sampling that will be conducted and the analysis used to evaluate additional remediation measures for six Badin plant waste sites. DWM recently approved that plan and Alcoa is now in the process of implementing it.

Finally, Alcoa, at Stanly County's request, has investigated additional sites reported by the County to be Alcoa waste sites. Those investigations were conducted with full transparency to the State and the County. Of these, one site was identified for further Alcoa action. Testing shows that chemicals found at the site are contained, have not impacted soil, groundwater or surface water and are unlikely to pose risk to human health or the environment. There are no suspected waste sites that have not been addressed through the RCRA program or North Carolina's Inactive Sites program.

Worker Safety and Health

With respect to our employees, Alcoa has a stellar worker safety and health record in North Carolina and throughout the United States and the world. Alcoa has been honored for its outstanding safety performance by N. C. Department of Labor for 37 consecutive years.

Senate Judiciary II Committee Meeting on J 6,2010

Alcoa has noted, as it has sought to understand the intentions of the committee, that the only official action taken by the committee pertaining to Alcoa was the issuance of subpoenas to UNC-TV and one of its employees, Eszter Vajda, for an unaired, unedited video attacking our company. Recent news articles have called into question the objectivity of the video and the motivations of its producer. Others opposed to APGI's relicensing (including private interests, members of the General Assembly as well as the executive branch) appear to have been directly involved with her efforts. A panel of journalism professors at the University of North Carolina at Chapel Hill who reviewed Ms. Vajda's work concluded that "the result was a series of stories proffering an apparent point of view unsupported by the facts" and that the report "not only tarnished the reputation of a valued state resource, UNC-TV, but, more importantly, presented an unbalanced and slanted view of this important public issue."

The issuance of the subpoena came about as you and certain state officials and private interests pursue a government takeover of Alcoa Power Generating Inc.'s private property and business. The committee meeting provided a forum for the proponents of a takeover to attempt to further their cause by using a now discredited video.

Further, having reflected on the prominent role in the video played by a plaintiffs personal injury attorney and the multiple questions pertaining to workers compensation and related litigation, all of which have nothing to do with the relicensing of the Yadkin project, it appears that this video and some of the related committee questions were driven by agendas other than relicensing. We understand that the public nature of this written response means that others outside of the committee will have access to any and all information that Alcoa provides. As the UNC journalism professors' review demonstrates, to an objective eye the heavy hand of an attorney actively engaged in litigation against Alcoa greatly influenced the video production. The release of partial records by UNC-TV has shown that many others, outside the journalism process, were actively involved in its production. As such, we respectfully decline to provide any information we believe is inappropriate to provide outside of privilege or that is part of or may potentially be part of a litigation process.

Responses to Committee Questions

With respect to questions raised by the committee members and information contained in this response, for ease of understanding we have categorized the documents and information as follows:

1. Alcoa Health Studies. Several questions were directed to health studies that Alcoa has commissioned. Of particular interest to the Committee were studies that Alcoa commissioned concerning potential kidney or bladder cancer effects of Alcoa's operations, specifically at our Badin smelter facility. These studies are:

    - Proportionate Mortality Study of Alcoa Workers (1980-1987), Rockette, H. E. and Arena, V.C., March 1990.
    - Case-Control Study of Kidney Cancer and Hydrocarbon Exposure in the Aluminum Industry, Rockette, H.E, and Arena, V.C., August 1993.
    - Re-Analysis of Kidney Cancer Case-Control Study Following Data Corrections, Checkoway, H, Alexander, B.H and Cullen, M.R., May 1996.

    All three studies were communicated to the federal Environmental Protection Agency. Copies of those studies are attached to this letter.

2. Information Related to Workers' Compensation Claims in North Carolina:

Much of the information requested with respect to worker injury claims is confidential. In particular, Alcoa is not authorized to supply information about amounts of any settlements. Additionally, a significant issue in occupational disease claims is in the conflicting science, or lack of science, to address what causes illness and disease--especially where personal habits and family history may also play a causative role. In other words, the number of claims filed and any settlements, individually or in aggregate, are not an accurate indication of

worker safety or the precautions put in place by the company to protect its workers, and Alcoa does not agree that settlement of these often highly disputed claims constitutes an acceptance that the claim was compensable or that the employee developed any work-related disease at Alcoa.

3. Fish Study and Posting of Fish Consumption Advisory:

There are small amounts of PCBs in the sediment in Badin Lake adjacent to the Badin Works plant. When Alcoa initially made this discovery in 1997, we immediately notified the appropriate officials within Stanly County and DENR. The PCBs levels are already similar to post-cleanup levels typically recommended by the federal Environmental Protection Agency. Alcoa has continued to monitor these sediments and recent testing (December 2008) confirms that the contaminated sediments remain isolated and are not migrating.
In 2009, APGI filed a petition for contested case hearing concerning the Fish Consumption Advisory issued by the N.C. Department of Health and Human Services, acting through its Division of Public Health, for Badin Lake. The advisory recommended limits on the amount of largemouth bass and catfish the public should eat from the lake.

APGI respects the DPH's responsibilities and duty to protect public health and inform the public of risks. However, APGI appealed the advisory because the State changed its own stated evaluation criteria, but only after the study was completed, and held Badin Lake to a different standard than other lakes and rivers in North Carolina.

Specifically, the State had never before issued a fish advisory based on the findings in a single fish with slightly elevated levels - and from a location far from the Badin plant outfall. And, even though the State had monitored similar levels of chemicals in fish caught in other waterways in North Carolina, it had not issued a fish advisory in those instances. The failure to use consistent evaluation criteria and apply fish advisories consistently across all waterways called into question the confidence the public will place in fish advisories issued by the State.

Importantly, APGI never vrotested or appealed the posting of signs. In fact, after working with DHHS on appropriate wording for the fish consumption advisory APGI worked with the appropriate agencies to post the signs on Badin Lake.

The presence of PCBs in fish is not an isolated issue affecting Badin Lake. In fact, the N.C. Division of Water Quality website indicates that fish in many other lakes and rivers across the state — including the Yadkin River near Mocksville, upstream of Badin Lake — have been found to have similar levels of PCBs. Health officials have suggested looking for upstream sources of contamination since a majority of fish with elevated PCB levels were caught in the northwest part of the lake, upstream of the Badin Works plant. There are more than 4,500 square miles that drain into the Yadkin Project, including discharges of approximately 100 outfalls from other industries or municipalities permitted by the State of North Carolina.

4. Naturally Occurring Arsenic in Stanly County:

Beyond an onsite landfill at the Badin site, there is no arsenic contamination in Stanly County attributable to Alcoa's operations. The arsenic identified in groundwater at the facility is more likely related to natural background conditions of the soils in the area than smelter operations. That arsenic associated with groundwater at Alcoa's Badin smelter is contained to the area of an onsite landfill. There simply is no plausible

way that elevated arsenic levels in well water across Stanly County could be associated with the smelter. Moreover, studies show no impact from Alcoa's Badin operations on water in Badin Lake or the groundwater in other parts of the County.

Arsenic naturally occurs in soils and can become more prevalent in groundwater if certain soil conditions are present. In fact, during a joint meeting between APGI and Stanly County that was held on September 19,2007, Vance Jackson, a State geologist pointed out that Stanly County soil contains high levels of arsenopyrite (a form of fools gold with which arsenic is associated) which is a natural explanation for the high levels of arsenic. Mr. Jackson told representatives from Stanly County that it is "unlucky" to be located in an area with large amounts of naturally-occurring arsenic. Mr. Jackson said a geological study would show that large natural concentration and that anyone would be hard-pressed to directly attribute it to a particular source - such as the Alcoa plant. (This meeting was attended not only by County and Alcoa officials, but also by representatives of several agencies of the state government and the General Assembly.)

Alcoa also tested the water in Badin Lake and Little Mountain Creek for elevated arsenic levels. These are the only bodies of water near the Badin Works site that could be affected by the groundwater at the onsite landfill. Arsenic was not detected. In addition, Alcoa tested the groundwater at other waste sites for elevated arsenic levels. Alcoa has conducted extensive testing of ground water at the Badin smelter site. Arsenic was detected in groundwater in a localized area, near the boundaries of two Badin plant landfills. These levels appear to be the result of naturally occurring soil arsenic levels that are made soluble by relatively higher pH and reducing chemistry conditions at the landfill/soil interface and do not persist very far from the landfill boundary. In particular, our sampling data demonstrates that the groundwater is not transporting arsenic off site to rivers or the lake.

5. Groundwater Monitors at the Badin Plant:

Alcoa has placed nearly 80 groundwater monitoring wells on the Badin site and taken approximately 270 discrete samples from them in the course of preparing its RCRA Facility Investigation report that was submitted to the state and EPA. Many of those wells still exist and others are being installed in preparation for the Corrective Measures Study. That study will provide for the long term management of existing identified waste sites. Again, this interaction with DENR is a transparent process.

Because the site groundwater has been found by the State to be stable and contaminants are not moving and do not pose a risk to human health or the environment, routine monitoring is not currently necessary, according to DENR.

6. Alcoa's Business Model

During the Committee's questions, one of the members observed that since Alcoa no longer operates the smelter at Badin, APGI it should no longer own and operate the Yadkin hydro facility and suggested that only regulated public utilities own and operate facilities that produce electricity which is sold onto the grid. Quite to the contrary, there are many private owners and operators of hydro-electric facilities and other electric generating facilities throughout the United States, including in North Carolina. These private owners generate and sell electricity at wholesale to utilities and provide an indispensible part of the nation's electric supply. The member also suggested that APGI had "recouped" its investment and would not suffer a loss if the new license

were not approved. APG1's existing project investment must continue to earn a return, whatever the past returns might have been, as is the case with any capital investment. Going forward, APGI's $240 million investment in the hydro-project for modernization of equipment and other upgrades will continue over ten years. That new investment creates a negative cash flow for the project during these years with a resulting need to borrow money to sustain operations. This investment also increases depreciation expense significantly, with potentially lower profitability dependant on power prices and water availability. It is investment in a business with probable long-term gains for which a long-term license is appropriate to ensure success.

Closing

We appreciated the opportunity for Alcoa to be heard before the J II Committee and to provide this supplemental information.

Sincerely,

William J. O'Rourke
Vice President, Sustainability, Environment, Health & Safety

Attachments

Cc: Judiciary II Committee

PROPORTIONATE MORTALITY STUDY

OF AL'COA WORKERS

(1980-1987)

Howard E. Rockette, Ph.D.
Department of Biostatistics
University of Pittsburgh

Vincent C. Arena, Ph.D.
Department of Clinical Epidemiology
and Preventive,Medicine
University of Pittsburgh

MARCH 1990

Acknowledgements - The authors wish to acknowledge Mrs. Bonnie Besseck for coding the death certificates, Mr. Rao Damaraju, Ms. Cora Wixey for coding employment histories and help in preparing the report, and Mrs. Betty Valentine for typing the manuscript. We would also like to thank Ms. Barbara Peterson for her diligence in obtaining the death certificates.

Background

This study provides an evaluation of the mortality patterns of workers in the aluminum industry that can be used with the information from the previously reported Tripartite Study to help assess potential health problems in the aluminum industry. The Tripartite Study was initiated in May 1978 and a report of study findings was made in November 1981. Progress of the study was reported quarterly throughout the duration of the contract period to a Tripartite Committee consisting of representatives of labor, management and government. The study population consisted of 21,829 men employed at least five years in a reduction operation in one of the 14 plants between January 1, 1946 and December 31, 1973 (1). Vital Status determination as of December 31, 1977 was made on 99.3% of the cohort and death certificates were obtained for 97.6% of the men believed to be deceased. The priorities which directed the analysis of the Tripartite data were as follows:

(1) Mortality patterns of workers in the potroom and/or carbon departments were given the most attention in the analysis.

(2) Respiratory cancer was to be investigated thoroughly and was the disease category given the highest priority.

(3) Lymphopoietic cancers were to be investigated and were second only to respiratory cancer as a disease category to be given special attention.

(4) For diseases other than respiratory cancer and lymphopoietic cancer, enough preliminary analysis was

done to identify any excess mortality that was associated with a particular plant or process.

(5) Causes of death associated with the aluminum reduction process in other studies were reinvestigated using the Tripartite data.

In order to satisfy these objectives, the mortality patterns of employees in the fourteen reduction plants was compared to the total U.S. male population for 59 selected causes of death. Analysis was done by plant, process, calendar time period, time since first employment and selected exposure measurements. Industrial hygiene measurements were available for total particulates, benzene solubles, benzo(a)pyrene, particulate polycyclic organic matter, sulfur dioxide and total fluorides. Based on these analyses and the previous research literature on mortality of reduction plant workers, some categories of disease were selected for more detailed investigation.

The major findings of the Tripartite Study were as follows:

(1) There were no strong associations of lung cancer mortality and work in the reduction plant. Overall the lung cancer SMR of the total cohort based on 272 observed deaths was 96.4. Formal tests of a dose-response relationship to cumulative years employment in the potroom and carbon departments, cumulative pears of employment in the reduction plant, and cumulative exposure to benzene solubles, particulate polycyclic organic matter, benzo(a)pyrene, total particulates, total fluorides and sulfur dioxide showed no statistically significant relationship.

There were two exceptions to the lack of an excess for lung cancer mortality. One plant, a horizontal Soderberg, had an SMR of 162.0 (pC0.05) for white males. However, the region in which the plant was located has a high lung cancer rate in the general population and when the data was reanalyzed using local rates, the SMR was below 100. The second excess was in the baked carbon department of one of the plants where there was an SMR of 266.8 ($p<0.05$) based on eight observed deaths. However, this excess was not observed in the baked carbon departments of the remainder of the prebake plants.

(2) The SMR for leukemia was 124.9 based on 43 observed deaths. This excess was not statistically significant. The SMR for the prebake process was 123.5 and for the Soderberg process was 130.2. The SMR for potroom workers in the Soderberg process was 169.1 and for potroom workers in the prebake process was 124.6. Analysis by duration of employment was not consistent by process with men in the prebake showing more excess with longer term employment and men in the Soderberg process showing greater excess with short term employment.

(3) The SMR for pancreatic cancer was 122.3 and was not statistically significant. However, there was a significant excess for men with more than 15 years employment in the potroom department in both the Soderberg (SMR=271.3, $p<0.05$) and prebake process (SMR=222.2, $p<0.05$).

(4) The SMR for kidney cancer in the prebakc process was 144.9. The excess was greater in men with less than 20 years employment and greater in men employed outside the carbon and potroom departments.

(5) Although the number of observed deaths was small there was an excess of bladder cancer in men employed 5 or more years in the potroom or carbon department of the Soderberg process.

(6) The only cause of death which was statistically elevated for an entire process was benign and unspecified neoplasms. For the prebake process the SMR for this cause was 193.5 ($p<0.05$) based on 14 observed deaths. The estimated risk was greater for men employed twenty-five or more years, and was higher outside the potroom and carbon departments.

(7) There was an excess of emphysema in the potroom and carbon departments of the Soderberg process (SMR=216.5, $p<0.05$; SMR=258.9, $p<0.05$). Although the excess in the prebake process was elevated, it was not statistically significant. The emphysema risk may have been understated in the prebake process because of a tendency to code many death certificates to "chronic obstructive lung disease" after 1970. If these cases were considered to be emphysema there would be a statistically significant excess in the prebake process. For men with more than 20 years employment in the prebake process there was an SMR of 260.2, ($p<0.01$) for asthma.

The present study is a PMR Study without detailed work histories and without exposure measurements available. Thus, the conclusions that can be drawn from this study are more limited than those that could be obtained from the Tripartite Study. Nevertheless, this study provides us with an independent data base on which to confirm the interpretation of some of the findings in the Tripartite Study and also provides a means of

obtaining a preliminary evaluation of mortality patterns of nonreduction plant workers. Specifically, the primary objectives of the present study are as follows:

(1) To obtain mortality data from aluminum reduction plants independent of the Tripartite cohort that can be used to further clarify the relationship of employment in aluminum reduction plants to excess mortality from cancer. Because the majority of ALCOA workers were employed in the prebake process, it is for workers in this process that we expect the most information to be obtained. The mortality patterns in the PMR study will be contrasted with those obtained from the Tripartite Study.

(2) To obtain a profile of the mortality experience of nonreduction plant workers. Little information is available on the mortality experience of nonreduction plant workers since most studies have focussed on exposure in the potroom and carbon departments. This part of the investigation is limited because of the lack of detailed coding within the nonreduction plants. However, by investigating the consistency of any excess among plants with similar processes we may identify potential associations for future investigation.

(3) On the basis of this PMR study, the Tripartite Study and a review of the literature of potential health hazards in the aluminum industry, we will make specific recommendations of studies we feel are necessary in order to determine the association of disease with exposure in the aluminum industry. Such studies will be primarily hypotheges testing as opposed to hypothesis generating.

Methods

The study population assembled by ALCOA consisted of all deaths known to the company as determined by insurance claims during the time period 1/1/80 through 12/31/87 in one of the 37 study plants. Any former employee whose beneficiary had either filed a claim or was receiving death benefits from the company was included in the study population. The initial list supplied by ALCOA was reviewed for duplicates and incomplete or inconsistent names. The resultant study population contains 6433 workers. Death certificates were obtained for all but 60 (0.9%) of the study population. These deaths were coded by a nosologist according to the ninth revision ICD and it is these 6373 death certificates on which the analyses in the present report are based. The frequencies of deaths for each cause are given in the Appendix.

Detailed work histories were not coded and analyzed for this study, since to provide such coding for such a large variety of plants and processes would have required considerable effort. For this report an employee was classified in the plant where he was last employed. Using this method of classification, 2777 workers were coded to one of the eight reduction plants. For these eight reduction plants we further coded whether they had ever worked in the potroom or carbon department as well as the department they spent the majority of time. Nine employees could not be included in this analysis because we did not have work histories. The departments in the reduction process used to classify majority of time were potroom, carbon, ingot, mechanical maintenance, electrical maintenance, and power. A total of 1320

employees in the eight reduction plants spent the majority of their time in a nonreduction process. We have done analysis separately for the 3596 employees in nonreduction plants, the 1320 employees in a nonreduction process of a reduction plant and the 1448 employees in the reduction process.

The proportionate mortality ratio was the primary summary index of risk. The analysis was done using the computer program OCMAP (2) and five year average annual age, race and sex-specific U.S. rates for the control group. As a secondary analysis we used a proportionate cancer mortality index (PCMR) (3). This index uses "all cancer mortality" as the base on which to base proportionate mortality rather than "all cause" mortality and is believed by many investigators to be less subject to the healthy worker effect.

Both the PMR and PCMR were adjusted for age, sex, race and calendar time. To meet the primary objectives of this study we completed the following analyses:

(1) The PMR and PCMRs were computed for 62 selected causes of death by race, sex, and race-sex combinations for the total cohort, for nonreduction plants, and for plants with a reduction process (reduction plants).

(2) For plants with a reduction process PMRs and PCMRs were computed for employees with a majority of their time in each of the following: a) nonreduction process, b) potroom department, c) carbon department, d) ingot department, e) mechanical maintenance, f) electrical maintenance, and g) power. Mortality indices were also

computed for employees "ever employed in the potroom department" and employees "ever employed in the carbon department".

(3) PMRs and PCMRs were computed for each plant for all 62 selected causes of death.

Because of the large number of comparisons we expect some statistically significant excesses as well as deficits. When interpreting our data we will give emphasis to the excesses, but when interpreting excesses we will take into consideration the consistency of the result with the Tripartite Study as well as the consistency with other plants that have a similar process. In most cases we have required that either the observed or expected number of deaths be 5 before we attempt to interpret results for a specific cause of death.

Population Characteristics

A total of 6373 death certificates was obtained and coded for the years 1980 to 1987 in the 37 study plants. A total of 6112 (95.9%) death certificates were for males and 5816 (91.3%) were for whites. Table 1 summarizes the distribution of deaths by year. The number of deaths were approximately equal for each of the seven years of the study. The age at death is summarized in Table 2. Fifty-one percent of the deaths occurred at ages 65-79.

The distribution of deaths for the 37 study plants is shown in Table 3. The eight plants with a reduction process contributed 44% of the total deaths and 28% of the total deaths were for employees who at one time were in a reduction process evaluated in the Tripartite Study. Of the 2777 workers in one

of the eight plants.with a reduction process, all but 9 had employment histories. Of the 2768 workers with employment histories, 1320 spent the majority of their .time in a nonreduction process. The distribution of the number of employees spending the majority of their time in a specific reduction department is given in Table 4. Of the 1448 employees with the majority of time in one of the reduction departments, 556 (36%) had the majority of their time in the potroom. The second largest group was mechanical maintenance which accounted for 433 (29.9%) of the deaths.

Table 1

Distribution of Employees
by Year of Death

Year	Frequency	Percent
1980	766	12.0
1981	772	12.1
1982	781	12.3
1983	824	12.9
1984	793	12.4
1985	759	11.9
1986	819	12.9
1987	859	13.5
TOTAL	6373	100.0

Table 2
Distribution of Employees
by Age at Death

Value Label.	Frequency	Percent
20 - 24	7	.1
25 - 29	19	.3
30 - 34	29	.5
35 - 39	41	.6
40 - 44	57	.9
45 - 49	80	1.3
50 - 54	172	2.7
55 - 59	293	4.6
60 - 64	573	9.0
65 - 69	1002	15.7
70 - 74	1261	19.8
75 - 79	1182	18.5
80 - 84	838	13.1
85 - 89	541	8.5
90 - 94	206	3.2
$\geq$95	72	1.1

Table 3

Distribution of Workers by Plant

Plant Name	Frequency	Percent,
Tennessee	1325	20.8
Vernon	210	3.3
Point Comfort	167	2.6
Massena	630	9.9
New Rensington	754	11.8
Cleveland	448	7.0
Cressona	231	3.6
Buffalo	7	.1
Vancouver	196	3.1
Warrick	116	1.8
chillicothe	54	.8
Richmond	74	1.2
Detroit	76	1.2
East St. Louis	145	2.3
Edgewater	282	4.4
Chicago	27	.4
Corona	12	.2
Bridgeport	36	.6
Edison	103	1.6
Davenport	247	3.9
Wentachee	88	1.4
Lafayette	355	5.6
Lancaster	31	.5
Marshall	11	.2
Logans Ferry	16	.3
Mobile	149	2.3
Lebanon	8	.1
Anderson	2	.0
Badin	152	2.4
Bauxite	148	2.3
Addy	8	.1
Atc	89	1.4
Fort Meade	4	.1
Franklin	23	.4
Rockdale	103	1.6
Rosiclare	36	.6
Tiffon	10	.2
Total	6373	100.0

Table 4
Department Where Reduction Plant Workers
Spent Majority of Time

Department	Frequency	Percent
Potroom	556	38.4
Carbon	140	9.7
Ingot	183	12.6
Mech Maintenance	433	29.9
Elec Maintenance	113	7.8
Power	23	1.6

Results

A. Mortality for Total Cohort

The cause-specific mortality for 62 selected causes of death is shown in Table 5. The PMR for the category "all malignant neoplasms" is 103.7 based on 1605 observed deaths. Five causes of death are significantly elevated. These are cancer of the kidney (PMR=158.1, $p<0.01$), all other malignant neoplasms (PMR=134.3, $p<0.01$), benign and unspecified neoplasm (PMR=195.6, $p<0.01$), nephritis and nephrosis (PMR=242.2, $p<0.01$) and cerebral vascular disease (PMR=111.4, $p<0.05$). Since males comprise 91% of the cohort, it is not surprising that when we restrict our analysis to the population of males (Table 6) the same causes of death show a significant excess. For females (Table 7), all other malignant neoplasms (PMR=240.2, $p<0.01$), benign neoplasms (PMR=600.5, $p<0.01$) and all other causes of death (PMR=135.1, $p<0.05$) show a statistically significant excess.

When mortality patterns for the total cohort are

Table 5
observed and Expected Deaths and Proportionate Mortality Ratios for the Total Population

Cause of Death (ICDA 9th Revision Codes)	OBS	EXP	SPMR		95% Limits LOWER	UPPER
All Cruses of Math	6373	6373.00	100.0		---	---
Tuberculosis	4	8.18	48.9		18.7	127.6
All Malignant Neoplasms	1605	1548.32	103.7		98.4	108.1
Cancer of Buccal Cavity & Pharynx	18	33.58	53.6	**	34.1	84.4
Cancer of Digestive Organs b Peritoneum	385	381.80	100.8		91.5	111.1
Cancer of Esophagus	19	36.85	51.6	**	33.2	80.0
Cancer of Stomach	59	53.88	109.5		84.9	141.2
Camr of Large Intestine	166	151.98	109.2		94.0	120.9
Cancer of Rectum	30	29.70	101.0		70.7	144.3
Cancer of Biliary Passages b Liver	30	34.79	86.2		60.4	123.2
Cancer of Pancreas	74	75.10	98.5		78.6	123.8
Cancer of All Other Digestive Organs	7	10.95	63.9		30.7	133.2
Cancer of Respiratory System	568	545.75	104.1		96.3	112.5
Cancer of Larynx	7	17.88	39.1	*	19.2	79.8
Cancer of Bronchus, Trachea, Lung	558	522.98	106.7		98.6	115.4
Cancer of All Other Respiratory	3	4.88	61.5		20.1	188.5
Canter of Breast	13	14.29	91.0		53.8	153.9
All Uterine Cancers (Females only)	4	3.23	123.8		46.9	320.0
Cancer of Cervix Uteri (Ferules only)	1	1.33	75.2		10.8	524.4
Cancer of Other Female Genital Organs	4	4.17	95.9		38.4	252.9
Cancer of Prostate (Males only)	147	167.98	87.5		74.7	102.0
Cancer of Testes and Other Male Genital Organs	3	2.48	121.9		39.4	377.1
Cancer of Kidney	53	33.52	158.1	**	121.2	206.3
Curer of Bladder and Other Urinary Organs	48	48.32	103.8		78.2	137.4
Malignant Melanoma of Skin	19	16.88	112.6		71.9	170.3
Cancer of Eye	1	0.79	127.3		18.0	899.0
Cancer of Central Nervous System	24	29.12	82.4		55.3	122.7
Cancer of Thyroid & Other Endocrine Glands	4	3.42	116.9		43.9	311.1
Cancer of Bone	3	2.50	120.0		38.8	371.3
Cancer of All Lymphatic, Haematopoietic Tissue	147	129.45	113.6		96.8	133.2
Lymphosarcoma & Reticulosarcoma	18	13.74	116.5		71.4	189.9
Hodgkins Disease	7	4.78	146.8		70.2	305.9
Leukemia A Aleukemia	55	53.91	102.0		78.4	132.7
Cancer of All Other Lymphopoietic Tissue	69	57.03	121.0		95.7	153.0
All Other Malignant Neoplasms	164	122.11	134.3	**	115.5	156.2
Benign Neoplasms	29	14.82	195.6	**	136.9	279.5
Diabetes Mellitus	92	85.41	86.4		78.7	118.1
Cerebrovascular Disease	466	418.26	111.4	*	102.1	121.8
All Heart Disease	2555	2587.57	98.5		98.8	102.5
Rheumatic Heart Disease	14	22.81	61.4		36.8	103.0
Ischemic Heart Disease	1889	2217.28	85.2	**	82.2	88.3
Chronic Endocard. Dis.; Other Myocard. Xnsuff.	134	125.14	107.1		90.6	126.6
Hypertension with Heart Disease	52	62.35	83.4		63.7	109.2
All Other Heart Disease	468	481.67	100.9		92.5	110.1
Hypertension w/o Heart Disease	23	17.23	133.5		88.9	200.5
Non-malignant Respiratory Disease	482	580.91	82.4	**	75.5	89.8
Influenza b Pneumonia	153	198.70	77.0	**	66.0	89.9
Bronchitis, Emphysema, Asthma	73	88.50	82.5		65.7	103.5
Bronchitis	10	15.53	64.4		34.8	119.0
Emphysema	54	68.12	79.2		60.9	103.3
Asthma	9	5.80	155.3		81.2	298.8
Other Non-malignant Respiratory Disease	236	287.82	82.1	**	72.5	92.9
Ulcer of Stomach & Duodenum	22	19.09	115.2		76.0	174.9
Cirrhosis of Liver	56	90.48	61.9	**	47.9	80.0
Nephritis & Nephrosis	85	35.09	242.2	**	197.3	297.4
All External Causes of Death	288	285.28	100.9		90.9	112.1
Accidents	181	178.11	108.8		93.2	122.1
Motor Vehicle Accidents	80	69.53	115.1		93.2	142.0
All Other Accidents	111	111.10	99.9		83.2	120.0
Suicides	74	72.58	102.0		81.6	127.5
Homicides b Other External Causes	23	33.82	68.4		46.2	101.3
All Other Causes of Death	686	651.61	105.3		98.1	113.0
Unknown Causes (In All Causes Category Only)	0					

* Significant at 5% Level; ** Significant at 1% Level

Table 6
observed and Expected Deaths and Proportionate Mortality Ratios for Hales

Cause of Death (ICDA 9th Revision Cobs)	OBS	EXP	SPMR		95% Limits LOWER	UPPER
All Causes Of Death	6112	6112.00	100.0		---	---
Tuberculosis	4	7.88	50.1		19.2	130.8
All Malignant Neoplasms	1533	1482.52	103.4		98.0	108.0
Cancer of Buccal Cavity A Pharynx	18	32.69	55.1	*	35.0	86.7
Cancer of Digestive Organs A Peritoneum	387	385.61	100.4		90.9	110.8
Cancer of Esophagus	19	36.20	52.5	**	33.8	81.5
Cancer of Stomach	57	52.24	109.1		84.3	141.3
Cancer of Large Intestine	158	144.54	107.9		92.4	126.0
Cancer of Rectum	28	28.48	101.8		70.8	148.4
Cancer of Biliary Passages b Liver	28	33.15	84.5		58.4	122.2
Cancor of Pancreas	71	71.57	99.2		78.7	125.0
Cancer of All Other Digestive Organs	7	10.40	67.3		32.3	140.4
Cancer of Respiratory System	557	533.38	104.4		98.5	113.0
Cancor of Larynx	7	17.88	39.6	*	19.4	80.8
Cancer of Bronchus, Trachea, Lung	547	510.97	107.1		98.9	115.9
Cancer of All Other Respiratory	3	4.73	63.4		20.8	184.5
Cancer of Breast	0	1.83	---		---	---
All Uterine Cancers (Females only)	0	0.00	---		---	---
Cancor of Cervix Uteri (Females only)	0	0.00	---		---	---
Cancer of Other female Genital O r .	0	0.00	---		---	---
Cancor of Prostate (Males only)	147	167.98	87.5		74.7	102.8
Cancor of Tortes and Other Male Genital Organs	3	2.46	121.9		39.4	377.1
Cancer of Kidney	53	32.42	163.5	**	125.3	213.3
Cancer of Bladder and Other Urinary Organs	48	45.38	105.7		79.8	140.2
Malignant Melanoma of Skin	19	16.19	117.4		75.0	183.7
Cancer of Eye	1	0.74	134.5		19.1	948.2
Cancor of Central Nervous System	21	27.66	75.9		49.6	116.1
Cancer of Thyroid & Other Endocrine Glands	4	3.16	126.5		47.8	338.2
Cancer of Bone	3	2.38	125.9		40.7	388.2
Cancer of All Lymphatic, Haematopoietic Tissue	141	123.81	114.1		96.9	134.3
Lymphosarcoma A Reticulosarcoma	18	13.03	122.8		75.3	200.1
Hodgkins Disease	7	4.55	153.9		73.9	320.9
Leukemia A Aleukemia	53	51.71	102.5		78.4	134.0
Cancer of All Other Lymphopoietic Tissue	65	54.32	119.7		94.0	152.4
All Other Malignant Neoplasms	151	116.70	129.4	**	110.5	151.5
Benign Neoplasms	24	13.99	171.5	**	115.8	254.8
Diabetes Mellitus	85	89.58	94.9		76.9	117.2
Cerebrovascular Disease	446	394.33	113.1	**	103.4	123.7
All Heart Disease	2467	2468.77	99.9		96.9	103.0
Rheumatic Heart Disease	13	20.40	63.7		37.2	109.1
Ischemic Heart Disease	1823	2137.37	85.3	**	82.2	88.5
Chronic Endocard. Dis.; Other Myocard. Insuff.	128	119.10	107.5		90.8	127.5
Hypertension with Heart Disease	52	59.04	88.1		67.2	115.4
All Other Wart Disease	451	443.35	101.7		93.1	111.2
Hypertension w/o Heart Disease	22	16.41	134.1		88.5	203.2
Non-malignant Respiratory Disease	451	543.17	83.0	**	76.1	90.6
Influenza & Pneumonia	149	190.83	78.1	**	66.8	91.3
Bronchitis, Emphysema, Asthma	72	85.91	83.8		66.7	105.4
Bronchitis	10	15.04	66.5		36.0	122.9
Emphysema	53	66.54	79.7		61.0	104.0
Asthma	9	5.36	168.1		88.1	320.8
Other Non-malignant Respiratory Disease	230	279.79	82.2	**	72.5	93.2
Ulcer of Stomach A Duodenum	20	18.29	109.3		70.8	169.4
Cirrhosis of Liver	55	87.23	63.1	**	48.7	81.7
Nephritis a Nephrosis	82	33.71	243.2	**	197.4	209.7
All External Causes of Death	278	275.54	100.9		90.7	112.3
Accidents	184	172.47	106.7		93.0	122.4
Motor Vehicle Accidents	75	66.67	112.5		90.5	139.9
All Other Accidents	109	(07.28	101.8		84.5	122.2
Suicides	71	70.78	100.3		79.9	120.0
Homicides 6 Other External Causes	23	32.29	71.2		48.1	105.6
All Other Curses of Death	845	821.26	103.8		B8.5	111.7
Unknown Causes (In All Causes Category Only)	0					

* Significant at 5% Level; ** Significant at 1% Level

Table 7
Observed and Expected Deaths and Proportionate Mortality Ratios for Females

Cause of Death (ICDA 8th Revision Codes)	OBS	EXP	SPMR		95% Limits LOWER	UPPER
All Causes of Death	261	261.00	100.0		---	---
Tuberculosis	0	0.20	---		---	---
All Malignant Neoplasms	72	65.80	109.4		00.3	132.1
Cancer of Buccal Cavity & Pharynx	0	0.17	---		---	---
Cancer of Digestive Organs & Portt——	18	10.19	111.2		71.2	173.7
Cancer of Esophagus	0	*0.85*	---		---	---
Cancer of Stomach	2	1.14	122.2		30.8	485.3
Cancer of Large Intestine	10	7.44	134.4		73.2	246.9
Cancer of Rectum	1	1.22	81.8		11.6	575.7
Cancer of Biliary Passages & Liver	2	1.14	121.7		30.6	483.2
Camr of Pancreas	3	3.53	84.9		27.7	280.7
Cancer of All Othrr Digestive Organs	0	0.55	---		---	---
Camr of Respiratory System	11	12.38	88.0		50.3	157.2
Cancer of Larynx	0	0.22	---		---	---
Cancer of Bronchus, Trachea, Lung	11	12.00	91.6		51.8	182.1
Camr of All Othrr Respiratory	0	0.14	---		---	---
Cancer of Breast	13	12.66	102.7		80.9	173.3
All Uterine Cancers (Females only)	4	3.23	123.8		46.9	326.6
Cancer of Cervix Uteri (Females only)	1	1.33	75.2		10.8	524.4
Cancer of Other Female Genital Organs	4	4.17	95.9		36.4	252.8
Cancer of Prostate (Males only)	0	0.00	---		---	---
Cancer of Testes and Other Male Genital Organs	0	0.00	---		---	---
Cancer of Kidney	0	1.10	---		---	---
Cancer of Bladder and Other Urinary Organs	0	0.83	---		---	---
Malignant Melanoma of Skin	0	0.69	---		---	---
Cancer of Eye	0	0.04	---		---	---
Camr of Central Nervous System	3	1.48	205.4		88.2	618.7
Cancer of Thyroid & Other Endocrine Glands	0	0.26	---		---	---
Cancer of Bone	0	0.12	---		---	---
Cancer of All Lyephatic, Haematopoietic Tissue	6	5.84	102.8		48.6	226.4
Lymphosarcoma & Reticulosarcoma	0	0.70	---		---	---
Hodgkins Disease	0	0.23	---		---	---
Leukemia & Aleukemia	2	2.20	90.8		22.8	360.8
Cancer of All Other Lymphopoietic Tissue	4	2.70	147.9		58.2	389.4
All Othr Malignant Neoplasms	13	5.41	240.2	**	142.7	404.2
Benign Neoplasms	5	0.83	600.5	**	278.8	1294.5
Diabetes Mellitus	7	5.86	119.5		57.5	248.3
Cerebrovascular Disease	20	23.93	83.6		55.2	128.4
All Heart Disease	88	87.80	90.0		76.8	105.8
Rheumatic Heart Disease	1	2.41	41.5		6.3	274.4
Ischemic Heart Disease	66	79.90	82.6		87.8	100.6
Chronic Endocard. Dis.; Other Myocard. Insuff.	6	6.04	99.4		45.2	218.8
Hypertension with Mart Disease	0	3.32	---		---	---
All Other Heart Disease	15	18.32	81.9		50.4	133.1
Hypertension w/o Mart Disease	1	0.82	121.8		17.3	858.8
Non-malignant Respiratory Disease	11	17.74	62.0		35.3	109.0
Influenza & Pneumonia	4	7.87	50.8		19.8	130.4
Bronchitis, Emphysema, Asthma	1	2.58	38.7		5.9	252.6
Bronchitis	0	0.49	---		---	---
Emphysema	1	1.58	63.4		9.2	439.2
Asthma	0	0.44	---		---	---
Other Non-malignant Respiratory Disease	6	7.84	76.6		34.9	167.8
Ulcer of Stomach & Duodenum	2	0.80	250.3		85.8	852.6
Cirrhosis of Liver	1	3.27	30.6		4.9	190.4
Nephritis & Nephrosis	3	1.38	217.8		72.5	654.7
All External Causes of Death	10	9.75	102.6		58.2	180.7
Accidents	7	6.64	105.3		52.0	213.4
Motor Vehicle Accidents	5	2.87	174.4		76.8	395.7
All Othr Accidents	2	3.83	52.3		13.6	201.1
Suicides	3	1.77	169.6		58.5	508.7
Homicides & Other External Causes	0	1.34	---		---	---
All Other Causes of Death	41	30.34	135.1	*	101.5	179.8
Unknown Causes (In All Causes Category Only)	0					

* Significant at 5% Level; ** Significant at 1% Level

Table 8
Observed and Expected Deaths and Proportionate Mortality Ratios for Whites

Cause of Death (ICDA 9th Revision Codes)	OBS	EXP	SPMR		95% Limits LOWER	UPPER
All Causes of Death	5816	5816.00	100.0		---	---
Tuberculosis	3	6.96	50.3		16.6	152.5
All Malignant Neoplasms	1438	1407.46	102.2		97.7	106.8
Cancer of Buccal Cavity & Pharynx	13	29.89	43.5	**	25.7	73.6
Cancer of Digestive Organs & Peritoneum	340	344.43	98.7		89.1	109.4
Cancer of Esophagus	17	30.51	55.7	*	34.8	88.9
Cancer of Stomach	48	48.47	99.0		74.2	132.0
Cancer of Large Intestine	153	140.84	108.6		92.9	127.0
Cancer of Rectum	29	27.60	105.1		73.1	151.1
Cancer of Biliary Passages & Liver	22	30.89	71.2		47.0	107.8
Cancer of Pancreas	86	88.29	96.7		78.0	122.8
Camr of All Other Digestive Organs	7	10.17	68.8		33.0	143.7
Cancer of Respiratory System	520	499.48	104.1		96.0	112.9
Cancer of Larynx	7	15.91	44.0	*	21.4	90.3
Cancmr of Bronchus, Trachea, Lung	510	479.07	106.5		98.0	115.8
Cancer of All Other Respiratory	3	4.49	66.8		21.7	205.3
Cancer of Breast	13	13.67	95.1		56.2	180.8
All Uterine Cancers (Females only)	3	3.04	98.8		32.2	303.8
Cancer of Cervix Uteri (Females only)	0	1.19	---		---	---
Cancer of Other Female Genital Organs	4	4.09	97.8		37.1	257.7
Cancer of Prostate (Males only)	123	143.49	85.7		72.0	102.0
Camr of Testes and Other Male Genital Organs	3	2.23	134.8		43.7	416.0
Cancer of Kidney	48	31.58	152.1	**	115.0	201.3
Cancer of Bladder and Other Urinary Organs	44	43.56	101.0		75.3	135.8
Malignant Melanoma of Skin	18	16.65	108.1		68.2	171.4
Cancmr of Eym	1	0.77	129.9		18.4	917.0
Cancer of Central Nervous System	22	28.05	78.4		51.8	118.8
Cancer of Thyroid & Other Endocrine Glands	4	3.22	124.2		46.7	330.2
Cancer of Bone	3	2.31	130.0		42.1	401.8
Cancer of All Lymphatic, Haematopoietic Tissue	132	120.58	109.5		92.5	129.6
Lymphosarcoma & Reticulosarcoma	13	13.13	99.0		57.5	170.4
ins Disease	7	4.51	155.1		74.4	323.3
emia & Aleukemia	50	50.88	98.7		74.9	130.0
Cancer of All Other Lymphopoietic Tissue	82	52.26	118.6		92.6	152.0
All Other Malignant Neoplasms	147	110.55	133.0	**	113.4	156.0
Benign Neoplasms	28	13.80	181.2	**	131.1	278.8
Diabetes Mellitus	73	84.63	86.3		68.7	108.3
Cerebrovascular Disease	422	373.12	113.1	**	103.2	124.0
All Wart Disease	2371	2371.79	100.0		96.8	103.1
Rheumatic Heart Disease	14	21.75	64.4		38.3	108.1
Ischemic Wart Disease	1777	2082.38	85.3	**	82.2	88.6
Chronic Endocard. Dis.; Other Myocard. Insuff.	128	113.89	112.4		94.7	133.4
Hypertension with Heart Disease	38	48.63	72.5		52.5	100.3
All Other Heart Disease	418	405.99	102.5		93.4	112.4
Hypertension w/o Heart Disease	20	14.42	138.7		89.7	214.4
Non-malignant Respiratory Disease	430	521.14	82.5	**	75.4	90.3
Influenza & Pneumonia	143	180.38	79.3	**	67.6	93.0
Bronchitis, Emphysema, Asthma	88	83.92	81.0		64.0	102.5
Bronchitis	10	14.87	67.2		36.3	124.3
Emphysema	50	65.12	76.8		58.3	101.1
Asthma	8	5.02	159.4		80.2	316.8
Other Non-malignant Respiratory Disease	219	269.47	81.3	**	71.4	92.4
Ulcer of St—ch & Duodenum	21	17.56	119.6		78.0	183.1
Cirrhosis of Liver	50	83.04	60.2	**	45.9	78.9
Nephritis & Nephrosis	75	29.89	251.0	**	201.8	312.1
All External Causes of Death	281	255.72	102.1		91.4	114.0
Accidents	174	160.96	108.1		93.8	124.5
Motor Vehicle Accidents	70	63.51	110.2		88.0	138.0
All Other Accidents	104	98.79	105.3		87.2	127.2
Suicides	70	70.11	99.8		79.4	125.6
Homicides & Other External Causes	17	24.65	69.0		43.4	109.5
All Other Causes of Death	828	583.52	107.3		99.8	115.5
Unknown Causes (In All Causes Category Only)	0					

* Significant at 5% Level; ** Significant at 1% Level

Table 9
Observed and Expected Deaths and Proportionate Mortality Ratios for Nonwhites

Cause of Death (ICDA 9th Revision Codes)	OBS	EXP	SPMR		95% Limits LOWER	UPPER
All Causes of bath	557	557.00	loo.0		---	---
Tuberculosis	1	2.22	45.1		6.7	302.8
All Malignant Neoplasms	167	140.88	118.5	•	104.1	135.0
Cancer of Buccal Cavity A Pharynx	5	3.66	136.6		57.3	325.8
Cancer of Digestive Organs b Peritoneum	45	37.37	120.4		80.9	150.5
Cancer of Esophagus	2	6.34	31.6		8.8	116.0
Cancer of Stomach	13	7.41	175.5	•	103.0	299.1
Cancer of Large Intestine	13	11.15	116.6		68.1	199.6
Cancer of Rectum	1	2.11	47.5		7.0	321.2
Cancer of Biliary Passages & Liver	8	3.80	205.1	•	104.4	403.1
Cancer of Pancreas	8	6.81	117.4		59.0	233.6
Cancer of All Other Digestive Organs	0	0.78	---		---	---
Cancer of Respiratory System	48	46.27	103.7		79.3	135.7
Cancer of Larynx	0	1.98	---		---	---
Cancer of Bronchus, Trachea, Lung	48	43.90	109.3		83.5	143.1
Cancer of All Other Respiratory	0	0.38	---		---	---
Cancer of Breast	0	0.62	---		---	---
All Uterine Cancers (Females only)	1	0.18	513.2		90.6	2908.6
Cancer of Cervix Uteri (Females only)	1	0.14	697.7	•	132.1	3685.6
Cancer of Other Female Genital Organs	0	0.08	---		---	---
Cancer of Prostate (Males only)	24	24.48	98.0		66.4	144.7
Cancer of Testes and Other Male Genital Organs	0	0.24	---		---	---
Cancer of Kidney	5	1.96	254.5	•	109.5	591.9
Cancer of Bladder and Other Urinary Organs	4	2.76	145.0		54.8	383.2
Malignant Melanoma of Skin	1	0.23	435.8		72.5	2818.7
Cancer of Eye	0	0.02	---		---	---
Cancer of Central Nervous System	2	1.07	187.0		47.9	729.9
Cancer of Thyroid A Other Endocrine Glands	0	0.20	---		---	---
Cancer of Bone	0	0.19	---		---	---
Cancer of All Lymphatic, Haematopoietic Tissue	15	8.87	169.2	•	103.0	277.9
Lymphosarcoma A Reticulosarcoma	3	0.61	495.0	••	178.7	1371.1
Hodgkins Disease	0	0.26	---		---	---
Leukemia b Aleukemia	5	3.23	154.9		65.1	368.6
Cancer of All Other Lymphopoietic Tissue	7	4.77	146.8		70.5	305.5
All Other Malignant Neoplasms	17	11.56	147.1		92.2	234.7
Benign Neoplasms	3	1.22	245.3		82.2	732.1
Diabetes Mellitus	19	10.78	176.1	•	113.5	273.2
Cerebrovascular Disease	44	45.14	97.5		73.5	129.3
All Heart Disease	184	195.77	94.0		83.7	105.5
Rheumatic mart Disease	0	1.07	---		---	---
Ischemic Heart Disease	112	134.92	83.0	•	70.7	97.4
Chronic Endocard. Dis.; Other Myocard. Insuff.	6	11.25	53.3		24.5	118.1
Hypertension with Heart Disease	16	12.72	125.8		77.6	203.9
All Other Heart Disease	50	55.68	89.8		69.1	116.8
Hypertension w/o Heart Disease	3	2.80	107.0		34.8	330.7
Non-malignant Respiratory Disease	32	38.77	80.5		57.7	112.2
Influenza A Pneumonia	10	18.32	54.6	•	30.0	99.3
Bronchitis, Emphysema, Asthma	5	4.57	109.3		45.7	281.5
Bronchitis	0	0.68	---		---	---
Emphysema	4	3.00	133.4		50.4	353.2
Asthma	1	0.78	128.8		18.3	908.1
Other Non-malignant Respiratory Disease	17	18.15	93.6		58.7	149.4
Ulcer of Stomach & Duodenum	1	1.52	65.6		9.4	457.6
Cirrhosis of Liver	6	7.45	80.5		36.8	176.8
Nephritis b Nephrosis	10	5.21	192.1	•	104.8	352.0
All External Causes of Death	27	29.57	91.3		64.8	128.7
Accidents	17	18.15	93.7		59.1	148.5
Motor Vehicle Accidents	10	6.02	166.0		90.8	303.3
All Other Accidents	7	12.31	56.9		27.7	116.8
Suicides	4	2.45	163.6		62.6	427.7
Homicides A Other External Causes	6	8.98	66.8		31.8	140.7
All Other Causes of Death	60	68.09	88.1		69.6	111.6
Unknown Causes (In All Causes Category Only)	0					

• Significant at 5% Level; •• Significant at 1% Level

investigated by race, the white population shows a similar mortality pattern to that observed for the total cohort (Table 8). For nonwhites, causes of death (Table 9) for which there were five observed or expected deaths and where there was a statistically significant excess were all malignant neoplasms (PMR=118.6, $p<0.05$), cancer of the stomach (PMR=175.5, $p<0.05$), cancer of the liver (PMR=205.1, $p<0.05$), cancer of the kidney (PMR=254.5, $p<0.05$), cancer of the lymphatic and haematopoietic tissue (PMR=169.2, $p<0.05$); diabetes mellitus (PMR=176.1, $p<0.05$), and nephritis and nephrosis (PMR=192.1, $p<0.05$).

B. Nonreduction Process

A total of 3596 employees worked in a plant that had no reduction process (Table 10). The overall PMR for these employees was 105.2. The only excess within the category of neoplasms was for "all other malignant neoplasms" where the PMR was 145.9 ($p<0.01$). Other causes of death showing a statistically significant excess were benign and unspecified neoplasms with a PMR of 227.3 ($p<0.01$), "all other heart disease" with a PMR of 117.2 ($p<0.01$), and "nephritis and nephrosis" with a PMR of 293.8 ($p<0.01$). Investigation separately for males and females indicated no causes of death other than those identified in excess for the total cohort. When we evaluated mortality patterns separately for race, in addition to the four causes of death in excess for the total group of nonreduction plant workers we found for whites a PMR of 122.8 ($p<0.05$) for cancer of the large intestine and a PMR of 135.4 ($p<0.01$) for chronic endocarditis and other myocardial insufficiency. For nonwhites, we found that

the excess of stomach cancer, liver cancer, lymphatic cancer and nephritis reported in the nonwhite population comprising the total cohort occurred in these nonreduction plants. The PMR for all malignancies for nonwhites in the nonreduction plants was 128.0 ($p<0.01$).

Of the 2777 workers in the 8 plants with a reduction process, 1320 spent the majority of their time in a nonreduction process. For this group of workers the PMR for all malignant neoplasms was 93.6. There were statistically significant excesses of cancer of the lymphatic and haematopoietic tissue (PMR=140.1, $p<0.05$), cerebrovascular disease (PMR=126.9, $p<0.05$), hypertension without heart disease (PMR=230.2, $p<0.05$) and nephritis and nephrosis (PMR=196.8, $p<0.01$). We also note the excess for asthma (PMR=331.0, $p<0.05$) based on only four observed deaths. There were only 56 females in this group of workers so the mortality pattern of the total group is essentially the *same* as that observed for males. For whites, the excesses were the same as that observed for the total group of 1320 workers. For nonwhites, excesses occurred in hypertension with heart disease (PMR=239.2, $p<0.05$) and "all other causes of death" (PMR=202.9, $p<0.01$).

Table 10
Observed and Expected Deaths and Proportionate Mortality Ratios for Nonreduction Plant Employees

Cause of Death (ICDA 9th Revision Codes)	OBS	EXP	SPMR	95% Limits LOWER	UPPER
All Causes of Death	3596	3596.00	100.0	---	---
Tuberculosis	3	4.62	65.0	21.2	199.5
All Malignant Neoplasms	906	861.09	105.2	99.5	111.3
Cancer of Buccal Cavity & Pharynx	11	18.19	60.5	33.8	108.3
Cancer of Digestive Organs & Peritoneum	225	213.51	105.4	92.9	119.6
Cancer of Esophagus	11	20.10	54.7 *	30.7	97.7
Cancer of Stomach	36	30.13	119.5	86.4	165.4
Cancer of Large Intestine	103	85.59	120.3	99.5	145.6
Cancer of Rectum	20	16.64	120.2	77.7	186.0
Cancer of Biliary Passages & Liver	17	19.49	87.2	54.3	140.0
Cancer of Pancreas	35	41.81	83.7	60.3	116.3
Cancer of All Other Digestive Organs	3	6.17	48.6	16.1	147.0
Cancer of Respiratory Syatem	316	297.08	106.4	95.8	118.1
Cancer of Larynx	4	9.69	41.3	16.0	106.4
Cancer of Bronchus, Trachea, Lung	310	284.73	108.9	97.9	121.0
Cancer of All Other Respiratory	2	2.65	75.4	18.9	299.8
Cancer of Breast	9	10.45	86.1	45.8	161.8
All Uterine Cancers (Females only)	3	2.45	122.7	40.0	376.1
Cancer of Cervix Uteri (Females only)	0	0.98	---	---	---
Cancer of Other Female Genital Organs	2	3.16	63.3	16.3	246.3
Cancer of Prostate (Males only)	84	96.35	87.2	70.7	107.6
Cancer of Testes and Other Male Genital Organs	1	1.29	77.4	11.0	546.2
Cancer of Kidney	25	18.32	136.5	92.5	201.4
Cancer of Bladder and Other Urinary Organa	28	26.32	106.4	73.6	153.9
Malignant Melanoma of Skin	11	8.95	123.0	68.2	221.5
Cancer of Eye	1	0.44	229.1	34.1	1539.1
Cancer of Central Nervous System	14	15.51	90.3	53.6	152.1
Cancer of Thyroid & Other Endocrine Glands	4	1.89	211.7	81.3	551.4
Cancer of Bone	1	1.36	73.5	10.4	517.5
Cancer of All Lymphatic, Haematopoietic Tissue	72	71.84	100.2	79.7	126.0
Lymphosarcoma & Reticulosarcoma	6	7.54	79.6	35.9	176.7
Hodgkins Disease	2	2.51	79.8	20.0	317.7
Leukemia & Aleukemia	27	30.06	89.8	61.7	130.8
Cancer of All Other Lymphopoietic Tissue	37	31.74	116.6	84.6	160.6
All Other Malignant Neoplasms	99	67.83	145.9 **	120.2	177.2
Benign Neoplasm.	19	8.36	227.3 **	146.9	351.8
Diabetes Mellitus	55	54.16	101.6	78.1	132.0
Cerebrovascular Diacasc	237	245.53	96.5	85.4	109.1
All Heart Disease	1477	1457.21	101.4	97.5	105.4
Rheumatic Heart Diaease	8	12.85	62.2	31.4	123.5
Ischemic Heart Disease	1038	1254.88	82.7 **	78.8	86.8
Chronic Endocard. Dis.; Other Myocard. Insuff.	95	73.19	129.8 *	106.5	158.2
Hypertension with Heart Disease	28	35.66	78.5	54.4	113.4
All Other Heart Diseasc	308	262.71	117.2 **	105.3	130.5
Hypertension w/o Heart Diacasc	11	10.03	109.7	60.8	197.8
Non-malignant Respiratory Diacase	258	322.34	80.0 **	71.3	89.9
Influenza & Pneumonia	85	117.33	72.4 **	58.9	89.1
Bronchitis, Emphysema, Asthma	40	49.83	80.3	59.1	109.1
Bronchitis	4	8.85	45.2	17.4	117.2
Emphysema	34	38.27	88.8	63.6	124.1
Asthma	2	3.25	61.5	15.6	242.6
Other Non-malignant Respiratory Disease	133	163.39	81.4 *	69.0	96.0
Ulcer of Stomach C Duodenum	13	10.91	119.1	69.3	204.8
Cirrhosis of Liver	30	47.45	63.2 *	44.5	89.8
Nephritis & Nephrosis	60	20.42	293.8 **	231.0	373.6
All External Causes of Death	140	147.02	95.2	81.7	111.0
Accidents	99	93.90	105.4	87.3	127.4
Motor Vehicle Accidenta	43	34.82	123.5	92.6	164.8
All Mhar Accidents	56	59.93	93.4	72.2	120.9
Suicides	27	36.77	73.4	50.8	106.2
Homicides & Other External Causes	14	16.36	85.6	51.5	142.3
All Other Causes of Death	387	371.99	104.0	94.7	114.3
Unknown Causes (In All Causes Category Only)	0				

* Significant at 5% Level; ** Significant at 1% Level

Table 11
Observed and Expected Deaths and Proportionate Mortality Ratios for Employees in Reduction Plants Spending the Majority of Their Time in a Nonreduction Process

Cause of Death (ICDA 9th Revision Codes)	OBS	EXP	SPUR	95% Limitr LOWER	VPPCR
All Causes of Death	1320	1320.00	100.0	---	---
Tuberculosis	0	1.63	---	---	---
All Malignant Neoplasms	302	322.52	93.6	85.0	103.2
Cancrr of Buccal Cavity & Pharynx	2	6.98	28.7	7.8	104.7
Cancer of Digestive Organs & Peritonrum	78	79.22	98.5	79.4	122.1
Cancer of Erophagum	1	7.56	13.2 *	2.5	69.3
Cancer of Stomach	15	11.09	135.2	81.9	223.4
Cancrr of Large Intestine	30	31.64	94.8	66.6	135.0
Cancer of Rectum	6	6.20	96.8	43.6	215.1
Cancer of Biliary Passages & Livcr	6	7.20	83.4	37.6	185.0
Cancer of Pancreas	18	15.64	115.1	72.8	182.1
Cancer of All Other Digestive Organs	2	2.28	87.8	22.0	350.4
Cancer of Respiratory System	91	114.28	79.6 *	65.6	96.7
Cancer of Larynx	2	3.73	53.6	13.7	209.3
Cancer of Bronchum, Trachea. Lung	89	109.53	81.3 *	66.7	98.9
Cancer of All Other Respiratory	0	1.02	---	---	---
Cancer of Breast	4	3.10	128.9	50.2	331.4
All Uterine Cancers (Females only)	1	0.71	140.9	20.4	974.6
Cancer of Cervix Uteri (Females only)	1	0.32	314.6	49.7	1991.8
Cancer of Other Female Genital Organs	1	0.90	110.7	15.9	768.0
Cancer of Prostate (Males only)	32	34.15	93.7	66.6	131.8
Cancer of Testes and Other Hale Genital Organs	1	0.51	194.7	28.5	1332.3
Cancer of Kidncy	11	7.05	156.1	87.0	280.0
Cancer of Bladder and Other Urinary Organs	10	9.61	104.1	56.2	193.0
Malignant Melanoma of Skin	3	3.59	83.5	27.0	257.8
Cancer of Eyr	0	0.17	---	---	---
Cancer of Central Nervoum System	3	6.21	48.3	16.0	145.6
Cancer of Thyroid & Other Endocrine Glands	0	0.72	---	---	---
Cancer of Bona	2	0.53	375.9 *	103.5	1364.5
Cancer of All Lymphatic, Haematopoietic Tissue	38	27.12	140.1 *	102.5	191.6
Lymphosarcoma & Reticulosarcoma	6	2.91	206.3	94.4	450.9
Hodgkins Disease	3	1.03	291.2	99.0	856.3
Leukemia & Aleukemia	13	11.31	115.0	66.9	197.4
Cancer of All Other Lymphopoietic Tissue	16	11.87	134.8	82.9	219.1
All Other Malignant Neoplasms	25	25.39	98.5	66.8	145.1
Benign Neoplasms	5	3.08	162.2	68.1	386.0
Diabetes Mellitus	15	19.66	76.3	46.2	125.9
Cerebrovamcular Disease	108	85.13	126.9 *	105.9	152.0
All Heart Disease	531	530.71	100.1	93.7	106.8
Rheumatic Heart Disease	4	4.81	83.1	31.3	220.7
Ischemic Heart Disease	422	460.01	91.7 *	85.0	99.0
Chronic Endocard. Dim.; Other Myocard. Insuff.	18	25.51	70.6	44.8	111.2
Hypertension with Heart Disease	11	12.55	87.6	48.7	157.6
All Other Heart Disease	76	94.56	80.4 *	64.8	99.7
Hypertension w/o Heart Disease	8	3.48	230.2 *	117.5	450.8
Non-malignant Respiratory Disease	103	115.44	89.2	74.3	107.2
Influenza & Pneumonia	39	40.23	96.9	71.3	131.8
Bronchitim, Emphysema, Asthma	17	18.47	92.1	57.4	147.5
Bronchitis	4	3.23	123.8	46.6	328.9
Emphysema	9	14.23	63.3	33.2	120.4
Asthma	4	1.21	331.0 *	131.4	833.2
Other Non-malignant Respiratory Disease	47	59.55	78.9	59.8	104.2
Ulcer of Stomach & Duodenum	3	3.93	76.3	24.7	235.3
Cirrhomir of Liver	15	19.05	78.7	47.8	129.6
Nephritis & Nephrosis	14	7.11	196.8 **	117.9	328.6
All Extrrnal Causes of Death	66	61.82	106.8	86.0	132.6
Accidents	44	38.34	114.8	86.8	151.8
Motor Vehicle Accident.	19	15.37	123.7	80.5	190.0
All Other Accidents	25	23.28	107.4	73.1	157.8
Suicides	21	15.70	133.8	88.1	203.0
Homicides & Other External Cause.	1	7.79	12.8 *	2.7	61.7
All Other Causes of Death	150	133.99	111.9	96.2	130.2
Unknown Causes (In All Causes Category Only)	0				

* Significant at 5% Level; ** Significant at 1% Level

C. Mortality for the Reduction Process

There were 1866 workers who had some employment in the reduction process. The overall PMR for cancer was 106.6 which was not statistically significant (Table 12). The PMR for lung cancer was 117.8 with a corresponding 95% confidence interval of (103.1, 134.5). Cancer of the kidney was also elevated with a PMR of 200.1 and a corresponding 95% confidence interval of (131.7, 303.8). The only nonmalignant cause of death with a statistically significant excess was cerebral vascular disease with a PMR of 135.3 and a corresponding 95% confidence interval of (116.0, 157.7). The PMR for the category ischemic heart disease was low [PMR=87.2 with corresponding confidence interval of (81.6, 93.2)]. Since only 6 women were employed in the reduction process, the mortality patterns in Table 12 are essentially the same for males. When analysis was done by race, some additional causes were in excess. For whites, in addition to respiratory and kidney cancer, there was an excess in cancer of the lymphatic and haematopoietic tissue (PMR=132.2, $p<0.05$). For nonwhites, the only excess was for diabetes where the PMR was 389.5 ($p<0.01$).

When the 62 causes of death were re-evaluated for men spending the majority of their time in the reduction process, the mortality patterns were similar to those "ever employed in the reduction process" but tended to be slightly increased for many of the malignancies (Table 13). The PMR for the category all malignant neoplasms increased from 106.6 to 109.5 ($p<0.05$). Similarly, the PMRs for cancer of the lung and kidney were

Table 12

Observed and Expected Deaths and Proportionate Mortality Ratios for Employees Ever Employed in a Reduction Process

Cause of Death (ICDA 9th Revision Codes)	OBS	EXP	SPMR		95% Limits LOWER	UPPER
All Causes Of Death	1866	1866.00	100.0		---	---
Tuberculosis	1	2.48	40.3		6.1	287.2
All Malignant Neoplasms	499	488.17	106.6		98.9	114.9
Cancer of Buccal Cavity & Pharynx	6	10.80	55.6		25.3	121.9
Cancer of Digestive Organs & Peritoneum	105	114.28	91.9		76.4	110.8
Cancer of Esophagus	7	11.86	59.0		28.5	122.4
Cancer of Stomach	13	18.25	80.0		46.6	137.3
Cancer of Large Intestine	39	44.50	87.6		64.3	119.5
Cancer of Rectum	5	8.81	56.8		24.0	134.5
Cancer of Biliary Passages & Liver	9	10.39	86.7		45.2	166.1
Cancer of Pancreas	29	22.88	127.9		89.2	183.4
Cancer of All Other Digestive Organs	3	3.21	93.5		30.2	289.5
Cancer of Respiratory System	197	172.88	114.0		99.9	130.0
Cancer of Larynx	1	5.76	17.4	*	3.1	97.8
Cancer of Bronchus, Trachea, Lung	195	165.57	117.8	*	103.1	134.5
Cancer of All Dther Respiratory	1	1.54	64.8		9.3	452.4
Cancer of Breast	0	1.00	---		---	---
All Uterine Cancers (Females only)	0	0.11	---		---	---
Cancer of Cervix Uteri (Females only)	0	0.05	---		---	---
Cancer of Other Female Genital Organs	1	0.16	643.6	*	120.0	3450.7
Cancer of Prostate (Males only)	39	47.68	81.8		60.1	111.3
Cancer of Testes and Other Male Genital Organs	2	0.83	240.0		82.7	918.1
Cancer of Kidney	21	10.50	200.1	**	131.7	303.8
Cancer of Bladder and Other Urinary Organs	14	13.28	105.6		82.7	177.9
Malignant Melanoma of Skin	7	5.59	125.2		59.9	261.7
Cancer of Eye	0	0.24	---		---	---
Cancer of Central Nervous System	8	9.56	83.7		42.0	166.7
Cancer of Thyroid & Other Endocrine Glands	0	1.04	---		---	---
Cancer of Bone	2	0.78	256.7		67.5	978.1
Cancer of All Lymphatic, Haematopoietic Tissue	50	39.07	128.0		97.4	166.2
Lymphosarcoma & Reticulosarcoma	5	4.22	118.5		49.4	284.0
Hodgkins Disease	3	1.59	188.9		62.2	574.3
Leukemia & Aleukemia	20	16.05	124.6		80.6	192.6
Cancer of All Other Lymphopoietic Tissue	22	17.21	127.9		84.4	193.6
All Other Malignant Neoplasms	47	37.12	126.6		95.5	167.9
Benign Neoplasms	5	4.33	115.5		48.1	276.9
Diabetes Mellitus	28	27.65	101.3		70.1	146.3
Cerebrovascular Disease	151	111.64	135.3	**	116.0	157.7
All Heart Disease	710	742.22	95.7		90.4	101.2
Rheumatic Heart Disease	3	6.62	45.3		15.1	136.2
Ischemic Heart Disease	561	643.10	87.2	**	81.6	93.2
Chronic Endocard. Dis.; Other Myocard. Insuff.	25	33.78	74.1		50.3	108.0
Hypertension with Heart Disease	17	18.13	93.8		58.5	150.4
All Other Heart Disease	104	133.89	77.7	**	64.6	93.4
Hypertension w/o Heart Disease	6	4.78	126.1		56.8	279.8
Non-malignant Respiratory Disease	126	156.88	80.3	**	68.0	94.8
Influenza & Pneumonia	42	52.52	80.0		59.5	107.5
Bronchitis, Emphysema, Asthma	22	25.71	85.6		56.5	129.5
Bronchitis	3	4.36	68.4		22.2	210.2
Emphysema	18	19.86	80.6		49.5	131.0
Asthma	3	1.72	174.7		57.2	533.7
Other Non-malignant Respiratory Disease	82	82.30	75.3	*	59.1	96.0
Ulcer of Stomach & Duodenum	7	5.42	129.2		61.8	270.1
Cirrhosis of Liver	15	31.08	48.3	**	29.8	78.7
Nephritis & Nephrosis	15	9.68	155.3		94.1	256.1
All External Causes of Death	105	98.28	106.8		90.0	126.8
Accidents	67	59.94	111.8		89.1	140.1
Motor Vehicle Accidents	25	24.84	101.4		69.8	147.8
All Other Accidents	42	35.77	117.4		87.3	157.9
Suicides	30	25.77	116.4		82.1	165.0
Homicides & Other External Causes	8	12.57	63.6		32.8	123.5
All Other Causes of Death	198	188.30	106.3		93.1	121.3
Unknown Causes (In All Causes Category Only)	0					

* Significant at 5% Level; ** Significant at 1% Level

Table 13
Observed and Expected Deaths and Proportionate Mortality Ratios for Employees Spending a Majority of Time in a Reduction Process

Cause of Death (ICDA 9th Revision Codes)	OBS	EXP	SPMR		95% Limits LOWER	UPPER
All Causes of both	1449	1449.00	100.0		---	---
Tuberculosis	1	1.93	51.9		7.6	355.1
All Malignant Neoplasms	397	382.63	109.5	*	100.6	119.1
Cancer of Buccal Cavity & Pharynx	5	8.34	60.0		25.3	142.2
Cancer of Digestive Organs & Peritoneum	82	88.58	92.6		76.1	114.2
Cancer of Esophagus	7	9.15	76.5		36.7	159.6
Cancer of Stomach	8	12.59	63.5		32.1	125.9
Cancer of Large Intestine	33	34.55	95.5		68.2	133.8
Cancer of Rectum	4	6.83	58.6		22.3	153.9
Cancer of Biliary Passages & Liver	7	8.08	86.9		41.5	181.8
Cancer of Pancreas	21	17.85	119.8		78.3	182.9
Cancer of All Other Digestive Organs	2	2.49	80.3		20.2	320.0
Cancer of Respiratory System	181	133.59	120.5	*	104.2	139.4
Cancer of Larynx	1	4.45	22.5		3.8	134.2
Cancer of Bronchus, Trachea, Lung	159	127.95	124.3	**	107.3	144.0
Cancer of All Other Respiratory	1	1.20	83.7		11.8	591.9
Cancer of Breast	0	0.73	---		---	---
All Uterine Cancers (Females only)	0	0.08	---		---	---
Cancer of Cervix Uteri (Females only)	0	0.04	---		---	---
Cancer of Other Female Genital Organs	1	0.11	948.9	**	195.9	4597.1
Cancer of Prostate (Males only)	31	37.27	83.2		56.9	117.5
Cancer of Testes and Other Male Genital Organs	1	0.65	153.1		21.9	1069.9
Cancer of Kidney	17	8.11	209.7	**	132.0	333.3
Cancer of Bladder and Other Urinary Organs	10	10.34	96.7		52.2	178.3
Malignant Melanoma of Skin	5	4.31	115.9		48.4	277.7
Cancer of Eye	0	0.18	---		---	---
Cancer of Central Nervous System	7	7.38	95.1		45.5	198.0
Cancer of Thyroid & Other Endocrine Glands	0	0.81	---		---	---
Cancer of Bone	0	0.60	---		---	---
Cancer of All Lymphatic, Haematopoietic Tissue	37	30.31	122.1		88.8	167.8
Lymphosarcoma & Reticulosarcoma	4	3.27	122.2		46.0	324.8
Hodgkins Disease	2	1.23	162.2		41.2	639.1
Leukemia & Aleukemia	15	12.47	120.3		72.7	198.8
Cancer of All Other Lymphopoietic Tissue	16	13.33	120.0		73.7	195.3
All Other Malignant Neoplasms	40	28.72	139.3	*	102.6	189.0
Benign Neoplasms	5	3.36	148.7		82.3	354.8
Diabetes Mellitus	22	21.48	102.4		67.7	155.1
Cerebrovascular Disease	121	87.15	138.8	**	117.0	164.7
All Heart Disease	545	576.37	94.6		88.6	100.9
Rheumatic Heart Disease	2	5.12	39.1		10.3	148.3
Ischemic Heart Disease	428	489.52	85.7	**	79.4	92.4
Chronic Endocard. Dis.; Other Myocard. Insuff.	20	28.28	78.1		49.4	117.2
Hypertension with Heart Disease	13	14.07	92.4		53.8	158.8
All Othar Hurt Disease	82	103.83	79.0	*	64.2	97.2
Hypertension w/o Heart Disease	4	3.70	108.0		40.6	287.2
Non-malignant Respiratory Disease	98	122.38	80.9	*	67.1	97.6
Influenza & Pneumonia	28	40.89	68.5	*	47.7	98.3
Bronchitis, Emphysema, Asthma	16	20.08	79.7		49.1	129.5
Bronchitis	2	3.43	58.3		14.9	229.0
Emphysema	11	15.52	70.9		39.5	127.1
Asthma	3	1.33	225.5		75.0	677.7
Other Non-malignant Respiratory Disease	55	64.27	85.6		66.1	110.7
Ulcer of Stomach & Duodenum	6	4.22	142.2		64.2	314.8
Cirrhosis of Liver	11	23.88	46.1	**	26.1	81.3
Nephritis & Nephrosis	11	7.51	146.4		81.5	262.8
All External Causes of Death	82	76.20	107.6		86.7	130.6
Accidents	48	46.72	102.7		76.7	134.1
Motor Vehicle Accidents	18	19.30	93.3		59.9	145.1
All Othar Accidents	30	27.78	108.0		76.1	153.3
suicides	28	20.01	129.9		89.4	188.8
Homicides & Other External Causes	6	9.46	84.5		43.1	165.8
All Othar Causes of Death	145	144.85	100.1		85.8	118.8
Unknown Causes (In All Causes Category Only)	0					

* Significant at 5% Level; ** Significant at 1% Level

increased slightly (PMR=124.3 and 209.7, respectively). The remainder category "all other malignant neoplasms" is also significant with a PMR of 139.3 ($p<0.05$).

Since the primary departments of interest in the Tripartite Study were the potroom and carbon departments, we investigated mortality patterns separately for these two departments. There were 943 employees with some experience in the potroom department. The PMR for all malignancies was 106.8 with a corresponding 95% confidence interval of (96.1, 118.6) (Table 14). The PMR for cancer of the lung was 111.9 with a corresponding confidence interval of (92.6, 135.2). The only malignancy with five or more observed deaths and a statistically significant elevation was kidney cancer with a PMR of 297.9 and a corresponding 95% confidence interval of (187.1, 474.2). There was also an excess of ulcer of the stomach and duodenum based on six observed deaths and 2.69 expected (PMR=223.0, $p<0.05$). For employees with a majority of time in the potroom the PMR for all malignant neoplasms was 114.8 with a corresponding 95% confidence interval of (100.7, 130.9) (Table 15). Of those causes with more than 5 observed or expected deaths, cancer of the kidney and ulcer of the stomach were elevated (PMR=285.8, $p<0.01$ and PMR=317.2, $p<0.05$, respectively). Ischemic heart disease was significantly low (PMR=80.6, $p<0.01$).

The carbon department had fewer workers than the potroom department. For the 489 employees with some employment in the carbon department, the PMR for all malignancies was 105.8 (Table 16). Both cancer of the kidney (PMR=250.7, $p<0.01$) and

Table 14
observed and Expected Deaths and proportionate Mortality Ratios for Employees Ever Employed in the Potroom Department

Cause of Death (ICDA 9th Revision Codes)	OBS	EXP	SPMR	95% Limits LOWER	UPPER
All Causes of math	943	943.00	100.0	---	---
Tuberculosis	0	1.34	---	---	---
All Malignant Neoplasms	258	239.81	108.8	96.1	118.8
Cancer of Buccal Cavity & Pharynx	5	5.67	88.2	36.8	211.1
Cancer of Digestive Organs & Peritoneum	51	58.48	87.2	66.8	113.7
Cancer of Esophagus	4	6.36	62.9	23.8	165.5
Cancer of Stomach	7	8.41	83.2	39.8	173.8
Cancer of Large Intestine	17	22.42	75.8	47.5	121.1
Cancer of Rectum	3	4.44	67.5	22.0	207.3
Cancer of Biliary Passages & Liver	6	5.35	112.2	50.5	249.0
Cancer of Pancreas	12	11.63	103.2	58.8	181.1
Cancmr of All Other Digestive Organs	2	1.61	123.9	31.1	493.6
Cancmr of Respiratory System	97	89.82	108.2	89.7	130.8
Cancer of Larynx	1	3.02	33.1	5.2	212.5
Cancer of Bronchus, Trachea, Lung	96	85.80	111.9	92.8	135.2
Cancer of All Other Respiratory	0	0.80	---	---	---
Cancer of Breast	0	0.28	---	---	---
All Uterine Cancers (Females only)	0	0.00	---	---	---
Cancer of Cervix Uteri (Females only)	0	0.00	---	---	---
Cancer of Other Female Genital Organs	0	0.00	---	---	---
Cancer of Prostate (Males only)	24	23.91	100.4	67.7	148.8
Cancer of testes and Ottmr Male Genital Organs	2	0.45	441.4 *	124.5	1584.5
Cancer of Kidney	18	5.37	297.9 **	187.1	474.2
Cancer of Bladder and Other Urinary Organs	6	6.51	92.2	41.6	204.6
Malignant Melanoma of Skin	3	2.88	104.2	33.7	322.1
Cancer of Eye	0	0.12	---	---	---
Cancer of Central Nervous System	1	4.97	20.1	3.5	116.9
Cancer of Thyroid A Other Endocrine Glands	0	0.54	---	---	---
Cancer of Bone	2	0.41	493.7 *	141.8	1720.8
Cancer of All Lymphatic, Haematopoietic Tissue	27	19.88	135.9	93.7	197.1
Lymphosarcoma A Reticulosarcoma	1	2.15	46.6	6.9	314.7
Hodgkins Disease	3	0.84	355.5 *	123.4	1024.2
Leukemia A Aleukemia	11	8.08	136.1	75.7	244.5
Cancer of All Other Lymphopoietic Tissue	12	8.79	136.5	77.9	239.2
All Other Malignant Neoplasms	22	19.09	115.2	76.2	174.2
Benign Neoplasms	0	2.18	---	---	---
Diabetes Mellitus	12	14.11	85.1	48.6	149.1
Cerebrovascular Disease	68	54.84	124.0	98.6	155.9
All Heart Disease	384	370.47	98.3	90.7	108.4
Rheumatic Heart Disease	2	3.34	60.0	15.3	235.8
Ischemic Heart Disease	278	319.30	87.1 **	78.2	95.7
Chronic Endocard. Dis.; Other Myocard. Insuff.	14	16.48	84.9	50.6	142.5
Hypertension with Heart Disease	10	9.55	104.7	56.6	193.8
All Other Heart Disease	80	68.15	88.0	68.0	112.3
Hypertension w/o Heart Disease	2	2.42	82.7	20.8	328.4
Non-malignant Respiratory Disease	68	76.81	88.5	70.6	111.0
Influenza A Pneumonia	20	25.28	79.1	51.5	121.5
Bronchitis, Emphysema, Asthma	13	12.71	102.2	59.6	175.4
Bronchitis	0	2.14	---	---	---
Emphysema	11	9.79	112.3	62.4	202.0
Asthma	2	0.89	223.7	58.1	861.6
Other Non-malignant Respiratory Disease	35	40.59	86.2	62.4	119.1
Ulcer of Stomach A Duodenum	6	2.69	223.0 *	102.4	485.5
Cirrhosis of Liver	7	16.45	42.5 *	20.9	86.4
Nephritis & Nephrosis	7	4.85	144.2	69.2	300.8
All External Causes of Death	54	54.64	98.8	78.2	124.8
Accidents	34	32.91	103.3	75.4	141.5
Motor Vehicle Accidents	13	13.99	92.9	55.4	156.0
All Other Accidents	21	19.18	109.5	72.2	168.4
Suicides	14	13.99	100.1	60.1	166.6
Homicides & Other External Causes	6	7.74	77.5	38.2	166.0
All Other Causes of Death	99	93.78	105.6	87.6	127.2
Unknown Causes (In All Causes Category Only)	0				

* Significant at 5% Level; ** Significant at 1% Level

Table 15
Observed and Expected Deaths and proportionate Mortality Ratios for Employees Spending a Majority of Time in the Potroom Department

Cause of Death (ICDA 9th Revision Codes)	OBS	EXP	SPMR		95% Limits LOWER	UPPER
All Causes of Death	558	558.00	100.0		---	---
Tuberculosis	0	0.82	---		---	---
All Malignant Neoplasms	183	141.98	114.8	*	100.7	130.9
Cancer of Buccal Cavity & Pharynx	4	3.35	119.5		45.1	318.8
Cancer of Digestive Organs & Peritoneum	33	34.83	95.3		68.5	132.5
Cancer of Esophagus	3	3.82	78.6		25.8	241.8
Cancer of Stomach	5	5.03	99.4		41.5	237.7
Cancer of Large Intestine	13	13.21	98.4		57.5	188.1
Cancer of Rectum	1	2.60	38.4		5.8	252.2
Cancer of Biliary Passages & Liver	4	3.18	125.7		47.4	333.2
Cancer of Pancreas	6	8.88	67.2		39.4	192.9
Cancer of All Other Digestive Organs	1	0.95	105.7		14.9	748.9
Cancer of Respiratory System	62	53.04	116.9		92.4	147.8
Cancer of Larynx	0	1.79	---		---	---
Cancer of Bronchus, Trachea, Lung	62	50.77	122.1		96.5	154.5
Cancer of All Other Respiratory	0	0.47	---		---	---
Cancer of Breast	0	0.16	---		---	---
All Uterine Cancers (Females only)	0	0.00	---		---	---
Cancer of Cervix Uteri (Females only)	0	0.00	---		---	---
Cancer of Other Female Genital Organs	0	0.00	---		---	---
Cancer of Prostate (Males only)	17	14.32	118.7		74.4	189.3
Cancer of Testes and Other Male Genital Organs	1	0.28	358.2		57.8	2241.7
Cancer of Kidney	9	3.15	285.8	**	153.4	532.5
Cancer of Bladder and Other Urinary Organs	2	3.80	52.6		13.5	204.5
Malignant Melanoma of Skin	2	1.68	119.2		30.0	474.3
Cancer of Eye	0	0.07	---		---	---
Cancer of Central Nervous System	2	2.91	68.7		17.4	271.1
Cancer of Thyroid & Other Endocrine Glands	0	0.32	---		---	---
Cancer of Bone	0	0.24	---		---	---
Cancer of All Lymphatic, Haematopoietic Tissue	17	11.73	144.9		90.8	231.3
Lymphosarcoma & Reticulosarcoma	1	1.26	79.5		11.3	560.8
Hodgkins Disease	2	0.50	398.9	*	110.3	1428.6
Leukemia & Aleukemia	8	4.75	168.3		85.1	333.0
Cancer of All Other Lymphopoietic Tissue	6	5.22	115.0		51.9	254.9
All Other Malignant Neoplasms	14	11.31	123.8		73.8	207.7
Benign Neoplasm	0	1.29	---		---	---
Diabetes Mellitus	8	8.39	95.3		47.9	189.6
Cerebrovascular Disease	41	32.28	127.1		94.6	170.7
All Heart Disease	202	218.80	93.2		83.7	103.7
Rheumatic Heart Disease	2	1.94	103.0		25.8	410.6
Ischemic Heart Disease	150	186.07	80.6	**	70.9	91.7
Chronic Endocard. Dis.; Other Myocard. Insuff.	7	9.63	72.7		35.0	150.9
Hypertension with Heart Disease	7	5.78	121.1		58.1	252.5
All Other Heart Disease	36	40.39	89.1		65.1	122.0
Hypertension w/o Heart Disease	1	1.44	69.3		9.9	485.1
Non-malignant Respiratory Disease	41	44.95	91.2		68.1	122.1
Influenza & Pneumonia	10	14.66	68.2		37.2	124.9
Bronchitis, Emphysema, Asthma	8	7.47	107.2		53.9	213.1
Bronchitis	0	1.24	---		---	---
Emphysema	6	5.75	104.4		47.1	231.2
Asthma	2	0.53	374.4	*	103.1	1359.3
Other Non-malignant Respiratory Disease	23	23.85	96.5		64.7	143.7
Ulcer of Stomach & Duodenum	5	1.58	317.2	**	138.5	726.4
Cirrhosis of Liver	5	9.62	52.0		22.2	121.5
Nephritis & Nephrosis	5	2.88	173.4		73.2	410.8
All External Causes of Death	34	33.38	101.9		78.2	136.3
Accidents	17	20.30	83.7		54.0	129.9
Motor Vehicle Accidents	7	8.88	78.8		39.3	158.1
All Other Accidents	10	11.58	86.5		47.3	158.2
Suicides	11	8.51	129.3		73.0	229.0
Homicides & Other External Causes	6	4.55	132.0		61.0	285.5
All Other Causes of Death	51	55.58	91.8		70.8	119.0
Unknown Causes (In All Causer Category Only)	0					

* Significant at 5% Level; ** Significant at 1% Level

cerebrovascular disease (PMR=136.2, $p<0.05$) were significantly elevated. There were only 140 men spending the majority of their time in the carbon department (Table 17). Thus the statistical power to a true excess is limited. The only cause of death with a statistically significant excess is cerebrovascular disease with a PMR of 195.3 and corresponding 95% confidence interval of (124.6, 306.3).

The PMRs were also computed for the employees spending the majority of their time in mechanical maintenance, electrical maintenance, ingot and power. For most of these departments the number of employees was not sufficient to evaluate many of the specific cancer sites. Table 18 summarizes the observed and expected deaths and PMRs for all malignant neoplasms for employees with the majority of their time in each of the departments in the reduction plant. Those workers with the majority of time in the potrooms show an elevated PMR of 114.8 ($p<0.05$). The site-specific PMRs for cancer have already been discussed for the potroom and carbon departments. For the other four departments the only significant excess was for lung cancer in mechanical maintenance. The PMR was 138.3 with a corresponding 95% confidence interval of (107.2, 176.4).

Table 16
observed and Expected Deaths and Proportionate Mortality Ratios for Employees Ever Employed in the Carbon Department

Cause of Death (ICDA 9th Revision Codes)	OBS	EXP	SPMR	95% Limits LOWER	UPPER
All Causes of math	489	489.00	100.0	---	---
Tuberculosis	0	0.78	---	---	---
All Malignant Neoplasms	133	125.72	105.8	91.S	122.3
Cancer of Buccal Cavity & Pharynx	2	3.06	65.4	18.8	257.2
Cancer of Digestive Organs & Peritoneum	27	30.84	88.1	81.2	128.9
Cancer of Esophagus	1	3.58	27.9	4.5	172.7
Cancer of Stomach	5	4.52	110.7	48.3	284.8
Camr of Large Intestine	10	11.44	87.4	47.4	181.1
Cancer of Rectum	1	2.26	44.3	8.8	298.8
Cancer of Biliary Passages & Livmr	3	2.84	105.7	34.2	328.4
Cancer of Pancreas	6	6.09	98.5	44.5	218.1
Cancer of All Othor Digestive Organs	1	0.82	121.4	17.2	657.5
Cancer of Respiratory System	51	47.16	108.1	83.5	140.1
Cancer of Larynx	0	1.82	---	---	---
Camr of Bronchus. Trachea, Lung	51	45.12	113.0	67.2	148.5
Cancer of All Othor Respiratory	0	0.42	---	---	---
Cancer of Breast	0	0.14	---	---	---
All Uterine Cancers (Females only)	0	0.00	---	---	---
Cancer of Cervix Uteri (Females only)	0	0.00	---	---	---
Cancer of Other Female Genital Organs	0	0.00	---	---	---
Camr of Prostate (Males only)	12	12.34	97.2	IS.8	189.5
Camr of Testes and Other Male Genital Organs	1	0.26	388.4	63.4	2382.3
Cancer of Kidney	7	2.79	250.7 *	122.9	511.5
Cancer of Bladder and Othar Urinary Organs	3	3.19	94.1	30.5	290.8
Malignant Melanoma of Skin	2	1.55	128.9	32.5	61.1.5
Cancer of Eye	0	0.06	---	---	---
Cancer of Central Nervous System	0	2.65	---	---	---
Cancer of Thyroid & Other Endocrine Glands	0	0.28	---	---	---
Cancer of Bone	1	0.22	458.9	78.8	2717.1
Cancer of All Lymphatic, Haematopoietic Tissue	12	10.37	115.7	88.2	202.4
Lymphosarcoma & Reticulosarcoma	1	1.10	91.2	12.9	645.4
Hodgkins Disease	1	0.47	213.5	31.8	1444.0
Leukemia & Aleukemia	3	4.15	72.2	23.5	221.8
Cancer of All Other Lymphopoietic Tissue	7	4.65	150.5	72.4	313.0
All Other Malignant Neoplasms	15	10.12	148.2	90.1	243.7
Benign Neoplasms	1	1.14	87.9	12.4	621.6
Diabetes Mellitus	11	7.52	146.2	81.6	281.9
Cerebrovascular Disease	38	27.80	136.2 *	100.3	184.9
All kart Disease	180	187.03	101.1	90.5	112.9
Rheumatic Heart Disease	1	1.70	58.9	8.5	407.6
Ischemic Heart Disease	148	159.73	93.3	81.9	106.3
Chronic Endocard. Dis.; Othr Myocard. Insuff.	10	8.25	121.2	65.7	223.7
Hypertension with Heart Disease	3	5.37	55.9	18.5	169.1
All Other Heart Disease	27	38.11	74.8	52.1	107.3
Hypertension w/o kart Disease	1	1.29	77.2	11.0	543.8
Non-malignant Respiratory Disease	25	38.06	65.6 *	45.3	95.2
Influenza & Pneumonia	9	12.81	71.4	37.7	135.2
Bronchitis, Emphysema, Asthma	3	6.28	47.9	16.0	143.8
Bronchitis	0	1.03	---	---	---
Emphysema	1	4.77	20.9	3.6	122.2
Asthma	2	0.49	407.2 *	113.5	1481.2
Othr Non-malignant Respiratory Disease	13	20.10	64.7	38.2	109.5
Ulcer of Stomach & Duodenum	1	1.38	73.3	10.4	515.1
Cirrhosis of Liver	7	9.17	76.4	36.9	158.1
Nephritis & Nephrosis	4	2.55	157.1	59.8	413.8
All External Causes of Death	31	31.80	97.2	71.8	131.9
Accidents	17	18.10	88.0	57.2	138.5
Motor Vehicle Accidents	6	8.35	71.9	33.7	153.1
All Other Accidents	11	10.89	101.1	56.8	179.8
Suicides	12	8.03	149.5	86.7	257.8
Homicides & Other External Causes	2	4.77	41.9	11.5	152.3
All Other Causes of Death	47	49.22	95.5	72.8	125.1
Unknown Causes (In All Causes Category Only)	0				

* Significant at 5% Level; ** Significant at 1% Level

Table 17
Observed and Expected Deaths and Proportionate Mortality Ratios for Employees Spending a Majority of Time in the Carbon Department

Cause of Death (ICDA 9th Revision Codes)	OBS	EXP	SPMR	95% Limits LOWER	UPPER
All Causes of Death	140	140.00	100.0	---	---
Tuberculosis	0	0.25	---	---	---
All Malignant Neoplasms	38	35.48	107.1	81.5	140.7
Cancer of Buccal Cavity & Pharynx	0	0.88	---	---	---
Cancer of Digestive Organs & Peritoneum	8	8.78	91.2	46.7	178.1
Cancer of Esophagus	1	1.04	96.0	13.7	674.5
Cancer of Stomach	0	1.31	---	---	---
Cancer of Large Intestine	3	3.28	91.6	29.9	279.9
Cancer of Rectum	1	0.64	156.0	22.4	1084.9
Cancr of Biliary Passages & Ltvmr	0	0.82	---	---	---
Cancer of Pancreas	3	1.71	176.0	57.7	530.9
Cancer of All Other Digestive Organs	0	0.23	---	---	---
Cancer of Respiratory System	16	13.01	123.0	77.4	195.4
Cancr of Larynx	0	0.45	---	---	---
Cancr of Bronchus, Trachea, Lung	16	12.44	128.6	80.9	204.5
Cancor of All Other Respiratory	0	0.11	---	---	---
Cancor of Breast	0	0.04	---	---	---
All Uterine Cancers (Females only)	0	0.00	---	---	---
Cancer of Cervix Uteri (Females only)	0	0.00	---	---	---
Cancer of Other Female Genital Organs	0	0.00	---	---	---
Cancor of Prostate (Halos only)	3	3.80	78.9	25.4	233.0
Cancer of Testes and Other Male Genital Organs	0	0.06	---	---	---
Cancer of Kidney	2	0.75	265.2	70.3	1001.3
Cancor of Bladder and Othor Urinary Organs	1	0.85	105.5	15.0	743.4
Malignant Melanoma of Skin	0	0.37	---	---	---
Cancer of Eye	0	0.02	---	---	---
Cancer of Central Nervous System	0	0.85	---	---	---
Cancor of Thyroid & Othor Endocrine Glands	0	0.08	---	---	---
Cancer of Bone	0	0.06	---	---	---
Cancer of All Lymphatic, Haematopoietic Tissue	3	2.88	105.0	34.3	321.5
Lymphosarcoma & Reticulosarcoma	0	0.29	---	---	---
Hodgkins Disease	0	0.11	---	---	---
Leukemia & Aleukemia	1	1.15	88.7	12.3	609.6
Cancer of All Other Lymphopoietic Tissue	2	1.30	153.7	39.1	604.1
All Other Malignant Neoplasms	5	2.84	175.8	74.7	413.7
Benign Neoplasms	1	0.32	309.5	48.3	1982.7
Diabetes Mellitus	3	2.19	136.9	44.8	418.8
Cerebrovascular Disease	17	8.70	195.3 **	124.6	306.3
All mart Disease	50	54.44	91.8	74.1	113.9
Rheumatic Heart Disease	0	0.46	---	---	---
Ischemic Heart Disease	40	45.89	87.2	67.8	112.1
Chronic Endocard. Dis.; Othor Myocard. Insuff.	2	2.52	79.4	20.2	312.2
Hypertension with Mart Disease	0	1.85	---	---	---
All Othor Heart Disease	8	10.59	75.5	38.9	146.5
Hypertension w/o Heart Disease	0	0.40	---	---	---
Non-malignant Respiratory Ofsease	5	11.52	43.4 *	18.3	97.8
Influenza & Pneumonia	0	3.91	---	---	---
Bronchitis, Emphysema, Asthma	0	1.85	---	---	---
Bronchitis	0	0.31	---	---	---
Emphysema	0	1.41	---	---	---
Asthma	0	0.14	---	---	---
Othor Non-malignant Respiratory Disease	5	6.03	82.9	35.3	194.7
Ulcer of Stomach & Duodenum	0	0.40	---	---	---
Cirrhosis of Liver	2	2.34	85.6	21.9	334.9
Nephritis & Nephrosis	1	0.79	126.5	18.0	887.9
All External Causes of Death	9	7.43	121.1	67.0	218.8
Accidents	6	4.54	132.2	61.9	282.3
Motor Vehicle Accidents	4	1.81	221.4	67.9	557.5
All Other Accidents	2	2.77	72.2	18.7	278.2
Suicides	3	1.79	167.8	58.3	500.1
Homicides & Othor External Causes	0	1.11	---	---	---
All Othor Causes of Death	14	14.41	97.2	58.2	159.5
Unknown Causes (In All Causes Category Only)	0				

* Significant at 5% Level; ** Significant at 1% Level

Table 18
Observed and Expected Deaths and Proportionate Mortality Ratios by Department for All Malignant Neoplasms

	OBS	EXP	PMR	95% LOWER	UPPER
POTROOM	163	141.98	114.8*	100.7	130.9
CARBON	38	35.48	107.1	81.5	140.7
INGOT	44	44.33	99.3	76.9	128.1
MECH. MAINT.	117	108.00	108.3	92.7	126.6
ELECT. MAINT.	30	27.60	108.7	79.8	148.0
POWER	5	5.05	99.0	46.2	212.3

D, Selected Causes of Death

For those causes of death that were in excess or for which we have particular interest because of the Tripartite Study, we now present more detailed analysis.

(1) Kidney cancer - The PMR for kidney cancer for the total cohort is 158.1 based on 53 observed deaths and 33.52 expected. All cases of kidney cancer were in males and both white males and nonwhite males had an excess (PMR=157.5 and 257.8, respectively. Of the 53 employees with kidney cancer as a cause of death, 49 had more than 20 years employment. For those employees ever employed in the reduction process, the PMR is 200.1 based on 21 cbserved'deaths and 10.5 expected and a corresponding 95% confidence interval of (131.7, 303.8). This compares to a PMR of 136.5 with a corresponding 95% confidence interval of (92.5, 201.4) for workers in nonreduction plants.

Further investigation within the reduction process indicates

that there is no particular area that appears to have a concentration of excess deaths (Table 19). The excess is not much affected when a PCMR is used instead of a PMR (Table 20). The investigation of kidney cancer by individual plant indicated no pattern for the excess although the distribution of only 53 observed deaths among 37 plants results in numbers too small to conclude that no clustering exists.

Table 19
Observed and Expected Deaths and Proportionate Mortality Ratios by Job Location for Kidney Cancer

	OBS	EXP	PMR	95% LOWER	95% UPPER
NONREDUCTION PLANT	25	18.32	136.5	92.5	201.4
REDUCTION PLANT	28	15.20	184.2**	128.1	265.0
NONREDUCTION PROCESS	11	7.05	156.1	87.0	280.0
REDUCTION PROCESS	17	8.11	209.7**	132.0	333.3
POTROOM	9	3.15	285.8**	153.4	532.5
CARBON	2	.75	265.2	70.3	1001.3
INGOT	2	.99	201.8	52.1	781.4
MECH. MAINTAIN.	4	2.48	161.1	61.2	423.7
ELECT. MAINTAIN.	0	.61	--	--	--
POWER	0	.11	--	--	--

Table 20
Observed and Expected Deaths and Proportionate Cancer Ratios
by Job Location for Kidney Cancer

	OBS	EXP	PMR	95% LOWER	95% UPPER
NONREDUCTION PLANT	25	19.25	129.9	88.2	191.1
REDUCTION PLANT	28	15.62	179.3**	125.0	257.2
NONREDUCTION PROCESS	11	6.60	166.6	93.5	296.9
REDUCTION PROCESS	17	9.01	188.6**	118.8	299.4
POTROOM	9	3.64	247.1**	132.4	461.2
CARBON	2	.84	237.9	63.1	897.5
INGOT	2	1.02	195.8	51.1	750.7
MECH. MAINTAIN.	4	2.74	146.2	55.8	382.7
ELECT. MAINTAIN.	0	.67	--	--	--
POWER	0	.10	--	--	--

(2) All other cancers - The PMR for the category "all other cancers" was 134.3 ($p<0.01$) with 164 observed deaths and 122.1 expected. The excess did not appear to be restricted to any particular race or sex. Of these, 138 were cancer of an unspecified site, 14 were cancer of multiple sites, and 12 were cancer of soft or connective tissue.

(3) Benign and unspecified neoplasms - The PMR for benign and unspecified neoplasms was 195.6 with a corresponding 95% confidence interval of (136.9, 279.5). The PMR was higher in the nonreduction plants than in the reduction plants (PMR=227.3, $p<0.01$) and PMR=154.7, respectively. The cases did not appear confined to any specific race or sex. The median age at death

for the 29 workers with this cause of death was 70.9. Of the 29 observed deaths, 2 were benign brain tumors and 10 were brain tumors of unspecified nature.

(4) Nephritis and nephrosis - The PMR for nephritis and nephrosis was 242.2 based on 85 observed deaths and 35.09 expected. The excess appeared in reduction as well as nonreduction processes and was not restricted to a specific sex or race group. This ICD classification is often a result of insufficient coding of the death certificate and a review of individual death certificates indicated "renal failure" as a frequent cause of death designated on the death certificates with this cause. Investigation of individual plants indicates that five plants accounted for 52 observed deaths when 13.95 were expected. These plants were both reduction and nonreduction plants.

(5) Cerebral vascular disease - The total cohort had approximately an 11% excess in cerebrovascular disease. This excess appeared restricted to white males where the PMR was 115.2 ($p<0.01$) based on 403 observed deaths and.349.8 expected and was higher in plants with a reduction process where the PMR was 135.3 ($p<0.01$) based on 151 observed deaths compared to a PMR of 98.9 for the remainder of the white male population. For reduction plant workers this represents 30 observed deaths in excess which is approximately the same as the deficit observed tor the category "all heart disease". Although the excess occurs in reduction plants it is not confined to the reduction process. The white males who spent the majority of their time in a nonreduction process had a PMR of 132.1 ($p<0.01$) compared to

138.8 ($p<0.01$) for the white males spending the majority of their time in a reduction process.

(6) Respiratory cancer - The primary hypothesis in the Tripartite Study was to determine if there was an excess of lung cancer in the potroom and carbon departments of the reduction process. The overall SMR for lung cancer in that study was 96.4 with a corresponding 95% confidence interval of (83.2, 105.9). The corresponding SMR of the plants in the Tripartite Study which have been included in this study is 91.7 with a corresponding 95% confidence interval of (78.4, 106.5).

For this study the PMR for lung cancer shows a slight excess. The PMR for lung cancer for employees in the reduction process is 124.3 with a corresponding confidence interval of (107.3, 144.0). This compares to a PMR of 108.9 for workers in plants with no reduction process and a PMR of 81.3 ($p<0.05$) for workers in a reduction plant that spent the majority of their time in a nonreduction process. Further investigation was conducted by department within the reduction process (Table 21). Workers spending the majority of their time in the potroom, carbon or ingot department all have excesses of 20%-30% that are not statistically significant. Workers spending the majority of time in mechanical maintenance have a significantly elevated PMR of 136.3 ($p<0.05$).

When the risk is estimated using a proportionate cancer mortality ratio ,(Table 22), the risk is slightly increased for employees in the nonreduction process of the reduction plant (PCMR=87.9) and decreased for employees in the reduction process

(PCMR=111.9). Neither of these is significantly different from 100. The only significant excess using the PCMR occurs for maintenance workers where the PCMR is 125.7 with a corresponding 95% confidence interval of (101.6, 155.6).

Table 21
Observed and Expected Deaths and Proportionate Mortality Ratios by Job Location for Cancer of Bronchus, Trachea and Lung

	OBS	EXP	PMR	95% LOWER	95% UPPER
NONREDUCTION PLANT	310	284.73	108.9	97.9	121.0
REDUCTION PLANT	248	238.24	104.1	92.5	117.1
NONREDUCTION PROCESS	89	109.53	81.3*	66.7	98.9
REDUCTION PROCESS	159	127.95	124.3**	107.3	144.0
POTROOM	62	50.77	122.1	96.5	154.5
CARBON	16	12.44	128.6	80.9	204.5
INGOT	19	15.13	125.6	82.0	192.4
MECH. MAINTAIN.	53	38.34	136.3*	107.2	178.3
ELECT. MAINTAIN.	8	9.53	83.9	43.5	162.0
POWER	1	1.69	59.2	9.4	372.4

Table 23
Observed and Expected Deaths and Proportionate Mortality Ratios for Lung Cancer by Plant

Plant	OBS	EXP	PMR	95% LOWER	95% UPPER
ADDY	3	.71	--	--	--
ANDERSON	1	.11	--	--	--
ALCOA	8	7.47	107.2	55.5	206.8
BADIN	12	12.19	98.5	57.5	168.7
BAUXITE	13	12.29	105.8	63.1	177.3
BRIDGEPORT	4	1.94	--	--	--
BUFFALO	0	.16	--	--	--
CHICAGO	3	2.45	--	--	--
CHILLICOTHE	6	4.87	123.2	57.8	262.6
CLEVELAND	42	36.63	114.7	86.0	152.8
CORONA	0	1.08	--	--	--
CRESSONA	23	23.53	97.8	66.5	143.8
DAVENPORT	29	23.39	124.0	88.0	174.8
DETROIT	2	4.39	--	--	--
EAST ST. LOUIS	5	7.99	62.6	27.1	144.5
EDGEWATER	17	18.26	93.1	59.0	146.8
EDISON	11	8.17	134.6	76.9	235.7
FORT MEADE	0	.31	--	--	--
FRANKLIN	2	1.95	--	--	--
LAFAYETTE	21	30.36	69.2	46.2	103.6
LANCASTER	5	2.69	185.5	81.8	420.8
LEBANON	2	.85	--	--	--
LOGANS FERRY	3	1.60	--	--	--
MARSHALL	3	1.09	--	--	--
MASSENA	47	53.08	88.5	67.5	116.1
MOBILE	22	13.65	161.2*	108.8	238.7
NEW KENSINGTON	54	52.96	102.0	79.0	131.5
POINT COMFORT	25	17.42	143.5	99.4	207.3
RICHMOND	4	5.94	67.3	26.7	170.0
ROCKDALE	5	9.58	52.2	23.1	117.7
ROSICLARE	5	2.45	204.4	89.9	464.8
TENNESSEE	107	109.3	97.9	81.7	117.2
TIFFON	1	.72	--	--	--
VANCOUVER	27	17.49	154.4*	108.3	220.1
VERNON	21	16.75	125.4	83.6	188.1
WARRICK	16	11.10	144.2	91.0	228.4
WENTACHEE	9	8.07	111.5	60.1	207.0

(7) Cancer of the Lymphatic and Haematopoietic Cancer - The PMR for the total cohort for lymphatic and haematopoietic cancer was 113.6 with a 95% confidence interval of (96.8, 133.2). The PMR for workers in nonreduction plants was 100.2 compared to a PMR of 130.2 ($p<0.05$) for workers in reduction plants. Within the reduction plants, those workers spending the majority of their time in a nonreduction process had a higher PMR than those in a reduction process [PMR=140.1, $p<0.05$ and PMR=122.1 (not significant), respectively]. The PCMR was 146.7 ($p<0.05$) for workers in the nonreduction process and 111.3 for workers in the reduction process. Analysis based on majority of time in individual departments yielded no statistically significant results. Potroom workers had a PMR of 144.9 with a 95% confidence interval of (90.8, 231.3) and electrical maintenance workers had a PMR of 217.3 with a corresponding 95% confidence interval of (93.3, 506.3). The only individual plant with a significant excess was Tennessee which had a PMR of 172.1 ($p<0.01$. The PMR for leukemia in the total cohort was 102.0. The PMR for those in reduction plants was 117.4 compared to 89.8 for those in nonreduction plants. The number of deaths was small on which to do an analysis by department. However, 8 of the 15 deaths occurred in the potroom with a subsequent PMR of 168.3 based on 8 observed deaths and 4.75 expected with a corresponding 95% confidence interval of (85.1, 333.0). The only individual plant with a significant excess was Edgewater with a PMR of 260.7 ($p<0.05$).

(8) Pancreatic cancer - In this study, the PMRs for

pancreatic cancer did not show a significant excess for either reduction plant workers or workers spending the majority of their time in the potrooms (PMR=103.2 and 87.2). This compares to an SMR of 134.8 for workers in the potrooms of the Tripartite Study. The significant finding of the Tripartite Study was for potroom workers with more than 15 years employment, where the excess was more than twofold. With the data available in the present study a risk for longterm employees could not be obtained.

E. Analysis by Plant

Mortality for each of the 62 selected causes of death was done for each of the 37 study plants. Such analysis must be interpreted with caution since by random chance alone some plants would be expected to deviate from the average value. In addition, many of the plants did not have sufficient numbers for an individual analysis. Because of these limitations, we view the results as preliminary and any plants that are identified should be given consideration for a more detailed study (if feasible) in a second phase.

Table 24 summarizes the observed, expected deaths and Proportionate Mortality Ratios by plant. Of the 29 plants with sufficient sample size to compute a PMR, 14 had a PMR less than 100 and 15 had a PMR greater than 100. Four plants had a statistically significant excess, but one was based on only 5 observed deaths. One plant had a borderline excess of PMR=130.5 with a corresponding 95% confidence interval of (99.9, 170.4).

Numbers were often too small to do an analysis of individual plants for many of the specific cancers. Nevertheless, in reviewing the results from those plants we note the following

Table 24
Observed and Expected Deaths and Proportionate Mortality Ratios for All Malignant Neoplasms by Plant

Plant	OBS	EXP	PMR	95% LOWER	95% UPPER
ADDY	5	2.00	250.6*	123.2	509.9
ANDERSON	1	.37	--	--	--
ALCOA	21	22.02	95.3	66.1	137.6
BADIN	40	37.11	107.8	82.5	140.7
BAUXITE	34	36.16	94.0	70.4	125.5
BRIDGEPORT	12	7.04	170.5*	103.7	280.3
BUFFALO	0	.91	--	--	--
CHICAGO	5	7.06	70.8	33.5	149.4
CHILLICOTHE	16	14.98	106.8	70.8	161.0
CLEVELAND	138	110.16	125.3**	108.6	144.6
CORONA	1	2.85	--	--	--
CRESSONA	64	62.75	102.0	82.8	125.6
DAVENPORT	85	64.20	132.4**	110.5	158.6
DETROIT	14	16.17	86.6	54.6	137.3
EAST ST. LOUIS	28	29.04	96.4	69.5	133.9
EDGEWATER	60	61.07	98.2	78.7	122.6
EDISON	30	24.75	121.2	89.1	165.0
FORT MEADE	1	.88	--	--	--
FRANKLIN	5	5.85	85.4	40.4	180.5
LAFAYETTE	78	87.57	89.1	73.6	107.8
LANCASTER	7	7.83	89.4	47.4	168.3
LEBANON	3	2.16	--	--	--
LOGANS FERRY	5	4.36	104.7	54.5	24.7
MARSHALL	3	2.78	--	--	--
MASSENA	148	152.68	96.4	84.4	111.4
MOBILE	45	38.58	116.6	90.8	149.8
NEW KENSINGTON	160	168.55	94.9	83.0	108.6
POINT COMFORT	45	45.95	97.9	76.5	125.4
RICHMOND	19	19.81	95.9	65.6	140.1
ROCKDALE	23	26.44	87.0	61.4	123.2
ROSICLARE	10	7.78	128.5	74.7	220.9
TENNESSEE	330	323.35	102.1	93.0	112.0
TIFFON	4	2.33	--	--	--
VANCOUVER	52	49.27	105.8	83.6	133.2
VERNON	52	51.06	101.8	80.6	128.7
WARRICK	39	29.89	130.5	99.9	170.4
WENTACHEE	22	22.55	97.6	68.3	139.5

neoplasms which were in excess at particular plants:

(1) The Cleveland plant had PMRs of *280.5* for stomach cancer (based on 12 observed deaths, $p<0.01$), *298.8* for cancer of

the rectum (based on six observed deaths, **p<0.05)** and 464.7 for cancer of the breast (based on 4 observed deaths, **p<0.01).**

(2) The Cressona plant had a **PWR** of 247.4 for stomach cancer (based on five deaths, **p<0.05),** 261.9 for kidney cancer (based on four deaths, **p<0.05),** and 530.4 for melanoma (based on four deaths, **p<0.01).**

(3) The Davenport plant had a **PMR** of 177.0 for all digestive cancers (based on 27 observed deaths, **p<0.01).** The PCMR was not significantly elevated for this cause.

(4) The Edgewater plant had a **PMR** of 260.7 for leukemia (based on six observed deaths, **p<0.05).**

(5) The Hassena plant had a **PMR** of 283.2 for lymphosarcoma (based on 4 observed deaths, **p<0.05).**

(6) The **Mobile** plant had a **PMR** of 161.2 **(p<0.05)** for lung cancer. The **PCMR** was 135.3.

(7) The Tennessee **(Alc)** plant had a **PMR** of 172.1 (based on 46 observed deaths, **p<0.01)** for cancer of the lymphatic and haematopoietic tissue.

(8) The Vancouver plant had a **PMR** of 154.4 for lung cancer (based on 27 observed deaths, **p<0.05)** and a **PMR** of 356.1 (based on 4 observed deaths, **p<0.05)** for kidney cancer.

Summary

Conclusions from this study must be drawn more cautiously than was necessary for the Tripartite Study because of the inherent limitations of the PMR study design as well as the less specific job classification used in the present study. Furthermore, the large number of estimates of risk that were computed will result in a larger number of false positive findings than can be inferred from the p-values. Conversely, the small number of workers available for many of the estimates of risk precludes any strong statements in regard to those findings that were negative. With these limitations stated, we now summarize the findings we feel are most important. Consistent with the study objectives, we have given most attention in our summary to malignant neoplasms..

The PMR for malignant neoplasms for the total study population was 103.7 and was not significantly different from the total U.S. population. The only specific cancer site.which was significantly elevated was kidney cancer with a PMR of 158.1 and a corresponding 95% confidence interval of (121.2, 206.3). The nonspecific disease categories of benign and unspecified neoplasms, nephritis and nephrosis and "all other malignant neoplasms" were elevated and appeared to result from lack of complete specification of cause of death on the certificate. The only other disease category that was elevated for the total cohort was cerebral vascular disease with a PMR of 111.4 ($p<0.05$) and this was accompanied by a deficit in ischemic heart disease (PMR=85.2, $p<0.01$).

The analysis by work area yielded the following:

(1) For the combined group of workers in nonreduction plants the PMR for all malignant neoplasms was 105.2. The only statistically significant excesses occurred for nonspecific disease categories (i [illegible], nephritis, benign and unspecified neoplasms, all other cancers). Analysis by race indicated that whites had an excess of colon cancer and nonwhites had an excess of stomach, liver and lymphatic cancer.

(2) For the 1320 workers in a reduction plant who spent the majority of their time in a nonreduction process, the PMR for all malignant neoplasms was 93.6. The only specific neoplastic site with a significant elevation was cancer of the lymphatic and haematopoietic tissue (PMR=140, $p<0.05$).

(3) Workers with the majority of their employment in the reduction process had a PMR of 109.5 ($p<0.05$) for all malignant neoplasms. These workers had a PMR of 124.3 for lung cancer ($p<0.01$) and a PMR of 209.2 for kidney cancer ($p<0.01$). When a PCMR was computed, the estimate of risk for lung cancer was a nonsignificant 111.9 but remained significant for kidney cancer (PCMR=188.6, $p<0.01$). The workers spending the majority of their time in the reduction process had a significant excess for two of the study plants. Neither of these plants had an excess in the Tripartite Study. Workers spending the majority of their time in mechanical maintenance also had an excess of lung cancer.

(4) Although workers in reduction plants had a significantly elevated PMR of 130.2 ($p<0.05$), for cancer of the lymphatic and haematopoietic tissue it was greater in workers in the reduction plant spending the majority of their time in a

nonreduction process (PMR=140.1, $p<0.05$). No individual department had a statistically significant excess, although the small number of observed deaths when analyzed by department makes the results inconclusive.

(5) Analysis by plant is limited by small numbers and a further increase in the expected false positives due to the larger number of estimates of risk. Overall, 14 plants had a PMR for "all malignant neoplasms" below 100, 15 plants were above, and 8 had less than 5 observed deaths from neoplasms. Of plants with greater than 5 observed deaths for "all malignant neoplasms", three had a statistically significant excess and one had borderline significance. Eight of the plants had at least one specific site that showed a statistically significant excess. We could identify no consistent pattern in site-specific cancers among plants with similar processes, although such inferences are clearly limited by small numbers and lack of more detailed job classifications in plants with multiple processes.

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Appendix

Distribution of causes of death using 4 digit ICD codes

ICD	Freq.	ICD	Freq.	ICD	Freq.
88	1	1562	1	2008	4
119	3	1569	1	2019	7
189	1	1570	5	2020	1
310	1	1579	69	2021	1
360	1	1590	3	2024	1
381	3	1599	1	2028	41
384	7	1619	7	2030	25
388	1	1625	1	2040	5
389	54	1629	557	2041	8
419	1	1639	2	2049	2
498	1	1640	1	2050	17
499	1	1701	1	2051	6
539	1	1706	1	2080	9
543	1	1709	1	2081	1
703	2	1712	1	2089	7
1159	2	1713	1	2159	1
1169	1	1716	1	2169	1
1175	1	1719	9	2251	1
1179	2	1722	1	2252	1
1350	1	1725	2	2302	1
1363	2	1727	1	2373	1
1369	1	1729	15	2384	1
1409	1	1734	1	2387	4
1419	2	1749	13	2389	2
1449	1	1790	2	2390	2
1459	2	1809	1	2391	1
1460	2	1820	1	2395	1
1469	1	1830	4	2396	10
1479	3	1850	147	2398	1
1481	1	1869	1	2399	1
1490	5	1874	2	2429	1
1505	2	1889	47	2449	1
1509	17	1890	48	2500	72
1510	3	1891	1	2501	2
1519	56	1892	4	2502	2
1522	2	1899	1	2503	6
1529	1	1909	1	2504	1
1531	1	1910	1	2505	1
1532	2	1913	2	2506	6
1533	4	1916	1	2507	1
1534	2	1919	20	2509	1
1536	5	1930	1	2535	1
1539	152	1940	2	2554	1
1540	6	1946	1	2558	1
1541	24	1950	1	2599	1
1550	12	1990	14	2639	3
1551	2	1991	136	2651	1
1552	8	2000	5	2733	1

Table (continued)

Distribution of causes of death using 4 digit ICD codes

ICD	Freq.	ICD	Freq.	ICD	Freq.
1560	4	2001	6	2738	1
1561	2	2002	1	2754	1
2761	1	4049	4	4402	3
2762	2	4100	1017	4409	65
2765	4	4109	16	4410	4
2773	2	4110	11	4411	1
2780	1	4120	9	4412	1
2793	1	4130	1	4413	41
2810	1	4140	617	4414	3
2848	2	4141	1	4415	7
2849	2	4148	14	4416	3
2859	1	4149	203	4429	1
2866	2	4151	36	4439	8
2888	2	4160	3	4440	1
2898	1	4169	5	4449	5
2899	1	4210	3	4472	1
2900	4	4239	1	4479	1
2901	2	4240	5	4512	1
2910	1	4241	23	4519	2
3030	1	4249	6	4539	1
3089	1	4254	67	4549	1
3109	5	4255	2	4560	4
3229	1	4271	1	4578	1
3239	2	4273	3	4589	3
3240	1	4274	4	4590	5
3310	19	4275	164	4599	1
3312	1	4278	1	4660	1
3314	2	4279	19	4787	1
3319	2	4280	80	4809	1
3320	16	4281	2	4810	4
3334	3	4284	4	4820	3
3352	12	4289	14	4823	1
3400	3	4290	2	4824	1
3418	1	4291	1	4828	1
3419	1	4292	150	4829	1
3429	2	4299	4	4830	1
3481	3	4300	6	4850	35
3483	1	4301	5	4860	103
3485	1	4310	46	4870	1
3489	1	4321	6	4878	1
3561	1	4329	5	4900	3
3570	2	4330	1	4912	6
3760	1	4331	4	4919	1
3940	2	4340	49	4920	54
3941	1	4341	2	4939	9
3949	5	4349	27	4940	1
3959	1	4360	275	4960	141

Table (continued)

Distribution of causes of death using 4 digit ICD codes

ICD	Freq.	ICD	Freq.	ICD	Freq.
3980	1	4370	16	5000	18
3989	4	4371	1	5010	1
4019	11	4378	1	5020	1
4029	48	4379	15	5050	1
4039	12	4380	7	5064	1
5070	17	5715	34	8120	9
5109	3	5718	2	8121	1
5118	1	5719	3	8122	3
5119	4	5722	1	8129	16
5120	4	5724	3	8130	4
5130	3	5728	19	8147	6
5140	6	5733	4	8150	2
5150	13	5739	2	8159	2
5163	1	5742	2	8169	2
5168	2	5743	1	8190	7
5183	1	5750	3	8191	2
5184	2	5751	1	8192	3
5185	3	5754	1	8199	16
5188	9	5761	3	8209	1
5199	1	5770	5	8219	1
5301	1	5771	1	8220	1
5304	1	5789	11	8249	1
5309	1	5809	1	8259	1
5314	4	5829	4	8261	1
5315	2	5838	1	8300	1
5319	1	5839	2	8309	1
5324	2	5845	1	8329	1
5325	2	5849	12	8480	1
5326	1	5850	19	8682	1
5329	1	5860	45	8689	3
5334	6	5900	1	8698	1
5335	2	5901	2	8781	1
5339	1	5908	3	8782	2
5369	1	5920	1	8789	1
5400	1	5938	1	8799	5
5409	1	5939	4	8809	7
5532	2	5959	1	8810	4
5539	1	5990	25	8811	1
5560	1	6019	1	8820	1
5570	8	6029	1	8839	1
5579	1	6821	1	8849	2
5580	1	6829	1	8870	1
5601	1	6861	1	8880	10
5602	1	6954	1	8902	4
5608	1	7070	6	8903	2
5609	5	7101	1	8909	4
5621	5	7802	2	8920	1
5660	1	7855	6	8939	1

Table (continued)

Distribution of causes of death using 4 digit ICD codes

ICD	Freq.	ICD	Freq.	ICD	Freq.
5679	1	7860	1	9000	1
5698	4	7970	2	9053	1
5699	1	7981	5	9068	1
5710	1	7982	44	9102	1
5712	13	7991	41	9108	3
5713	2	7999	62	9110	4
5714	1	8109	2	9120	2
9138	1	9251	1	9571	1
9190	5	9289	15	9600	1
9192	1	9323	1	9651	1
9198	2	9345	1	9652	1
9199	2	9520	4	9654	7
9220	1	9530	5	9660	2
9221	1	9538	1	9689	2
9222	1	9540	1	9821	4
9229	5	9550	4	9830	1
9239	1	9551	4	9851	1
9240	1	9552	2	9854	2
9250	1	9554	52	9947	1

EXHIBIT 2

TRIPARTITE

FINAL REPORT

Case-Control Study of Kidney Cancer and Hydrocarbon Exposure in the Aluminum Industry

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* Analysis Based on Exposure Classification as of August 18, 1993.

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Carolyn Watkins is acknowledged for coding of the death certificates.

* Disclaimer: The authors do not take responsibility for the classification of jobs into exposure categories. As specified in the proposal Alcoa had responsibility for the exposure classification.' Subsequent to the analysis and preparation of this report an error in exposure 'classification was identified that could affect the results and/or conclusions of this study.

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Abbreviations Used in this Work

95% CI	95% confidence interval
IH	Industrial hygiene
ICDA	International classification of disease
P	Statistical significance level or α - level
p-value	Statistical significance level or a - level
PPOM	Particulate polycyclic organic matter
PMR	Proportionate mortality ratio
RR	Relative risk
SMR	Standardized mortality ratio

Summary

In March, 1990, a Proportionate Mortality Study was completed of 6373 deaths occurring in one of 37 Alcoa plants from 1980-1987. One of the goals of the original study was to provide a general assessment of mortality across all Alcoa plants and to identify potential problems requiring further research. Although the proportion of cancer deaths was not significantly greater than the proportion observed in the total U.S. population, the mortality from kidney cancer was 58% higher than expected. The present study is a follow-up to this previously reported Proportionate Mortality Study and its purpose was to investigate whether the excess was due to occupational exposure. One hypothesized cause of an excess of kidney cancer was exposure to some form of hydrocarbon. The primary purpose of the present study was to test the hypothesis of an association of kidney cancer and hydrocarbon exposure. The analysis was based on 71 observed kidney cancer deaths for workers in 26 plants in the aluminum industry from 1980 through 1990. These were matched to a control group consisting of individuals whose cause of death was not cancer or chronic nephritis.

We obtained a relative risk of 2.55 for those with high exposure to hydrocarbons as compared to those without high exposure ($p < .05$). Those with jobs classified as low or medium exposure did not have a significant excess risk. A significantly elevated risk remained after adjustment for nonoccupational factors such as smoking, analgesic use and obesity. Given the suggestion of a relationship of hydrocarbon exposure and kidney cancer in several other occupationally exposed

groups we conclude that some of the excess of kidney cancer previously observed in this population of aluminum workers is likely due to hydrocarbon exposure. The number of jobs rated as high hydrocarbon exposure was small and many are no longer in existence. Estimates of risk were elevated for both high aliphatic and high aromatic exposure. However, since many employees had exposure to both types of hydrocarbons it is difficult to separate the effects of these two specific types of exposure,

It should be noted that the analysis and conclusions are based on the data for exposure groupings which we had as of August 18, 1993. On August 19, we became aware of some errors in the exposure classification given to us by Alcoa. This could have a major impact on the results, but there was insufficient time to incorporate these changes in classification into the report.

Introduction

In 1990, a Proportionate Mortality Study [1] was completed of all deaths known to Alcoa that occurred from 1980 through 1987 in one of 37 study plants. Any former employee whose beneficiary had either filed a claim or was receiving death benefits from the company was included in the study population. The resultant study population contained 6433 deaths and death certificates were obtained for all but 60 (0.9%) subjects. All but nine workers had employment histories. Detailed work histories were not coded and analyzed for this study, since coding for such a large variety of plants and processes was beyond the scope of the original proposal. Therefore, most of the analysis was presented by study plant. Employees were classified into the plant where they were last employed. One of the goals of the PMR study was to provide a general assessment of mortality across all Alcoa plants in order to identify potential problem areas. Previous mortality studies in the aluminum industry had focused primarily on workers in reduction plants.

The PMR study summarized the mortality experience for 62 causes of death for the total group and for selected subgroups based on race, sex, and a general characterization of job history. The only cancer-specific site which was significantly elevated for the total study population was kidney cancer with a PMR of 158.1 and a 95% confidence interval of (121.2, 206.3). Of the 6373 total deaths in the cohort, 2777 were for workers in one of the eight aluminum reduction plants. The PMR for kidney cancer for reduction plant workers was 184.2 ($p < .01$) based on 28 observed deaths with a 95% confidence interval of (128.1, 265.0). The corresponding PMR

in nonreduction plants was 136.5 based on 25 observed deaths and a corresponding 95% confidence interval of (92.5, 201.4).

Based on these findings, a review of the literature, and discussions with industrial hygienists, it was determined that some type of hydrocarbon exposure might be a cause of an excess kidney cancer risk. Two general classes of hydrocarbon exposure are aromatics and aliphatics. Polycyclic aromatic hydrocarbons are formed during the combustion of organic matter and the high temperature processing of crude oil, coke, coal and a variety of other industrial carbon compounds. Some of the members of this group of compounds have long been recognized as being carcinogenic. Occupational groups with exposure to aromatic hydrocarbons that demonstrate an excess cancer risk include workers in gas generation [2,3], coke oven workers [4,5], roofers [6,7] and aluminum reduction plant workers [8,9]. Excess lung cancer in coke oven workers had provided much of the motivation for the conduct of mortality studies of aluminum reduction plant workers. It is less well recognized that coke oven workers also have an excess kidney cancer risk [5].

Although in the aluminum industry investigations of hydrocarbon exposure have focused primarily on exposure to coal tar pitch volatiles in the potroom and carbon departments of reduction plants, there have been suggestions of a kidney cancer risk in other areas. The Tripartite Study [10] found a kidney cancer excess in prebake plants that was not confined to the potroom and carbon departments. The recently conducted PMR study [1], which included both reduction and nonreduction plants, also showed some excess for kidney cancer in nonreduction plants. Solvents, a class of

organic substances that includes members of both the aromatic and aliphatic group of compounds, have been considered as a possible carcinogen in several epidemiological studies. Occupational groups with solvent exposure for which an excess cancer risk has been reported include dry cleaners [11], commercial pressman [12] and painters [13]. Gasoline has been suggested as a possible kidney carcinogen [14]. Several cohorts of oil refinery workers, where there is exposure to both aliphatic and aromatic hydrocarbons have shown an excess of cancer [15-17], although in general estimates of cancer risks for this occupational group have been inconsistent [18].

Another source of aliphatic exposure in the aluminum industry are rolling and lubricating oils. The association of cancer of the skin with mineral oils was established in early epidemiological studies [19,20]. More recent studies have focussed on oil mists. Several investigators have shown a relationship of machining oils or mists to cancer [21-26]. Because of the evidence that hydrocarbons in the work environment that are not included in the class of aromatic compounds may be carcinogenic it was decided that the assessment of hydrocarbon exposure would include estimation of exposure to aliphatic as well as aromatic compounds.

Research Objectives

The current project is a case-control study of **71** cases and **283** controls. This study tests the association of hydrocarbon exposure with kidney cancer risk. Jobs were classified in regard to exposure to both aromatic hydrocarbons and aliphatic hydrocarbons. Information on nonoccupational factors which may be related to kidney cancer was obtained and investigated as possible causes of the excess risk of kidney cancer in this population.

Research Methods

Methods

The cases included 53 kidney cancer deaths occurring in the PMR Study and an additional **20** kidney cancer deaths identified in the time interval 1988 through **1990.** The two kidney cancer cases from the Detroit plant were excluded from the study because information on the employment histories did not identify the work areas or job titles held by the workers. Therefore, 71 cases were available for the analyses. For each kidney cancer case, four controls were randomly selected that were matched on race, sex, year of death and birth year (matched within five years). The control group excluded all deaths from other malignancies since employment in aluminum reduction plants has been associated with a variety of cancer sites including cancers of the lung, bladder, digestive system and haemolymphopoietic tissues. In addition, deaths attributed to non-malignant kidney disease were excluded. Subsequent to the selection of the **284** controls, one subject was found to have died of cause of death

which made them ineligible as a control and was removed from the study. The distribution of the study population by cause of death is given in Appendix A.

The **354** study participants had a total of **9673** job entries. These were reviewed by industrial hygiene personnel at Alcoa and classified into **1931** potentially different categories of job exposure. Subsequently each of these was classified into one of the four categories; none, low, medium and high for both aromatic hydrocarbon exposure and for aliphatic hydrocarbon exposure. This resulted in identifying **649** jobs with exposure to either aliphatic or aromatic hydrocarbons, and, **1282** jobs considered to have insignificant exposures to these compounds. It was plann'ed that ,if sufficient industrial hygiene data were available, an assignment would be made of an appropriate quantitative aliphatic and aromatic hydrocarbon exposure for each of these **649** jobs. Otherwise, analysis would be based on the low, medium and high classification.

Conditional logistic regression was used to test the hypothesis of an association of hydrocarbon exposure and kidney cancer. Employing this analytical approach serves a twofold purpose. First, it preserves the matching used in the sampling of controls and leads to analyses with statistically more power. Second, the logistic regression is a multivariate technique and can incorporate adjustment for other covariates. Specifically, the effect of hydrocarbon exposure can be evaluated while simultaneously adjusting for potential confounders which were not matched during the sampling of the controls. Information on potential confounders was obtained from a questionnaire administered to a surrogate by telephone (Appendix B). Potential

confounders for kidney cancer include weight, smoking patterns and use of analgesics. Responses to the questionnaire were obtained for 301 (85.0%) of the 354 study participants. The response rates for the cases and the controls was 83.1% and 85.5%, respectively. The individual responding to the questionnaire was a spouse 63.8% of time and a child 27.9% of the time. There was no difference between the cases and controls in regard to the distribution of the relationship of the person responding for the study participant. The primary analysis will relate hydrocarbon exposure to kidney cancer for the total study group. Several exposure measures were used to investigate the primary hypothesis. These included estimation of risks: 1) for those ever exposed to hydrocarbons; 2) for those ever exposed to high levels of hydrocarbons; 3) by cumulative years of hydrocarbon exposure; and 4) by cumulative years of high hydrocarbon exposure. As a secondary analysis, we estimated risk separately for aliphatic and aromatic hydrocarbon exposure. To determine if exposure is related to disease outcome, the likelihood ratio test was used to determine whether the beta coefficient for exposure in the logistic model is equal to zero. A reanalysis, adjusting for potential confounders, was done for the subgroup responding to the questionnaire.

The .sample size estimates in the design of this study assumed a Type I error of .05, a proportion of exposed controls equal to 0.30 and a matching ratio of 1:4. Assuming a conditional logistic regression model, the sample size required for selected values of relative risk and statistical power are summarized in Table 1. We had planned to have reasonable power to detect a relative risk, of 2 to 2.5. At the time

we initiated the study we were unsure as to the exact number of kidney cancer cases since the number of kidney cancer deaths in 1988-1990 was unknown.

The actual number of kidney cancer cases was 71 which was in the expected range. However, the percentage of individuals with some exposure to hydrocarbons was 77%. This was because many of the workers in alurninum plants have at least low exposure to hydrocarbons, particularly aliphatics. With 71 cases and an exposure proportion of .77 there is 68% power of detecting a 2.5 relative risk and power of 80% of detecting a risk of 3.0. Overall, eleven percent of the workers were classified as having high exposure to hydrocarbons. High hydrocarbon exposure among the controls was nine percent. Assuming a conditional logistic regression model, the statistical power for relative risks of 2.5 and 3.0 were 68% and 85%, respectively [27].

Description of the Data Base

Of the 354 study participants, 349 (98.6%) were males and 329 (92.9%) were white. These characteristics as well as birth year and year of death were considered in the design by matching to assure comparability of cases and controls. Figure 1 shows the frequency distribution of year of birth for the study participants. The largest number of births occurred between 1911 and 1920, with very few births occurring before 1900 or after 1930. Year of death (Figure 2) was fairly evenly distributed among the 11 years of the study, and differences can be attributed to chance variation. The average age at death was 69.0 for cases and controls

combined. Figure 3 shows the frequency distribution of the average age at death for cases and controls. More than half (62%) of the deaths occurred between the ages of 60 and 75.

For the 85% of the study participants for whom there was a response to the questionnaire there was also information on smoking, weight, use of diuretics and use of analgesics. A comparison of the smoking patterns of cases and controls is shown in Table 2. Eighty-five percent of the study population were smokers or ex-smokers and 78% had smoked cigarettes. As expected, more detailed information on the amount and duration of past smoking was less complete. There is reasonably good agreement in the smoking patterns of the two groups. Although this might be considered surprising because smoking is a risk factor for kidney cancer, some of the causes of death in the control group are also associated with excess risk from cigarette smoking and would be expected to have an increased number of smokers.

A comparison of other selected characteristics is shown in Table 3. The proportion of patients using diuretics is higher in the control group. Information on the reason for usage was not available for most of the patients, but in those that did give a reason, blood pressure (46.3%) and heart disease (26.8%) were the most common reason. Since the control group contains a large number of deaths from cardiovascular disease it is not surprising that there would be a higher number of patients in the control group taking diuretics for a hypertensive or cardiovascular condition. Although the average weight is similar in the two groups the percentage of individuals classified by the surrogate as overweight throughout most of their adult

life is higher in the control group ($p < .05$). There is a tendency for a preference for aspirin rather than aspirin free products in the control group but the results are not statistically significant. The response on the duration and brand name of products used was not sufficiently complete to be useful in the analysis.

Work Environment

The study consists of 354 workers from 28 plants. Of this number, 56.2% are workers in aluminum reduction plants and 29.9% are from Alcoa, Tennessee (Table 4). Alcoa provided all of the information on exposure classification and was responsible for the coordination of this effort. Review of the jobs appearing on the work histories by Alcoa industrial hygienists resulted in a classification into 1931 potentially different categories of job exposure. Then blinded as to whether the job category was present on the work history of a case or a control, the 1931 job classifications were identified by company industrial hygienists as: a) none/insignificant; b) low; c) medium; and d) high for both aromatic and aliphatic exposure. This assessment was done through interviews with current industrial hygienists and process engineers with experience at the specific plants. For aromatic exposure the plant industrial hygienists were asked if specific jobs had exposure to coal tar pitch volatiles such as those in reduction operations, roofing or floor coatings; solvents containing chemicals such as benzene, xylene, toluene or other aromatic hydrocarbon; or paints or coatings containing aromatic hydrocarbons. For aliphatic

hydrocarbon exposure the plant industrial hygienists were asked whether the specific jobs had exposure to diesel or gasoline fumes, solvents containing aliphatic hydrocarbons, perchlorethylene, oil mists, or paints or coatings containing aliphatic hydrocarbons.

Pertinent industrial hygiene files were reviewed by Alcoa for the individual locations and when quantitative exposure assessments were available they were considered in the determination of the appropriate qualitative classification of job exposure. Table 5 summarizes the 1931 jobs cross-classified by aliphatic and aromatic hydrocarbon exposure. In the classification of aliphatics, six jobs were classified in an intermediate category of "low to medium" exposure. In analysis where the low and medium categories were distinguished these job categories were considered to have medium exposure. The cross-classification in Table 5 indicates that approximately 20% of the job categories with exposure have both an aliphatic and an aromatic component. However, since workers have been employed in multiple job categories the percentage of individuals with exposure to both aliphatics and aromatics is higher.

Table 6 summarizes the percentage of workers who had ever worked a job with some exposure to aliphatics or aromatics and those with at least one job at higher exposure levels. It is clear from Table 6 that the majority of workers have had some exposure to aliphatics. It is also clear that many workers have been exposed to both types of hydrocarbon exposure. All of the workers with exposure to aromatics also had some exposure to aliphatics. Forty-seven percent of the workers with exposure

to aliphatics had exposure to aromatics and sixty percent of the workers with high exposure to aliphatics had some exposure to aromatics.

The occurrence of both aliphatic and aromatic hydrocarbon exposure in the same individuals means it may not be possible to separate the effects of exposure to aliphatic and aromatic exposure. Therefore, as a first analysis we estimated risk associated with hydrocarbon exposure without regard to type. As a secondary analysis we will estimate risks separately for aromatic and aliphatic exposure.

We also considered the possibility of using industrial hygiene measurements in place of the qualitative classification. Unfortunately, since some operations either had substantial changes in exposure or were no longer in existence, we felt the data was too incomplete to attempt to link a numerical value with each specific job category. However, the data were useful in providing an indication of the average quantitative value associated with the qualitative categories and in providing an indication of the validity of the qualitative assessment. For aliphatics, measurements were taken on 161 exposure categories. For each of these categories we had quantitative estimates of exposure for aliphatic chains from length five to twenty (C_5 - C_{20}). The lowest quartile of quantitative exposure measures were all for job categories classified in the low or insignificant exposure category and for the second quartile 95% of the measurements were for jobs in the low exposure category. In the third quartile (second highest quartile), 38% of the measurements were classified as medium exposure and the rest were classified as low or insignificant. The highest quartile based for the quantitative IH values contained all five of the jobs classified as high

exposure and a majority of the remaining jobs were classified as medium exposure. For aliphatic exposure there appeared to be reasonably good agreement between the quantitative measurement and the qualitative category.

For aromatic exposure a comparison between the qualitative categories and quantitative values was more problematic. First, the industrial hygienists did not consider any single quantitative measure for aromatic hydrocarbon exposure to be an adequate representation of the qualitative index since aromatic exposure includes both "pitch" and "non-pitch" exposure. Pitch exposure occurs primarily in the reduction plants and is primarily aromatics of three rings or higher. Solvents are one of the primary sources of "non-pitch" hydrocarbon exposure and consist primarily of the one ringed aromatics (benzene, toluene and xylene) and some two and three ringed aromatics. An individual ranking was not done of "pitch" and "non-pitch" hydrocarbon exposure so an appropriate comparison of qualitative and quantitative values could not be done. Second, the amount of quantitative data was limited. There were only 8 quantitative measurements available for jobs with exposure to only "nonpitch' aromatics.

Although there is more data for jobs associated with pitch, the range of values for present day operations is limited. Of the 152 jobs with an IH measure that had no exposure to 'nonpitch", aromatic hydrocarbons 130 (85.5%) were less than 30% below the PEL. This is a reflection of the improvements in levels of coal tar pitch in present day reduction plants but it provides little information for comparison to the qualitative categories where the assignment of "medium" and "high" often were based

on exposure representing historical conditions. In fact, there were no measurements taken for jobs classified as having high aromatic exposure since no comparable environments were available in current operations.

On August 18, we became aware of some errors in the exposure data given to us by Alcoa. These errors could impact on the results and conclusions of this report. However, there was not enough time to incorporate any changes which would result from a reanalysis of the data into this document.

Risk Associated with Hydrocarbon Exposure

The results of fitting a conditional logistic model with hydrocarbon exposure as an independent variable is summarized in Table 7. The estimated risk for those with some hydrocarbon exposure to those with no hydrocarbon exposure is 1.04. Those with low or medium exposure show no greater risk than those with no hydrocarbon exposure.. However, for those with high hydrocarbon exposure the estimated risk is 2.55 ($p = .02$). When a term for low to medium exposure and a term for high exposure are included in the model (Model 4) and compared to those with no hydrocarbon exposure, the association of kidney cancer and hydrocarbon exposure remains significant ($p = .05$). The risk is only evident for those with high hydrocarbon exposure and those with low to medium exposure actually have a risk that is slightly below the baseline group. Although high exposure is associated with kidney cancer risk there does not appear to be a relationship with duration of

exposure. There is no relationship of kidney cancer mortality with either cumulative years of hydrocarbon exposure (Model 5) or cumulative years of high hydrocarbon exposure (Model 6).

The same models summarized in Table 7 were fit to the data using aromatic hydrocarbon exposure as the independent variable (Table 8) and aliphatic hydrocarbon exposure as the independent variable (Table 9). Again, it is the high exposure categories that show the greatest risks for kidney cancer. For aromatic exposure, the relative risk of those ever exposed to high levels of aromatics to those never exposed to high levels was 1.61 ($p = .38$). When a term for low to medium exposure is added to the model (Model 4) the high exposure category has a risk of 1.67 compared to those never exposed and the p-value associated with the joint aromatic hydrocarbon coefficient remains nonsignificant. For aliphatics [Table 9) the relationship with kidney cancer is also strongest for those with high exposure ($RR = 4.10$, $p < .01$). There remains no association with length of time with aliphatic exposure (Model 5) or length of time with high aliphatic exposure (Model 6). Although the high aliphatic exposure category had increased risk, there appeared no increase with low or medium exposure.

When a dose-response relationship was tested using the relative weights of 0, 1, 2, 3 for none, low, medium and high exposure, respectively, neither aliphatic or aromatic hydrocarbon exposure showed a statistically significant excess. A reanalysis for aliphatics was done by selecting weights corresponding to mean values of the industrial hygiene measurements in the various exposure categories. This

corresponded to 3, 9, and 26 mg/m^3 for low, medium and high exposures, respectively. There was no significant trend of kidney cancer and exposure.

Adjustment for Nonoccupational Factors

Survey information was available for 59 cases and 242 controls. The primary purpose of the questionnaire was to control for potential confounding variables that may distort the relationship of exposure and risk of kidney cancer. A copy of the questionnaire appears as Appendix B. When the variables from the questionnaire are included in the analysis it must be done on the subset of patients with information available. The risk of kidney cancer due to high hydrocarbon exposure in the subgroup of patients responding to the questionnaire was 3.24, $p = .01$, which is similar to the estimated risk for the entire population (RR =.2.55, $p = .02$). A formal test was conducted to determine whether the risk'of kidney cancer for those with high hydrocarbon exposure differed for those with a survey and those without a survey. The model used to test this hypothesis included a variable indicating whether a survey was done, a variable indicating high hydrocarbon exposure, and a variable measuring the interaction for these two factors. The variable for interaction was not significant, indicating there is no statistically significant difference in the risk of kidney cancer associated with high hydrocarbon exposure between those responding to the questionnaire and those not responding.

Logistic regression was used to test whether high hydrocarbon exposure was related to kidney cancer after adjusting for potential confounders. Potential confounders obtained from the questionnaire include smoking history, use of diuretics, use of aspirin analgesics, use of aspirin free analgesics and obesity. We measured obesity using the index weight/(height)^2 where weight was in kilograms and height was measured in meters. The model used a binary variable to characterize individuals that were overweight ($\geq$ 30.0 kg/m^2). In addition, adjustment for possible geographic variability was made by including an extra term in the model which controlled for plant location. This variable grouped together those plants which had jobs with high hydrocarbon exposure. Table 10 summarizes the effect of adjusting the risk of kidney cancer from high hydrocarbon exposure for various models. The estimated risk ranges from 2.74 to 3.37 when adjusted by single factors and in all cases the risk due to high hydrocarbon exposure remains statistically significant (Models 2 through 8). The results remain unchanged when simultaneously adjusting by several factors. All of the models adjusting for multiple confounders have an estimated risk of high hydrocarbon exposure of at least 2.99 and all indicate the hydrocarbon effect is statistical significant. Model 13, which includes all the potential confounders, has an estimated relative risk of 4.28 ($p = .014$) for high hydrocarbon exposure. The corresponding 95% confidence interval is (1.31, 13.99). Both smoking and the use of aspirin-free analgesics also show increased risk of kidney cancer but including them in the model does not eliminate the risk due to hydrocarbon exposure. The inverse relationships of kidney cancer risk with diuretics usage and obesity probably occurs because these

factors have a stronger relationship with cardiovascular disease, a condition that is prevalent in the control group.

Table 11 summarizes the results of incorporating potential confounders in the model when the measure of exposure is high aromatic exposure. The estimates of kidney cancer risk associated with high aromatic exposure increase when adjustment is made for potential confounders. The estimated risk after adjustment for all potential confounders (Model 13) is 4.12 ($p = .08$). The corresponding 95% confidence interval is (.80, 21.94).

Table 12 summarizes these same models applied to the exposure variable indicating high aliphatic exposure. The estimated risk of kidney cancer for those with high aliphatic exposure remains consistently above 3.0. When all potential confounders are included in the model (Model 13) the estimated risk for kidney cancer is **4.27** from high exposure to aliphatics ($p = .048$). The corresponding 95% confidence interval is (1.01, 18.15).

Of the 22 workers with high exposure to aromatics, six (27%) died from kidney cancer. All were white males with an age at death ranging from 62-82 years. Several of the workers were in a high exposure area for only a short period of time, but all had long periods of time with hydrocarbon exposure (minimum 12 years). Three of the workers had at least 28 years of exposure to jobs with medium or high levels of aromatic hydrocarbon exposure. All of the jobs classified as having high exposure to aromatics had exposure to coal tar pitch volatiles that occurred in older reduction plant operations.

Of the 20 workers with high exposure to aliphatics 9 **(45%)** died from kidney cancer. All of the workers were white males with an age at death that ranged between 62 and 72. Five of the nine deaths were for workers at Massena. Only one of the workers had high exposure to aromatics and three were classified as having no aromatic exposure. The median length of time to aliphatic exposure was 19 years. Eight of these nine workers had employment in jobs with high aliphatic exposure in the wire, rod and bar or tube mills.

Discussion

The suggestion that there is a risk of kidney cancer from hydrocarbon exposure, is not a new one. Animal studies have shown a relationship of exposure to hydrocarbons and kidney cancer [28,29]. In addition, several epidemiological studies have demonstrated a risk of kidney cancer with hydrocarbon exposure identified as a possible causative factor. In a cohort study of coke oven workers, there was a relative risk of **7.49** based on **8** observed deaths [5,30]. Coke oven workers are exposed to aromatic hydrocarbons and much of the original concern with cancer in aluminum reduction workers is related to exposure to aromatic hydrocarbons. McLaughlin *et al.* [31] reported a relative risk of 1.6 for workers exposed to petroleum, tar and pitch products in a population based case-control study of renal carcinoma with **495** cases and **697** controls. In a population based case-control study with 210 cases and 210 matched controls, Kadamani et *al.* [32] reported a relative risk of 1.6 in males exposed

to hydrocarbons but no excess in females. Exposure was assessed by two industrial hygienists who assigned a subjective score of 0 to 5 for each job in the work history. Each individual then had a cumulative exposure score.

Cohort studies of aluminum workers have also identified excesses in kidney cancer although the results were not always statistically significant. Rockette and Arena [10] found an excess of kidney cancer in prebake plants (SMR = 151.3). However, excesses did not appear to be associated with potroom or carbon department jobs. In a large cohort of Norwegian reduction plant workers [33] there was an excess risk of kidney cancer of 20%..Two different studies of Canadian aluminum reduction plant workers [34,35] show excesses of 46% and 36%, respectively. Thus, there appears to be a consistent, although small, excess of kidney cancer in reduction plant workers. This consistent excess in kidney cancer was noted by Doll in a previous review of mortality patterns in aluminum reductionplant workers [36].

Although these studies as well as other have found excess cancer risk that may be due to hydrocarbon exposure, the investigators of some occupational groups with hydrocarbon exposure have produced inconsistent estimates of cancer risk. In particular, Harrington [18] considers 'the studies of exposure to gasoline to be inconsistent in regard to estimates of cancer risk. Savitz and Moure [37] attribute the inconsistent results in studies of oil refinery workers to methodological shortcomings. In particular, exposure is often not assessed, latency periods are not considered in many of the analyses, and there is often no attempt to adjust for potential confounding variables. In summary there have been many studies assessing the

association of hydrocarbon exposure and cancer risk, many of which have been positive and some of which have identified an excess of kidney cancer. However, a number of negative studies as well as methodological shortcomings in some of the studies which were conducted have prevented any general conclusions that a wide range of hydrocarbons result in an excess kidney cancer risk.

In regard to the excess kidney cancer risk found in the present study, there is always a possibility of bias in a case-control study. However, efforts were made to control bias. We matched on the factors age, race, sex, year of birth and death year to avoid possible confounding by these factors. The industrial hygienists were blinded in regard to whether the job entry was taken from the work history of a case or a control when making the exposure assessment. Therefore, misclassification errors were likely to be nondifferential between cases and controls. Errors of this type tend to lessen the chance of an association of outcome with exposure.

An attempt to control for nonoccupational confounders was done using questionnaire data. Several issues arise when incorporating data obtained from questionnaires, Information on confounders is usually difficult to obtain and there is usually a loss in statistical power due to exclusion of subjects from the analysis of those not responding. There is also the possibility that the subset of those who respond is not representative of the entire group. In this study, non-responders had a slight tendency to die in earlier years, however, there was not a sufficient difference to affect risk estimates. Furthermore, the estimates of risk from high hydrocarbon exposure were not significantly different in the group of responders and the group of

nonresponders. Smoking [38] has been associated with kidney cancer. The validity of smoking information obtained from surrogates has been discussed in the literature. For adults, Pickle et *al.* [38] report that the most complete information is collected when the subject's spouse or offspring is interviewed and when the data is consolidated into broad categories. In the present study, 91.7% of the respondents were a spouse or offspring of the decedent. An attempt was made not to have questions that were too specific in the interview because of the problems associated with surrogates providing detailed information on smoking habits. Age started smoking was categorized to the appropriate decade of life and estimates of the number of cigarettes per day were grouped into broad categories. Over ninety percent of those responding to the questionnaire indicated an age when the subject first started smoking and the amount of cigarettes smoked per day. Although the reliability of surrogate information is always an issue, Rojot and Redi [40] found that smoking information from next.of kin was more reliable when deaths occurred recently. Telephone interviewing of the surrogates occurred within five years of the subjects death for 52% of the deaths in this study. None of the deaths occurred more than ten years prior to the interviews.

Even if one questions the validity of the smoking data, it is unlikely given the large number of smokers or ex-smokers and the magnitude of the estimated risk, that the risk for hydrocarbon exposure could be entirely due to confounding. Assuming the average risk of kidney cancer in a mixed population of smokers and ex-smokers is 3:0, and 85% of the controls are smokers or ex-smokers then even if 100% of the cases were smokers or ex-smokers the increase in risk estimate due to confounding

would result in an estimate of 1.15 [41], which is far below our estimates of risk due to hydrocarbon exposure.

Other nonoccupational risk factors for kidney cancer are less well established. Several investigators have suggested an association of obesity with an increased risk of kidney cancer [42-46]. Animal and human studies have shown a positive association between the ingredients found in diuretics and renal carcinoma [46,47]. Other studies have indicated an increase of kidney cancer in patients using certain based analgesic compounds [48-52]. Use of aspirin-free analgesics in the present study had an associated risk of kidney cancer of 1.96 (p.= .22) but there was no imbalance among cases and controls that would alter the elevated risk of those exposed to high levels of hydrocarbons. When aspirin-free analgesic usage was included in the model, the adjusted estimate of risk for high exposure to hydrocarbons remained significant.

When the risk for hydrocarbon exposure is adjusted for multiple factors the hydrocarbon risk remains statistically significant. Smoking and aspirin free analgesics are associated with excess risk of kidney cancer which is consistent with the literature. Weight and diuretic are inversely related to kidney cancer risk. This latter observation may be an artifact since these two factors would also be expected to be higher in individuals dying from cardiovascular disease. Cardiovascular deaths comprise a majority of the control group.

In addition to bias, excess risk sometimes occurs due to random variability. Over reliance on the p-value can lead to overemphasis of high relative risks in occupational mortality studies that test a large number of hypotheses. Due in part to

the Healthy Worker Effect, the effect of multiple comparisons on the probability of a false positive finding is greater in proportionate mortality studies [53]. This was a potential problem in the originally conducted PMR study [1]. However, in the present study which could be considered the "hypothesis testing" phase rather than "hypothesis generating" phase the probability of a false positive finding is more accurately reflected by the significance level associated with the risk

Although the present study indicates that individuals with high exposure to hydrocarbons are at excess risk from kidney cancer several limitations of the study should be noted. First, all studies of this type require estimates of exposure in some situations where actual measurements are presently unavailable. This is because operations and exposures have changed over time and present exposures may not be an adequate representation of historical ones. In the present study approximately 25.0% of the jobs had actual measurements taken. For those with measures there was reasonably good agreement between the a priori estimate of aliphatic exposure (classified as low, medium and high) and the quantitative measure. However, such estimates of exposure must always be viewed as an approximation. If the misclassification is nondifferential then the effect of poor estimates will make it harder to identify a dose-response. For aromatic exposure, there was more difficulty in comparing quantitative and qualitative values. Historically the reduction jobs had higher levels of aromatic exposures than current operations. Also, there is a possibility that some job classifications may not have adequately considered the lower ringed compounds since historically the aluminum industry has given emphasis to the

higher ringed compounds. Some of the hydrocarbon exposure included solvents. Exposure to solvents is particularly difficult to assess [54]. There may be large variations in an individual's exposure during the workday and there can be considerable variability among individuals even when performing the same task. It is common to use solvents in mixtures and exposure to specific ,solvents or even classes of compounds are often difficult to assess.

A second issue relates to delineating the risk for aromatic and aliphatic exposure. For many jobs both exposures are present and distinguishing risk is difficult. In the multivariate model both aliphatics and aromatics have an excess risk but only for aliphatics is the result statistically significant. Because of the confounding exposure occurring in the same job and because workers often held jobs with varying types of hydrocarbon exposure, it is difficult to separate the effects of risk of the aliphatic and aromatic compounds.

Even within the categories of aliphatic and aromatic hydrocarbons there can be considerable variability in job exposure. In this study the aromatic exposure was primarily coal tar pitch and the high category of coal tar pitch was assigned to jobs in the Soderberg process. Nonpitch aromatic exposure was 'due primarily to solvents. Since all the high e'xposure jobs were due to pitch the kidney cancer excess in the high aromatic category is probably due to pitch exposure.

In this study the higher categories of aliphatic exposure were primarily due to rolling and lubricating oils. There is increasing evidence that machining oils or oil mists [21-24,26,55] can cause cancer although the most frequently identified causes are

cancer of the skin and digestive cancer. In this regard cancer of the kidney has not been established as associated with machining oils and further investigation is needed.

Finally, there does not appear to be a dose-response relationship. Low and medium exposures show no excess risk. This could be due to a threshold or a result of some misclassification at the lower dose levels. Similarly, some of the workers with high hydrocarbon exposure had short exposure at these high intensities. Although it may be that high intensity is more important than cumulative dose, this is difficult to evaluate because those with high intensity hydrocarbon exposure tended to have long term aliphatic or aromatic exposure at lower levels.

In summary, epidemiological studies are always subject to limitations and investigations of hydrocarbon exposure are even more difficult because of the difficulties in measuring exposure. However, the conclusion that the high kidney cancer risk in the present study is related to high hydrocarbon exposure is strengthened by the following factors:

1) The magnitude of the risk is relatively high making it less likely to be induced by unknown confounders.

2) The risk remains significant even after controlling for potential nonoccupational confounders.

3) The quality of the exposure assessment is good compared to most previous studies of hydrocarbon exposure. The categorization was done blinded as to case or control status so errors are unlikely to introduce bias.

The foregoing analysis and conclusions is based on data we had available as of August 18, 1993. On August 19, we received information from Alcoa that there were some errors in the classification. Although the percentage of jobs misclassified is small, these errors could have an impact on the results and conclusions. In the short amount of time available, we could not assess the magnitude of the impact.

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FIGURE 1
Year of Birth for Study Participants

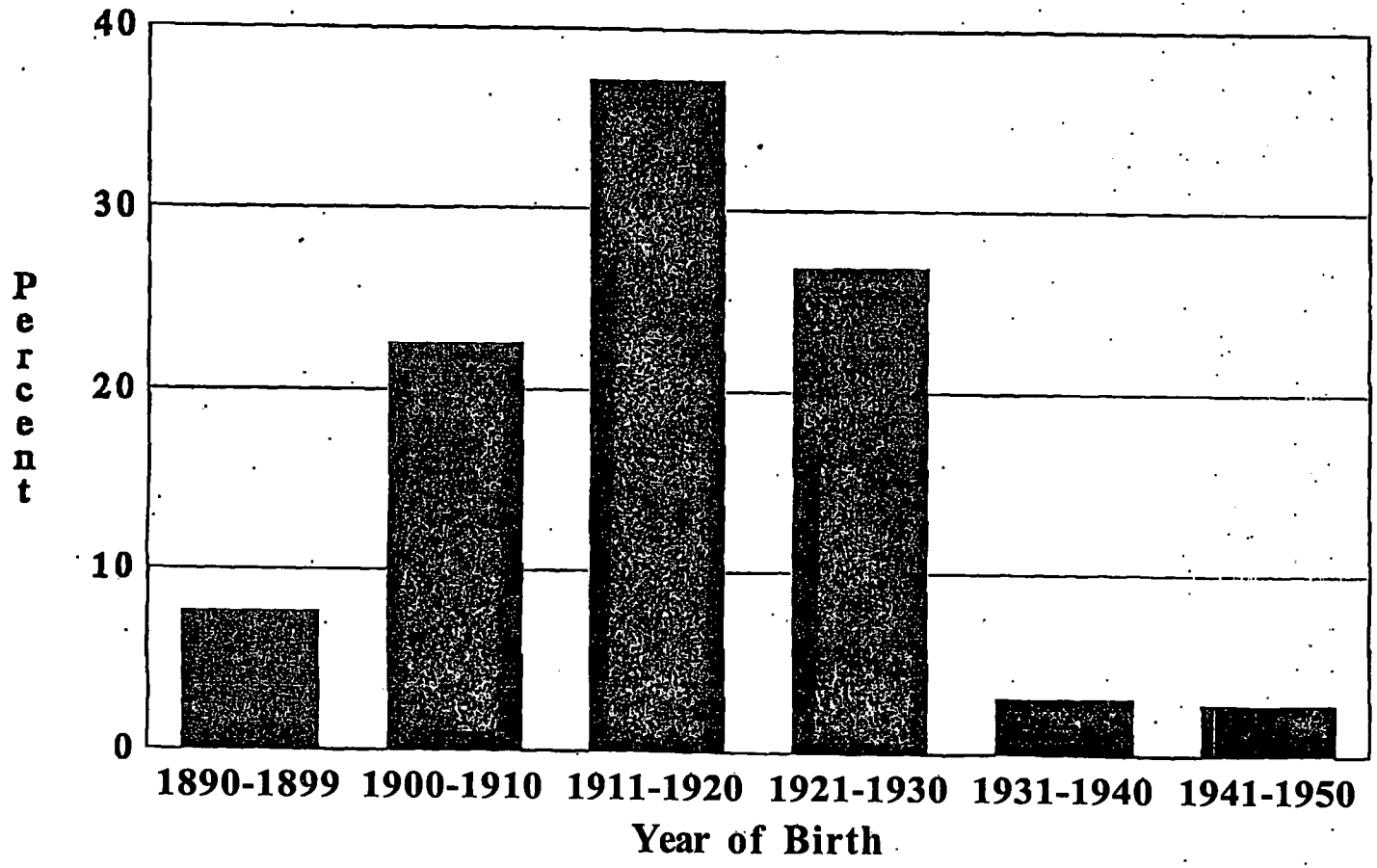


FIGURE *2*
Year of Death for Study Participants

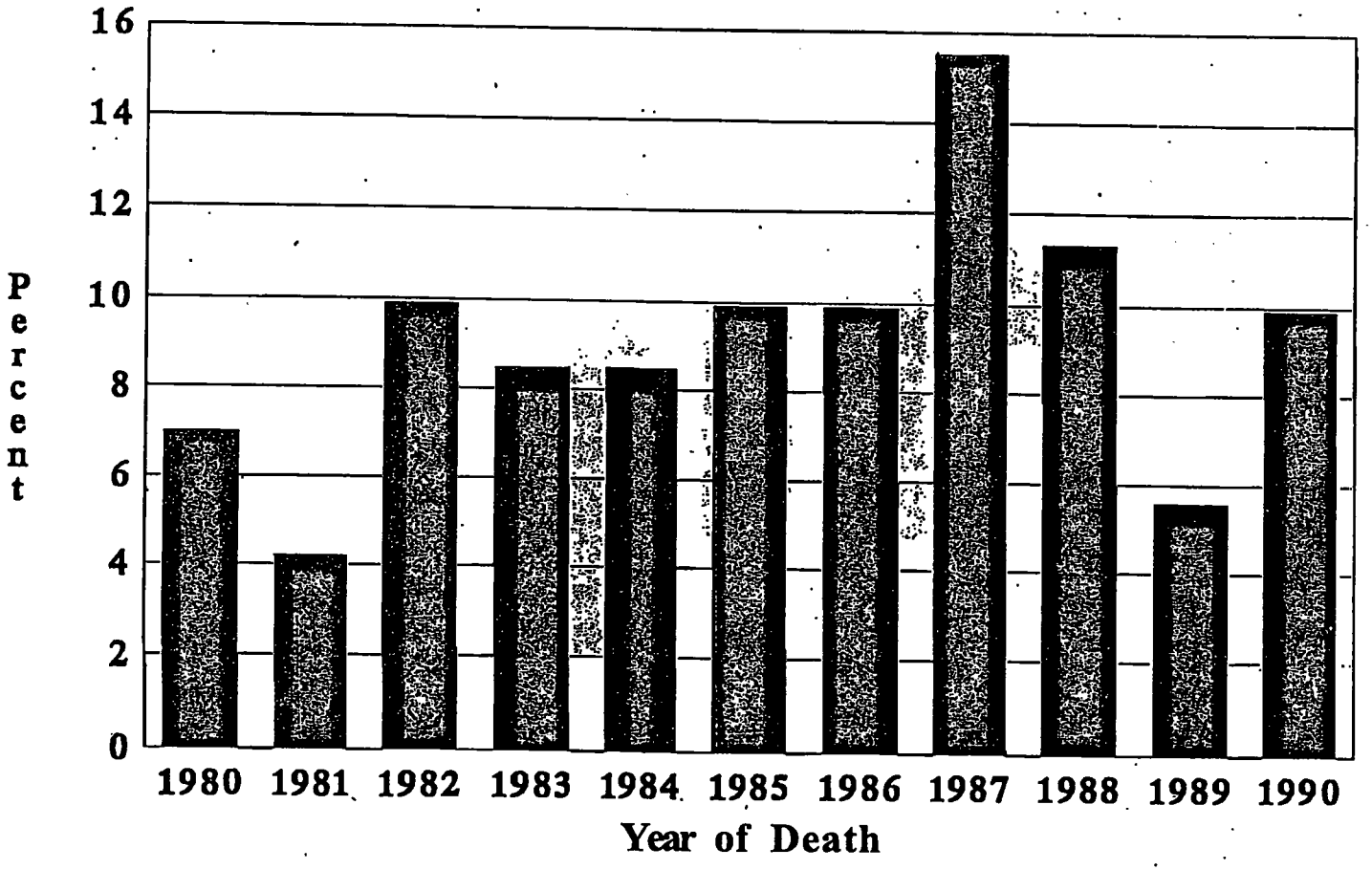


FIGURE 3
Age at Death for Study Participants

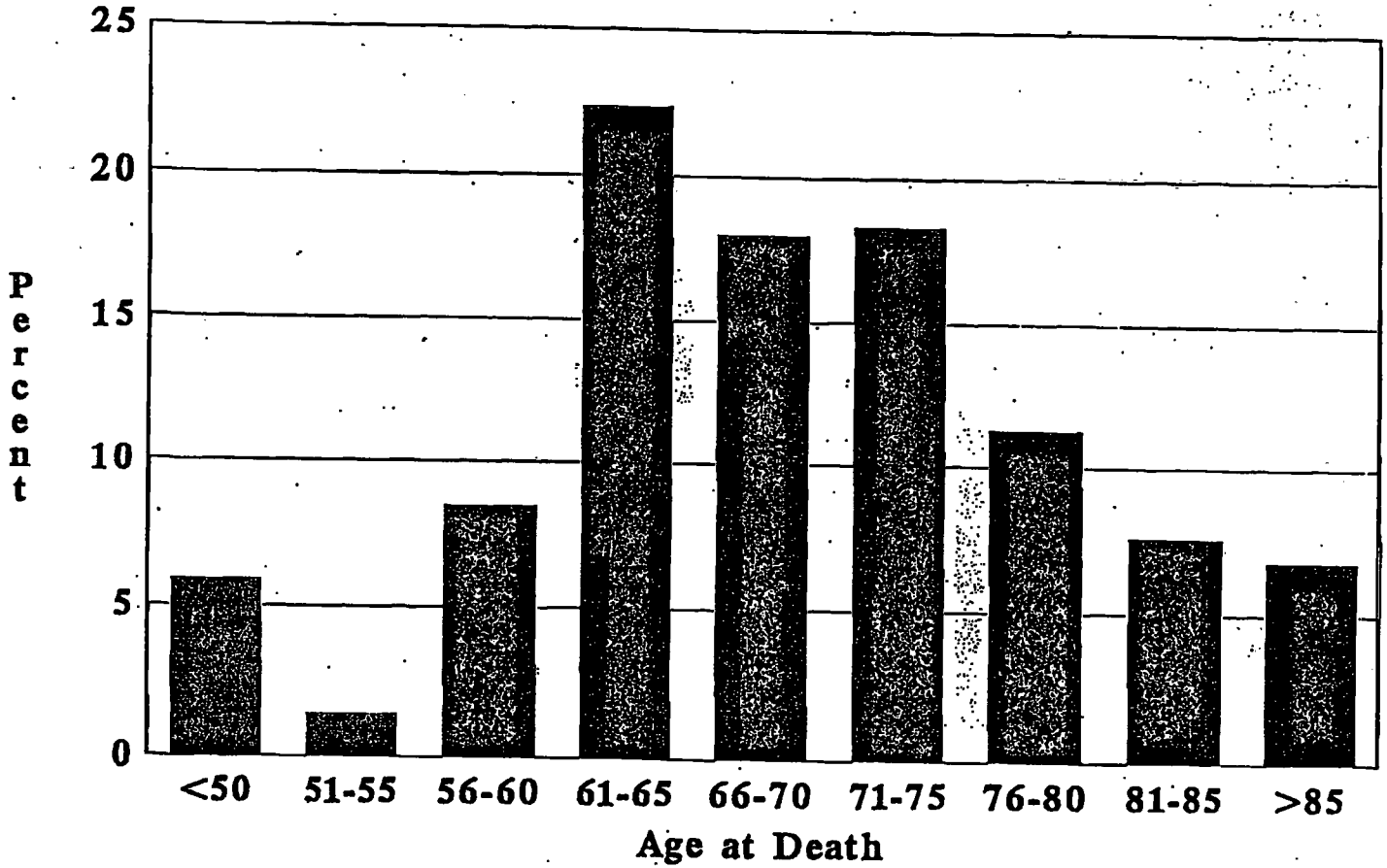


Table 1

Number of Matched Sets Needed to Achieve a Specified Power and Relative Risk Assuming a Two-Sided $\alpha = .05$ Test, A Matching Ratio of 1:4 and the Proportion of Exposed Controls Is 30%

	Power		
Relative Risk	80%	90%	95%
2.0	87	117	144
2.5	49	66	82
3.0	35	46	57

Table 2

Smoking Patterns of Study Population

	Number of Respondents	Cases §	Control §
Ever smoked	294	84.8	85.4
Ever smoked cigarettes	301	74.6	78.9
Ever smoked a pipe	298	25.4	30.1
Ever smoker cigars	300	15.2	12.4
Age stopped smoking	160	53.7	52.3
Started smoking in teens	213	77.3	63.9
Smoked more than pack/day	212	38.5	34.7

* $p < .05$
** $p < .01$
§ Numbers presented are for percentages of cases and controls with the specified characteristic,
Age stopped smoking is given in years.

Table 3

Comparison of Selected Patient Characteristics

	Number of Respondents	Cases	Control
Age (years)	354	69.0	69.0
Weight (pounds)	282	181.9	176.7
Overweight (percent) *	295	16.9	33.0
Aspirin use (percent) +	285	10.3	21.6
Aspirin-free analgesic use (percent)	287	10.3	6.6
Diuretics use (percent) **	269	16.7	35.4
Height (inches)	299	70.1	69.5

\+ $p < .10$
* $p < .05$
** $p < .01$

Table 4

Distribution of Deaths by Plant

Plant	Frequency	Percent
ALCOA	106	29.9
ATC	2	.6
BADIN	8	2.3
BAUXITE	8	2.3
BRIDGEPORT	1	.3
CHILLICOTHE	1	.3
CLEVELAND	18	5.1
CORONA	1	.3
CHESSONA	15	4.2
DAVENPORT	16	4.5
EAST ST. LOUIS	4	1.1
EDGEWATER	11	3.1
EDISON	6	1.7
FRANKLIN	2	.6
LAFAYETTE	16	4.5
LOGANS FERRY	1	.3
MARSHALL	1	.3
MASSENA	34	9.6
MOBILE	7	2.0
NEW KENSINGTON	29	8.2
POINT COMFORT	17	4.8
RICHMOND	7	2.0
ROCKDALE	11	3.1
ROSICLARE	3	.8
VANCOUVER	10	2.8
VERNON	6	1.7
WARRICK	10	2.8
WENATCHEE	3	.8

Table 5

Distribution of Aliphatic Exposure Level by Aromatic Exposure Level
For the Classified Job Categories

Aphatic Exposure Level	Aromatic Exposure Level				
	None	low	ium	High	tal
No	1282 (66.4)§	4 (2)	--	-	1 6 6.)
Low	328 (17.0)	52 (2.7)	45 (2.3)	2 (1)	4Z7 (Z2.1)
Low / Medium	6 (.3)	-	-	--	6 (.3)
Medium	3 18.4)	3 [2)	8 (.4)	12 (6)	186 (9.6)
High	20 (1. 0)	4 (2)	--	2 (1)	26 (1 .4)
Total	1799 (93.2)	63 (3.3)	53 (2.7)	16 (8)	1931 (100.0)

§ Percentages are shown in parentheses

Table 6

Distribution of Hydrocarbon Exposure in Study Population

Type of Hydrocarbon Exposure	Percent of All Subjects
Aliphatics	76.8
Aromatics	36.7
Aliphatics or Aromatics	76.8
Medium to High Aliphatics	46.0
Medium to High Aromatics	22.0
Medium to High Exposure to Aliphatics or Aromatics	52.8
High Aliphatics	5.6
High Aromatics	6.2
High Exposure to Aliphatics or Aromatics	11.3

Table 7'

Relationship of Kidney Cancer to Hydrocarbon Exposure

Model	Variable	β	S.E.	RR	p-value	95% CI
1	Ever Hydrocarbon / Never	.043	.330	1.04	.90	(.55, 2.00)
2	Ever Medium or High Hydrocarbon / Never	-.040	.281	.96	.88	(.55, 1.67)
3	Ever High Hydrocarbon / Never	.935	.377	2.55	.02	(1.22, 5.34)
4	No Hydrocarbon '(baseline)			1.0	.05	
	Low / Medium Hydrocarbon	-.108	.342	.90		(.46, 1.76)
	High Hydrocarbon	.852	.460	2.34		(.95, 5.77)
5	Years Of Hydrocarbon Exposure	.840 E-2	.011	1.00	.45	(.99, 1.03)
6	Years Of High Hydrocarbon Exposure	-.014	.046	.99	.76	(.90, 1.08)

Table 8

Relationship of Kidney Cancer to Aromatic Exposure

Model	Variable	β	S.E.	RR	p-value	95% CI
1	Ever Aromatic / Never	.153	.287	1.16	.59	(.66, 2.04)
2	Ever Medium or High Aromatic / Never	.039	.333	1.04	.91	(.54, 2.00)
3	Ever High Aromatic / Never	.478	.526	1.61	.38	(.58, 4.52)
4	No Aromatic (baseline)			1.0	.65	
	Low / Medium Aromatic	.081	.304	1.08		(.60, 1.97)
	High Aromatic	.510	.539	1.67		(.58, 4.79)
5	Years Of Aromatic Exposure	.020	.015	1.02	.20	(.99, 1.05)
6	Years Of High Aromatic Exposure	-.038	.060	.96	.48	(.86, 1.08)

Table 9

Relationship of Kidney Cancer to Aliphatic Exposure

Model	Variable	β	S.E.	RR	p-value	95% CI
1	Ever Aliphatic / Never	.043	.330	1.04	.90	(.55, 2.00)
2	Ever Medium or High Aliphatic / Never	-.056	.283	.95	.84	(.54, 1.65)
3	Ever High Aliphatic / Never	1.410	.514	4.10	.007	(1.50, 11.22)
4	No Aliphatic (baseline)			1.0	.025	
	Low / Medium Aliphatic	-.054	.337	.95		(.49, 1.83)
	High Aliphatic	1.37	.582	3.92		(1.25, 12.27)
5	Years Of Aliphatic Exposure	.808 E-2	.011	1.00	.47	(.99, 1.03)
6	Years Of High Aliphatic Exposure	.079	.097	1.08	.43	(.90, 1.31)

Table 10

Effect of Confounding Factor on Kidney Cancer Risk From High Hydrocarbon Exposure

Model	Covariates in Model	Risk for Confounder	High Hydrocarbon Risk			observations +	
			RR	95% CI	p-value	n	sets
1	No covariates	--	2.55	(1.22, 5.34)	.016	354	71
2	Ever Any Smoking.	1.14	3.20	(1.29, 7.96)	.012	298	58
3	Ever Cigarette Smoking	.81	3.13	(1.27, 7.73)	.014	301	58
4	Plant *	.62	3.18	(1.42, 7.091	005	354	71
5	Diuretics	.33	2.91	(1.08, 7.80)	.034	269	52
6	Aspirin Analgesics	.44	3.37	(1.31, 8.65)	.011	288	57
7	Aspirin-free Analgesics	2.18	3.21	(1.30, 7.91)	.011	287	57
8	Obesity	.81	2.74	(1.04, 7.22)	.042	281	53
9	'Ever Any Smoking	1.98	3.70	(1.27, 10.76)	.015	258	51
	Diuretics	.33					
	Aspirin Analgesics	.48					
	Aspirin-free Analgesics	3.52					

Model	Covariates in Model	Risk for Confounder	High Hydrocarbon Risk			observations +	
			RR	95% CI	p-value	n	sets
10	Ever Cigarette Smoking	1.39	3.46	(1.21, 9.89)	.020	258	51
	Diuretics	.33					
	Aspirin Analgesics	.47					
	Aspirin-free Analgesics	3.62					
11	Ever Any Smoking	2.59	3.30	(1.09, 10.05)	.033	246	48
	Diuretics	.36					
	Aspirin Analgesics.	.50					
	Aspirin-free Analgesics	2.74					
	Obesity	.86					
12	Ever Cigarette Smoking	1.60	2.99	(1.02, 8.81)	.045	246	48
	Diuretics	.35					
	Aspirin Analgesics	.48					
	Aspirin-free Analgesics	3.04					
	Obesity	.77					

Model	Covariates in Model	Risk for Confounder	High Hydrocarbon Risk			observations +	
			RR	95% CI	p-value	n	sets
13	Ever Any Smoking	3.02	4.28	(1.31, 13.99)	.014	246	48
	Diuretics	.37					
	Aspirin Analgesics	.48					
	Aspirin-free Analgesics	3.11					
	Obesity	.86					
	Plant *	.52					
14	Ever Cigarette Smoking	1.93	3.90	(1.22, 12.48)	.020	246	48
	Diuretics	.36					
	Aspirin Analgesics	.45					
	Aspirin-free Analgesics	3.44					
	Obesity	.80					
	Plant *	.52					

§ significance level of aliphatic exposure after adjusting for other covariates in the model

+ number of subjects and matched sets in the model

* **Alcoa, Cressona, Massena,** Point Comfort and New Kensington combined verses remaining plants

Table 11

Effect of Confounding Factor on Kidney Cancer Risk From High Aromatic Exposure

Model	Covariates in Model	Risk for Confounder	High Aromatic Risk			observations +	
			RR	95% CI	p-value	n	sets
1	No covariates	--	1.61	(.58, 4.52)	.375	354	71
2	Ever Any Smoking	.98	2 1 2	(.57, 7.89)	.269	298	58
3	Ever Cigarette Smoking	.74	2.20	(.59, 8.20)	.250	301	58
4	Plant *	.74	1.92	(.64, 5.74)	.255	354	71
5	Diuretics	.35	2.56	(.63, 10.41)	.190	269	52
6	Aspirin Analgesics	.43	2.70	(.66, 11.02)	.168	288	57
7	Aspirin-free Analgesics	1.99	2.24	(.60, 8.34)	.236	287'	57
8	Obesity	.78	2.66	(.66, 10.70)	.169	281	53
9	Ever Any Smoking	1.81,	3.63	(.74, 17.83)	.104	258	51
	Diuretics	.35					
	Aspirin Analgesics	.48					
	Aspirin-free Analgesics	3.22					

Model	Covariates in Model	Risk for Confounder	High Aromatic Risk			observations +	
			RR	95% CI	p-value	n	sets
10	Ever Cigarette Smoking	1.32	3.37	(.70, 16.13)	.121	258	51
	Diuretics	.35					
	Aspirin Analgesics	.47					
	Aspirin-free Analgesics	3.31					
11	Ever Any Smoking	[illegible]	3.64	(.73, 18.13)	.104	246	48
	Diuretics	[illegible]					
	Aspirin Analgesics	.50					
	Aspirin-free Analgesics	2.59					
	Obesity	.71					
12	Ever Cigarette Smoking	1.50	3.29	(.69, 15.64)	.127	246	48
	Diuretics	.38					
	Aspirin Analgesics	.48					
	Aspirin-free Analgesics	2.86					
	Obesity	.66					

Model	Covariates in Model	Risk for Confounder	High Aromatic Risk			observations +	
			RR	95% CI	p-value	n	sets
13	Ever Any Smoking	2.42	4.12	(.80, 21.94)	.081	246	48
	Diuretics	.39					
	Aspirin Analgesics	.51					
	Aspirin-free Analgesics	2.61					
	Obesity	.68					
	Plant *	.75					
14	Ever Cigarette Smoking	1.65	3.88	(.76, 19.71)	.094	246	48
	Diuretics	.38					
	Aspirin Analgesics	.50					
	Aspirin-free Analgesics	2.88					
	Obesity	.65					
	Plant *	.72					

§ significance level of aliphatic exposure after adjusting for other covariates in the model
\+ number of subjects and matched sets in the model
* Alcoa, Massena and Point Comfort combined verses remaining plants

Table 12

Effect of Confounding Factor on Kidney Cancer Risk From High Aliphatic Exposure

Model	Covariates in Model	Risk for Confounder	High Aliphatic Risk			observations +	
			RR	95% CI	p-value	n	sets
I	No covariates	--	4.10	(1.50, 11.22)	.007	354	71
2	Ever Any Smoking	1.07	4.27	(1.35,13.47)	.012	298	58
3	Ever Cigarette Smoking	.77	4.10	(1.30,12.93)	.015	301	58
4	Plant *	.64	4.94	(1.74, 14.05)	.003	354	71
5	Diuretics	.33	3.18	(.92, 10.96)	.069	269	52
6	Aspirin Analgesics	.44	4.84	(1.39, 16.86)	.010	288	57
7	Aspirin-free Analgesics	2.17	4.23	(1.34,13.30)	.013	287	57
8	Obesity	.78	3.61	(.99, 13.13)	.050	281	53
9	Ever Any Smoking	1.75	4.34	(1.13,16.56)	.030	258	51
	Diuretics	.33					
	Aspirin Analgesics	.47					
	Aspirin-free Analgesics	3.45					

Model	Covariates in Model	Risk for Confounder	High Aliphatic Risk			observations +	
			RR	95% CI	p-value	n	sets
10	Ever Cigarette Smoking	1.28	4.18	(1.10, 15.87)	.034	258	51
	Diuretics	.33					
	Aspirin Analgesics	.46					
	Aspirin-free Analgesics	3.53					
11	Ever Any Smoking	2.21	3.59	(.88, 14.61)	.074	246	48
	Diuretics	.35					
	Aspirin Analgesics	.50					
	Aspirin-free Analgesics	2.75					
	Obesity	.82					
12	Ever Cigarette Smoking	1.45	3.37	(.84, 13.51)	.086	246	48
	Diuretics	.35					
	Aspirin Analgesics	.47					
	Aspirin-free Analgesics	3.00					
	Obesity	.75					

Model,	Covariates in Model	Risk for Confounder	High Aliphatic Risk			observations +	
			RR	95% CI	p-value	n	sets
13	Ever Any Smoking	2.53	4.27	(1.01, 18.15)	.048	246	48
	Diuretics	.37					
	Aspirin Analgesics	.47					
	Aspirin-free Analgesics	3.05					
	Obesity	.77					
	Plant *	.60					
14	Ever Cigarette Smoking	1.64	3.47	(.95, 16.55)	.057	246	48
	Diuretics	.37					
	Aspirin Analgesics	.45					
	Aspirin-free Analgesics	3.33					
	Obesity	.70					
	Plant *	.61					

§ significance level of aliphatic exposure after 'adjusting for other covariates in the model
+ number of subjects and matched sets in the model
* Alcoa, Massena, Cressona, and New Kensington combined verses remaining plants

Appendix A: Distribution of Deaths by ICDA Codes

Appendix A

Distribution of Deaths for All Subjects by Four Digit International Classification of Disease Codes

ICDA	Frequency	Percent
11.9	2	.6
38.9	2	.6
189.0	66	18.6
189.1	1	.3
189.2	4	1.1
250.0	8	2.3
250.1	1	.3
289.9	1	.3
303.0	1	.3
331.0	4	1.1
332.0	2	.6
333.4	1	.3
335.2	1	.3
402.9	1	.3
410.0	79	22.3
412.0	1	.3
414.0	34	9.6
414.8	2	.6
414.9	14	4.0
415.1	4	1.1
423.9	2	.6
425.4	6	1.7
426.8	1	.3
427.3	2	.6
427.5	9	2.5
427.9	2	.6
428.0	7	2.0
429.2	10	2.8
431.0	3	.8
432.1	1	.3
434.0	1	.3
434.9	3	.8
436.0	12	3.4
437.0	2	.6

ICDA	Frequency	Percent
437.1	1	.3
437.9	1	.3
438.0	1	.3
440.9	1	.3
441.1	1	.3
441.3	4	1.1
441.5	1	.3
443.9	1	.3
454.9	1	.3
485.0	1	.3
486.0	6	1.7
490.0	1	.3
492.0	3	.8
496.0	9	2.5
513.0	1	.3
514.0	1	.3
518.8	2	.6
532.9	1	.3
533.4	1	.3
557.0	1	.3
560.1	1	.3
572.8	1	.3
578.9	1	.3
737.3	1	.3
785.5	2	.6
798.2	1	.3
799.1	1	.3
799.9	6	1.7
812.9	1	.3
816.0	1	.3
819.0	1	.3
819.9	1	.3
910.8	1	.3
928.9	1	.3
955.0	1	.3
955.4	3	.8
965.1	1	.3

DATE: _____

Aluminum Workers Health Study
Questionnaire

Worker's name:

Social Security Number:

Please fill in the name and phone number of the person answering the questions

Spouse	_____
Child	_____
Sibling	_____
Other relative	_____
Other	_____

Phone number: ( ) _____

Please circle correct responses.

1. How tall was he?

   Feet _____ Inches _____ Unknown

2. Throughout most of his adulthood, what was his usual weight?

   Lbs. _____ Unknown

3. Throughout most of his adulthood, how would you classify his weight?

   Under-weight
   Slightly under-weight
   Just right
   Over-weight
   Very much over-weight
   Unknown

4. Did he ever take prescription diuretics or water pills?

   Yes
   No
   Unknown

5. The following are several reasons for taking diuretics. Did he take medication for any of the following reasons.

   To lower blood pressure
   For heart disease
   To lose weight
   To reduce swelling
   Did not take medication (If NO, go to question 7)

6. How many years did he take diuretics on a regular basis?

   Less than 6 months
   6 months to 2 years
   2 years to 5 years
   5 years to 10 years
   Greater than 10 years

The following lists several brand names of diuretics. Please circle any that he took.

Aldactazide
Aldactone
Diuril
Dyazide
Enduron
Esidrix
Hydrochlorothiazide
Hydrodiuril
Hygroton
Lasix
Metahydrin
Oretic
Zaroxolyn
Other _____

7. Did he smoke at least 5 packs of cigarettes in his lifetime?

Yes
No (If NO, go to question 12)
Unknown

8. How old was he when he first started to smoke cigarettes regularly?

Age started _____

(If you are uncertain, would you guess he was)

In his teens?
In his twenties?
In his thirties?
Older than thirties?
Unknown

9. Did he smoke cigarettes at the time of his death?

Yes (If YES, go to question 11)
No
Unknown

10. How old was he when he stopped smoking cigarettes?

Age stopped_____
Unknown

11. When he did smoke, approximately how many cigarettes did he smoke a day?

Less than one
1/2 pack or less
Between 1/2 to 1 pack
Between one to two packs
More than two packs
Unknown

12. Did he ever smoke a pipe?

Yes
No
Unknown

13. Did he ever smoke cigars?

Yes
No,
Unknown

14. Did he ever take any aspirin containing products such as Bayer aspirin or Bufferin on a regular basis? (A regular basis means at least 2 or more times a week for one month or longer.)

Yes
No (If no, go to question 16.)
Unknown

What brand aspirin product did he use? _____
(see next page for some examples)

15. How many years did he take aspirin containing products on a regular basis?

Less than 6 months
6 months to 2 years
2 years to 5 years
5 years to 10 years
Greater than 10 years

16. Did he ever take any aspirin-free products such as Tylenol or Datril on a regular basis? (A regular basis means at least 2 or more times a week for one month or longer.)

Yes
No
Unknown'

What brand aspirin-free products did he use? _____
(see next page for some examples)

17. How many years did he take aspirin free products such as Tylenol or Datril on a regular basis?

Less than 6 months
6 months to 2 years
2 years to 5 years
5 years to 10 years
Greater than 10 years

Examples of aspirin and aspirin-free medications

Please circle any that apply.

A.P.C. tablets sometimes called "a perfect cure"
Alka Seltzer
Anacin-3 Maximum
Anacin-3 Regular Strength
Arthritis Strength Bufferin
Arthritis Pain Formula Anacin
ASA Compound
Aspirin-Free Anacin
Azolid/-A
BC powder or tablets
Bromoseltzer
Buffered aspirin such as Bufferin or Ascriptin
Butazolidin
Darvocet
Darvon Compound
Darvon
Doan's Pills
Empirin Compound not including Empirin w/Codeine
Empirin with Codeine
Excedrin
Excedrin P.M. or Aspirin-Free Excedrin
Extra strength aspirin such as Maximum Bayer
Extra Strength Datril
Extra Strength Tylenol
Generic acetaminophen
Indocin
Midol
Motrin
Naprosyn
P.A.C.
Percocet
Percodan
Phenylbutazone
Regular aspirin, such as Bayer Aspirin
Regular Strength Datril
Regular Anacin
Regular Strength Tylenol
Stanback, either as a powder or tablet
Tylenol with codeine
Vanquis

FINAL REPORT

Re-Analysis of Kidney Cancer Case-Control Study Following Data Corrections

Report to:

Aluminum Company of America

Prepared by:

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May, 1996

EXECUTIVE SUMMARY

In 1993, researchers from the University of Pittsburgh Department of Biostatistics reported findings from a case-control study of kidney cancer among Alcoa workers from 26 U.S. plants. The study was prompted by a proportionate mortality ratio analysis in which an excess of kidney cancer mortality was observed. The case-control study findings suggested risk elevations related to the highest exposures to hydrocarbons, especially aliphatic hydrocarbons. A weaker, but still elevated risk was found with the highest exposures to aromatic hydrocarbons. At the conclusion of the study, some inadvertent data errors were found which called into question the validity of the results. These errors were the result of miscoding of some potroom jobs at one reduction facility. Uncertainty regarding the type of smelting technology, Soderberg or pre-bake, was the main cause of the coding errors.

Following discovery of these errors, the Alcoa industrial hygiene staff obtained corrected information for most of the data errors. We obtained from the University of Pittsburgh researchers the data from their case-control study, and performed analyses on the corrected data to determine whether the associations with hydrocarbon exposures persisted. Our re-analysis included data for all 71 kidney cancer deaths (cases) and the 283 deaths from other causes, excluding cancer and chronic kidney disease (controls). Data on non-occupational risk factors for kidney cancer, smoking, medication use, and obesity, that might have confounded the observed relations with hydrocarbon exposures were incorporated into the re-analysis. This information had been obtained previously by the University of Pittsburgh investigators from questionnaires administered to study subjects' next-of kin.

Our re-analysis confirmed the observed association with aliphatic hydrocarbons. Workers who had ever been exposed to the highest levels of aliphatic hydrocarbons had roughly 4 times the risk of kidney cancer mortality as workers who had never been exposed to these chemicals. The association with aliphatic hydrocarbons was diminished somewhat, but remained elevated (2.5 times), when exposure was defined as at least 1 year rather than ever. In contrast, no association was detected with aromatic hydrocarbons after analysis of the corrected data. Confounding by smoking, medication use, or obesity was not a likely explanation for the observed association with aliphatic hydrocarbons.

The study had some notable limitations. The control group was not necessarily representative of the Alcoa workforce insofar is it was composed of roughly 75 percent of workers who had died from circulatory system diseases. Another significant limitation that hinders a clear interpretation of findings is the absence of quantitative data for specific chemicals, especially aliphatic hydrocarbons. The results of the re-analysis cannot confirm or refute specific causal hypotheses, but do offer some guidance for future assessments of kidney cancer in the aluminum industry.

BACKGROUND

In 1991, Alcoa commissioned researchers from the University of Pittsburgh Department of Biostatistics to conduct a case-control study of occupational risk factors for kidney cancer. The motivation for this new initiative was a finding by Rockette and Arena (1990) of a kidney cancer mortality elevation, of approximately 60 percent greater than national rates, among the Alcoa production workforce during the years 1980-87. This finding was based on proportionate mortality ratio (PMR) analysis which compared the percentage distribution of deaths, by cause, in the Alcoa workforce with the corresponding percentage distribution among U.S. males. Kidney cancer excesses have been found in some other aluminum industry worker studies (Rockette and Arena, 1983; Spinelli et al., 1991), although no excesses have been reported from others (Ronneberg and Anderson, 1995). The 1990 PMR kidney cancer results were considered to be suggestive of a consistent trend for Alcoa that was first noted in the Tripartite Study (Rockette and Arena, 1983).

The goal of the case-control study was to determine whether exposures to aromatic or aliphatic hydrocarbons during employment at Alcoa facilities were related to kidney cancer, while taking into consideration known or strongly suspected non-occupational risks factors (e.g., cigarette smoking). As stated in the original protocol for this case-control study (Rockette and Arena, 1990-91), aromatic hydrocarbons were of greater prior interest than aliphatics. This emphasis apparently evolved from earlier findings of a kidney cancer excess among reduction plant workers in the Tripartite Study, and the known associations of various polycyclic aromatic hydrocarbons with kidney cancer. Aliphatic hydrocarbons had been linked inconsistently with kidney cancer risk mainly from studies of workers exposed to gasoline and solvents.

Details of the study, including the study design, methods of data collection and analysis, original results, and discussion are provided in a report by Rockette and Arena (1993) from the University of Pittsburgh. This report is henceforth referred to as the "original report." At the time of its submission in August; 1993, all parties agreed that it should appropriately be regarded as a preliminary report, in view of the changes that would likely ensue following data corrections. The findings from the original report indicated elevated kidney cancer risks related to hydrocarbon exposures; a relative risk of 2.55 was noted for high exposures. This association was mainly due to an apparent excess risk concentrated among workers with the highest exposures to aliphatic hydrocarbons, for which the relative risk

was 4.10. The association with high aromatic hydrocarbon exposures (relative risk of 1.61) was considerably weaker.

Upon submission of their report to Alcoa in August, 1993, Drs. Rockette and Arena noted inconsistencies in some of the job assignment codings that may have resulted in erroneous classifications, and hence incorrect epidemiologic findings. The original report was therefore considered as a preliminary report, and the conclusions were disavowed by the investigators until errors could be corrected. Alcoa explored with researchers from another university the feasibility of having a new, more detailed exposure assessment for specific hydrocarbons and other workplace agents; however, this proved not to be feasible because of the enormous effort and resources that would have been required to locate and synthesize data relevant to historical exposures spanning back as far as the 1930s.

We agreed to oversee the Alcoa industrial hygienists' efforts to make corrections to the work history and exposure data sets, and to analyze the corrected case-control data following the same approaches taken by Rockette and Arena (1993). Drs. Rockette and Arena assisted us by providing data that they had analyzed in the original report, and by performing confirmatory data analyses that took into account possible effects of non-occupational risk factors (i.e., potential confounders, such as smoking).

METHODS

Original Study

Descriptions of the research design and study subjects are contained in the original report (Rockette and Arena, 1993). Thus, only a brief synopsis will be provided here. We will, however, provide details on the procedures that we followed in this re-analysis.

The case group included 71 of the 73 kidney cancer deaths (ie., cases) that occurred during 1980-90 among Alcoa workers from 26 plants. The 73 cases were 53 kidney cancer deaths included previously in the PMR study and 20 deaths identified during 1988-90. Two (2) of the 73 kidney cancer deaths were not included because their employment history records did not identify their past work areas and jobs (Rockette and Arena, 1993). Controls were a sample of deaths whose causes of death were attributed to diseases other than cancer or chronic nephritis during the same 1980-90 time period. Controls were individually matched to cases on race, gender, year of death and year of birth within 5

years. Rockette and Arena selected 283 controls who met these criteria According to Rockette and Arena (1993), deaths from cancers of sites other than the kidney were not eligible because of the possibility that some of the same exposures that may relate to kidney cancer might be associated with other cancers. Thus, the study included a large proportion of deaths (74%)from cardiovascularand other circulatory system diseases.

Cases' and controls' work history records were obtained and computerized for linkage with exposure information. Jobs held by cases and controls were classified according to separate exposure rating schemes for aliphatic and aromatic hydrocarbons. Jobs were classified as entailing "none," "low," "medium," or "high" exposures to either aromatic or aliphatic hydrocarbons. The exposure ratings for cases' and controls' jobs were provided by Alcoa industrial hygienists. Historical exposure information, industrial hygiene monitoring data from surveys performed during recent years, and industrial hygiene judgments formed the basis of the exposure ratings. The ratings were conducted without knowledge of where cases and controls had worked, i.e., blindly.

In order to address the concern that non-occupational risk factors (e.g., smoking) might confound observed associations detected with hydrocarbons, Rockette and Arena administered a telephone questionnaire to surrogate respondents (next-of-kin) of study subjects. Data were elicited for a history of smoking, obesity, and use of diuretics and analgesics.

Relative risk estimates (RR) were derived from logistic regression analyses for case-control data. RRs were estimated for any exposure to hydrocarbons, as well as for ordered levels of exposure: 'none, low/medium, high. Analyses were also performed separately for aliphatic and aromatic hydrocarbons.

Correction of Job/Exposure ClassificationErrors

The erroneous job and exposure coding assignments were identified as having resulted from ambiguities in the types of potroom technology that had been operated at one Alcoa facility. In particular, some potroom assignments during the 1930s-1950s had been erroneously classified as Soderberg potroom jobs when in fact they had been in pre-bake potrooms. These errors and the ensuing hydrocarbon exposure re-classifications were made by Alcoa hygienists. As before, the exposure classifications were made without knowledge of case or control status of the affected work history records.

In addition, there remained 23 potroom jobs held by 16 workers at this facility for which there was insufficient information to determine whether they were in Soderberg or pre-bake technologies. As will be described subsequently, we performed two sets of analyses in which these indeterminate potroom jobs were alternately classified as Soderberg and pre-bake.

Re-analysis of Case-Control Data

The first step in our re-analysis was to verify the results from the uncorrected data presented in the original report. Drs. Rockette and Arena provided us with a computer file of these data. Our analysis followed the procedures described in the original report, and we were able to replicate the earlier findings on the uncorrected data. Next, we received from the Alcoa industrial hygiene staff a list of corrected job/exposure assignments. The corrected list included new exposure codes for aliphatic and aromatic hydrocarbons (none, low, medium, high) for jobs where it was clear that pre-bake potroom jobs had been erroneously classified as Soderberg potroom jobs. Potroom jobs that could not be identified unambiguously as pre-bake or Soderberg were given alternative sets of aliphatic and aromatic hydrocarbon exposure ratings, one assuming that all of these were in a pre-bake potroom, and the other assuming all were in the Soderberg technology.

We analyzed the corrected data to generate relative risk estimates for hydrocarbon exposures, following the procedures of Rockette and Arena. Data on smoking, obesity, and medications (i.e., "confounders") were obtained from subjects' next-of-kin with the understanding that this information, that could potentially be linked to individual workers; would not be shared with parties outside of the University of Pittsburgh. In order to assess possible confounding by these non-occupational factors, we provided the corrected data set to Drs. Rockette and Arena for analyses that included these potential confounders. Their approach for statistical control of confounders (conditional logistic regression modeling) was identical to the methods used in their original report. Thus, we were able to estimate relative risks related to ever exposure to varying levels of hydrocarbon exposures that included control for the potential confounders.

The designation of "exposed" used in the original analysis by Rockette and Arena was made without reference to duration of exposure. Thus for example, ever exposed to high hydrocarbons included any duration of employment in a job classified as high exposure.

We performed an additional set of analyses in which "exposure" was defined as greater than 1 year. The purpose of this additional analysis was to evaluate possible dose-response relations in somewhat more depth than had been done previously.

RESULTS

The original and corrected exposure classifications for all, aliphatic, and aromatic hydrocarbons are shown in Table 1. There are two sets of reclassifications: Reclassification 1 placed the indetexminate potroom jobs in the Soderberg technology, and Reclassification 2 placed these jobs in pre-bake technology. Table 2 displays the corrected and uncorrected exposure classifications based on a minimum of 1 year exposure. The re-classification of aliphatic exposures, especially in the 'high' exposure group were minimally affected by data corrections. High aromatic exposures, however, were changed more profoundly. Based on the original classification, the percentages of cases and controls with high aromatic hydrocarbon exposures of any duration were 8.5 and 5.7, respectively, whereas the corresponding percentages under Reclassifications 1 and 2 were: 8.5 and 11.3; and 5.6 and 6.7 (Table 1). The classifications of high aromatic exposures under a 1 year minimum exposure duration criterion (Table 2) changed slightly as well, although a higher prevalence of exposure among controls than cases persisted throughout. It should be appreciated that high aromatic hydrocarbon exposures involved only a small number of cases and controls; thus, the overall classification of hydrocarbon exposures remained largely unaltered.

The relative risk estimates [odds ratios (OR)] associated with levels and types of hydrocarbons are given in Table 3, based on the original exposure classification and on Reclassifications 1 and 2. Following either exposure reclassification, there is no longer an excess apparent for the high compared to no aromatic hydrocarbon exposure; the OR was reduced from 1.76 to 0.79 or 0.89, depending on the classification of generic potroom jobs. The explanation for this change is that, following Reclassification 1, the cases' high exposure classifications were not changed, but 16 (5.7%) controls previously classified as having had low/medium aromatic hydrocarbon exposure were re-classified into the high category (Table 1). Following Reclassification 2, 2 (2.8%) cases were moved from high to low/medium aromatic hydrocarbon exposure, and 3 (1.1%) controls changed from the low/medium to high category. In contrast, re-classification had very little effect on the ORs for high aliphatic hydrocarbon exposure. The reduction of OR for the combined high

hydrocarbon category (from an original value of 2.34 to 1.40 or 1.76) was due to the change in the risk estimate for high aromatic hydrocarbon exposures.

The possible bias caused by confounding from non-occupational exposures was examined by computing adjusted relative risk estimates, and comparing these with unadjusted values. The results for the OR. associated with high hydrocarbon exposures, high aliphatic exposures, and high aromatic exposures, with and without adjustment for potential confounders, are summarized in Table 4. The adjusted analyses involved statistical control for ever cigarette smoking, use of diuretics, use of aspirin- and non-aspirin analgesics, and obesity (Model 14 from the original report). With several isolated exceptions, the adjusted and unadjusted ORs were reasonably close, which suggests that there was little evidence for important confounding by these factors. It is noteworthy that there were no instances where the direction of association changed from positive (OR>1.0) to negative (OR<1.0), or vice versa, after control for potential confounders.

When 1 year was set as the minimum duration of exposure, the ORs for high aliphatic hydrocarbon exposure were reduced somewhat from those based on an ever exposed classification, although the relative risk estimates remained elevated (Table 5). Thus in the corrected data set, we estimated an OR of 2.52 for high aliphatic exposure of 1 year or longer (Table 5), as contrasted with an OR of 3.70 for ever exposed (Table 3). The results based on the corrected data for aromatic hydrocarbons did not change materially when the 1 year minimum was imposed.

Review of the high aliphatic exposure jobs held by the cases and controls revealed that these jobs occurred at three plant locations, Cressona, Massena, and New Kensington, during the years 1934-1971. The jobs involved work in Merchant and Blooming Mills at Massena, and in the Tube Mills at Cressona and New Kensington Characterization of the highest aliphatic exposures to a small number of plant locations and specific jobs suggests that any elevation of kidney cancer risk related to aliphatic hydrocarbons, if one did indeed exist, was not widespread throughout the industry. It is also noteworthy that the high aliphatic exposures terminated in the early 1970s on cases' and controls' work history records. This may be due to the requirement of a prolonged latency interval for disease manifestation; alternatively, it may reflect exposure reductions that have taken place during the past 30 years. More detailed historical exposure data would be needed to evaluate the likelihood of the second explanation.

DISCUSSION

Findings from our re-analysis of the corrected data suggest that there remains a statistical association of hydrocarbons with kidney cancer risk (Rockette and Arena, 1993). The association pertains to aliphatic hydrocarbons rather than aromatic hydrocarbons. The original report indicated apparent elevated risks with both classes of hydrocarbons, but with a more prominent association for the aliphatics. The seeming disappearance of the relation with aromatic hydrocarbons, following data corrections, is not especially surprising because the original result was numerically dependent on only 6 cases and 16 control in the high exposed category (see Table 1). The findings for aliphatic hydrocarbons were and remain more numerically stable, and were thus altered only minimally after data corrections were made. However, evidence for a dose-response gradient with aliphatic hydrocarbon exposure and kidney cancer was weakened somewhat when a 1 year minimum exposure duration was imposed instead of an ever/never classification. Confounding from non-occupational risk factors, including cigarette smoking, use of diuretics or analgesics, and obesity, is very unlikely to be a meaningful explanation of the observed association with aliphatic hydrocarbons.

Interpreting the findings from this study should be made with due consideration given to some notable limitations of study design and quality of information. The most suitable control group would have been workers, either living or dead, from the same plants as the cases, who were free of kidney cancer at the times when the cases deaths occurred. Because it was not possible to enumerate the cohort that would have been necessary for this type of control selection scheme, Rockette and Arena (1993) selected controls from among other deaths that occurred at the same plants where the cases worked. The decision to eliminate cancer deaths, and to a lesser extent, chronic renal disease deaths, from the pool of eligible controls resulted in a large majority of circulatory system disease deaths in the controls (nearly 75%). This imbalance in the control group may have produced a bias if mortality from cardiovascular or other circulatory diseases was related to particular workplace agents or specific jobs in the smelter. For example, it cannot be determined whether the observed association with high aliphatic hydrocarbon exposures reflects a truly causal effect, or whether this is merely an artifact of unmeasured associations of aliphatics with cardiovascular diseases. In fact, Ronneberg (1995) reported increasing risk gradients for atherosclerotic disease mortality with cumulative exposure to tar and for cerebrovascular disease mortality with tar and pot emissions in a prebake smelter. In any event, the

potential effect of such bias on the findings cannot be evaluated because associations of occupational exposures in Alcoa facilities with circulatory system disease mortality have not been investigated previously.

Another important limitation of this study is the absence of quantitative exposure estimates for specific agents. This problem, while certainly not unique to this epidemiologic study, restricts the type of inference that can be drawn from the findings. Aliphatic hydrocarbons encompass many agents, ranging from solvents to machining fluids. Determining specificity and quantification of these exposures was especially complex in this study because the cases' and controls' relevant periods of exposure extended back as far as 50-60 years into the past and may have varied from plant to plant. Chemical usage by type and amount, and the extent of contamination with potential carcinogens, including some aromatic hydrocarbons (e.g., polycyclic aromatic hydrocarbons), undoubtedly have changed greatly in the 26 plants during this time interval. Documentation describing most of these changes, unfortunately, was not readily available to the investigators. As a result of these information shortcomings, exposure classification relied chiefly on industrial hygiene judgments regarding the potential and relative magnitude of exposure. to the non-specific groupings of aromatic and aliphatic hydrocarbon.

As reviewed recently by Smith and Liu (1995), there are many unresolved questions regarding etiologic associations between hydrocarbons and human kidney cancer. Much of the evidence from animal studies is conflicting, and more significantly, no consistent patterns of risk related to either broad categories or specific hydrocarbons have emerged from epidemiologic research. Taken in this context, the results from the present study neither support nor refute any previous epidemiologic associations with hydrocarbons. Our re-analysis of the data revealed that the observed association with presumably the highest aliphatic hydrocarbon exposures persisted after data corrections and control for potential confounders. This finding is consistent with a suspected occupational association with kidney cancer, and thus should provide some direction to further epidemiologic assessments of kidney cancer risks in the aluminum industry.

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Table 1. Hydrocarbon Exposure Classification Before and After Data Corrections

	Original Report				Reclassification 1*				Reclassification 2¶			
	Cases		Controls		Cases		Controls		Cases		Controls	
	N	(%)	N	(%)	N	(%)	N	(%)	N	(%)	N	(%)
Any hydrocarbon												
None	16	22.5	66	23.3	16	22.5	66	23.3	16	22.5	66	23.3
Low/medium	41	57.7	191	67.5	41	57.7	175	61.8	43	60.6	188	66.4
High	14	19.7	26	9.2	14	19.7	42	14.8	12	16.9	29	10.2
Aromatic												
None	43	60.6	181	64.0	43	60.6	181	64.0	43	60.6	181	64.0
Low/medium	22	31.0	86	30.4	22	31.0	70	24.7	24	29.3	83	33.8
High	6	8.5	16	5.7	6	8.5	32	11.3	4	5.6	19	6.7
Aliphatic												
None	16	22.5	66	23.3	16	22.5	66	23.3	16	22.5	66	23.3
Low/medium	46	64.8	206	72.8	47	66.2	207	73.1	47	66.2	207	73.1
High	9	12.7	11	3.9	8	11.3	10	3.5	8	11.3	10	3.5
Total	71		283		71		283		71		283	

* Reclassification of generic potroom job codes as Soderberg
¶ Reclassification of generic potroom job codes as Prebake

Table 2. Hydrocarbon Exposure Classification Before and After Data Corrections : Minimum 1 Year Exposure Criterion

	Original Report				Reclassification 1*				Reclassification 2¶			
	Cases		Controls		Cases		Controls		Case		Controls	
	N	(%)	N	(%)	N	(%)	N	(%)	N	(%)	N	(%)
Any hydrocarbon												
< 1 year	22	31.0	86	30.4	22	31.0	86	30.4	22	31.0	86	30.4
Low/medium ≥ 1 year	42	59.2	177	62.5	40	58.7	166	56.3	42	59.2	174	61.5
High ≥ 1 year	7	9.9	20	7.1	9	12.7	31	11.0	7	9.9	23	8.1
Aromatic												
< 1 year	46	64.8	209	73.9	46	64.8	209	73.9	46	64.8	209	73.9
Low/ medium ≥ 1 year	22	31.0	60	21.2	20	28.2	49	17.3	22	31.0	57	20.1
High2 1 year	3	4.2	14	4.9	5	7.0	25	8.8	3	4.2	17	6.0
Aliphatic												
< 1 year	22	31.0	86	30.4	22	31.0	86	30.4	22	31.0	86	30.4
Low/medium ≥1 year	45	63.4	191	67.5	45	63.4	191	67.5	45	63.4	191	67.5
High ≥ 1 year	4	5.6	6	2.1	4	5.6	6	2.1	4	5.6	6	2.1
Total	71		283		71		283		71		283	

* Reclassification of generic potroom job codes as Soderberg
¶ Reclassification of generic potroom job codes as Prebake

Table 3. Relative Risk Estimates for Hydrocarbon Exposure: Original Report and Corrected Exposure Assessment

Type of hydrocarbon exposure	Original Report		Reclassification*		Reclassification2¶	
	OR	(95%CI)‡	OR	(95%CI)‡	OR	95% CI)‡
Any Hydrocarbon						
Never	1.0	---	1.0	---	1.0	---
Low/medium	0.90	(0.46-1.76)	0.97	(0.50-1.90)	0.96	(0.49-1.86)
High	2.34	(0.95-5.77)	1.40	(0.59-3.29)	1.76	(0.71-4.40)
Aromatic						
Never	1.0	---	1.0	---	1.0	---
Low/medium	1.08	(0.60-1.97)	1.33	(0.72-2.43)	1.23	(0.68-2.21)
High	1.67	(0.58-4.79)	0.79	(0.30-2.06)	0.89	(0.28-2.84)
Aliphatic						
Never	1.0	---	1.0	---	1.0	---
Low/medium	0.95	(0.49-1.83)	0.97	(0.50-1.87)	0.97	(0.50-1.87)
High	3.92	(1.25-1.27)	3.70	(1.15-11.94)	3.70	(1.15-11.94)

* Reclassification of generic potroom job codes as Soderberg
¶ Reclassification of generic potroom job codes as Prebake
‡ Odds ratio (95%confidence interval)

Table 4. Relative Risk Estimates for High Hydrocarbon Exposures Before and After Data Corrections, with and without Control for Potential Confounders

Exposure	Original Report		Reclassification*		Reclassification 2¶	
	OR	(95% CI)‡	OR	(95% CI)‡	OR	(95% CI)‡
High any hydrocarbon						
Not adjusted	2.55	(1.22-5.34)	1.43	(0.72-2.84)	1.83	(0.86-3.87)
Adjusted§	3.90	(1.22-12.5)	1.25	(0.46-3.40)	1.52	(0.48-4.87)
Aromatic						
Not adjusted	1.61	(0.58-4.52)	0.71	(0.28-1.80)	0.83	(0.27-2.57)
Adjusted§	3.88	(0.76-19.7)	0.67	(0.19-2.40)	0.61	(0.11-3.44)
Aliphatic						
Not adjusted	4.10	(1.50-11.22)	3.80	(1.36-10.67)	3.80	(1.36-10.67)
Adjusted§	3.47	(0.95-16.6)	2.96	(0.70-12.5)	2.96	(0.70-12.5)

* Reclassification of generic potroom job codes as Soderberg
¶ Reclassification of generic potroom job codes as Prebake
‡ Odds ratio (95% confidence interval)
§ Adjusted for cigarette smoking, diuretic use, analgesic use, obesity, and plant.

Table 5. Relative Risk Estimates for Hydrocarbon Exposure with Minimum 1 Year of Exposure: Original Report and Corrected Exposure Assessment

Type of hydrocarbon exposure	Original Report		Reclassification 1*		Reclassification 2¶	
	OR	(95% CI)‡	OR	(95% CI)‡	OR	(95% CI)‡
Any hydrocarbon						
<1 year	1.0	---	1.0	---	1.0	---
Low/medium ≥ 1 year	0.93	(0.51-1.69)	0.94	(0.51-1.72)	0.94	0.52-1.71)
High ≥1 year	1.36	(0.50-3.66)	1.13	(0.46-2.75)	1.20	(0.45-3.20)
High ≥1 year§	1.43	(0.59-3.49)	1.17	(0.53-2.60)	1.25	(0.51-3.07)
Aromatic						
< 1year	1.0	---	1.0	---	1.0	---
Low/medium ≥1 year	1.69	(0.93-3.07)	1.89	(1.00-3.53	1.82	(0.99-3.37)
High ≥1 year	0.99	(0.27-3.61)	0.91	(0.33-2.53	0.78	(0.21-2.81)
High ≥1 year§	0.85	(0.24-3.06)	0.77	(0.28-2.11)	0.68	(0.19-2.45)
Aliphatic						
< 1year	1.0	---	1.0	---	1.0	---
Low/medium ≥1 year	0.93	(0.52-1.68)	0.93	(0.52-1.68)	0.93	(0.52-1.68)
High ≥1 year	2.52	(0.66-9.66)	2.52	(0.66-9.66)	2.52	(0.66-9.66)
High ≥1 year§	2.67	(0.75-9.45)	2.66	(0.75-9.45)	2.67	(0.75-9.45)

* Reclassification of generic potroom job codes as Soderberg
¶ Reclassification of generic potroom job codes as Prebake
‡ Odds ratio (95% confidence interval)
§ Ever exposed compared to never exposed

SENATE JUDICIARY II COMMITTEE
Thursday, July 8, 2010 at 11:30 AM
Room 1124, Legislative Building

MINUTES

The Senate Judiciary II Committee met at 11:30 AM on July 8, 2010, in Room 1124 of the Legislative Building with 13 members of the committee present. Senator Fletcher L. Hartsell, Jr., Chairman, presided.

Pages assisting in the Committee meeting were Austin Andrews and David Torres.

SB 836 - Oil Spill Liability, Response, & Preparedness. - Senator Hartsell noted that the bill was on the agenda for concurrence. Senator Dixon was recognized to explain the bill. Questions from Senators Jones, Berger, Forrester and Bingham were answered by Senator Dixon, Mr. Dan Conrad of North Carolina Conservation Network, Mr. Dan Crawford of Conservation Council of North Carolina, and Ms. Margaret Hartzell. Senator Atwater moved for concurrence of the bill. All voted and the motion carried.

There being no further business, the meeting was adjourned.

Fletcher L. Hartsell, Jr., Chairman

Gerry Johnson, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 5

SENATE BILL 836*

House Committee Substitute Favorable 8/6/09
House Committee Substitute #2 Favorable 6/10/10
House Committee Substitute #3 Favorable 6/22/10
Fifth Edition Engrossed 6/23/10

Short Title: Oil Spill Liability, Response, & Preparedness. (Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO: (1) CLARIFY LIABILITY FOR DAMAGES CAUSED BY THE DISCHARGE OF NATURAL GAS, OIL, OR DRILLING WASTE INTO STATE COASTAL FISHING WATERS OR OFFSHORE WATERS; (2) PROVIDE FOR THE REVIEW OF INFORMATION REQUIRED FOR A PROPOSED OFFSHORE FOSSIL FUEL FACILITY IN ORDER TO DETERMINE CONSISTENCY WITH STATE GUIDELINES FOR THE COASTAL AREA; (3) DIRECT THE COASTAL RESOURCES COMMISSION TO REVIEW EXISTING LAWS AND REGULATIONS THAT PERTAIN TO OFFSHORE ENERGY EXPLORATION AND PRODUCTION IN LIGHT OF THE EXPLOSION, SINKING, AND SUBSEQUENT DISCHARGE OF OIL FROM THE BRITISH PETROLEUM DEEPWATER HORIZON OFFSHORE DRILLING RIG; (4) DIRECT THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY TO IMMEDIATELY REVIEW AND UPDATE THE STATE OIL SPILL CONTINGENCY PLAN IN ORDER TO PREPARE THE STATE IN THE EVENT THAT OIL DISCHARGED FROM THE BRITISH PETROLEUM DEEPWATER HORIZON OFFSHORE DRILLING RIG IS TRANSPORTED BY CURRENTS OR OTHER MECHANISMS TO THE NORTH CAROLINA COAST; AND (5) DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO REVIEW LIMITATIONS ON RECOVERY BY THE STATE FOR DAMAGE TO PUBLIC RESOURCES AND FOR THE COST OF OIL OR OTHER HAZARDOUS SUBSTANCE CLEANUP ESTABLISHED PURSUANT TO G.S. 143-215.89.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 143-215.89 reads as rewritten:

"**§ 143-215.89. Multiple liability for necessary ~~expenses.~~expenses; limit on State recovery.**

(a) Any person liable for costs of cleanup of oil or other hazardous substances under this Part shall have a cause of action to recover such costs in part or in whole from any other person causing or contributing to the discharge of oil or other hazardous substances into the waters of the State, including any amount recoverable by the State as necessary expenses.

(b) The total recovery by the State for damage to the public resources pursuant to G.S. 143-215.90 and for the cost of oil or other hazardous substances cleanup, arising from any discharge, shall not exceed the applicable limits prescribed by federal law with respect to the United States government on account of such discharge. The limitations on recovery referenced in this subsection shall not apply to damages recoverable pursuant to G.S. 143-215.94CC."

SECTION 1.(b) G.S. 143-215.94BB reads as rewritten:

"**§ 143-215.94BB. Definitions.**

In addition to the definitions set out in G.S. 143-215.77, ~~as used in this Part,~~ the following definitions shall ~~apply:~~apply to this Part:

(1) "Damages" are damages for any of the following:

a. Injury or harm to real or personal property, which includes the cost of restoring, repairing, or replacing any real or personal property damaged or destroyed by a discharge under this section, any income lost from the time such property is damaged to the time such property is restored, repaired, or replaced, and any reduction in value of such property caused by such discharge by comparison with its value prior thereto.

b. Business loss, including loss of income or impairment of earning capacity due to damage to real or personal property or to damage or destruction of natural resources upon which such income or earning capacity is reasonably dependent.

c. Interest on loans obtained or other financial obligations incurred by an injured party for the purpose of ameliorating the adverse effects of a discharge pending the payment of a claim in full as provided by this Article.

d. Costs of cleanup, removal, or treatment of natural gas, oil, or drilling waste discharges.

e. Costs of restoration, rehabilitation, and, where possible, replacement of wildlife or other natural resources damaged as a result of a discharge.

f. When the injured party is the State or one of its political subdivisions, in addition to any injury described in subparagraphs (a) to (e), inclusive, damages include all of the following:

1. Injury to natural resources or wildlife, including recreational or commercial fisheries, and loss of use and enjoyment of public beaches and other public resources or facilities within the jurisdiction of the State or one of its political subdivisions.

2. Costs to assess damages to natural resources, wildlife, or habitat.

3. Costs incurred to monitor the cleanup of the natural gas, oil, or drilling waste spilled.

4. Loss of State or local government tax revenues resulting from damages to real or personal property proximately resulting from a discharge.

(2) For the purposes of this Part, "oil" and "drilling wastes" include, but are not limited to: petroleum, refined or processed petroleum, petroleum by-products, oil sludge, oil refuse, oil mixed with wastes and chemicals, or other materials used in the exploration, recovery, or processing of oil. "Oil" does not include oil carried in a vessel for use as fuel in that vessel.

(3) "Natural gas" includes natural gas, liquefied natural gas, and natural gas by-products. "Natural gas" does not include natural gas carried in a vessel for use as fuel in that vessel.

(4) "Exploration" means undersea boring, drilling, ~~and soil sampling.~~soil sampling, and any other technique employed to assess and evaluate the presence of subterranean oil and natural gas deposits.

(5) "Injured party" means any person who suffers damages from natural gas, oil, or drilling waste which is discharged or leaks into marine waters, or from offshore exploration. The State, or a county or municipality, may be an injured party.

(6) "Responsible person" means any of the following:

a. The owner or transporter of natural gas, oil, or drilling waste which causes an injury covered by this Part.

b. The owner, operator, lessee of, or person who charters by demise, any offshore well, undersea site, facility, oil rig, oil platform, vessel, or pipeline which is the source of natural gas, oil, drilling waste, or is the source or location of exploration which causes an injury covered by this Part.

"Responsible party" does not include the United States, the State, any county, municipality or public governmental agency; however, this exception to the definition of "responsible person" shall not be read to exempt utilities from the provisions of this Part.

(7) "Offshore waters" shall include both the territorial sea extending seaward from the coastline of North Carolina ~~to the State and federal boundary, and United States jurisdictional waters of the Atlantic Ocean adjacent to the territorial sea of the State.~~or any other coastal state bordering the Atlantic Ocean, including the Gulf of Mexico, and the exclusive economic zone extending seaward from the territorial sea of each such state.

(8) "Natural resources" shall include "marine and estuarine resources" and "wildlife resources" as those terms are defined in G.S. 113-129(11) and G.S. 113-129(17), respectively.

(9) "Coastal fishing waters" has the same meaning as in G.S. 113-129.

(10) "Exclusive economic zone" has the same meaning as in section 1001(8) of the Oil Pollution Act of 1990, 33 U.S.C. § 2701(8)."

SECTION 1.(c) G.S. 143-215.94CC reads as rewritten:

"**§ 143-215.94CC. Liability under this section; exceptions.**

(a) Any responsible person shall be strictly liable, notwithstanding any language of limitation found in G.S. 143-215.89, for all cleanup and removal costs and all direct or indirect damages incurred within the territorial jurisdiction of the State by any injured ~~party, which~~party that arise out of, or are caused ~~by,~~by any of the following:

(1) ~~the discharge or leaking~~ The discharge, as defined in G.S. 143-215.77, of natural gas, oil, or drilling waste into or onto ~~"coastal fishing waters" as defined in G.S. 113-129(4), or offshore waters, or by any exploration in or upon~~coastal fishing waters or offshore waters, from any of the following ~~sources:~~sources wherever located:

~~(1)~~a. Any ~~offshore~~well or undersea site at which there is exploration for or extraction or recovery of natural gas or oil.

~~(2)~~b. Any ~~offshore~~facility, oil rig, or oil platform at which there is exploration for, or extraction, recovery, processing, or storage of, natural gas or oil.

~~(3)~~c. Any vessel ~~offshore~~in which natural gas, oil, or drilling waste is transported, processed or stored other than for purposes of fuel for the vessel carrying it.

~~(4)~~d. Any pipeline ~~located offshore~~in which natural gas, oil, or drilling waste is transported.

(2) Any exploration in or upon coastal fishing waters.

(3) Any technique or method used for cleanup and removal of any discharge of natural gas, oil, or drilling waste from any source listed in subdivision (1) of this subsection into or onto coastal fishing waters, including, but not limited to, chemical dispersants.

(b) A responsible person is not liable to an injured party under this section for any of the following:

(1) Damages, other than costs of removal incurred by the State or a local government, caused solely by any act of war, hostilities, civil war, or insurrection or by an unanticipated grave natural disaster or other act of God of an exceptional, inevitable, and irresistible character, which could not have been prevented or avoided by the exercise of due care or foresight.

(2) Damages caused solely by the negligence or intentional malfeasance of that injured party.

(3) Damages caused solely by the criminal act of a third party other than the defendant or an agent or employee of the defendant. In any action arising under the provisions of this Article wherein this exception is raised as a defense to liability, the burden of proving that the alleged third-party intervention occurred in such a manner as to limit the liability of the person sought to be held liable shall be upon the person charged.

(4) Natural seepage not caused by a responsible person.

(5) Discharge ~~or leaking~~ of oil or natural gas from a private pleasure boat or commercial fishing vessel having a fuel capacity of less than 500 gallons.

(6) Damages which arise out of, or are caused by, a discharge ~~which~~ that is authorized by and in compliance with a State or federal permit.

(7) Damages that could have been reasonably mitigated by the injured party in accordance with common law.

(c) A court of suitable jurisdiction in any action under this Part may award reasonable costs of the suit and attorneys' fees, and the costs of any necessary expert witnesses, to any prevailing plaintiff. The court may award reasonable costs of the suit and attorneys' fees to any prevailing defendant only if the court finds that the plaintiff commenced or prosecuted the suit under this Part in bad faith or solely for purposes of harassing the defendant."

SECTION 1.(d) G.S. 143-215.94JJ reads as rewritten:

"**§ 143-215.94JJ. Federal law.**

Nothing in this Part shall authorize State agencies to impose any duties or obligations in conflict with limitations on State authority established by federal law at the time such agency action is taken. Likewise, no additional liability is established by this Part to the extent that, at the time of the injury, federal law establishes limits on liability which preempt State law. The federal limits on liability established in the Oil Pollution Act of 1990, 33 U.S.C.A. §§ 2701 to 2762, shall not apply to discharges or pollution by oil within the territorial jurisdiction of the State."

SECTION 2. Part 4 of Article 7 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"**§ 113A-119.2. Review of offshore fossil fuel facilities.**

(a) In addition to the definitions set out in G.S. 113A-103, as used in this section, the following definitions shall apply:

(1) "Coastal fishing waters" has the same meaning as in G.S. 113-129.

(2) "Discharge" has the same meaning as in G.S. 143-215.77.

(3) "Offshore fossil fuel facility" means those facilities for the exploration, development, or production of oil or natural gas which, because of their size, magnitude, or scope of impacts, have the potential to affect any land or

water use or natural resource of the coastal area. For purposes of this definition, offshore fossil fuel facilities shall include, but are not limited to:

a. Structures, including drill ships and floating platforms and structures relocated from other states or countries, located in coastal fishing waters.

b. Any equipment associated with a structure described in sub-subdivision a. of this subdivision, including, but not limited to, pipelines and vessels that are used to carry, transport, or transfer oil, natural gas, liquid natural gas, liquid propane gas, or synthetic gas.

c. Onshore support or staging facilities associated with a structure described in sub-subdivision a. of this subdivision.

(4) "Oil" has the same meaning as in G.S. 143-215.77.

(b) In addition to any other information necessary to determine consistency with State guidelines adopted pursuant to G.S. 113A-107, the following information is required for the review of an offshore fossil fuel facility located in coastal fishing waters:

(1) All information required to be included in an Exploration Plan required pursuant to Subpart B of Part 250 of 30 C.F.R. (July 1, 2009 edition).

(2) All information required to be included in an Oil-Spill Response Plan required pursuant to Subpart B of Part 254 of 30 C.F.R. (July 1, 2009 edition).

(3) An assessment of alternatives to the proposed offshore fossil fuel facility that would minimize the likelihood of an unauthorized discharge.

(4) An assessment of the potential for an unauthorized discharge to cause temporary or permanent violations of the federal and State water quality standards, including the antidegradation policy adopted pursuant to section 303(d) of the federal Clean Water Act (33 U.S.C. § 1313(d)).

(5) Any other information that the Commission determines necessary for consistency review."

SECTION 3. In light of the recent events pertaining to the British Petroleum Deepwater Horizon offshore drilling rig, the Coastal Resources Commission shall review existing statutes and modify existing rules that pertain to offshore energy exploration and production and make recommendations, if any, to the Environmental Review Commission on or before April 1, 2011.

SECTION 4. The Department of Crime Control and Public Safety shall immediately review the potential impacts of oil leaking from the British Petroleum Deepwater Horizon offshore drilling rig on the North Carolina coast and shall update the Oil Spill Contingency Plan, required by G.S. 143-215.94HH, as necessary to ensure the State's preparedness in the event the oil leaking from the British Petroleum Deepwater Horizon offshore drilling rig is transported by currents or other mechanisms to the North Carolina coast or the State's waters. In updating the plan, the Department shall assess the actions that are being implemented to manage and mitigate economic and environmental impacts resulting from the spill, determine which solutions have proven successful, identify the best management practices available to address the impacts, and identify the resources necessary to carry out the Oil Spill Contingency Plan.

SECTION 5. The Department of Environment and Natural Resources shall review the limitations on recovery by the State for damage to public resources and for the cost of oil or other hazardous substance cleanup established pursuant to G.S. 143-215.89. The Department shall report the results of its review, including any recommendations for changes to the limitations, to the Environmental Review Commission on or before December 1, 2010.

SECTION 6. This act is effective when it becomes law. Sections 1(a), 1(b), 1(c), and 1(d) of this act apply to any damages, as defined in G.S. 143-215.94BB, incurred on or after that date.

SENATE BILL 836:
Oil Spill Liability, Response, & Preparedness

2009-2010 General Assembly

Committee:	Senate Judiciary II	**Date:**	July 6, 2010
Introduced by:	Senator Albertson	**Prepared by:**	Jeff Hudson
Analysis of:	Fifth Edition		Committee Counsel

SUMMARY: ***Senate Bill 836 would clarify liability for damages caused by the discharge of natural gas, oil, or drilling wastes into coastal fishing waters or offshore waters; provide for review of information related to the permitting of offshore fossil fuel facilities, and direct State agencies to review State policies and plans related to offshore energy exploration and discharges of oil.***

BILL SUMMARY AND ANALYSIS:

Section 1.(a): Cap for Total Recovery of Oil or Hazardous Substances Discharges

S836 would clarify that the limits on recovery by the State under the statutes that govern the discharge of oil and other hazardous substances do not apply to offshore oil spills.

Section 1.(b): Definition of Exploration

S836 would amend the definition of "exploration," as it pertains to offshore oil and gas activities, to include other techniques employed to assess and evaluate the presence of subterranean oil and natural gas deposits beyond undersea boring, drilling, and soil sampling.

S836 would clarify that the term "offshore waters"[1] encompasses state and federal waters off the Atlantic coast, including the Gulf of Mexico.

Section 1.(c): Liability and Exceptions

Under current law, a responsible person is strictly liable for all cleanup and removal costs and all direct or indirect damages that arise out of the discharge[2] or leaking of natural gas, oil, or drilling waste into coastal fishing waters[3] or offshore waters from facilities located offshore.
S836 would clarify that strict liability may apply regardless of the location of the source of the discharge. S836 would also clarify that damages would include damages caused by cleanup techniques or methods such as chemical dispersants.

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[1] As currently defined by G.S. 143-215.94BB(7), the term "offshore waters" includes both the territorial sea extending seaward from the coastline of North Carolina to the State and federal boundary, and United States jurisdictional waters of the Atlantic Ocean adjacent to the territorial sea of the State.

[2] As defined by G.S. 143-215.77, "discharge" means any emission, spillage, leakage, pumping, pouring, emptying, or dumping of oil or other hazardous substances into waters of the State or into waters outside the territorial limits of the State which affect lands, waters or uses related thereto within the territorial limits of the State, or upon land in such proximity to waters that oil or other hazardous substances is reasonably likely to reach the waters . . . .

[3] As defined by G.S. 113-129(4), "coastal fishing waters" means the Atlantic Ocean; the various coastal sounds; and estuarine waters up to the dividing line between coastal fishing waters and inland fishing waters . . . .

Under current law, damages that arise out of the discharge or leaking of natural gas, oil, or drilling waste are not recoverable if the damages are caused by a discharge authorized by a State or federal permit or the damages could have been mitigated by the injured party.
S836 would clarify that the defense to liability for any damages that result from a discharge authorized by a State or federal permit only applies when the discharge is in compliance with the permit. S836 would also provide that mitigation required of an injured party be reasonable.

Section 2: Review of Information Required for a Proposed Offshore Fossil Fuel Facility

S836 would provide for review of information pertaining to an offshore fossil fuel facility located in coastal fishing waters necessary to determine consistency[4] with State guidelines for public and private use of land and water areas within the coastal area. "Offshore fossil fuel facility" would be those facilities, which because of their size, magnitude, or scope of impacts, have the potential to affect any land or water use or natural resource of the coastal area. Offshore fossil fuel facilities would include:

- Any equipment, including but not limited, to pipelines and vessels, that are used to carry, transport, or transfer oil, natural gas, liquid natural gas, liquid propane gas, or synthetic gas.
- Structures, including drillships and floating platforms and structures relocated from other states or countries, located in coastal fishing waters for the purposes of exploration for, or development or production of, oil or natural gas.
- Onshore support or staging facilities related to exploration for, or development or production of, oil or natural gas.

The following information would be required for the review of an offshore fossil fuel facility:

- All information required to be included in an Exploration Plan required pursuant to Subpart B of Part 250 of 30 C.F.R. (July 1, 2009 edition).
- All information required to be included in an Oil-Spill Response Plan required pursuant to Subpart B of Part 254 of 30 C.F.R. (July 1, 2009 edition).
- Assessment of alternatives to the proposed facility that would minimize the likelihood of an unauthorized discharge.
- An assessment of the potential for the discharge to cause temporary or permanent violations of State and federal water quality standards.
- Any other information that the Coastal Resources Commission determines necessary for consistency review.

Section 3: Review Existing Laws and Rules Pertaining to Offshore Exploration and Production

S836 would direct the Coastal Resources Commission to review existing laws and regulations that pertain to offshore energy exploration and production in light of the explosion, sinking, and subsequent oil releases from the Deepwater Horizon and make recommendations, if any, to the Environmental Review Commission on or before April 1, 2011.

[4] The term "consistency" refers to federal consistency review and determination as required pursuant to Section 307 of 16 U.S.C. § 1456 wherein each federal agency activity or activity that requires federal permits, licensing, or authorization within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone is to be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs.

Section 4: Review and Update the State Oil Spill Contingency Plan

S836 would direct the Department of Crime Control and Public Safety to immediately review the potential impacts of oil leaking from the Deepwater Horizon on the North Carolina Coast and update the State's Oil Spill Contingency Plan accordingly to ensure the State's preparedness in the event the oil leaking from the Deepwater Horizon makes it to North Carolina's coast or waters.

Section 5: Review of Liability Caps

S836 would direct the Department of Environment and Natural Resources to review and make recommendations on current liability caps related to the discharge of oil and other hazardous substances.

EFFECTIVE DATE: This act would become effective when it becomes law. Sections 1.(a), 1.(b), 1.(c), and 1.(d) would apply to any damages incurred on or after that date.

Jennifer Mundt, Legislative Analyst for the House Committee on Environment and Natural Resources, substantially contributed to this summary.

VISITOR REGISTRATION SHEET

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