2017-2018

HOUSE
JUDICIARY III

MINUTES

HOUSE JUDICIARY III

MEMBER	ASSISTANT	PHONE	OFFICE	SEAT
Rep. Jonathan Jordan Co - Chair	Emma Benson Committee Assistant	733-7727	420 LOB	42
Rep. Lee Zachary Co – Chair	Martha Jenkins	715-8361	1002 LB	74
Rep. Robert Reives	Veronica Green	733-0057	1323 LB	92
Rep. Debra Conrad	Danielle Brinton	733-5787	416B LOB	44
Rep. Kelly Hastings	James Jenkins	715-2002	1206 LB	20
Rep. Craig Horn	Pattie Fleming	733-2406	305 LOB	32
Rep. Linda Johnson	Rhonda Todd	733-5861	301D LOB	3
Rep. Marcia Morey		733-7633	111 LB	104
Rep. Amos Quick	Mildred Alston	733-5902	1317 LB	91
Rep. William Richardson	Leigh Lawrence	733-5601	1021 LB	71
Rep. John Szoka	Beverly Slagle	733-9892	2207 LB	30
Rep. Brian Turner	Anna Stearns	715-3012	1209 LB	120
Rep. Donna White	Susan Mullins	733-5605	306A2 LOB	111

Staff:

Brad Krehely
Billy Godwin
Kristen Harris

919-733-2578

ATTENDANCE

House Judiciary III

DATES	3/1/17	3/8/17	3/22/17	3/29/17	4/5/2017	4/6/2017	4/11/17	4/19/17	4/24/17	4/26/2017	6/14/2017	6/28/2017			
Rep. Jonathan Jordan– Co- Chair	X	X	X	X	X	X	X	X	X	X	X	x			
Rep. Lee Zachary – Co - Chair	X	X	X	X	X	X	X		X	X	X	X			
Rep. Robert Reives – Vice Chair	X	X	X	X	X	X		X		X	X				
Rep. Debra Conrad	X	X	X	X	X		X	X		X	X	X			
Rep. Kelly Hastings	X		X	X	X	X	X	X		X					
Rep. Craig Horn	X	X	X	X		X	X	X	X	X	X	X			
Rep. Linda Johnson		X			X	X		X	X	X					
Rep. Marcia Morey								X	X	X	X	X			
Rep. Phil Lehman	X	X	X	X											
Rep. Amos Quick	X	X	X	X	X	X	X	X	X	X	X	X			
Rep. William Richardson								X			X	X			
Rep. John Szoka					X		X	X	X	X	X				
Rep. Brian Turner	X	X	X	X	X		X	X		X	X	X			
Rep. Donna White	X	X	X	X	X	X		X	X	X	X	X			
Staff															
Brad Krehely	X	X	X	X	X	X	X	X	X	X	X	X			
Billy Godwin	X	X	X	X	X	X	X	X	X	X	X	X			
Kristen Harris	X		X	X	X	X	X	X	X	X	X				
Emma Benson – Clerk	X	X	X	X	X	X	X	X	X	X	X	X			

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE JUDICIARY III
2017-18 SESSION

Rep. Jonathan Jordan
Co- chair

Rep. Lee Zachary
Co-Chair

Rep. Robert Reives

Vice Chair

Rep. Debra Conrad

Rep. Kelly Hastings

Rep. Craig Horn

Rep. Linda Johnson

Rep. Marcia Morey

Rep. Amos Quick

Rep. William Richardson

Rep. John Szoka

Rep. Brian Turner

Rep. Donna White

House Committee on Judiciary III
Wednesday, March 1, 2017 at 1:00 PM
Room 421 of the Legislative Office Building

Sergeant of Arms

1. **Bill Bass**
2. **Will Crocker**
3. **David Linthicum**

House Committee on Judiciary III
Wednesday, March 1, 2017 at 1:00 PM
Room 421 of the Legislative Office Building

MINUTES

The House Committee on Judiciary III met at 1:00 PM on Wednesday, March 1, 2017 in Room 421 of the Legislative Office Building. Representatives Jordan, Zachary, Reives, Conrad, Hastings, Horn, Lehman, Quick, B. Turner and White attended. Brad Krehely, Billy Godwin, and Kristen Harris (Research Staff Counsel), along with Emma Benson (Committee Clerk) were in attendance. A Visitor Registration list is attached and made part of these minutes. (Attachment 1)

Representative Jonathan Jordan, Chair, presided. The chair called the meeting to order at 1:03 PM. He introduced the Sergeants at Arms and House Pages (Attachment 2). The following bills were considered:

House Bill 126 and a summary are provided (Attachment 3 and Attachment 4)
HOUSE BILL 126: CONDUCT AND DISCIPLINE FOR MAGISTRATES

Chairman Jordan recognized Rep. Rogers to speak on the bill.

House Bill 126 would require the Administrative Office of the Courts to develop a code of conduct for all magistrates to give authority for chief district court judges to discipline magistrates, to allow for magistrates to be assigned to temporary duty in another county, to require chief district court judges of each country to appoint a chief magistrate, and to modify the date on which the term of office for a magistrate begins. The act is effective as provided in the attached bill summary.

Rep. Zachary moved a technical amendment on the bill (Attachment 5). This motion was seconded by Rep. Horn.

Chairman Jordan recognized Representatives Horn and Quick to ask questions on the bill.

After a short discussion, the chair recognized Representative Horn who moved to have the amendment rolled into a new committee substitute and given a favorable report, unfavorable as to the original bill. The motion passed without dissent.

The original bill, Proposed Committee Substitute for House Bill 162 and a summary are provided (Attachments 6, 7, and 8)
HOUSE BILL 162: AMEND ADMINISTRATIVE PROCEDURE LAWS

Chairman Jordan recognized Rep. Stevens to speak on the bill.

The Proposed Committee Substitute (PCS) for House Bill 162 would:

- Authorize agencies to make rule technical corrections without review by the Rules Review Commission and authorize the Codifier of Rules to make technical corrections.
- Clarify that a party may commence a contested case in a dispute with an agency without petitioning the agency for rule making or seeking or obtaining a declaratory ruling.
- Revise the process for the review and periodic readopting of existing rules.

The PCS made only clarifying and technical changes to the First Edition of House Bill 162.

Chairman Jordan recognized Rep. Conrad who moved to bring the PCS before the committee. The motion passed without dissent.

Chairman Jordan recognized Rep. Conrad who moved to give a favorable report to the PCS, unfavorable to the original bill. The motion passed without dissent.

House Bill 142, The PCS, and a summary are provided (Attachment 9, 10, and 11)
HOUSE BILL 142: INCREASE OVERSIGHT OF OLBS

Chairman Jordan recognized Rep. Conrad who moved to bring the PCS before the committee. The motion passed without dissent.

Chairman Jordan recognized Rep. Stevens to speak on the bill.

The PCS for House Bill 142 would make a number of changes to the statutes governing occupational licensing boards (OLBs) to increase oversight of the OLBs.

Chairman Jordan recognized Reps. Horn, Hastings, and Lehman to ask questions on the bill.

After brief discussion Chairman Jordan recognized Rep. Horn to make a motion for unfavorable to the original bill, favorable to the PCS. The motion passed without dissent.

There being no further business, Chairman Jordan adjourned the meeting at 1:42 PM.

Representative Jonathan Jordan, Chair
Presiding

Emma Benson, Committee Clerk

Attachments

1. Visitor Registration Sheet
2. Committee Sergeants at Arms, House Pages
3. House Bill 126
4. House Bill 126 Summary
5. Amendment to House Bill 126
6. House Bill 162
7. House Bill 162 PCS
8. House Bill 162 Summary
9. House Bill 142
10. House Bill 142 PCS
11. House Bill 142 Summary

Attachment 1

VISITOR REGISTRATION SHEET

House Judiciary III — **Name of Committee**

3-1-2017 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLEI

NAME	FIRM OR AGENCY AND ADDRESS
Peter Bolac	NC State Bar
JENNIFER KNOX	WAKE COUNTY CLERK OF COURT
Athena Brooks	Henderson, TVA, Polk Cty - Chief Dist
Mildred Spearman	NCAOC
Tom Mars	NC Judicial Branch
Ken Arnold	NCBA
[illegible]	[illegible]
Starnes	OST
Jon Carr	Young Price Law Firm
Seth Peter	NC REALTORS
Fred Moreno	NCREC

J 162
S 142
R 126

VISITOR REGISTRATION SHEET

House Judiciary III — 3-1-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Don Paschall	Durham Co. Magistrate President-Elect NC Magistrate Assn.
Sarah Wolfe	MWC
Julian Mann	OAH
Molly Masich	OAH
Garth K. Dunklin	Rules Review Commission
Dan Gerlach	SA
[illegible]	NCHS
Henry Jones	Jordan Price
William Cooke	DOI
George Robinson	DOI
Matt Hembaugh	Speaker
Kris Parks	NCAJ

VISITOR REGISTRATION SHEET

House Judiciary III — 3-1-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bev Bell	Council Statutes Commission

Attachment 2

Committee Sergeants at Arms

NAME OF COMMITTEE Judiciary III

DATE: 3-01-2017 Room: 421

House Sgt-At Arms:

1. Name: Bill Bass
2. Name: Will Crocker
3. Name: David Linthicum
4. Name: _____
5. Name: _____

Senate Sgt-At Arms:

1. Name: _____
2. Name: _____
3. Name: _____
4. Name: _____
5. Name: _____

House Pages
Assignments
Wednesday, March 01, 2017
Session: 2:00 PM

Committee	Room	Time	Staff	Comments	Member
Pensions & Retirement and Aging	415	12:00 PM	Michaela-Sivan Steele		Rep. Speaker Tim Moore
Energy Policy Commission, Jt. Leg.	643	1:00 PM	Melvin McLawhorn		Rep. Speaker Tim Moore
			Kelsey Peterson		Rep. John Ager
Judiciary I	415	1:00 PM	Brion Rogers		Rep. Speaker Tim Moore
Judiciary III	421	1:00 PM	Sheridan Charles		Rep. Speaker Tim Moore

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

HOUSE BILL 126

Short Title:	Conduct and Discipline for Magistrates.	(Public
Sponsors:	Representatives Rogers, Duane Hall, Destin Hall, and John (Primary Sponsors). *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	Judiciary III	

February 20, 2017

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO DEVELOP A CODE OF CONDUCT FOR ALL MAGISTRATES; TO GIVE AUTHORITY FOR CHIEF DISTRICT COURT JUDGES TO DISCIPLINE MAGISTRATES; TO ALLOW FOR MAGISTRATES TO BE ASSIGNED TO TEMPORARY DUTY IN ANOTHER COUNTY; AND TO REQUIRE CHIEF DISTRICT COURT JUDGES OF EACH COUNTY TO APPOINT A CHIEF MAGISTRATE, AS RECOMMENDED BY THE NORTH CAROLINA COURTS COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Code of Conduct. – The Administrative Office of the Courts shall develop a Code of Conduct for all magistrates. The purpose of the Code of Conduct is to create uniformity among all districts. The Code of Conduct shall provide guidance to magistrates regarding (i) standards of professional conduct and timeliness, (ii) required duties and responsibilities, (iii) methods for ethical decision making, and (iv) any other information that is deemed relevant by the Administrative Office of the Courts.

SECTION 1.(b) Time Frame. – The Administrative Office of the Courts shall establish the Code of Conduct for Magistrates required by subsection (a) of this section by July 1, 2018.

SECTION 2. G.S. 7A-146 reads as rewritten:

"**§ 7A-146. Administrative authority and duties of chief district judge.**

The chief district judge, subject to the general supervision of the Chief Justice of the Supreme Court, has administrative supervision and authority over the operation of the district courts and magistrates in his district. These powers and duties include, but are not limited to, the following:

(1) Arranging schedules and assigning district judges for sessions of district courts.

(2) Arranging or supervising the calendaring of noncriminal matters for trial or hearing.

(3) Supervising the clerk of superior court in the discharge of the clerical functions of the district court.

(4) Assigning matters to magistrates, and consistent with the salaries set by the Administrative Officer of the Courts, prescribing times and places at which magistrates shall be available for the performance of their duties; however, the chief district judge may in writing delegate his authority to prescribe times and places at which magistrates in a particular county shall be available for the performance of their duties to another district court judge or the clerk of the superior court, or the judge may ~~appoint a chief magistrate to fulfill~~ delegate

some or all of the duties under subdivision (12) of this ~~section,~~section to the chief magistrate, and the person to whom such authority is delegated shall make monthly reports to the chief district judge of the times and places actually served by each magistrate.

(5) Making arrangements with proper authorities for the drawing of civil court jury panels and determining which sessions of district court shall be jury sessions.

(6) Arranging for the reporting of civil cases by court reporters or other authorized means.

(7) Arranging sessions, to the extent practicable for the trial of specialized cases, including traffic, domestic relations, and other types of cases, and assigning district judges to preside over these sessions so as to permit maximum practicable specialization by individual judges.

(8) Repealed by Session Laws 1991 (Regular Session, 1992), c. 900, s. 118(b), effective July 15, 1992.

(9) Assigning magistrates ~~during an emergency~~ to temporary duty outside the county of their residence but within that district pursuant to the policies and procedures prescribed under G.S. 7A-343(11); and, upon the request of a chief district judge of an adjoining district and upon the approval of the Administrative Officer of the Courts, to temporary duty in the district of the requesting chief district judge pursuant to the policies and procedures prescribed under G.S. 7A-343(11).

(10) Designating another district judge of his district as acting chief district judge, to act during the absence or disability of the chief district judge.

(11) Designating certain magistrates to appoint counsel and accept waivers of counsel pursuant to Article 36 of this Chapter. This designation does not give any magistrate the authority to appoint counsel or accept waivers of counsel for potentially capital offenses, as defined by rules adopted by the Office of Indigent Defense Services.

(12) Designating a full-time magistrate in ~~a~~each county to serve as chief magistrate for that county for an indefinite term and at the judge's pleasure. The chief magistrate shall have the derivative administrative authority assigned by the chief district court judge under subdivision (4) of this section. ~~This subdivision applies only to counties in which the chief district court judge determines that designating a chief magistrate would be in the interest of justice.~~

(13) Investigating complaints against magistrates. Upon investigation and written findings of misconduct, a chief district court judge may issue a letter of caution, a written reprimand, or suspend a magistrate without pay for no longer than 10 days within one pay period."

SECTION 3. G.S. 7A-173 reads as rewritten:

"**§ 7A-173. ~~Suspension;~~Suspension pending removal; removal; reinstatement.**

(a) A magistrate may be suspended from performing the duties of ~~his office~~the magistrate's office pending removal from office by the chief district judge of the district court district in which ~~his~~the magistrate's county is located, or removed from office by the senior regular resident superior court judge of, or any regular superior court judge holding court in, the district or set of districts as defined in G.S. 7A-41.1(a) in which the county is located. Grounds for suspension pending removal or removal are the same as for a judge of the General Court of Justice.

(b) Suspension from performing the duties of the office may be ordered upon filing of sworn written charges in the office of clerk of superior court for the county in which the magistrate resides. If the chief district judge, upon examination of the sworn charges, finds that the charges, if true, constitute grounds for removal, he may enter an order suspending the magistrate

from performing the duties of ~~his~~the magistrate's office until a final determination of the charges on the merits. During suspension pending removal, the salary of the magistrate continues.

(c) If a hearing, with or without suspension, is ordered, the magistrate against whom the charges have been made shall be given immediate written notice of the proceedings and a true copy of the charges, and the matter shall be set by the chief district judge for hearing before the senior regular resident superior court judge or a regular superior court judge holding court in the district or set of districts as defined in G.S. 7A-41.1(a) in which the county is located. The hearing shall be held in a county within the district or set of districts not less than 10 days nor more than 30 days after the magistrate has received a copy of the charges. The hearing shall be open to the public. All testimony offered shall be recorded. At the hearing the superior court judge shall receive evidence, and make findings of fact and conclusions of law. If ~~he~~the judge finds that grounds for removal exist, ~~he~~the judge shall enter an order permanently removing the magistrate from office, and terminating ~~his~~the magistrate's salary. If ~~he~~the judge finds that no such grounds exist, ~~he~~the judge shall terminate the suspension, if any.

(d) A magistrate may appeal from an order of removal to the Court of Appeals on the basis of error of law by the superior court judge. Pending decision of the case on appeal, the magistrate shall not perform any of the duties of his office. If, upon final determination, ~~he~~the magistrate is ordered reinstated, either by the appellate division or by the superior court on remand, ~~his~~the magistrate's salary shall be restored from the date of the original order of removal.

(e) This section shall only apply to suspensions pending removal from office and does not apply to disciplinary suspension pursuant to G.S. 7A-146."

SECTION 4. G.S. 7A-171 reads as rewritten:

"**§ 7A-171. Numbers; appointment and terms; vacancies.**

...

(a1) The initial term of appointment for a magistrate is two years and subsequent terms shall be for a period of four years. The term of office begins ~~on the first day of January~~on the first day of February of the ~~odd-numbered~~even-numbered year after appointment. The service of an individual as a magistrate filling a vacancy as provided in subsection (d) of this section does not constitute an initial term. For purposes of this section, any term of office for a magistrate who has served a two-year term is for four years even if the two-year term of appointment was before the effective date of this section, the term is after a break in service, or the term is for appointment in a different county from the county where the two-year term of office was served.

(b) Not earlier than the Tuesday after the first Monday nor later than the third Monday in ~~December~~January of each even-numbered year, the clerk of the superior court shall submit to the senior regular resident superior court judge of the district or set of districts as defined in G.S. 7A-41.1(a) in which the clerk's county is located the names of two (or more, if requested by the judge) nominees for each magisterial office for the county for which the term of office of the magistrate holding that position shall expire on ~~December 31~~January 31 of that year. Not later than the fourth Monday in ~~December,~~January, the senior regular resident superior court judge shall, from the nominations submitted by the clerk of the superior court, appoint magistrates to fill the positions for each county of the judge's district or set of districts.

(c) If an additional magisterial office for a county is approved to commence on ~~January 1~~February 1 of an ~~odd-numbered year,~~even-numbered year, the new position shall be filled as provided in subsection (b) of this section. If the additional position takes effect at any other time, it is to be filled as provided in subsection (d) of this section.

(d) Within 30 days after a vacancy in the office of magistrate occurs the clerk of superior court shall submit to the senior regular resident superior court judge the names of two (or more, if so requested by the judge) nominees for the office vacated. Within 15 days after receipt of the nominations the senior regular resident superior court judge shall appoint from the nominations received a magistrate who shall take office immediately and shall serve until ~~December 31~~January

31 of the even-numbered year, and thereafter the position shall be filled as provided in subsection (b) of this section."

SECTION 5. Section 3 of this act becomes effective December 1, 2017, and applies to all current and future magistrates. Section 4 of this act becomes effective December 1, 2017, and applies to all magistrates appointed to office January of 2018; currently appointed magistrates will finish their term as set at their appointment. The remainder of this act is effective when it becomes law.

Attachment 4

HOUSE BILL 126:
Conduct and Discipline for Magistrates.

2017-2018 General Assembly

Committee:	House Judiciary III	**Date:**	February 28, 2017
Introduced by:	Reps. Rogers, Duane Hall, Destin Hall, John	**Prepared by:**	Brad Krehely
Analysis of:	First Edition		Committee Co-Coun

OVERVIEW: House Bill 126 would require the Administrative Office of the Courts to develop a code of conduct for all magistrates, to give authority for chief district court judges to discipline magistrates, to allow for magistrates to be assigned to temporary duty in another county, to require chief district court judges of each county to appoint a chief magistrate, and to modify the date on which the term of office for a magistrate begins. The act is effective as provided in this summary.

CURRENT LAW: A magistrate is a judicial officer of the District Court who handles certain criminal and civil matters. G.S. 7A-170. In criminal cases, a magistrate issues warrants and sets bail. A magistrate also may accept guilty pleas and payments of fines and costs for traffic violations and minor misdemeanors. In civil cases, the magistrate presides over small claims court.

A magistrate must be a resident of the county and must have one of the following: a college degree, 8 years experience as a clerk of superior court, or a two-year associate degree and 4 years experience ina related field. G.S. 7A-171.2.

Magistrates are appointed to an initial two-year term and subsequent four-year terms by the Senior Resident Superior Court judge from persons nominated by the clerk of superior court. NC Const. Art. IV, Sec. 10; G.S.7A-171. The term of office begins on the first day of January in an odd-numbered year after appointment. G.S.7A-171. Magistrates are supervised by the chief district court judge. The chief district court judge sets magistrates' work schedules, but may delegate this authority to another district court judge, the clerk of superior court, or a chief magistrate. G.S. 7A-146(4).

A magistrate may be suspended from performing the duties of office by the chief district judge of the district court district in which his county is located, or removed from office by the senior regular resident superior court judge of, or any regular superior court judge holding court in, the district or set of districts in which the county is located. Grounds for suspension or removal are the same as for a judge of the General Court of Justice. G.S. 7A-173.

BILL ANALYSIS:

Section 1 would require the Administrative Office of the Courts (AOC) to develop a code of conduct for all magistrates. This would create uniformity among all the districts. The Code of Conduct must provide guidance regarding: standards of professional conduct and timeliness, mandatory duties and responsibilities, ethical decision making, and any other information deemed relevant by AOC. AOC must establish this Code of Conduct by July 1, 2018. (Effective when it becomes law).

Section 2 would amend the powers and duties of chief district court judges in the following ways:

- Requires the chief district court judge to designate a full-time magistrate in each county to serve as chief magistrate for that county (under current law, a chief magistrate is appointed only if the

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

chief district court judge determined that designating a chief magistrate is in the interest of justice).

- Allows the chief district court judge to assign magistrates to temporary duty outside their county of residence, but within that district (under current law, this is allowed during an emergency only).
- Allows the chief district court judge to investigate complaints against magistrates. After an investigation and written findings of misconduct, a chief district court judge may issue a letter of caution, a written reprimand, or suspend a magistrate without pay for no longer than 10 days within one pay period.

Section 2 is effective when it becomes law.

Section 3 clarifies that the provisions in G.S. 7A-173 dealing with "suspension pending removal from office" do not apply to disciplinary suspension (a magistrate is suspended without pay for up to 10 days in a pay period) as provided in G.S. 7A-146. (Effective December 1, 2017 and applies to all current and future magistrates).

Section 4 amends the statute dealing with appointment and terms of magistrates. It establishes that the term of office for a magistrate begins on the first day in February of the even-numbered year (was first day of January of the odd-numbered year) after appointment. It also changes when the clerk of superior court must submit nominations to the resident superior court judge to January of the even-numbered year. This would allow a new clerk more than one week to decide the names to be submitted to the senior resident superior court judge for consideration. (Effective December 1, 2017, and applies to magistrates appointed to office in January of 2018).

EFFECTIVE DATE: The act is effective as provided in this summary.

BACKGROUND: House Bill 126 is a recommendation of the North Carolina Courts Commission. It also arose from the input of a working group that included a wide range of stakeholders and was chaired by the Honorable Athena Brooks, Chief District Court Judge, District 29B (Henderson, Polk, and Transylvania Counties).

Attachment 5

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 126

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

H126-ARN-1 [v.2]

Amends Title [NO]
First Edition

Date _____, 2017

Representative Zachary

moves to amend the bill on page 4, line 5, by inserting "on or after" between the words "office" and "January".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

HOUSE BILL 162

Short Title: Amend Administrative Procedure Laws. (Public

Sponsors: Representatives Jordan, Stevens, Hardister, and Floyd (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary III

February 23, 2017

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE AGENCIES TO MAKE RULE TECHNICAL CORRECTIONS WITHOUT REVIEW BY THE RULES REVIEW COMMISSION AND TO AUTHORIZE THE CODIFIER OF RULES TO MAKE RULE TECHNICAL CORRECTIONS, TO CLARIFY THAT A PARTY MAY COMMENCE A CONTESTED CASE IN A DISPUTE WITH AN AGENCY WITHOUT PETITIONING THE AGENCY FOR RULE MAKING OR OBTAINING A DECLARATORY RULING, AND TO REVISE THE PROCESS FOR THE REVIEW AND READOPTION OF EXISTING RULES, AS RECOMMENDED BY THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

AUTHORIZE RULE TECHNICAL CORRECTIONS

SECTION 1.1. G.S. 150B-21.5 reads as rewritten:

"**§ 150B-21.5. Circumstances when notice and rule-making hearing not ~~required.~~required; circumstances when submission to the Commission not required.**

(a) Amendment. – An agency is not required to publish a notice of text in the North Carolina ~~Register or~~Register, hold a public ~~hearing~~ hearing, or submit the amended rule to the Commission for review when it proposes to amend a rule to do one of the following:

(1) Reletter or renumber the rule or subparts of the rule.
(2) Substitute one name for another when an organization or position is renamed.
(3) Correct a citation in the rule to another rule or law when the citation has become inaccurate since the rule was adopted because of the repeal or renumbering of the cited rule or law.
(4) Change information that is readily available to the public, such as an ~~address or~~address, a telephone ~~number.~~number, or a Web site.
(5) Correct a typographical ~~error in the North Carolina Administrative Code.~~error.
~~(6) Change a rule in response to a request or an objection by the Commission, unless the Commission determines that the change is substantial.~~

(a1) Response to Commission. – An agency is not required to publish a notice of text in the North Carolina Register or hold a public hearing when it proposes to change the rule in response to a request or an objection by the Commission, unless the Commission determines that the change is substantial.

(b) Repeal. – An agency is not required to publish a notice of text in the North Carolina Register or hold a public hearing when it proposes to repeal a rule as a result of any of the following:

(1) The law under which the rule was adopted is repealed.
(2) The law under which the rule was adopted or the rule itself is declared unconstitutional.
(3) The rule is declared to be in excess of the agency's statutory authority.

(c) OSHA Standard. – The Occupational Safety and Health Division of the Department of Labor is not required to publish a notice of text in the North Carolina Register or hold a public hearing when it proposes to adopt a rule that concerns an occupational safety and health standard and is identical to a federal regulation promulgated by the Secretary of the United States Department of Labor. The Occupational Safety and Health Division is not required to submit to the Commission for review a rule for which notice and hearing is not required under this subsection.

(d) State Building Code. – The Building Code Council is not required to publish a notice of text in the North Carolina Register when it proposes to adopt a rule that concerns the North Carolina State Building Code. The Building Code Council is required to publish a notice in the North Carolina Register when it proposes to adopt a rule that concerns the North Carolina State Building Code. The notice must include all of the following:

(1) A statement of the subject matter of the proposed rule making.
(2) A short explanation of the reason for the proposed action.
(3) A citation to the law that gives the agency the authority to adopt a rule on the subject matter of the proposed rule making.
(4) The person to whom questions or written comments may be submitted on the subject matter of the proposed rule making.

The Building Code Council is required to submit to the Commission for review a rule for which notice of text is not required under this subsection. In adopting a rule, the Council shall comply with the procedural requirements of G.S. 150B-21.3.

(e) An agency that adopts or amends a rule pursuant to subsection (a) or (c) of this section shall notify the Codifier of Rules of its actions. When notified of an agency action taken pursuant to subsection (a) or (c) of this section, the Codifier of Rules shall make the appropriate change to the North Carolina Administrative Code."

SECTION 1.2. G.S. 150B-21.20 reads as rewritten:

"**§ 150B-21.20. Codifier's authority to revise ~~form of~~ rules.**

(a) Authority. – After consulting with the agency that adopted the rule, the Codifier of Rules may revise ~~the form of a rule submitted for inclusion in the North Carolina Administrative Code~~ a rule to do one or more of the following:

(1) Rearrange the order of the rule in the Code or the order of the subsections, subdivisions, or other subparts of the rule.
(2) Provide a catch line or heading for the rule or revise the catch line or heading of the rule.
(3) Reletter or renumber the rule or the subparts of the rule in accordance with a uniform system.
(4) Rearrange definitions and lists.
(5) Make other changes in arrangement or in form that do not change the substance of the rule and are necessary or desirable for a clear and orderly arrangement of the rule.
(6) Omit from the published rule a map, a diagram, an illustration, a chart, or other graphic material, if the Codifier of Rules determines that the Office of Administrative Hearings does not have the capability to publish the material or that publication of the material is not practicable. When the Codifier of Rules omits graphic material from the published rule, the Codifier must insert a reference to the omitted material and information on how to obtain a copy of the omitted material.

(7) Substitute one name for another when an organization or position is renamed.
(8) Correct a citation in the rule to another rule or law when the citation has become inaccurate since the rule was adopted because of the repeal or renumbering of the cited rule or law.
(9) Change information that is readily available to the public, such as an address, a telephone number, or a Web site.
(10) Correct a typographical error.

(b) Effect. – Revision of a rule by the Codifier of Rules under this section does not affect the effective date of the rule or require the agency to readopt or resubmit the rule. When the Codifier of Rules revises the form of a rule, the Codifier of Rules must send the agency that adopted the rule a copy of the revised rule. The revised rule is the official rule, unless the rule was revised under subdivision (a)(6) of this section to omit graphic material. When a rule is revised under that subdivision, the official rule is the published text of the rule plus the graphic material that was not published."

CLARIFY CONTESTED CASE POLICY

SECTION 2.1. G.S. 150B-22 reads as rewritten:

"**§ 150B-22. Settlement; contested case.**

(a) It is the policy of this State that any dispute between an agency and another person that involves the person's rights, duties, or privileges, including licensing or the levy of a monetary penalty, should be settled through informal procedures. In trying to reach a settlement through informal procedures, the agency may not conduct a proceeding at which sworn testimony is taken and witnesses may be cross-examined.

(b) If the agency and the other person do not agree to a resolution of the dispute through informal procedures, either the agency or the person may commence an administrative proceeding to determine the person's rights, duties, or privileges, at which time the dispute becomes a "contested case." A party or person aggrieved shall not be required to petition an agency for rule making or to seek or obtain a declaratory ruling before commencing a contested case pursuant to G.S. 150B-23."

SECTION 2.2. G.S. 150B-43 reads as rewritten:

"**§ 150B-43. Right to judicial review.**

Any party or person aggrieved by the final decision in a contested case, and who has exhausted all administrative remedies made available to the party or person aggrieved by statute or agency rule, is entitled to judicial review of the decision under this Article, unless adequate procedure for judicial review is provided by another statute, in which case the review shall be under such other statute. Nothing in this Chapter shall prevent any party or person aggrieved from invoking any judicial remedy available to the party or person aggrieved under the law to test the validity of any administrative action not made reviewable under this Article. ~~Absent a specific statutory requirement, nothing in this Chapter shall require a~~A party or person aggrieved shall not be required to petition an agency for rule making or to seek or obtain a declaratory ruling before obtaining judicial review of a final decision or order made pursuant to G.S. 150B-34."

AMEND PERIODIC REVIEW OF RULES PROCESS

SECTION 3. G.S. 150B-21.3A reads as rewritten:

"**§ 150B-21.3A. Periodic review and expiration of existing rules.**

(a) Definitions. – For purposes of this section, the following definitions apply:
(1) Commission. – Means the Rules Review Commission.
(2) Committee. – Means the Joint Legislative Administrative Procedure Oversight Committee.
(2a) Necessary rule. – Means any rule other than an unnecessary rule.

~~(3) Necessary with substantive public interest. – Means any rule for which the agency has received public comments within the past two years. A rule is also "necessary with substantive public interest" if the rule affects the property interest of the regulated public and the agency knows or suspects that any person may object to the rule.~~

~~(4) Necessary without substantive public interest. – Means a rule for which the agency has not received a public comment concerning the rule within the past two years. A "necessary without substantive public interest" rule includes a rule that merely identifies information that is readily available to the public, such as an address or a telephone number.~~

(5) Public comment. – Means written comments objecting to the rule, in whole or in part, received by an agency from any member of the public, including an association or other organization representing the regulated community or other members of the public.

(6) Unnecessary rule. – Means a rule that the agency determines to be obsolete, redundant, or otherwise not needed.

(b) Automatic Expiration. – Except as provided in subsection (e) of this section, any rule for which the agency that adopted the rule has not conducted a review in accordance with this section shall expire on the date set in the schedule established by the Commission pursuant to subsection (d) of this section.

(c) Review Process. – Each agency subject to this Article shall conduct a review of the agency's existing rules at least once every 10 years in accordance with the following process:

(1) Step 1: The agency shall conduct an analysis of each existing rule and make an initial determination as to whether the rule is ~~(i) necessary with substantive public interest, (ii) necessary without substantive public interest, or (iii)~~necessary or unnecessary. The agency shall then post the results of the initial determination on its Web site and invite the public to comment on the rules and the agency's initial determination. The agency shall also submit the results of the initial determination to the Office of Administrative Hearings for posting on its Web site. The agency shall accept public comment for no less than 60 days following the posting. The agency shall review the public comments and prepare a brief response addressing the merits of each comment. After completing this process, the agency shall submit a report to the Commission. The report shall include the following items:

a. The agency's initial determination.

b. All public comments received in response to the agency's initial determination.

c. The agency's response to the public comments.

(2) Step 2: The Commission shall review the reports received from the agencies pursuant to subdivision (1) of this subsection. If a public comment relates to a rule that the agency determined to be ~~necessary and without substantive public interest or~~ unnecessary, the Commission shall determine whether the public comment has merit and, if so, designate the rule as ~~necessary with substantive public interest.~~necessary. For purposes of this subsection, a public comment has merit if it addresses the specific substance of the ~~rule and relates to any of the standards for review by the Commission set forth in G.S. 150B-21.9(a).~~rule. The Commission shall prepare a final determination report and submit the report to the Committee for consultation in accordance with subdivision (3) of this subsection. The report shall include the following items:

a. The agency's initial determination.

b. All public comments received in response to the agency's initial determination.

c. The agency's response to the public comments.

d. A summary of the Commission's determinations regarding public comments.

~~e. A determination that all rules that the agency determined to be necessary and without substantive public interest and for which no public comment was received or for which the Commission determined that the public comment was without merit be allowed to remain in effect without further action.~~

f. A determination that all rules that the agency determined to be unnecessary and for which no public comment was received or for which the Commission determined that the public comment was without merit shall expire on the first day of the month following the date the report becomes effective in accordance with this section.

g. A determination that all rules that the agency determined to be necessary ~~with substantive public interest~~ or that the Commission designated as necessary ~~with public interest as provided in this subdivision~~ shall be readopted as though the rules were new rules in accordance with this Article.

(3) Step 3: The final determination report shall not become effective until the agency has consulted with the Committee. The determinations contained in the report pursuant to sub-subdivisions ~~e., f.,~~ f. and g. of subdivision (2) of this subsection shall become effective on the date the report is reviewed by the Committee. If the Committee does not hold a meeting to hear the consultation required by this subdivision within 60 days of receipt of the final determination report, the consultation requirement is deemed satisfied, and the determinations contained in the report become effective on the 61st day following the date the Committee received the report. If the Committee disagrees with a determination regarding a specific rule contained in the report, the Committee may recommend that the General Assembly direct the agency to conduct a review of the specific rule in accordance with this section in the next year following the consultation.

(d) Timetable. – The Commission shall establish a schedule for the review and readoption of existing rules in accordance with this section on a decennial basis as follows:

(1) With regard to the review process, the Commission shall assign each Title of the Administrative Code a date by which the review required by this section must be completed. In establishing the schedule, the Commission shall consider the scope and complexity of rules subject to this section and the resources required to conduct the review required by this section. The Commission shall have broad authority to modify the schedule and extend the time for review in appropriate circumstances. Except as provided in subsections ~~(e) and~~ (e), (e1), and (f) of this section, if the agency fails to conduct the review by the date set by the Commission, the rules contained in that Title which have not been reviewed will expire. The Commission shall report to the Committee any agency that fails to conduct the review. The Commission may exempt rules that have been adopted or amended within the previous 10 years from the review required by this section. However, any rule exempted on this basis must be reviewed in accordance with this section no more than 10 years following the last time the rule was amended.

(2) With regard to the readoption of rules as required by sub-subdivision (c)(2)g. of this section, once the final determination report becomes effective, the Commission shall establish a date by which the agency must readopt the rules. The Commission shall consult with the agency and shall consider the agency's rule-making priorities in establishing the readoption date. The agency may amend a rule as part of the readoption process. If a rule is readopted without substantive change or if the rule is amended to impose a less stringent burden on regulated persons, the agency is not required to prepare a fiscal note as provided by G.S. 150B-21.4.

(e) Rules to Conform to or Implement Federal Law. – Rules adopted to conform to or implement federal law shall not expire as provided by this section. The Commission shall report annually to the Committee on any rules that do not expire pursuant to this subsection.

(e1) Rules to Protect Inchoate or Accrued Rights of Retirement Systems Members. – Rules deemed by the Boards of Trustees established under G.S. 128-28 and G.S. 135-6 to protect inchoate or accrued rights of members of the Retirement Systems administered by the State Treasurer shall not expire as provided by this section. The Commission shall report annually to the Committee on any rules that do not expire pursuant to this subsection.

(f) Other Reviews. – Notwithstanding any provision of this section, an agency may subject a rule that it determines to be unnecessary to review under this section at any time by notifying the Commission that it wishes to be placed on the schedule for the current year. The Commission may also subject a rule to review under this section at any time by notifying the agency that the rule has been placed on the schedule for the current year."

EFFECTIVE DATE

SECTION 4. This act is effective when it becomes law. Section 3 of this act applies to agency rule reports submitted to the Office of Administrative Hearings pursuant to G.S. 150B-21.3A(c)(1) on or after May 1, 2017.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 162
PROPOSED COMMITTEE SUBSTITUTE H162-CSSB-2 [v.3]

02/28/2017 10:47:35 AM

Short Title: Amend Administrative Procedure Laws. (Public)

Sponsors:

Referred to:

February 23, 2017

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE AGENCIES TO MAKE RULE TECHNICAL CORRECTIONS WITHOUT REVIEW BY THE RULES REVIEW COMMISSION AND TO AUTHORIZE THE CODIFIER OF RULES TO MAKE RULE TECHNICAL CORRECTIONS, TO CLARIFY THAT A PARTY MAY COMMENCE A CONTESTED CASE IN A DISPUTE WITH AN AGENCY WITHOUT PETITIONING THE AGENCY FOR RULE MAKING OR OBTAINING A DECLARATORY RULING, AND TO REVISE THE PROCESS FOR THE REVIEW AND READOPTION OF EXISTING RULES, AS RECOMMENDED BY THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

AUTHORIZE RULE TECHNICAL CORRECTIONS

SECTION 1.1. G.S. 150B-21.5 reads as rewritten:

"**§ 150B-21.5. Circumstances when notice and rule-making hearing not ~~required.~~required; circumstances when submission to the Commission not required.**

(a) Amendment. – An agency is not required to publish a notice of text in the North Carolina ~~Register or~~Register, hold a public ~~hearing~~ hearing, or submit the amended rule to the Commission for review when it proposes to amend a rule to do one of the following:

(1) Reletter or renumber the rule or subparts of the rule.

(2) Substitute one name for another when an organization or position is renamed.

(3) Correct a citation in the rule to another rule or law when the citation has become inaccurate since the rule was adopted because of the repeal or renumbering of the cited rule or law.

(4) Change information that is readily available to the public, such as an ~~address or~~address, a telephone ~~number.~~number, or a Web site.

(5) Correct a ~~typographical error in the North Carolina Administrative Code.~~typographical error.

~~(6) Change a rule in response to a request or an objection by the Commission, unless the Commission determines that the change is substantial.~~

(a1) Response to Commission. – An agency is not required to publish a notice of text in the North Carolina Register or hold a public hearing when it proposes to change the rule in response to a request or an objection by the Commission, unless the Commission determines that the change is substantial.

(b) Repeal. – An agency is not required to publish a notice of text in the North Carolina Register or hold a public hearing when it proposes to repeal a rule as a result of any of the following:

(1) The law under which the rule was adopted is repealed.
(2) The law under which the rule was adopted or the rule itself is declared unconstitutional.
(3) The rule is declared to be in excess of the agency's statutory authority.

(c) OSHA Standard. – The Occupational Safety and Health Division of the Department of Labor is not required to publish a notice of text in the North Carolina Register or hold a public hearing when it proposes to adopt a rule that concerns an occupational safety and health standard and is identical to a federal regulation promulgated by the Secretary of the United States Department of Labor. The Occupational Safety and Health Division is not required to submit to the Commission for review a rule for which notice and hearing is not required under this subsection.

(d) State Building Code. – The Building Code Council is not required to publish a notice of text in the North Carolina Register when it proposes to adopt a rule that concerns the North Carolina State Building Code. The Building Code Council is required to publish a notice in the North Carolina Register when it proposes to adopt a rule that concerns the North Carolina State Building Code. The notice must include all of the following:

(1) A statement of the subject matter of the proposed rule making.
(2) A short explanation of the reason for the proposed action.
(3) A citation to the law that gives the agency the authority to adopt a rule on the subject matter of the proposed rule making.
(4) The person to whom questions or written comments may be submitted on the subject matter of the proposed rule making.

The Building Code Council is required to submit to the Commission for review a rule for which notice of text is not required under this subsection. In adopting a rule, the Council shall comply with the procedural requirements of G.S. 150B-21.3.

(e) An agency that adopts or amends a rule pursuant to subsection (a) or (c) of this section shall notify the Codifier of Rules of its actions. When notified of an agency action taken pursuant to subsection (a) or (c) of this section, the Codifier of Rules shall make the appropriate change to the North Carolina Administrative Code."

SECTION 1.2. G.S. 150B-21.20 reads as rewritten:

"**§ 150B-21.20. Codifier's authority to revise ~~form of~~ rules.**

(a) Authority. – After consulting with the agency that adopted the rule, the Codifier of Rules may revise ~~the form of a rule submitted for inclusion in the North Carolina Administrative Code~~ a rule to do one or more of the following:

(1) Rearrange the order of the rule in the Code or the order of the subsections, subdivisions, or other subparts of the rule.
(2) Provide a catch line or heading for the rule or revise the catch line or heading of the rule.
(3) Reletter or renumber the rule or the subparts of the rule in accordance with a uniform system.
(4) Rearrange definitions and lists.
(5) Make other changes in arrangement or in form that do not change the substance of the rule and are necessary or desirable for a clear and orderly arrangement of the rule.
(6) Omit from the published rule a map, a diagram, an illustration, a chart, or other graphic material, if the Codifier of Rules determines that the Office of Administrative Hearings does not have the capability to publish the material or that publication of the material is not practicable. When the Codifier of Rules omits graphic material from the published rule, the Codifier must insert a reference to the omitted material and information on how to obtain a copy of the omitted material.

(7) Substitute one name for another when an organization or position is renamed.
(8) Correct a citation in the rule to another rule or law when the citation has become inaccurate since the rule was adopted because of the repeal or renumbering of the cited rule or law.
(9) Change information that is readily available to the public, such as an address, a telephone number, or a Web site.
(10) Correct a typographical error.

(b) Effect. – Revision of a rule by the Codifier of Rules under this section does not affect the effective date of the rule or require the agency to readopt or resubmit the rule. When the Codifier of Rules revises the form of a rule, the Codifier of Rules must send the agency that adopted the rule a copy of the revised rule. The revised rule is the official rule, unless the rule was revised under subdivision (a)(6) of this section to omit graphic material. When a rule is revised under that subdivision, the official rule is the published text of the rule plus the graphic material that was not published."

CLARIFY CONTESTED CASE POLICY

SECTION 2.1. G.S. 150B-22 reads as rewritten:

"**§ 150B-22. Settlement; contested case.**

(a) It is the policy of this State that any dispute between an agency and another person that involves the person's rights, duties, or privileges, including licensing or the levy of a monetary penalty, should be settled through informal procedures. In trying to reach a settlement through informal procedures, the agency may not conduct a proceeding at which sworn testimony is taken and witnesses may be cross-examined.

(b) If the agency and the other person do not agree to a resolution of the dispute through informal procedures, either the agency or the person may commence an administrative proceeding to determine the person's rights, duties, or privileges, at which time the dispute becomes a "contested case." A party or person aggrieved shall not be required to petition an agency for rule making or to seek or obtain a declaratory ruling before commencing a contested case pursuant to G.S. 150B-23."

SECTION 2.2. G.S. 150B-43 reads as rewritten:

"**§ 150B-43. Right to judicial review.**

Any party or person aggrieved by the final decision in a contested case, and who has exhausted all administrative remedies made available to the party or person aggrieved by statute or agency rule, is entitled to judicial review of the decision under this Article, unless adequate procedure for judicial review is provided by another statute, in which case the review shall be under such other statute. Nothing in this Chapter shall prevent any party or person aggrieved from invoking any judicial remedy available to the party or person aggrieved under the law to test the validity of any administrative action not made reviewable under this Article. ~~Absent a specific statutory requirement, nothing in this Chapter shall require a~~A party or person aggrieved shall not be required to petition an agency for rule making or to seek or obtain a declaratory ruling before obtaining judicial review of a final decision or order made pursuant to G.S. 150B-34."

AMEND PERIODIC REVIEW OF RULES PROCESS

SECTION 3. G.S. 150B-21.3A reads as rewritten:

"**§ 150B-21.3A. Periodic review and expiration of existing rules.**

(a) Definitions. – For purposes of this section, the following definitions apply:
(1) Commission. – Means the Rules Review Commission.
(2) Committee. – Means the Joint Legislative Administrative Procedure Oversight Committee.
(2a) Necessary rule. – Means any rule other than an unnecessary rule.

~~(3) Necessary with substantive public interest. – Means any rule for which the agency has received public comments within the past two years. A rule is also "necessary with substantive public interest" if the rule affects the property interest of the regulated public and the agency knows or suspects that any person may object to the rule.~~

~~(4) Necessary without substantive public interest. – Means a rule for which the agency has not received a public comment concerning the rule within the past two years. A "necessary without substantive public interest" rule includes a rule that merely identifies information that is readily available to the public, such as an address or a telephone number.~~

(5) Public comment. – Means written comments objecting to the rule, in whole or in part, or objecting to an agency's determination of the rule as necessary or unnecessary, received by an agency from any member of the public, including an association or other organization representing the regulated community or other members of the public.

(6) Unnecessary rule. – Means a rule that the agency determines to be obsolete, redundant, or otherwise not needed.

(b) Automatic Expiration. – Except as provided in subsection (e) of this section, any rule for which the agency that adopted the rule has not conducted a review in accordance with this section shall expire on the date set in the schedule established by the Commission pursuant to subsection (d) of this section.

(c) Review Process. – Each agency subject to this Article shall conduct a review of the agency's existing rules at least once every 10 years in accordance with the following process:

(1) Step 1: The agency shall conduct an analysis of each existing rule and make an initial determination as to whether the rule is ~~(i) necessary with substantive public interest, (ii) necessary without substantive public interest, or (iii)~~necessary or unnecessary. The agency shall then post the results of the initial determination on its Web site and invite the public to comment on the rules and the agency's initial determination. The agency shall also submit the results of the initial determination to the Office of Administrative Hearings for posting on its Web site. The agency shall accept public comment for no less than 60 days following the posting. The agency shall review the public comments and prepare a brief response addressing the merits of each comment. After completing this process, the agency shall submit a report to the Commission. The report shall include the following items:

a. The agency's initial determination.

b. All public comments received in response to the agency's initial determination.

c. The agency's response to the public comments.

(2) Step 2: The Commission shall review the reports received from the agencies pursuant to subdivision (1) of this subsection. If a public comment relates to a rule that the agency determined to be ~~necessary and without substantive public interest or~~ unnecessary, the Commission shall determine whether the public comment has merit and, if so, designate the rule as ~~necessary with substantive public interest.~~necessary. For purposes of this subsection, a public comment has merit if it addresses the specific substance of the ~~rule and relates to any of the standards for review by the Commission set forth in G.S. 150B-21.9(a).~~rule. The Commission shall prepare a final determination report and submit the report to the Committee for consultation in accordance with subdivision (3) of this subsection. The report shall include the following items:

a. The agency's initial determination.

b. All public comments received in response to the agency's initial determination.

c. The agency's response to the public comments.

d. A summary of the Commission's determinations regarding public comments.

~~e. A determination that all rules that the agency determined to be necessary and without substantive public interest and for which no public comment was received or for which the Commission determined that the public comment was without merit be allowed to remain in effect without further action.~~

f. A determination that all rules that the agency determined to be unnecessary and for which no public comment was received or for which the Commission determined that the public comment was without merit shall expire on the first day of the month following the date the report becomes effective in accordance with this section.

g. A determination that all rules that the agency determined to be necessary ~~with substantive public interest~~ or that the Commission designated as necessary ~~with public interest as provided in this subdivision~~ shall be readopted as though the rules were new rules in accordance with this Article.

(3) Step 3: The final determination report shall not become effective until the agency has consulted with the Committee. The determinations contained in the report pursuant to sub-subdivisions ~~e., f.,~~ f. and g. of subdivision (2) of this subsection shall become effective on the date the report is reviewed by the Committee. If the Committee does not hold a meeting to hear the consultation required by this subdivision within 60 days of receipt of the final determination report, the consultation requirement is deemed satisfied, and the determinations contained in the report become effective on the 61st day following the date the Committee received the report. If the Committee disagrees with a determination regarding a specific rule contained in the report, the Committee may recommend that the General Assembly direct the agency to conduct a review of the specific rule in accordance with this section in the next year following the consultation.

(d) Timetable. – The Commission shall establish a schedule for the review and readoption of existing rules in accordance with this section on a decennial basis as follows:

(1) With regard to the review process, the Commission shall assign each Title of the Administrative Code a date by which the review required by this section must be completed. In establishing the schedule, the Commission shall consider the scope and complexity of rules subject to this section and the resources required to conduct the review required by this section. The Commission shall have broad authority to modify the schedule and extend the time for review in appropriate circumstances. Except as provided in subsections (e) and (f) of this section, if the agency fails to conduct the review by the date set by the Commission, the rules contained in that Title which have not been reviewed will expire. The Commission shall report to the Committee any agency that fails to conduct the review. The Commission may exempt rules that have been adopted or amended within the previous 10 years from the review required by this section. However, any rule exempted on this basis must be reviewed in accordance with this section no more than 10 years following the last time the rule was amended.

(2) With regard to the readoption of rules as required by sub-subdivision (c)(2)g. of this section, once the final determination report becomes effective, the Commission shall establish a date by which the agency must readopt the rules. The Commission shall consult with the agency and shall consider the agency's rule-making priorities in establishing the readoption date. The agency may amend a rule as part of the readoption process. If a rule is readopted without substantive change or if the rule is amended to impose a less stringent burden on regulated persons, the agency is not required to prepare a fiscal note as provided by G.S. 150B-21.4.

(e) ~~Rules to Conform to or Implement Federal Law. -- Rules adopted to conform to or implement federal law shall not expire as provided by this section. The Commission shall report annually to the Committee on any rules that do not expire pursuant to this subsection.~~

~~(e1)~~ ~~Rules to Protect Inchoate or Accrued Rights of Retirement Systems Members. -- Rules deemed by the Boards of Trustees established under G.S. 128-28 and G.S. 135-6 to protect inchoate or accrued rights of members of the Retirement Systems administered by the State Treasurer shall not expire as provided by this section. The Commission shall report annually to the Committee on any rules that do not expire pursuant to this subsection.~~Exclusions. -- The Commission shall report annually to the Committee on any rules that do not expire pursuant to this subsection. The following rules shall not expire as provided in this section:

(1) Rules adopted to conform to or implement federal law.

(2) Rules deemed by the Boards of Trustees established under G.S. 128-28 and G.S. 135-6 to protect inchoate or accrued rights of members of the Retirement Systems administered by the State Treasurer.

(f) Other Reviews. -- Notwithstanding any provision of this section, an agency may subject a rule that it determines to be unnecessary to review under this section at any time by notifying the Commission that it wishes to be placed on the schedule for the current year. The Commission may also subject a rule to review under this section at any time by notifying the agency that the rule has been placed on the schedule for the current year."

SECTION 4. This act is effective when it becomes law. Section 3 of this act applies to agency rule reports submitted to the Office of Administrative Hearings pursuant to G.S. 150B-21.3A(c)(1) on or after May 1, 2017.

Attachment 8

HOUSE BILL 162:
Amend Administrative Procedure Laws.

2017-2018 General Assembly

Committee:	House Judiciary III	**Date:**	March 1, 2017
Introduced by:	Reps. Jordan, Stevens, Hardister, Floyd	**Prepared by:**	Jeffrey Hudson
Analysis of:	PCS to First Edition H162-CSSB-2		Legislative Analyst

OVERVIEW: The Proposed Committee Substitute (PCS) for House Bill 162 would:

- ***Authorize agencies to make rule technical corrections without review by the Rules Review Commission and authorize the Codifier of Rules to make rule technical corrections.***
- ***Clarify that a party may commence a contested case in a dispute with an agency without petitioning the agency for rule making or seeking or obtaining a declaratory ruling.***
- ***Revise the process for the review and periodic readoption of existing rules.***

The PCS makes only clarifying and technical changes to the First Edition of House Bill 162.

[As introduced, this bill was identical to S16, as introduced by Sens. Wells, Barringer, Daniel, which has passed the Senate and been received by the House. This PCS is identical to the Second Edition of S16.]

BACKGROUND: The PCS for House Bill 162 consists of several recommendations from the Joint Legislative Administrative Procedure Oversight Committee (APO) to the 2017 Regular Session of the 2017 General Assembly. These recommendations were proposed to APO by the Office of Administrative Hearings and the Rules Review Commission.

BILL ANALYSIS:

Sections 1.1 and 1.2: Authorize Rule Technical Changes

Under current law, an agency can make certain types of technical changes to its rules without publishing notice of the text in the North Carolina Register or holding a public hearing, but such a change must still be submitted to the Rules Review Commission.

Section 1.1 would provide that these technical changes would not need to be submitted to the Rules Review Commission.

Section 1.2 would authorize the Codifier of Rules to make certain types of technical changes to an agency's rules. The Codifier could only do this after consulting with the agency.

Sections 2.1 and 2.2: Clarify Contested Case Policy

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

Under current law, a person aggrieved by an agency action is not required to petition the agency for rule making or to seek or obtain a declaratory ruling before seeking judicial review.

Section 2.1 would provide that a person aggrieved by an agency action is not required to petition the agency for rule making or to seek or obtain a declaratory ruling before commencing a contested case.

Section 2.2 would make a conforming change.

Section 3: Amend Periodic Review of Rules Process

Under the current process for the periodic review of rules, agencies must classify their rules as necessary with substantive public interest, necessary without substantive public interest, or unnecessary. Agencies must then readopt the rules that were classified as necessary with substantive public interest. Such rules are subject to notice and public comment requirements and review by the Rules Review Commission. Rules that are classified as unnecessary or necessary without substantive public interest are not subject to readoption.

Section 3 would eliminate the category of necessary without substantive public interest so that all rules would be classified as either necessary or unnecessary. Rules that are classified as necessary would be subject to readoption.

EFFECTIVE DATE: House Bill 162 would be effective when it becomes law. The revisions to the process for the review and periodic readoption of existing rules would apply to agency rule reports submitted to the Office of Administrative Hearings on or after May 1, 2017.

Attachment 9

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 142

Short Title:	Increase Oversight of OLBs.	(Publi
Sponsors:	Representatives Stevens and Jordan (Primary Sponsors). *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	Judiciary III	

February 22, 2017

A BILL TO BE ENTITLED

AN ACT TO INCREASE OVERSIGHT OF OCCUPATIONAL LICENSING BOARDS, AS RECOMMENDED BY THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93B-2 is amended by adding a new subsection to read:

"(c1) Each occupational licensing board shall provide the Joint Legislative Administrative Procedure Oversight Committee with the name and contact information of the individual responsible for filing the reports required by this section. Each occupational licensing board shall keep this information current and notify the Committee within 30 days of any changes in this information."

SECTION 2. G.S. 93B-5(g) reads as rewritten:

"(g) Within six months of a board member's initial appointment to the board, and at least once within every two calendar years thereafter, a board member shall receive training, either from the board's staff, including its legal advisor, or from an outside educational institution such as the School of Government of the University of North Carolina, on the statutes governing the board and rules adopted by the board, as well as the following State and federal laws, in order to better understand the obligations and limitations of a State agency:

(1) Chapter 150B, The Administrative Procedure Act.
(2) Chapter 132, The Public Records Law.
(3) Article 33C of Chapter 143, The Open Meetings Act.
(4) Articles 31 and 31A of Chapter 143, The State Tort Claims Act and The Defense of State Employees Law.
(5) Chapter 138A, The State Government Ethics Act.
(6) Chapter 120C, Lobbying.
(7) Antitrust law and State action immunity.

Completion of the training requirements contained in Chapter 138A and Chapter 120C of the General Statutes satisfies the requirements of subdivisions (5) and (6) of this subsection."

SECTION 3. Chapter 93B of the General Statutes is amended by adding six new sections to read:

"**§ 93B-17. Occupational licensing board rule making.**

(a) Each occupational licensing board shall adopt rules for the receipt and resolution of complaints, for taking disciplinary or enforcement actions against its licensees, and for taking enforcement actions against persons not licensed by the board.

(b) Any interpretation, clarification, or other delineation of the scope of practice of an occupational licensing board shall be adopted as a rule.

"**§ 93B-18. Unlicensed activity.**

(a) An occupational licensing board shall have the authority to investigate unlicensed activity and notify unlicensed persons and entities of the possible violation of the law and administrative rules and any civil action or criminal penalty that may be imposed by a court. The notification shall not indicate that the occupational licensing board has made any finding of a violation but may indicate the board's belief or opinion that a particular act may violate the board's enabling statutes, include factual information regarding legislation and court proceedings concerning the potential violation, and provide notice of the board's intention to pursue administrative remedies or court proceedings with regard to the potential violation.

(b) Any occupational licensing board providing notification to unlicensed persons and entities of a possible violation of the law and administrative rules and any civil action or criminal penalty that may be imposed by a court shall include the following statement in the notification:

> "You are hereby notified that the opinion expressed herein is not a legal determination. An occupational licensing board does not have the authority to order you to discontinue your current practices. Only a court may determine that you have violated or are violating any law and, if appropriate, impose a remedy or penalty for the violation. Further, pursuant to G.S. 150B-4, you may have the right, prior to initiation of any court action by the occupational licensing board, to request a declaratory ruling regarding whether your particular conduct is lawful. You are further notified that any right to a declaratory ruling supplements any other legal rights that you may already have to establish the legality of your conduct with respect to the goods or services you offer or provide."

"**§ 93B-19. Venue for court enforcement.**

The venue for occupational licensing boards seeking court order for injunctive relief or to show cause for failure to comply with a subpoena lawfully issued by the occupational licensing board shall be in the superior court of the county where the defendant resides or in the county where the occupational licensing board has its principal place of business.

"**§ 93B-20. Injunctive relief.**

An occupational licensing board may appear in its own name in superior court in actions for injunctive relief to restrain the violation of the provisions of a statute administered by the board or a rule or order of the board. The superior court shall have the jurisdiction to grant these injunctions, restraining orders, or take other appropriate action even if criminal prosecution has been or may be instituted as a result of the violations, or whether the person is a licensee of the board. No board shall issue such orders independently of the superior court unless specifically authorized to do so by law.

"**§ 93B-21. Jurisdictional disputes between boards.**

It is the policy of the State that jurisdictional disputes among occupational licensing boards shall be resolved through informal procedures. If a jurisdictional dispute among occupational licensing boards cannot be resolved through informal procedures, any affected board may commence an administrative proceeding to resolve the jurisdictional dispute by filing a petition with the Office of Administrative Hearings and serve the petition on all affected boards. Once the petition is filed and the required fee is paid, the dispute shall become a contested case and shall be conducted by the Office of Administrative Hearings under Articles 3 and 4 of Chapter 150B of the General Statutes.

"**§ 93B-22. Complaint process.**

Each occupational licensing board shall develop and implement a complaint process that provides for all of the following:

(1) A description of the complaint process on the board's Web site, including the types of violations that are under the jurisdictional authority of the board.

(2) Electronic complaint submission via the board's Web site, including a prominently displayed link to a complaint form.

(3) The ability to provide complainants with a written description of the final disposition of each complaint."

SECTION 4. The Joint Legislative Administrative Procedure Oversight Committee shall continue to monitor and study the effects of the opinion in *North Carolina State Board of Dental Examiners v. Federal Trade Commission* and other issues related to the scope of practice jurisdiction of occupational licensing boards.

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

Attachment 10

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H D

HOUSE BILL 142
PROPOSED COMMITTEE SUBSTITUTE H142-CSSB-3 [v.2]
02/28/2017 04:07:35 PM

Short Title: Increase Oversight of OLBs. (Public

Sponsors:

Referred to:

February 22, 2017

A BILL TO BE ENTITLED

AN ACT TO INCREASE OVERSIGHT OF OCCUPATIONAL LICENSING BOARDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93B-1 reads as rewritten:

"**§ 93B-1. ~~Definitions.~~Definitions; List of occupational licensing boards.**

(a) As used in this ~~Chapter:~~Chapter, the following definitions apply:

(1) ~~"License" means any license (other than a privilege license),~~License. – Any license, other than a privilege license, certificate, or other evidence of qualification which an individual is required to obtain before he or she may engage in or represent himself or herself to be a member of a particular profession or occupation.

(2) ~~"Occupational licensing board" means any~~Occupational licensing board. – Any board, committee, commission, or other agency in North Carolina which receives no General Fund revenue and is ~~established for the primary purpose of regulating the entry of persons into, and/or the conduct of persons within, a particular profession or occupation, and which is authorized to issue licenses; "occupational licensing board" does not include State agencies, staffed by full-time State employees, which as a part of their regular functions may issue licenses.~~given statutory authority to do all of the following:

a. Determine minimum qualifications required for licensure for a particular profession or occupation.

b. Issue licenses to qualified applicants.

c. Regulate the conduct of licensees within a particular profession or occupation.

d. Seek injunctive relief to prohibit unlicensed individuals or entities from engaging in certain activities as defined by statute.

e. Collect fees to support agency operations.

(b) Occupational licensing boards include only those boards specifically identified in this subsection. No additional boards or commissions shall be added to this list without first having been approved by the Joint Legislative Administrative Procedure Oversight Committee of the General Assembly as being necessary in that the profession subject to licensure affects the health, safety, or welfare of the public and that mandatory licensure is necessary to ensure minimum standards of competency so as to protect the public from unqualified persons or unprofessional conduct by persons or entities practicing in the profession. Occupational licensing boards shall include only the following:

(1) Acupuncture Licensing Board.

(2) Alarm Systems Licensing Board.
(3) North Carolina Board of Landscape Architects.
(4) North Carolina Landscape Contractors' Licensing Board.
(5) Board of Examiners for Speech and Language Pathologists and Audiologists.
(6) Midwifery Joint Subcommittee.
(7) North Carolina Appraisal Board.
(8) North Carolina Auctioneers Commission.
(9) North Carolina Board for Licensing of Geologists.
(10) North Carolina Board for Licensing of Soil Scientists.
(11) North Carolina Board of Architecture.
(12) North Carolina Board of Athletic Trainer Examiners.
(13) North Carolina Board of Cosmetic Art Examiners.
(14) North Carolina Board of Dietetics/Nutrition.
(15) North Carolina Board of Electrolysis Examiners.
(16) North Carolina Board of Funeral Service.
(17) North Carolina Board of Licensed Professional Counselors.
(18) North Carolina Board of Massage and Bodywork Therapy.
(19) North Carolina Board of Nursing.
(20) North Carolina Board of Occupational Therapy.
(21) North Carolina Board of Pharmacy.
(22) North Carolina Board of Physical Therapy Examiners.
(23) North Carolina Board of Podiatry Examiners.
(24) North Carolina Board of Recreational Therapy Licensure.
(25) North Carolina Cemetery Commission.
(26) North Carolina Criminal Justice Education and Training Standards Commission.
(27) Sheriffs' Education and Training Standards Commission.
(28) North Carolina Home Inspector Licensure Board.
(29) North Carolina Interpreter and Transliterator Licensing Board.
(30) North Carolina Irrigation Contractors' Licensing Board.
(31) North Carolina State Licensing Board for General Contractors.
(32) North Carolina Locksmith Licensing Board.
(33) North Carolina Marriage and Family Therapy Licensure Board.
(34) North Carolina Medical Board.
(35) North Carolina On-Site Wastewater Contractors and Inspectors Certification Board.
(36) North Carolina Psychology Board.
(37) North Carolina Real Estate Commission.
(38) North Carolina Respiratory Care Board.
(39) North Carolina Social Work Certification and Licensure Board.
(40) North Carolina State Board of Dental Examiners.
(41) North Carolina State Board of Examiners for Engineers and Surveyors.
(42) North Carolina State Board of Examiners for Nursing Home Administrators.
(43) North Carolina State Board of Examiners in Optometry.
(44) North Carolina State Board of Examiners of Fee-Based Practicing Pastoral Counselors.
(45) North Carolina State Board of Opticians.
(46) North Carolina State Hearing Aid Dealers and Fitters Board.
(47) North Carolina Substance Abuse Professional Practice Board.
(48) North Carolina Veterinary Medical Board.
(49) Private Protective Services Board.

(50) Public Librarian Certification Commission.
(51) State Board of Barber Examiners.
(52) State Board of Certified Public Accountant Examiners.
(53) State Board of Chiropractic Examiners.
(54) State Board of Environmental Health Specialist Examiners.
(55) State Board of Examiners of Electrical Contractors.
(56) State Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors.
(57) State Board of Refrigeration Examiners.
(58) State Board of Registration for Foresters."

SECTION 2. G.S. 93B-2 reads as rewritten:

"**§ 93B-2. Annual reports required; contents; open to inspection; sanction for failure to report.**

(a) No later than October 31 of each year, each occupational licensing board shall file electronically with the ~~Secretary of State, the Attorney General, and the~~ Joint Legislative Administrative Procedure Oversight ~~Committee~~ Committee, the Department of Commerce, the State Auditor, the Office of State Budget and Management, and the State Controller an annual report containing all of the following information:

(1) The address of the board, and the names of its members and officers.
(1a) The total number of licensees supervised by the board.
(2) The number of persons who applied to the board for examination.
(3) The number who were refused examination.
(4) The number who took the examination.
(5) The number to whom initial licenses were issued.
(5a) The number who failed the examination.
(6) The number who applied for license by reciprocity or comity.
(7) The number who were granted licenses by reciprocity or comity.
(7a) The number of official complaints received involving licensed and unlicensed activities.
(7b) The number of disciplinary actions taken against licensees, or other actions taken against nonlicensees, including injunctive relief.
(8) The number of licenses suspended or revoked.
(9) The number of licenses terminated for any reason other than failure to pay the required renewal fee.
(10) The substance of any anticipated request by the occupational licensing board to the General Assembly to amend statutes related to the occupational licensing board.
(11) The substance of any anticipated change in rules adopted by the occupational licensing board or the substance of any anticipated adoption of new rules by the occupational licensing board.
(12) A financial report that includes the source and amount of all funds credited to the occupational licensing board and the purpose and amount of all funds disbursed by the occupational licensing board during the previous fiscal year.
(13) The certification of a proper system of internal control and other financial information as required by G.S. 143D-7.
(14) A report of all civil penalties, civil forfeitures, and civil fines collected and remitted to the Civil Penalty and Forfeiture Fund pursuant to G.S. 115C-457.2.
(15) The statute or rule authorizing each fee collected, the amount of the fee, the date the fee was last changed, the number of times the fee was collected during the prior reporting period, and the total receipts resulting from the fee during the prior reporting period.

(16) If the occupational licensing board has a budget of at least fifty thousand dollars ($50,000), a financial audit of its operations.

~~(b) No later than October 31 of each year, each occupational licensing board shall file electronically with the Secretary of State, the Attorney General, the Office of State Budget and Management, and the Joint Legislative Administrative Procedure Oversight Committee a financial report that includes the source and amount of all funds credited to the occupational licensing board and the purpose and amount of all funds disbursed by the occupational licensing board during the previous fiscal year.~~

(c) The reports required by this section shall be open to public ~~inspection.~~inspection and shall be posted on the Internet Web site of the occupational licensing board.

(c1) Each occupational licensing board shall provide the Joint Legislative Administrative Procedure Oversight Committee with the name and contact information of the individual responsible for filing the reports required by this section. Each occupational licensing board shall keep this information current and notify the Committee within 30 days of any changes in this information.

(d) The Joint Legislative Administrative Procedure Oversight Committee shall review the reports submitted pursuant to this section and shall notify any board that fails to file the reports required by this section. Failure of a board to comply with the reporting requirements of this section by October 31 of each year shall result in a suspension of the board's authority to expend any funds until such time as the board files the required reports. Suspension of a board's authority to expend funds under this subsection shall not affect the board's duty to issue and renew licenses or the validity of any application or license for which fees have been tendered in accordance with law. Each board shall adopt rules establishing a procedure for implementing this subsection and shall maintain an escrow account into which any fees tendered during a board's period of suspension under this subsection shall be deposited."

SECTION 3. G.S. 93B-4 reads as rewritten:

"**§ 93B-4. Audit of Occupational Licensing Boards; payment of costs.**

(a) The State Auditor shall audit occupational licensing boards from time to time to ensure their proper operation. The books, records, and operations of each occupational licensing board shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. In accordance with G.S. 147-64.7(b), the State Auditor may contract with independent professionals to meet the requirements of this section.

~~(b) Each occupational licensing board with a budget of at least fifty thousand dollars ($50,000) shall conduct an annual financial audit of its operations and provide a copy to the State Auditor.~~"

SECTION 4. G.S. 93B-5 reads as rewritten:

"**§ 93B-5. Compensation, employment, and training of board members.**

(a) ~~Board~~ Notwithstanding the provisions of G.S. 138-5, board members shall receive as compensation for their services per diem not to exceed ~~one~~ two hundred dollars ~~($100.00)~~ ($200.00) for each day during which they are engaged in the official business of the board.

...

(g) Within six months of a board member's initial appointment to the board, and at least once within every two calendar years thereafter, a board member shall receive training, either from the board's staff, including its legal advisor, or from an outside educational institution such as the School of Government of the University of North Carolina, on the statutes governing the board and rules adopted by the board, as well as the following State and federal laws, in order to better understand the obligations and limitations of a State agency:

(1) Chapter 150B, The Administrative Procedure Act.

(2) Chapter 132, The Public Records Law.

(3) Article 33C of Chapter 143, The Open Meetings Act.

(4) Articles 31 and 31A of Chapter 143, The State Tort Claims Act and The Defense of State Employees Law.
(5) Chapter 138A, The State Government Ethics Act.
(6) Chapter 120C, Lobbying.
(7) Antitrust law and State action immunity.

Completion of the training requirements contained in Chapter 138A and Chapter 120C of the General Statutes satisfies the requirements of subdivisions (5) and (6) of this subsection."

SECTION 5.(a) Chapter 93B of the General Statutes is amended by adding six new sections to read:

"**§ 93B-17. Occupational licensing board rule making.**

(a) Each occupational licensing board shall adopt rules for the receipt and resolution of complaints, for taking disciplinary or enforcement actions against its licensees, and for taking enforcement actions against persons not licensed by the board.

(b) Any interpretation, clarification, or other delineation of the scope of practice of an occupational licensing board shall be adopted as a rule.

"**§ 93B-18. Unlicensed activity.**

(a) An occupational licensing board shall have the authority to investigate unlicensed activity and notify unlicensed persons and entities of the possible violation of the law and administrative rules and any civil action or criminal penalty that may be imposed by a court. The notification shall not indicate that the occupational licensing board has made any finding of a violation but may indicate the board's belief or opinion that a particular act may violate the board's enabling statutes, include factual information regarding legislation and court proceedings concerning the potential violation, and provide notice of the board's intention to pursue administrative remedies or court proceedings with regard to the potential violation.

(b) Any occupational licensing board providing notification to unlicensed persons and entities of a possible violation of the law and administrative rules and any civil action or criminal penalty that may be imposed by a court shall include the following statement in the notification:

> You are hereby notified that the opinion expressed herein is not a legal determination. An occupational licensing board does not have the authority to order you to discontinue your current practices. Only a court may determine that you have violated or are violating any law and, if appropriate, impose a remedy or penalty for the violation. Further, pursuant to G.S. 150B-4, you may have the right, prior to initiation of any court action by the occupational licensing board, to request a declaratory ruling regarding whether your particular conduct is lawful. You are further notified that any right to a declaratory ruling supplements any other legal rights that you may already have to establish the legality of your conduct with respect to the goods or services you offer or provide.

"**§ 93B-19. Venue for court enforcement.**

The venue for occupational licensing boards seeking court order for injunctive relief or to show cause for failure to comply with a subpoena lawfully issued by the occupational licensing board shall be in the superior court of the county where the defendant resides or in the county where the occupational licensing board has its principal place of business.

"**§ 93B-20. Injunctive relief.**

An occupational licensing board may appear in its own name in superior court in actions for injunctive relief to restrain the violation of the provisions of a statute administered by the board or a rule or order of the board. The superior court shall have the jurisdiction to grant these injunctions, restraining orders, or take other appropriate action even if criminal prosecution has been or may be instituted as a result of the violations, or whether the person is a licensee of the board. No board shall issue such orders independently of the superior court unless specifically authorized to do so by law.

"**§ 93B-21. Jurisdictional disputes between boards.**

It is the policy of the State that jurisdictional disputes among occupational licensing boards shall be resolved through informal procedures. If a jurisdictional dispute among occupational licensing boards cannot be resolved through informal procedures, any affected board may commence an administrative proceeding to resolve the jurisdictional dispute by filing a petition with the Office of Administrative Hearings and serve the petition on all affected boards. Once the petition is filed and the required fee is paid, the dispute shall become a contested case and shall be conducted by the Office of Administrative Hearings under Articles 3 and 4 of Chapter 150B of the General Statutes.

"**§ 93B-22. Complaint process.**

Each occupational licensing board shall develop and implement a complaint process that provides for all of the following:

(1) A description of the complaint process on the board's Web site, including the types of violations that are under the jurisdictional authority of the board.

(2) Electronic complaint submission via the board's Web site, including a prominently displayed link to a complaint form.

(3) The ability to provide complainants with a written description of the final disposition of each complaint."

SECTION 5.(b) The complaint process provided for in G.S. 93B-22 shall be implemented and active on each board's Web site no later than January 1, 2018.

SECTION 6. G.S. 115C-457.2 reads as rewritten:

"**§ 115C-457.2. Remittance of moneys to the Fund.**

The clear proceeds of all civil penalties, civil forfeitures, and civil fines that are collected by a State agency and that the General Assembly is authorized to place in a State fund pursuant to Article IX, Section 7(b) of the Constitution shall be remitted to the Office of State Budget and Management by the officer having custody of the funds within 10 days after the close of the calendar month in which the revenues were received or collected. Notwithstanding any other law, all such funds shall be deposited in the Civil Penalty and Forfeiture Fund. The clear proceeds of these funds include the full amount of all civil penalties, civil forfeitures, and civil fines collected under authority conferred by the State, diminished only by the actual costs of collection, not to exceed twenty percent (20%) of the amount collected. The collection cost percentage to be used by a State agency shall be established and approved by the Office of State Budget and Management on an annual basis based upon the computation of actual collection costs by each agency for the prior fiscal year. Occupational licensing boards as defined in G.S. 93B-1 shall satisfy the annual reporting obligation imposed under this section by including the information required in the occupational licensing board's annual report required pursuant to G.S. 93B-2."

SECTION 7. G.S. 143C-9-4 reads as rewritten:

"**§ 143C-9-4. Biennial fee report.**

The Office of State Budget and Management shall prepare a report biennially on the fees charged by each State department, bureau, division, board, commission, institution, and agency during the previous two fiscal years. The report shall include the statutory or regulatory authority for each fee, the amount of the fee, when the amount of the fee was last changed, the number of times the fee was collected during the prior fiscal year, and the total receipts from the fee during the prior fiscal year. The Office of State Budget and Management shall obtain the information required under this section for occupational licensing boards as defined in G.S. 93B-1 from the annual report filed by each occupational licensing board pursuant to G.S. 93B-2."

SECTION 8. G.S. 143D-7 reads as rewritten:

"**§ 143D-7. Agency management responsibilities.**

(a) The management of each State agency bears full responsibility for establishing and maintaining a proper system of internal control within that agency. Each principal executive officer and each principal fiscal officer shall annually certify, in a manner prescribed by the State

Controller, that the agency has in place a proper system of internal control. The State Controller shall develop policies and procedures to direct agencies in their evaluation.

(b) The management of each State agency also bears the responsibility periodically to submit accurate and complete financial information to the State Controller for compilation into North Carolina State government's various financial reports and other related financial information disseminated to the public. With the submission of such periodic reports to the State Controller, each agency's principal executive officer and each agency's principal fiscal officer shall certify, in a manner prescribed by the State Controller, to the accuracy and completeness of the financial information submitted.

(c) Occupational licensing boards as defined in G.S. 93B-1 shall satisfy the annual reporting obligation imposed under this section by including the information required in the occupational licensing board's annual report required pursuant to G.S. 93B-2."

SECTION 9. G.S. 150B-38(a) reads as rewritten:

"**§ 150B-38. Scope; hearing required; notice; venue.**

(a) The provisions of this Article shall apply to:

(1) Occupational licensing ~~agencies.~~boards, as defined by G.S. 93B-1.

(2) The State Banking Commission, the Commissioner of Banks, and the Credit Union Division of the Department of Commerce.

(3) The Department of Insurance and the Commissioner of Insurance.

(4) The State Chief Information Officer in the administration of the provisions of Article 14 of Chapter 143B of the General Statutes.

(5) The North Carolina State Building Code Council.

(6) The State Board of Elections in the administration of any investigation or audit under the provisions of Article 22A of Chapter 163 of the General Statutes.

(7) The Securities Division of the Department of the Secretary of State."

SECTION 10. G.S. 150B-45 reads as rewritten:

"**§ 150B-45. Procedure for seeking review; waiver.**

(a) Procedure. – To obtain judicial review of a final decision under this Article, the person seeking review must file a petition within 30 days after the person is served with a written copy of the decision. The petition must be filed as follows:

(1) Contested tax cases. – A petition for review of a final decision in a contested tax case arising under G.S. 105-241.15 must be filed in the Superior Court of Wake County.

(2) Other final decisions. – A petition for review of any other final decision under this Article must be filed in the superior court of the county where the person aggrieved by the administrative decision resides, in the county where the agency has its principal place of business, or in the case of a person residing outside the State, in the county where the contested case which resulted in the final decision was filed. If a petitioner files a petition in a county other than as provided in this subdivision, the superior court may order a change of venue pursuant to G.S. 1-83; provided, however, that improper venue shall not be grounds for dismissal of the petition.

(b) Waiver. – A person who fails to file a petition within the required time waives the right to judicial review under this Article. For good cause shown, however, the superior court may accept an untimely petition."

SECTION 11. The Joint Legislative Administrative Procedure Oversight Committee shall continue to monitor and study the effects of the opinion in *North Carolina State Board of Dental Examiners v. Federal Trade Commission* and other issues related to the scope of practice jurisdiction of occupational licensing boards.

SECTION 12.(a) G.S. 86A-3 reads as rewritten:

"**§ 86A-3. Qualifications for certificate as a registered barber.**

A certificate of registration as a registered barber shall be issued by the Board to any person who meets all of the following qualifications:

(1) Has attended an approved barber school for at least 1528 hours.
(2) Has completed a 12-month apprenticeship under the supervision of a licensed barber, as provided in G.S. 86A-24.
(3) Has passed a clinical examination conducted by the Board.
(4) Has submitted to the Board the affidavit required by G.S. 86A-24(c) certifying that the applicant has served the apprenticeship required by subdivision (2).
(5) Has received a high school diploma or its equivalency or a high school graduation equivalency certificate and provided documentation thereof to the Board."

SECTION 12.(b) G.S. 86A-22 reads as rewritten:

"**§ 86A-22. Licensing and regulating barber schools and colleges.**

The North Carolina State Board of Barber Examiners may approve barber schools or colleges in the State, and may prescribe rules and regulations for their operation. The Board shall adopt rules establishing criteria for barber schools and colleges to maintain their accreditation. No barber school or college shall be approved by the Board unless the school or college meets all of the following requirements:

(1) Each school shall provide a course of instruction of at least ~~1528~~ 1,528 hours.
(2) Each school shall employ at least two instructors for the first 40 enrolled students and employ at least one additional instructor for every additional 20 enrolled students. Schools that are organized as nonprofits and have obtained a ruling from the Internal Revenue Service recognizing their tax-exempt status shall have at least one instructor for every 20 enrolled students. No school, whether for profit or nonprofit, shall provide practical training and theoretical training simultaneously unless at least two instructors are present.
(2a) Each student shall have received a high school diploma or its equivalency or a high school graduation equivalency certificate and provided documentation thereof to the Board and the school.
(3) An application for a student's permit, on a form prescribed by the Board, must be filed with the Board before the student enters school. No student may enroll without having obtained a student's permit.

...."

SECTION 13. G.S. 143B-68 reads as rewritten:

"**§ 143B-68. Public Librarian Certification Commission – members; selection; quorum; compensation.**

The Public Librarian Certification Commission of the Department of Natural and Cultural Resources shall consist of five members as follows: (i) ~~the chairman of the North Carolina Association of Library Trustees, (ii)~~ the chairman of the public libraries section of the North Carolina Library Association, ~~(iii) an individual~~ (ii) two individuals named by the Governor upon the nomination of the North Carolina Library Association, ~~(iv)~~(iii) the dean of a State or regionally accredited graduate school of librarianship in North Carolina appointed by the ~~Governor~~ Governor, and ~~(v)~~(iv) one member at large appointed by the Governor.

The members shall serve four-year terms or while holding the appropriate chairmanships. Any appointment to fill a vacancy created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, and nonfeasance according to the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem, and necessary travel expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of the Department through the regular staff of the Department."

SECTION 14. Except as otherwise provided, this act is effective when it becomes law.

Attachment 11

HOUSE BILL 142:
Increase Oversight of OLBs.

2017-2018 General Assembly

Committee:	House Judiciary III	**Date:**	March 1, 2017
Introduced by:	Reps. Stevens, Jordan	**Prepared by:**	Jeffrey Hudson
Analysis of:	PCS to First Edition H142-CSSB-3		Legislative Analyst

OVERVIEW: The Proposed Committee Substitute for House Bill 142 (PCS) would make a number of changes to the statutes governing occupational licensing boards (OLBs) to increase oversight of the OLBs.

BACKGROUND: In *North Carolina State Board of Dental Examiners v. Federal Trade Commission,* 135 S. Ct. 1101 (2015), the US Supreme Court found that the NC Dental Board was not protected from antitrust actions under the doctrine of state action immunity because the Board was controlled by active market participants and was not subject to active supervision by the State.

House Bill 142, as introduced, is a recommendation of the Joint Legislative Administrative Procedure Oversight Committee (APO) designed to respond to the supervision concerns raised in *North Carolina State Board of Dental Examiners v. Federal Trade Commission.*

With the exception of a provision requiring OLBs to update their contact information, the PCS is identical to the 3rd Edition of House Bill 1007, which was passed by the House of Representatives during the 2016 Regular Session.

CURRENT LAW AND BILL ANALYSIS:

Section 1 of the PCS would amend the definition of "occupational licensing board" and create an exclusive list of all OLBs in the State. This section would also provide that no board or commission could be added to the list without the approval of APO.

Section 2 of the PCS would delete the Secretary of State and the Attorney General and add the Department of Commerce, the State Auditor, the Office of State Budget and Management, and the State Controller as recipients of the annual report that OLBs are required to submit. This section would also expand the information the annual report is required to include and require OLBs to update their contact information.

Section 3 of the PCS would make a conforming change.

Section 4 of the PCS would increase the per diem authorization for OLB members from $100 to $200 per day and would require OLB members to receive training in antitrust law and State action immunity.

Section 5 of the PCS would add several new sections to Chapter 93B as follows:

- G.S. 93B-17 would require OLBs to adopt rules for the receipt and resolution of complaints, for taking disciplinary or enforcement actions against its licensees, and for taking enforcement actions

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

against persons not licensed by the board. This new statute would also require that any interpretation, clarification, or other delineation of the scope of practice of an OLB be adopted as a rule.

- G.S. 93B-18 would clarify OLBs' authority to investigate unlicensed activity and to notify unlicensed person of possible violations of laws and rules. This section would also provide standardized language for notifying unlicensed persons and entities of possible violations of the law. The notification would not indicate that the OLB has made a finding of a violation, but may indicate the OLB's belief or opinion that an unlicensed activity may violate the OLB's enabling statutes, include factual information regarding legislation and court proceedings concerning the potential violation, and provide notice of the OLB's intent to pursue administrative remedies or court proceedings.
- G.S. 93B-19 would provide that the venue for injunctive relief sought by an OLB is the superior court of the county where the defendant resides or in the county where the OLB has its principal place of business.
- G.S. 93B-20 would authorize an OLB to appear in its own name in actions for injunctive relief and authorize the superior court to grant injunctions, restraining orders, or take other appropriate action even if criminal prosecution has be instituted. No OLB shall issue orders independently of the superior court unless specifically authorized to do so by law.
- G.S. 93B-21 would encourage the resolution of jurisdictional disputes among OLBs by informal procedures and would authorize the use of the administrative hearing process if informal procedures fail.
- G.S. 93B-22 would require each OLB to implement a complaint process, with the requirements specified, and implement that process no later than January 1, 2018.

Sections 6, 7, and 8 of the PCS would amend other statutes requiring certain information be reported by OLBs by providing that the report required by G.S. 93B-2 will satisfy these reporting requirements.

Section 9 would add a clarifying cross-reference to the statute governing the scope of agencies that may hear their own contested cases and would add the Securities Division of the Department of the Secretary of State to the list of such agencies.

Section 10 of the PCS would clarify venue for superior court review of administrative final decisions.

Section 11 of the PCS would provide that APO shall continue to monitor and study the effects of *North Carolina State Board of Dental Examiners v. Federal Trade Commission* and other issues related to the scope of practice jurisdiction of OLBs.

Section 12 of the PCS would add to the requirements for barber certification that an applicant for certification must have a high school diploma or its equivalent. This section would also add to the approval requirements for barber schools and colleges that each student must have received a high school diploma or its equivalent.

Section 13 of the PCS would amend the membership of the Public Librarian Certification Commission by eliminating the chairman of the North Carolina Association of Library Trustees and giving the Governor an additional appointment upon nomination by the North Carolina Library Association.

EFFECTIVE DATE: Except as otherwise provided, this act is effective when it becomes law.

House Committee on Judiciary III
Wednesday, March 8, 2017 at 1:00 PM
Room 421 of the Legislative Office Building

Sergeant of Arms

1. **Mark Cone**
2. **Will Crocker**
3. **Joe Crook**

House Committee on Judiciary III
Wednesday, March 8, 2017 at 1:00 PM
Room 421 of the Legislative Office Building

MINUTES

The House Committee on Judiciary III met at 1:00 PM on Wednesday, March 8, 2017 in Room 421 of the Legislative Office Building. Representatives Jordan, Zachary, Reives, Conrad, Horn, Johnson, Lehman, Quick, B. Turner and White attended. Brad Krehely and Billy Godwin (Research Staff Counsel), along with Emma Benson (Committee Clerk) were in attendance. A Visitor Registration list is attached and made part of these minutes. (Attachment 1)

Representative Jonathan Jordan, Chair, presided. The chair called the meeting to order at 1:00 PM. He introduced the Sergeants at Arms (Attachment 2) and House Pages (Attachment 3). The following bills were considered:

House Bill 95 and a summary are provided (Attachment 4 and Attachment 5)
HOUSE BILL 95: TRUCK DELIVERIES TO PORT/NIGHT TRAVEL

Chairman Jordan recognized Rep. Torbett to speak on the bill.

House Bill 95 would authorize the Department of Transportation (DOT) to issue permits allowing operation of oversize and overweight vehicles after sunset and would prohibit restrictions on permitted oversized and overweight vehicles traveling after sunset to and from international ports. The act would be effective when it becomes law.

Chairman Jordan recognized Representative Reives to ask a question on the bill.

Chairman Jordan recognized Representative Reives who made a motion to give a favorable report of the bill. The motion passed without dissent.

House Bill 205 and a summary are provided (Attachment 6 and Attachment 7)
HOUSE BILL 205: WORKERS' COMPENSATION/PRISON INMATES

Chairman Jordan recognized Rep. McNeill to speak on the bill.

House Bill 205 would provide that inmates employed under the Prison Industry Enhancement Program must receive workers' compensation. The act is effective when it becomes law.

Rep. Zachary moved for a technical amendment on the bill (Attachment 8). The motion passed without dissent.

Chairman Jordan recognized Karen Brown, Director of Correction Enterprises to answer questions from Rep. Horn. Rep. Horn asked why this bill was necessary. Ms. Brown informed that they were currently out of compliance with Federal regulations, and this bill would make them compliant.

Chairman Jordan recognized Kendall Bourdon from the Industrial Commission to inform that the Industrial Commission did not have a position on the bill.

Chairman Jordan recognized Representative Johnson to ask if there is a cost to the bill. Ms. Brown of Correction Enterprises answered no, the cost would be the responsibility of the contractor.

Chairman Jordan recognized Rep. Johnson who moved to give a favorable report to the PCS, unfavorable to the original bill. The motion passed without dissent.

There being no further business, Chairman Jordan adjourned the meeting at 1:17 PM.

Representative Jonathan Jordan, Chair
Presiding

Emma Benson, Committee Clerk

Attachments

1. Visitor Registration Sheet
2. Sergeants at Arms
3. House Pages
4. House Bill 95
5. House Bill 95 Summary
6. House Bill 205
7. House Bill 205 Summary
8. Technical Amendment, House Bill 205

Attachment 1

VISITOR REGISTRATION SHEET

House Committee on Judiciary III — 3-8-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLEI

NAME	FIRM OR AGENCY AND ADDRESS
Kendall Bowden	NC Industrial Commission
Chris Broughton	MWC
Karen Brown	DPS - Correction Enterprises
Andy Brandon	NC DPS

VISITOR REGISTRATION SHEET

House Committee on Judiciary III — 3-8-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Peter Bolac	NC State Bar
Rebecca Calvert	DMV
Tonya Hoban	TSS
Kris Parker	NCAJ
	Rep Szoka

Attachment 2

Committee Sergeants at Arms

NAME OF COMMITTEE House judiciary #3

DATE: 3-8-17 Room: 421

House Sgt-At Arms:

1. Name: Mark Cone
2. Name: Joe Crook
3. Name: Will Crocker
4. Name:
5. Name:

Senate Sgt-At Arms:

1. Name:
2. Name:
3. Name:
4. Name:
5. Name:

Attachment 3

House Pages
Assignments
Wednesday, March 08, 2017
Session: 2:00 PM

Committee	Room	Time	Staff	Comments	Member
Judiciary III	421	1:00 PM	Rayquian Jones		Rep. Speaker Tim Moore
			Brian Ornelas		Rep. Speaker Tim Moore
Other	643	1:00 PM	Mahlaysia Thomas		Rep. Speaker Tim Moore

Attachment 4

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

HOUSE BILL 95
Committee Substitute Favorable 2/28/17

Short Title: Truck Deliveries to Port/Night Travel. (Publi

Sponsors:

Referred to:

February 15, 2017

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE PERMITTED OVERSIZED OR OVERWEIGHT VEHICLES TO TRAVEL AFTER SUNSET WHEN TRANSPORTING AND DELIVERING CARGO, CONTAINERS, OR OTHER EQUIPMENT TO OR FROM INTERNATIONAL PORTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-119 is amended by adding a new subsection to read:

"(b3) For a special permit issued under this section for the transport and delivery of cargo, containers, or other equipment, the Department may allow travel after sunset if the Department determines it will be safe and expedite traffic flow. The Department shall not include a term or condition prohibiting travel after sunset for any permitted shipments going to or from international ports. Nothing in this subsection precludes the Department from restricting movements it determines to be unsafe."

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

Attachment 5

HOUSE BILL 95:
Truck Deliveries to Port/Night Travel.

2017-2018 General Assembly

Committee:	House Judiciary III	**Date:**	March 7, 2017
Introduced by:	Reps. Torbett, Presnell	**Prepared by:**	Billy R. Godwin
Analysis of:	Second Edition		Staff Attorney

OVERVIEW: ***House Bill 95 would authorize the Department of Transportation (DOT) to issue permits allowing operation of oversize and overweight vehicles after sunset and would prohibit restrictions on permitted oversize and overweight vehicles traveling after sunset to and from international ports. The act would be effective when it becomes law.***

CURRENT LAW: Under current law DOT is authorized to issue permits for oversized and overweight vehicles, subject to the rules established by DOT for issuance of the permits. G.S. 20-119

By rule, vehicles issued oversized and overweight permits by DOT may only move between sunrise and sunset. Additional time restrictions may be set by the issuing office in the interest of safety or to expedite flow of traffic. 19A NCAC 02D. 0607

BILL ANALYSIS: House Bill 95 would:

- Authorize DOT to issue oversized and overweight permits for shipments of cargo, containers, or other equipment that allow travel after sunset as long DOT determines it to be safe and it expedites traffic flow.
- Prohibit DOT, when issuing permits for oversize and overweight vehicles, from including permit conditions prohibiting travel after sunset for shipments going to or from international ports.
- Authorize DOT to restrict any movements it determines to be unsafe.

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

**Staff Attorney Wendy Ray substantially contributed to this bill summary.

Karen Cochrane-Brown
Director

H95-SMBD-11-E2-V-2

Legislative Analysis
Division
919-733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

Attachment 6

HOUSE BILL 205:
Workers' Compensation/Prison Inmates.

2017-2018 General Assembly

Committee:	House Judiciary III	**Date:**	March 7, 2017
Introduced by:	Reps. McNeill, Zachary	**Prepared by:**	Brad Krehely
Analysis of:	First Edition		Committee Co-Co

OVERVIEW: ***House Bill 205 would provide that inmates employed under the Prison Industry Enhancement Program must receive workers' compensation. The act is effective when it becomes law.***

CURRENT LAW: Generally, the North Carolina Workers' Compensation Act does not apply to prisoners being worked by the State or any subdivision of the State. There is an exception for prisoners assigned to the Division of Adult Correction of the Department of Public Safety who suffer accidental injury or accidental death arising out of and in the course of the employment, if the prisoner dies or if the results of the injury continues until after the date of the lawful discharge of the prisoner and the injury amounts to a disability. In that case, the discharged prisoner, their dependents, or the next of kin of the discharged prisoner may get workers' compensation by applying to the Industrial Commission. The application must be made within 12 months from the date of the discharge. The maximum compensation to any prisoner or to the dependents or next of kin of any deceased prisoner must not exceed $30.00 per week, and the period of compensation relates to the date of the discharge, not the date of the accident. The compensation stops if a person who has been awarded compensation is sent to prison for an offense committed after the award.

BILL ANALYSIS: House Bill 205 would provide that inmates employed under the Prison Industry Enforcement Plan must receive workers' compensation.

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

BACKGROUND: The Prison Industry Enhancement (PIE) Program is a program established by federal law that allows private commercial employers to employ prison inmates on site at a prison. The prisoners manufacture goods and services that are then sold to the public.

Correction Enterprises runs North Carolina's PIE program. Correction Enterprises was assessed by the contract vendor to the Bureau of Justice Assistance to perform the compliance assessment, the National Correctional Industries Association, and was found to be out of compliance with workers' compensation requirements under 18 U.S.C. 1761 and the 1999 PIECP Guideline. The finding of non-compliance risks program suspension or revocation of certification if State law is not amended.

Karen Cochrane-Brown
Director

H205-SMRN-8-E1-V-5

Legislative Analysis
Division
919-733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

Attachment 7

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H 1

HOUSE BILL 205

Short Title: Workers' Compensation/Prison Inmates. (Publi

Sponsors: Representatives McNeill and Zachary (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary III

March 1, 2017

A BILL TO BE ENTITLED

AN ACT AMENDING PROVISIONS OF THE WORKERS' COMPENSATION ACT RELATING TO PRISONERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 97-13 reads as rewritten:

"**§ 97-13. Exceptions from provisions of Article.**

(a) Employees of Certain Railroads. – This Article shall not apply to railroads or railroad employees nor in any way repeal, amend, alter or affect Article 8 of Chapter 60 or any section thereof relating to the liability of railroads for injuries to employees, nor upon the trial of any action in tort for injuries not coming under the provisions of this Article, shall any provision herein be placed in evidence or be permitted to be argued to the jury. Provided, however, that the foregoing exemption to railroads and railroad employees shall not apply to employees of a State-owned railroad company, as defined in G.S. 124-11, or to electric street railroads or employees thereof; and this Article shall apply to electric street railroads and employees thereof and to this extent the provisions of Article 8 of Chapter 60 are hereby amended.

(b) Casual Employment, Domestic Servants, Farm Laborers, Federal Government, Employer of Less than Three Employees. – This Article shall not apply to casual employees, farm laborers when fewer than 10 full-time nonseasonal farm laborers are regularly employed by the same employer, federal government employees in North Carolina, and domestic servants, nor to employees of such persons, nor to any person, firm or private corporation that has regularly in service less than three employees in the same business within this State, except that any employer without regard to number of employees, including an employer of domestic servants, farm laborers, or one who previously had exempted himself, who has purchased workers' compensation insurance to cover his compensation liability shall be conclusively presumed during life of the policy to have accepted the provisions of this Article from the effective date of said policy and his employees shall be so bound unless waived as provided in this Article; provided however, that this Article shall apply to all employers of one or more employees who are employed in activities which involve the use or presence of radiation.

(c) Most Prisoners. – ~~This~~ Except as provided in this subsection and by subsection (c1) of this section, this Article shall not apply to prisoners being worked by the State or any subdivision thereof, except to the following extent: Whenever any prisoner assigned to the Division of Adult Correction of the Department of Public Safety shall suffer accidental injury or accidental death arising out of and in the course of the employment to which he had been assigned, if there be death or if the results of such injury continue until after the date of the lawful discharge of such prisoner to such an extent as to amount to a disability as defined in this Article, then such discharged

prisoner or the dependents or next of kin of such discharged prisoner may have the benefit of this Article by applying to the Industrial Commission as any other employee; provided, such application is made within 12 months from the date of the discharge; and provided further that the maximum compensation to any prisoner or to the dependents or next of kin of any deceased prisoner shall not exceed thirty dollars ($30.00) per week and the period of compensation shall relate to the date of his discharge rather than the date of the accident. If any person who has been awarded compensation under the provisions of this subsection shall be recommitted to prison upon conviction of an offense committed subsequent to the award, such compensation shall immediately cease. Any awards made under the terms of this subsection shall be paid by the Department of Public Safety from the funds available for the operation of the Division of Adult Correction of the Department of Public Safety. The provisions of G.S. 97-10.1 and 97-10.2 shall apply to prisoners and discharged prisoners entitled to compensation under this subsection and to the State in the same manner as said section applies to employees and employers.

(c1) Certain Inmates. – Inmates employed pursuant to the Prison Industry Enhancement Program shall receive workers' compensation pursuant to G.S. 97-2(5).

(d) Sellers of Agricultural Products. – This Article shall not apply to persons, firms or corporations engaged in selling agricultural products for the producers thereof on commission or for other compensation, paid by the producers, provided the product is prepared for sale by the producer."

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

Attachment 8

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 205

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

H205-ARN-3 [v.2]

Amends Title [NO]
First Edition

Date _____ ,2017

Representative Zachary

moves to amend the bill on page 1, lines 29-31, by rewriting those lines to read:

"(c) Most Prisoners. – This Article shall not apply to prisoners being worked by the State or any subdivision thereof, except ~~to the following extent:~~ as provided in this subsection and subsection (c1) of this section. Whenever any prisoner assigned to the Division of Adult" ; and

and on page 2, line 15, by rewriting that line to read:

"Program shall receive workers' compensation based on the average weekly wage calculated pursuant to G.S. 97-2(5).".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

House Committee on Judiciary III
Wednesday, March 22, 2017 at 1:00 PM
Room 421 of the Legislative Office Building

Sergeant at Arms

1. **Bill Bass**
2. **Will Crocker**
3. **Terry McCraw**

House Committee on Judiciary III
Wednesday, March 22, 2017 at 1:00 PM
Room 421 of the Legislative Office Building

MINUTES

The House Committee on Judiciary III met at 1:00 PM on Wednesday, March 22, 2017 in Room 421 of the Legislative Office Building. Representatives Jordan, Zachary, Reives, Conrad, Hastings, Horn, Lehman, Quick, B. Turner and White attended. Brad Krehely, Kristen Harris and Billy Godwin (Research Staff Counsel), along with Emma Benson (Committee Clerk) were in attendance. A Visitor Registration list is attached and made part of these minutes. (Attachment 1)

Representative Jonathan Jordan, Chair, presided. The chair called the meeting to order at 1:00 PM. He introduced the Sergeants at Arms (Attachment 2) and House Pages. (Attachment 3) The following bills were considered:

House Bill 362, Proposed Committee Substitute (PCS) and a summary are provided. (Attachments 4, 5 and 6)

HOUSE BILL 362: CHANGES TO THE JUVENILE CODE

Chairman Jordan recognized Rep. Zachary to chair.

Chairman Zachary recognized Rep. Brian Turner to motion the PCS be before the committee.

Chairman Zachary recognized Rep. Jordan to speak on the bill.

The PCS to House Bill 362 makes various changes to the Juvenile laws. The act would become effective October 1, 2017.

Chairman Zachary recognized Deana Fleming, a Guardian Ad Litem, to explain the bill.

Chairman Zachary recognized Reps. Horn and Quick to discuss the bill. Rep. Jordan, Kevin Kelly of the Department of Health and Human Services, and Ms. Fleming also provided discussion on the bill.

Chairman Zachary recognized Rep. Conrad to make the motion favorable to the PCS, unfavorable to the original bill. The motion passed without dissent.

House Bill 362 has a referral to the House Committee on Homelessness, Foster Care, and Dependency.

Chairman Zachary recognized Rep. Jordan to chair the meeting.

House Bill 181, PCS, and a summary are provided. (Attachment 7, 8 and 9)

HOUSE BILL 181: FIRST RESPONDERS ACT OF 2017.

Chairman Jordan recognized Rep. Hastings to make the motion for the PCS to be before the committee.

Chairman Jordan recognized Reps. Warren, Potts, Clampitt, and Ford to speak on the bill.

House Bill 181 (PCS) would make the following changes to the laws applying to first responders:

- Create a $250 income tax deduction for a person who works as an unpaid member for a volunteer fire department, volunteer rescue department, or an EMS squad and attends at least 36 hours of training during the year.
- Create a property tax exclusion for property of a surviving spouse who has not remarried of an emergency personnel officer who was killed in the line of duty.
- Allow company police officers and hospital security located at the evaluating facility to take persons into custody for examination by a physician or psychologist.
- Direct the Department of Transportation to study the needs of law enforcement, emergency medical and emergency management personnel, and firefighters to improve access within the interstate system for the benefit of public safety and report its findings no later than March 1, 2018.
- Expand eligibility for assistance from a local firefighter relief fund by removing the requirement that a firefighter have served at least five years.
- Clarify the licensing exemptions for the operation of emergency vehicles.
- Create new hate crimes for offenses against emergency personnel.
- Exempt from the general prohibition against carrying a concealed weapon, emergency medical services personnel if they are deployed providing tactical medical assistance to law enforcement in an emergency situation and if they have had specific training.

Chairman Jordan recognized Reps. Horn, Conrad, Quick, Reives, and Hastings to provide questions for discussion on the bill.

After some discussion, Rep. Zachary was recognized to make a motion favorable to the PCS, unfavorable to original bill. The motion carried.

House Bill 181 has a referral to the House Committee on Transportation.

Due to rules and regulations of the House, Chairman Jordan adjourned the meeting at 1:45 PM to discuss HB 94: Emergency Management/Drone Use at a later date.

Representative Jonathan Jordan, Chair
Presiding

Emma Benson, Committee Clerk

Attachments

1. Visitor Registration Sheet
2. Sergeants at Arms
3. House Pages
4. House Bill 362
5. House Bill 362 PCS
6. House Bill 362 Summary
7. House Bill 181
8. House Bill 181 PCS
9. House Bill 181 Summary

Attachment 1

VISITOR REGISTRATION SHEET

House Judiciary III Committee — 03-22-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLE

NAME	FIRM OR AGENCY AND ADDRESS
Kevin Kelly	DHHS-DSS
Molly Berkoff	UNC Lungs
Reginald O'Rourke	GAL
Cindy Bagwell	GAL-ADC
Tancil Gilmore	CCJRNL
Susanna Birdsong	ACLU NC
Sarah Gillooly	ACLU NC
Sarah Collins	NCLM
JASON JOINER	NEW FRAME
TIM BRADLEY	NC STATE FIREFIGHTERS ASSOC.
Brian Cuy	NCSFA

VISITOR REGISTRATION SHEET

House Judiciary III Committee — 03-22-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Doug Gaines	CA
Sara Perdue	NUSPAC
Michelle Frazier	SML
Carlye Wilker	Perkinson Law Firm
Jon Sipe	NCFPC
Jillian Totman	MWCLLC
Andy Brandon	NC DPS
Josh Lanier	SML
Brian Lewis	New Frame

VISITOR REGISTRATION SHEET

House Judiciary III Committee — 03-22-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Deb Clary	NCSP
Wendy Sotolongo	EDS Durham NC
Mildred Spearman	NCAOC
Josh Jackson	NCMS
Sue Ann Forrey	NCMS
Gary Robertson	AP

Attachment 2

Committee Sergeants at Arms

NAME OF COMMITTEE Judiciary III

DATE: 3-22-2017 Room: 421

House Sgt-At Arms:

1. Name: Bill Bass
2. Name: Will Crocker
3. Name: Terry McCraw
4. Name: _____
5. Name: _____

Senate Sgt-At Arms:

1. Name: _____
2. Name: _____
3. Name: _____
4. Name: _____
5. Name: _____

House Pages
Assignments
Wednesday, March 22, 2017
Session: 2:00 PM

Committee	Room	Time	Staff	Comments	Member
State and Local Government	544	10:00 AM	Autumn Brisson		Rep. William Brisson
			Akirah Graves		Rep. Rodney Moore
Aging	Other	11:00 AM	Blake Bellanger		Rep. Larry Bell
			Connor Scanlon		Rep. Joe John
Health	643	11:00 AM	Lily Ahlin		Rep. George Cleveland
			Colin Konieczka		Rep. Linda Hunt-Williams
Pensions and Retirement	415	12:00 PM	Autumn Brisson		Rep. William Brisson
			Kailey Gause		Rep. William Brisson
Judiciary I	415	1:00 PM	Joshua Babson		Rep. William Brisson
			Garrett Penley		Rep. Julia Howard
Judiciary III	421	1:00 PM	Akirah Graves		Rep. Rodney Moore
			Kayla Yarborough		Rep. Dean Arp
Regulatory Reform	643	1:00 PM	Blake Bellanger		Rep. Larry Bell
			Colin Konieczka		Rep. Linda Hunt-Williams

Attachment 3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H 1

HOUSE BILL 362*

Short Title: Changes to the Juvenile Code.-AB (Public

Sponsors: Representative Jordan.

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary IV

March 16, 2017

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE JUVENILE LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-200(a) is amended by adding a new subdivision to read:

"(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:

...

(5a) Proceedings to review the placement of a young adult in foster care pursuant to G.S. 108A-48 and G.S. 7B-910.1.

...."

SECTION 2. G.S. 7B-404 reads as rewritten:

"**§ 7B-404. Immediate need for petition when clerk's office is closed.**

(a) When the office of the clerk is closed, a magistrate ~~may be authorized by the chief district court judge to draw, verify, and issue petitions as follows:~~shall accept for filing the following:

(1) ~~When the director of the department of social services requests a~~A petition alleging a juvenile to be abused, neglected, or ~~dependent, or~~dependent.

(2) ~~When the director of the department of social services requests a~~A petition alleging the obstruction of or interference with an assessment required by G.S. 7B-302.

(b) The authority of the magistrate under this section is limited to emergency situations when a petition ~~is required in order~~must be filed to obtain a nonsecure custody order or an order under G.S. 7B-303. Any petition ~~issued~~ accepted for filing under this section shall be delivered to the clerk's office for processing as soon as that office is open for business."

SECTION 3. G.S. 7B-405 reads as rewritten:

"**§ 7B-405. Commencement of action.**

An action is commenced by the filing of a petition in the clerk's office when that office is open or by the ~~issuance~~ acceptance of a juvenile petition by a magistrate when the clerk's office is closed, which ~~issuance~~ shall constitute filing."

SECTION 4. G.S. 7B-407 reads as rewritten:

"**§ 7B-407. Service of summons.**

The summons shall be served under G.S. 1A-1, Rule ~~4(j)~~4 upon the parent, guardian, custodian, or caretaker, not less than five days prior to the date of the scheduled hearing. The time for service may be waived in the discretion of the court.

If service by publication under G.S. 1A-1, Rule 4(j1) is required, the cost of the service by publication shall be advanced by the petitioner and may be charged as court costs as the court may direct."

SECTION 5. G.S. 7B-505(a) reads as rewritten:

"(a) A juvenile meeting the criteria set out in G.S. 7B-503 may be placed in nonsecure custody with the department of social services or a person designated in the order for temporary residential placement ~~in:~~in any of the following:

(1) A licensed foster home or a home otherwise authorized by law to provide such ~~care; or~~care.

(2) A facility operated by the department of social ~~services; or~~services.

(3) Any other home or facility, including ~~a relative's home~~the home of a parent, relative, nonrelative kin, or other person with legal custody of a sibling of the juvenile, approved by the court and designated in the order."

SECTION 6. G.S. 7B-505.1 reads as rewritten:

"**§ 7B-505.1. ~~Juvenile~~ Consent for medical care for a juvenile placed in nonsecure custody of a department of social services.**

(a) Unless the court orders otherwise, when a juvenile is placed in the nonsecure custody of a county department of social services, the director may arrange for, provide, or consent to any of the following:

(1) Routine medical and dental care or ~~treatment.~~treatment, including, but not limited to, treatment for common pediatric illnesses and injuries that require prompt intervention.

...."

SECTION 7. G.S. 7B-506 reads as rewritten:

"**§ 7B-506. Hearing to determine need for continued nonsecure custody.**

...

(b) At a hearing to determine the need for continued custody, the court shall receive testimony and shall allow the ~~guardian ad litem, or juvenile, and the juvenile's parent, guardian, custodian, or caretaker~~parties the right to introduce evidence, to be heard in the person's own behalf, and to examine witnesses. The petitioner shall bear the burden at every stage of the proceedings to provide clear and convincing evidence that the juvenile's placement in custody is necessary. The court shall not be bound by the usual rules of evidence at such hearings.

...

(g1) The provisions of G.S. 7B-905.1 shall apply to determine visitation.

...."

SECTION 8. G.S. 7B-906.1 reads as rewritten:

"**§ 7B-906.1. Review and permanency planning hearings.**

(a) ~~In any case where custody is removed from a parent, guardian, or custodian, the~~The court shall conduct a review hearing within 90 days from the date of the initial dispositional hearing held pursuant to G.S. 7B-901 and shall conduct a review hearing within six months thereafter. Within 12 months of the date of the initial order removing custody, there shall be a review hearing designated as a permanency planning hearing. Review hearings after the initial permanency planning hearing shall be designated as subsequent permanency planning hearings. ~~The subsequent~~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.

...

(d) At each hearing, the court shall consider the following criteria and make written findings regarding those that are relevant:

...

(3) Whether efforts to reunite the juvenile with either parent clearly would be unsuccessful or inconsistent with the juvenile's health or safety and need for a safe, permanent home within a reasonable period of time. The court shall consider efforts to reunite regardless of whether the juvenile resided with the parent, guardian, or custodian at the time of removal. If the court determines efforts would be unsuccessful or inconsistent, the court shall ~~consider other permanent plans of care for the juvenile pursuant to G.S. 7B-906.2.~~schedule a permanency planning hearing within 30 days to address the permanent plans in accordance with this section and G.S. 7B-906.2, unless the determination is made at a permanency planning hearing.

...

(o) This section does not apply to post termination of parental rights' placement reviews."

SECTION 9. 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~~ plans for the juvenile who has been placed in the custody of a county director or licensed child-placing agency, which ~~is~~ are 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, the person 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 or motion brought by any person or agency designated in G.S. 7B-1103(a)(2) through ~~(5)~~(6), or parental rights have been relinquished under Chapter 48 of the General Statutes, and a county director or licensed child-placing agency has custody of the ~~juvenile.~~juvenile and a right to consent to adoption. The court shall conduct reviews every six months thereafter until the juvenile is the subject of a decree of adoption:

...

(c) The court shall consider at least the following in its review and make written findings regarding the following that are relevant:

(1) The adequacy of the ~~plan~~ permanency plans developed by the county department of social services or a licensed child-placing agency for a permanent placement ~~relative to~~in the juvenile's best interests and the efforts of the department or agency to implement ~~such plan.~~the plans.

(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.~~NC Kids Adoption and Foster Care Network or any other child-specific recruitment program or whether there is an exemption to listing that the court finds is in the child's best interest.

(3) The efforts previously made by the department or agency to find a permanent ~~home~~ placement for the juvenile.

(4) Whether the current placement is in the juvenile's best interest.

(d) The court, after making findings of fact, shall ~~do one of the following:~~

~~(1)~~ ~~Affirm the county department's or child-placing agency's plans.~~adopt concurrent permanent plans and identify the primary and secondary plan in accordance with G.S. 7B-906.2(a)(2) through (6). The court may specify efforts that are necessary to accomplish a permanent placement that is in the best interests of the juvenile.

~~(2)~~ ~~If~~

(d1) If a juvenile is not placed with prospective adoptive parents as selected in G.S. 7B-1112.1, ~~order a placement or different plan the court finds to be in the juvenile's best interest after considering the department's recommendations.~~

~~In either case, the court may require specific additional steps that are necessary to accomplish a permanent placement that is in the best interests of the juvenile.~~the court may order a placement that the court finds to be in the juvenile's best interest after considering the department's recommendations.

...."

SECTION 10. G.S. 7B-910.1(d) read as rewritten:

"(d) The clerk shall give written notice of the initial and any subsequent review hearings to the young adult ~~and~~ in foster care and the director of social services at least 15 days prior to the date of the hearing."

SECTION 11. G.S. 7B-1106(a) reads as rewritten:

"(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. 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.

(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 child has been given by a court of competent jurisdiction.

(5) Repealed by Session Laws 2009-38, s. 3, effective May 27, 2009.

The summons shall notify the respondents to file a written answer within 30 days after service of the summons and petition. Service of the summons shall be completed as provided under the procedures established by G.S. 1A-1, Rule ~~4(j).~~4. But the parent of the juvenile shall not be deemed to be under a disability even though the parent is a minor."

SECTION 12. G.S. 7B-2503(1)c. reads as rewritten:

"c. 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-906.1. ~~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 13. G.S. 7B-2506(1)c. reads as rewritten:

"c. 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~~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-906.1. ~~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 14. G.S. 7B-3600 reads as rewritten:

"**§ 7B-3600. Judicial authorization of emergency treatment; procedure.**

A juvenile in need of emergency treatment under Article 1A of Chapter 90 of the General Statutes, whose physician is barred from rendering necessary treatment by reason of parental refusal to consent to treatment, may receive treatment with court authorization under the following procedure:

...

This Article shall operate as a remedy in addition to the provisions in ~~G.S. 7B-903, 7B-2503, and 7B-2506.~~G.S. 7B-505.1 and G.S. 7B-903.1."

SECTION 15. This act becomes effective October 1, 2017.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H D

HOUSE BILL 362
PROPOSED COMMITTEE SUBSTITUTE H362-CSTV-2 [v.2]

03/21/2017 04:44:07 PM

Short Title: Changes to the Juvenile Code.-AB (Public

Sponsors:

Referred to:

March 16, 2017

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE JUVENILE LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-200(a) is amended by adding a new subdivision to read:

"(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:

...

(5a) Proceedings to review the placement of a young adult in foster care pursuant to G.S. 108A-48 and G.S. 7B-910.1.

...."

SECTION 2. G.S. 7B-404 reads as rewritten:

"**§ 7B-404. Immediate need for petition when clerk's office is closed.**

(a) When the office of the clerk is closed, a magistrate ~~may be authorized by the chief district court judge to draw, verify, and issue petitions as follows:~~shall accept for filing the following:

(1) ~~When the director of the department of social services requests a~~A petition alleging a juvenile to be abused, neglected, or ~~dependent, or~~dependent.

(2) ~~When the director of the department of social services requests a~~A petition alleging the obstruction of or interference with an assessment required by G.S. 7B-302.

(b) The authority of the magistrate under this section is limited to emergency situations when a petition ~~is required in order~~must be filed to obtain a nonsecure custody order or an order under G.S. 7B-303. Any petition ~~issued~~ accepted for filing under this section shall be delivered to the clerk's office for processing as soon as that office is open for business."

SECTION 3. G.S. 7B-405 reads as rewritten:

"**§ 7B-405. Commencement of action.**

An action is commenced by the filing of a petition in the clerk's office when that office is open or by the ~~issuance~~ acceptance of a juvenile petition by a magistrate when the clerk's office is closed, which ~~issuance~~ shall constitute filing."

SECTION 4. G.S. 7B-407 reads as rewritten:

"**§ 7B-407. Service of summons.**

The summons shall be served under G.S. 1A-1, Rule ~~4(j)~~4 upon the parent, guardian, custodian, or caretaker, not less than five days prior to the date of the scheduled hearing. The time for service may be waived in the discretion of the court.

If service by publication under G.S. 1A-1, Rule 4(j1) is required, the cost of the service by publication shall be advanced by the petitioner and may be charged as court costs as the court may direct."

SECTION 5. G.S. 7B-505 reads as rewritten:

"(a) A juvenile meeting the criteria set out in G.S. 7B-503 may be placed in nonsecure custody with the department of social services or a person designated in the order for temporary residential placement ~~in:~~in any of the following:

(1) A licensed foster home or a home otherwise authorized by law to provide such ~~care; or~~care.

(2) A facility operated by the department of social ~~services; or~~services.

(3) Any other home or facility, including ~~a relative's home~~the home of a parent, relative, nonrelative kin, or other person with legal custody of a sibling of the juvenile, approved by the court and designated in the order.

(b) ~~The court shall order the department of social services to make diligent efforts to notify relatives and any custodial parents of the juvenile's siblings that the juvenile is in nonsecure custody and of any hearings scheduled to occur pursuant to G.S. 7B-506, unless the court finds such notification would be contrary to the best interests of the juvenile.~~ The court shall order the department of social services to make diligent efforts to notify relatives and other persons with legal custody of a sibling of the juvenile that the juvenile is in nonsecure custody and of any hearings scheduled to occur pursuant to G.S. 7B 506, unless the court finds the notification would be contrary to the best interests of the juvenile. In placing a juvenile in nonsecure custody under this section, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the relative unless the court finds that placement with the relative would be contrary to the best interests of the juvenile."

SECTION 6. G.S. 7B-505.1 reads as rewritten:

"**§ 7B-505.1. ~~Juvenile~~ Consent for medical care for a juvenile placed in nonsecure custody of a department of social services.**

(a) Unless the court orders otherwise, when a juvenile is placed in the nonsecure custody of a county department of social services, the director may arrange for, provide, or consent to any of the following:

(1) Routine medical and dental care or ~~treatment.~~treatment, including, but not limited to, treatment for common pediatric illnesses and injuries that require prompt intervention.

...."

SECTION 7. G.S. 7B-506 reads as rewritten:

"**§ 7B-506. Hearing to determine need for continued nonsecure custody.**

...

(b) At a hearing to determine the need for continued custody, the court shall receive testimony and shall allow the ~~guardian ad litem, or juvenile, and the juvenile's parent, guardian, custodian, or caretaker~~parties the right to introduce evidence, to be heard in the person's own behalf, and to examine witnesses. The petitioner shall bear the burden at every stage of the proceedings to provide clear and convincing evidence that the juvenile's placement in custody is necessary. The court shall not be bound by the usual rules of evidence at such hearings.

...

(g1) The provisions of G.S. 7B-905.1 shall apply to determine visitation.

...."

SECTION 8. G.S. 7B-906.1 reads as rewritten:

"**§ 7B-906.1. Review and permanency planning hearings.**

(a) ~~In any case where custody is removed from a parent, guardian, or custodian, the~~The court shall conduct a review hearing within 90 days from the date of the initial dispositional hearing held pursuant to G.S. 7B-901 and shall conduct a review hearing within six months thereafter. Within 12 months of the date of the initial order removing custody, there shall be a review hearing designated as a permanency planning hearing. Review hearings after the initial permanency planning hearing shall be designated as subsequent permanency planning hearings. ~~The subsequent~~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.

...

(d) At each hearing, the court shall consider the following criteria and make written findings regarding those that are relevant:

...

(3) Whether efforts to reunite the juvenile with either parent clearly would be unsuccessful or inconsistent with the juvenile's health or safety and need for a safe, permanent home within a reasonable period of time. The court shall consider efforts to reunite regardless of whether the juvenile resided with the parent, guardian, or custodian at the time of removal. If the court determines efforts would be unsuccessful or inconsistent, the court shall ~~consider other permanent plans of care for the juvenile pursuant to G.S. 7B-906.2.~~schedule a permanency planning hearing within 30 days to address the permanent plans in accordance with this section and G.S. 7B-906.2, unless the determination is made at a permanency planning hearing.

...

(o) This section does not apply to post termination of parental rights' placement reviews."

SECTION 9. 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~~ plans for the juvenile who has been placed in the custody of a county director or licensed child-placing agency, which ~~is~~ are 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, the person 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 or motion brought by any person or agency designated in G.S. 7B-1103(a)(2) through ~~(5)~~(6), or one parent's parental rights have been terminated by court order and the other parent's parental rights have been relinquished under Chapter 48 of the General Statutes, 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:

...

(c) The court shall consider at least the following in its review and make written findings regarding the following that are relevant:

(1) The adequacy of the ~~plan~~ permanency plans developed by the county department of social services or a licensed child-placing agency for a

permanent placement ~~relative to~~in the juvenile's best interests and the efforts of the department or agency to implement ~~such plan.~~the plans.

(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.~~NC Kids Adoption and Foster Care Network or any other child-specific recruitment program or whether there is an exemption to listing that the court finds is in the child's best interest.

(3) The efforts previously made by the department or agency to find a permanent ~~home~~ placement for the juvenile.

(4) Whether the current placement is in the juvenile's best interest.

(d) The court, after making findings of fact, shall ~~do one of the following:~~

~~(1)~~ ~~Affirm the county department's or child-placing agency's plans.~~adopt concurrent permanent plans and identify the primary and secondary plan in accordance with G.S. 7B-906.2(a)(2) through (6). The court may specify efforts that are necessary to accomplish a permanent placement that is in the best interests of the juvenile.

~~(2)~~ ~~If~~

(d1) If a juvenile is not placed with prospective adoptive parents as selected in G.S. 7B-1112.1, ~~order a placement or different plan the court finds to be in the juvenile's best interest after considering the department's recommendations.~~

~~In either case, the court may require specific additional steps that are necessary to accomplish a permanent placement that is in the best interests of the juvenile.~~the court may order a placement that the court finds to be in the juvenile's best interest after considering the department's recommendations.

...."

SECTION 10. G.S. 7B-910.1(d) read as rewritten:

"(d) The clerk shall give written notice of the initial and any subsequent review hearings to the young adult ~~and~~ in foster care and the director of social services at least 15 days prior to the date of the hearing."

SECTION 11. G.S. 7B-1106(a) reads as rewritten:

"(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. 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.

(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 child has been given by a court of competent jurisdiction.

(5) Repealed by Session Laws 2009-38, s. 3, effective May 27, 2009.

The summons shall notify the respondents to file a written answer within 30 days after service of the summons and petition. Service of the summons shall be completed as provided

under the procedures established by G.S. 1A-1, Rule ~~4(j).~~4. But the parent of the juvenile shall not be deemed to be under a disability even though the parent is a minor."

SECTION 12. G.S. 7B-2503(1)c. reads as rewritten:

"c. 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-906.1. ~~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 13. G.S. 7B-2506(1)c. reads as rewritten:

"c. 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~~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-906.1. ~~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 14. G.S. 7B-3600 reads as rewritten:

"**§ 7B-3600. Judicial authorization of emergency treatment; procedure.**

A juvenile in need of emergency treatment under Article 1A of Chapter 90 of the General Statutes, whose physician is barred from rendering necessary treatment by reason of parental refusal to consent to treatment. may receive treatment with court authorization under the following procedure:

...

This Article shall operate as a remedy in addition to the provisions in ~~G.S. 7B-903, 7B-2503, and 7B-2506.~~G.S. 7B-505.1 and G.S. 7B-903.1."

SECTION 15. This act becomes effective October 1, 2017.

Attachment 6

HOUSE BILL 362:
Changes to the Juvenile Code.

2017-2018 General Assembly

Committee:	House Judiciary III. If favorable, re-refer to Homelessness, Foster Care, and Dependency	**Date:**	March 21, 2017
Introduced by:	Rep. Jordan	**Prepared by:**	Tawanda N. Foster Staff Attorney
Analysis of:	PCS to First Edition H362-CSTV-2		

OVERVIEW: The PCS to House Bill 362 makes various changes to the juvenile laws. The act would become effective October 1, 2017.

BILL ANALYSIS:

Section 1 expands the jurisdiction of the juvenile court to include review hearings for youth in foster care who enter into a voluntary placement agreement for care after the age of 18.

Section 2 clarifies a magistrate must accept juvenile petitions for filing under G.S. 7B-404 when the clerk of court's office is closed.

Section 3 clarifies an action commences when a petition is accepted by a magistrate when the clerk's office is closed.

Section 4 amends G.S. 7B-407 to allow summons to be served under G.S. 1A-1, Rule 4.

Section 5 amends the list of approved placements for juveniles in nonsecure custody to add the home of a parent, relative, nonrelative kin, or other persons with legal custody of a sibling of the juvenile.

Section 6 makes a technical correction and clarifies when a juvenile is in nonsecure custody routine medical or dental treatment authorized by the director of the county department of social services may include common pediatric illnesses and injuries.

Section 7 makes a clarifying change to only require testimony from the parties in a hearing under G.S. 7B-506.

Section 8 amends G.S. 7B-906.1 to allow review hearings when a court has jurisdiction whether custody has been removed from a parent, guardian or custodian or not. This section also requires the court to schedule a permanency planning hearing within 30 days of a review hearing that finds reunification efforts would be unsuccessful or inconsistent when that determination is not made at a permanency planning hearing.

Section 9 requires post-termination of parental rights review hearings when a termination of parental rights is granted and when the juvenile is free for adoption after a termination of parental rights or a relinquishment.

Section 10 corrects a typographical error.

Karen Cochrane-Brown
Director

Legislative Analysis
Division
919-733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

Section 11 amends G.S. 7B-1106 to allow summons to be served under G.S. 1A 1, Rule 4 in a termination of parental rights matter.

Section 12 makes a technical correction to G.S. 7B-2503 to remove unnecessary language.

Section 13 makes a technical correction to G.S. 7B-2506 to remove unnecessary language.

Section 14 clarifies a juvenile may receive medical treatment with court authorization under G.S. 7B-3600, 7B-505.1, or 7B-903.1.

EFFECTIVE DATE: This bill would become effective October 1, 2017.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H 1

HOUSE BILL 181

Short Title:	First Responders Act of 2017. (Public
Sponsors:	Representatives Warren, Clampitt, Ford, and Potts (Primary Sponsors). *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*
Referred to:	Finance, if favorable, Judiciary III, if favorable, Transportation

February 23, 2017

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE LAWS APPLYING TO FIRST RESPONDERS.

The General Assembly of North Carolina enacts:

PART I. TAX DEDUCTION FOR FIREFIGHTERS

SECTION 1.(a) G.S. 105-153.5 is amended by adding a new subsection to read:

"(e) Other Adjustments. – In calculating North Carolina taxable income, a taxpayer who is an eligible firefighter or an eligible rescue squad worker may deduct from adjusted gross income the sum of two hundred fifty dollars ($250.00). In the case of a married couple filing a joint return, each spouse may qualify separately for the deduction allowed under this subsection. In order to claim the deduction allowed under this subsection, the taxpayer must submit with the tax return any documentation required by the Secretary. An individual may not claim a deduction as both an eligible firefighter and as an eligible rescue squad worker in a single taxable year. The following definitions apply in this subsection:

(1) Eligible firefighter. – An unpaid member of a volunteer fire department who attended at least 36 hours of fire department drills and meetings during the taxable year.

(2) Eligible rescue squad worker. – An unpaid member of a volunteer rescue or emergency medical services squad who attended at least 36 hours of rescue squad training and meetings during the taxable year."

SECTION 1.(b) This section is effective for taxable years beginning on or after January 1, 2017.

PART II. PROPERTY TAX HOMESTEAD EXCLUSION FOR SURVIVING SPOUSE OF QUALIFYING EMERGENCY PERSONNEL

SECTION 2.(a) Article 12 of Subchapter II of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-277.1E. Surviving spouse property tax homestead exclusion.**

(a) Classification. – A permanent residence owned and occupied by a qualifying owner is designated a special class of property under Section 2(2) of Article V of the North Carolina Constitution and is taxable in accordance with this section. The appraised value of the residence is excluded from taxation. A qualifying owner who receives an exclusion under this section may not receive other property tax relief.

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

(1) Emergency personnel officer. – Firefighting, search and rescue, or emergency medical services personnel or any employee of any duly accredited State or local government agency possessing authority to enforce the criminal laws of the State who (i) is actively serving in a position with assigned primary duties and responsibilities for prevention and detection of crime or the general enforcement of the criminal laws of the State and (ii) possesses the power of arrest by virtue of an oath administered under the authority of the State.

(2) Permanent residence. – Defined in G.S. 105-277.1.

(3) Property tax relief. – Defined in G.S. 105-277.1.

(4) Qualifying owner. – An owner, as defined in G.S. 105-277.1, who is a North Carolina resident and is the surviving spouse who has not remarried of an emergency personnel officer who was killed in the line of duty.

(c) Temporary Absence. – An owner does not lose the benefit of this exclusion because of a temporary absence from his or her permanent residence for reasons of health or because of an extended absence while confined to a rest home or nursing home, so long as the residence is unoccupied or occupied by a dependent of the owner.

(d) Other Multiple Owners. – This subsection applies to co-owners who are not husband and wife. Each co-owner of a permanent residence must apply separately for the exclusion allowed under this section.

When one or more co-owners of a permanent residence qualify for the exclusion allowed under this section and none of the co-owners qualifies for the exclusion allowed under G.S. 105-277.1, each co-owner is entitled to the full amount of the exclusion allowed under this section. The exclusion allowed to one co-owner may not exceed the co-owner's proportionate share of the valuation of the property, and the amount of the exclusion allowed to all the co-owners may not exceed the exclusion allowed under this section.

When one or more co-owners of a permanent residence qualify for the exclusion allowed under this section and one or more of the co-owners qualify for the exclusion allowed under G.S. 105-277.1, each co-owner who qualifies for the exclusion allowed under this section is entitled to the full amount of the exclusion. The exclusion allowed to one co-owner may not exceed the co-owner's proportionate share of the valuation of the property, and the amount of the exclusion allowed to all the co-owners may not exceed the greater of the exclusion allowed under this section and the exclusion allowed under G.S. 105-277.1.

(e) Application. – An application for the exclusion allowed under this section should be filed during the regular listing period but may be filed and must be accepted at any time up to and through June 1 preceding the tax year for which the exclusion is claimed. Persons may apply for this property tax relief by entering the appropriate information on a form made available by the assessor under G.S. 105-282.1."

SECTION 2.(b) G.S. 105-282.1(a) reads as rewritten:

"(a) Application. – Every owner of property claiming exemption or exclusion from property taxes under the provisions of this Subchapter has the burden of establishing that the property is entitled to it. If the property for which the exemption or exclusion is claimed is appraised by the Department of Revenue, the application shall be filed with the Department. Otherwise, the application shall be filed with the assessor of the county in which the property is situated. An application must contain a complete and accurate statement of the facts that entitle the property to the exemption or exclusion and must indicate the municipality, if any, in which the property is located. Each application filed with the Department of Revenue or an assessor shall be submitted on a form approved by the Department. Application forms shall be made available by the assessor and the Department, as appropriate.

Except as provided below, an owner claiming an exemption or exclusion from property taxes must file an application for the exemption or exclusion annually during the listing period.

...

(2) Single application required. – An owner of one or more of the following properties eligible for a property tax benefit must file an application for the benefit to receive it. Once the application has been approved, the owner does not need to file an application in subsequent years unless new or additional property is acquired or improvements are added or removed, necessitating a change in the valuation of the property, or there is a change in the use of the property or the qualifications or eligibility of the taxpayer necessitating a review of the benefit.

a. Property exempted from taxation under G.S. 105-278.3, 105-278.4, 105-278.5, 105-278.6, 105-278.7, or 105-278.8.

b. Special classes of property excluded from taxation under G.S. 105-275(3), (7), (8), (12), (17), (18), (19), (20), (21), (31e), (35), (36), (38), (39), (41), or (45) or under G.S. 105-277.1E or G.S. 131A-21.

c. Special classes of property classified for taxation at a reduced valuation under G.S. 105-277(h), 105-277.1, 105-277.1C, 105-277.10, 105-277.13, 105-277.14, 105-277.15, 105-277.17, or 105-278.

...."

SECTION 2.(c) This section is effective for taxes imposed for taxable years beginning on or after July 1, 2017.

PART III. ALLOW COMPANY POLICE OFFICERS AND HOSPITAL SECURITY TO TAKE PERSONS INTO CUSTODY FOR EXAMINATION BY PHYSICIAN OR ELIGIBLE PSYCHOLOGIST

SECTION 3. The title of Part 7 of Article 5 of Chapter 122C of the General Statutes and G.S. 122C-261 read as rewritten:

"Part 7. Involuntary Commitment of ~~the Mentally Ill~~Persons with Mental Illness; Facilities for ~~the Mentally Ill.~~Persons With Mental Illness.

"**§ 122C-261. Affidavit and petition before clerk or magistrate when immediate hospitalization is not necessary; custody order.**

(a) Anyone who has knowledge of an individual who ~~is mentally ill~~has a mental illness and is either (i) dangerous to self, as defined in G.S. 122C-3(11)a., or dangerous to others, as defined in G.S. 122C-3(11)b., or (ii) in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness, may appear before a clerk or assistant or deputy clerk of superior court or a magistrate and execute an affidavit to this effect, and petition the clerk or magistrate for issuance of an order to take the respondent into custody for examination by a physician or eligible psychologist. The affidavit shall include the facts on which the affiant's opinion is based. If the affiant has knowledge or reasonably believes that the respondent, in addition to ~~being mentally ill,~~having a mental illness, ~~is also mentally retarded,~~has an intellectual disability, this fact shall be stated in the affidavit. Jurisdiction under this subsection is in the clerk or magistrate in the county where the respondent resides or is found.

(b) If the clerk or magistrate finds reasonable grounds to believe that the facts alleged in the affidavit are true and that the respondent ~~is~~ probably ~~mentally ill~~has a mental illness and is either (i) dangerous to self, as defined in G.S. 122C-3(11)a., or dangerous to others, as defined in G.S. 122C-3(11)b., or (ii) in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness, the clerk or magistrate shall issue an order to ~~a~~ take the respondent into custody for examination by a physician or eligible psychologist. The order shall be issued to any of the following persons:

(1) A law enforcement ~~officer~~ officer.

(2) A company police officer commissioned under Chapter 74E of the General Statutes who is present at and assigned to the 24-hour facility or area facility where the respondent is located.

(3) A security officer employed by the facility or employed by a company contracting with the facility who is present at and assigned to the 24-hour facility or area facility where the respondent is located.

(4) ~~or any~~Any other person authorized under ~~G.S. 122C-251 to take the respondent into custody for examination by a physician or eligible psychologist.~~G.S. 122C-251.

If the clerk or magistrate finds that, in addition to probably ~~being mentally ill,~~having a mental illness, the respondent ~~is also~~ probably ~~mentally retarded,~~has an intellectual disability, the clerk or magistrate shall contact the area authority before issuing a custody order and the area authority shall designate the facility to which the respondent is to be taken for examination by a physician or eligible psychologist. The clerk or magistrate shall provide the petitioner and the respondent, if present, with specific information regarding the next steps that will occur for the respondent.

...

(d) If the affiant is a physician or eligible psychologist, all of the following apply:

...

(6) If the clerk or magistrate finds probable cause to believe that the respondent, in addition to ~~being mentally ill,~~having a mental illness, ~~is also mentally retarded,~~has an intellectual disability, 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.

...

(f) When a petition is filed for an individual who is a resident of a single portal area, the procedures for examination by a physician or eligible psychologist as set forth in G.S. 122C-263 shall be carried out in accordance with the area plan. Prior to issuance of a custody order for a respondent who resides in an area authority with a single portal plan, the clerk or magistrate shall communicate with the area authority to determine the appropriate 24-hour facility to which the respondent should be admitted according to the area plan or to determine if there are more appropriate resources available through the area authority to assist the petitioner or the respondent. When an individual from a single portal area is presented for commitment at a 24-hour area or State facility directly, the individual may not be accepted for admission until the facility notifies the area authority and the area authority agrees to the admission. If the area authority does not agree to the admission, it shall determine the appropriate 24-hour facility to which the individual should be admitted according to the area plan or determine if there are more appropriate resources available through the area authority to assist the individual. If the area authority agrees to the admission, further planning of treatment for the client is the joint responsibility of the area authority and the facility as prescribed in the area plan.

Notwithstanding the provisions of this section, in no event shall an individual known or reasonably believed to ~~be mentally retarded~~have an intellectual disability be admitted to a State psychiatric hospital, except as follows:

(1) Persons described in G.S. 122C-266(b);

(2) Persons admitted pursuant to G.S. 15A-1321;

(3) Respondents who are so extremely dangerous as to pose a serious threat to the community and to other patients committed to non-State hospital psychiatric inpatient units, as determined by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services or his designee; and

(4) Respondents who are so gravely disabled by both multiple disorders and medical fragility or multiple disorders and deafness that alternative care is

inappropriate, as determined by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services or his designee.

Individuals transported to a State facility for ~~the mentally ill~~persons with mental illness who are not admitted by the facility may be transported by law enforcement officers or designated staff of the State facility in State-owned vehicles to an appropriate 24-hour facility that provides psychiatric inpatient care.

No later than 24 hours after the transfer, the responsible professional at the original facility shall notify the petitioner, the clerk of court, and, if consent is granted by the respondent, the next of kin, that the transfer has been completed."

PART IV. INTERSTATE ACCESS STUDY

SECTION 4.(a) Study. – The Department of Transportation shall study the needs of law enforcement, emergency medical and emergency management personnel, and firefighters to improve access to or within the interstate system within this State for the benefit of public safety. In conducting the study, the Department of Transportation may consult with the Division of Emergency Management of the Department of Public Safety, the Office of State Fire Marshal of the Department of Insurance, the Office of Emergency Medical Services of the Department of Health and Human Services, and any other State or local government organizations the Department of Transportation determines may be of assistance in the course of the study. In performing the study, the Department of Transportation shall, at a minimum, take the following steps:

(1) Consult with county Fire Marshal Divisions, Emergency Management Offices, and Emergency Medical Service Divisions to determine potential sites of interest for construction or improvement relevant to the study.

(2) Establish criteria to prioritize sites of interest for either construction or improvement.

(3) Review applicable federal and State laws, codes, standards, and studies relevant to the study.

(4) Review (i) existing Department of Transportation planning, design, and construction standards for interchanges, median crossovers, and access points and (ii) how those standards consider the needs of law enforcement, emergency medical and emergency management personnel, and firefighters.

(5) Consider the feasibility of providing opportunities for stakeholder input during the planning of future interstate improvements that focus on the needs of law enforcement, emergency medical and emergency management personnel, and firefighters.

(6) Examine any other matters the Department of Transportation deems relevant in the course of the study.

SECTION 4.(b) Report. – The Department of Transportation shall report the findings and recommendations, including any legislative proposals, to the Joint Legislative Oversight Committee on Justice and Public Safety, Joint Emergency Management Oversight Committee, and Joint Legislative Transportation Oversight Committee no later than March 1, 2018.

PART V. LOCAL FIREFIGHTER RELIEF FUND ELIGIBILITY

SECTION 5.(a) G.S. 58-84-35(a) reads as rewritten:

"**§ 58-84-35. Disbursement of funds by trustees.**

(a) The board of trustees shall have entire control of the funds derived from the provisions of this Article, and shall disburse the funds only for the following purposes:

...

(2a) To provide assistance, upon approval by the Executive Director of the North Carolina State Firefighters' Association, to a destitute member firefighter who

has served or is serving honorably ~~for at least five years.~~with a certified fire department. The determination of destitute shall be based on the inability of the firefighters, through no fault of their own, to provide basic provisions to themselves or their families. Such basic provisions include, but are not limited to, assistance with housing, vehicle or commuting expenses, food, clothing, utilities, medical care, and funeral expenses.

...."

SECTION 5.(b) This section becomes effective July 1, 2017, and applies to distributions to local firefighters' relief funds on or after that date.

PART VI. CDL/CLARIFY EXEMPTION FOR EMERGENCY VEHICLES

SECTION 6.(a) G.S. 20-7(a)(3) reads as rewritten:

"(3) Class C. – A Class C license authorizes the holder to drive any of the following:

a. A Class C motor vehicle that is not a commercial motor vehicle.

b. When operated by a volunteer member of a fire department, a rescue squad, or an emergency medical service (EMS) in the performance of duty, a Class A or Class B fire-fighting, rescue, or EMS motor vehicle or a combination of these vehicles. For purposes of this sub-subdivision, the term "performance of duty" includes any official business of a fire department, rescue squad, or EMS, that requires use of the vehicle.

c. A combination of noncommercial motor vehicles that have a GVWR of more than 10,000 pounds but less than 26,001 pounds. This sub-subdivision does not apply to a Class C license holder less than 18 years of age."

SECTION 6.(b) G.S. 20-37.16(e) reads as rewritten:

"(e) The requirements for a commercial drivers license do not apply to vehicles used for personal use such as recreational vehicles. A commercial drivers license is also waived for the following classes of vehicles as permitted by regulation of the United States Department of Transportation:

...

(2) Any vehicle when used as firefighting or emergency equipment for the purpose of preserving life or ~~property or to execute~~property; executing emergency governmental ~~functions.~~functions; or other official business of a fire department, rescue squad, or emergency medical service that requires use of the vehicle. For purposes of this subdivision, the term "official business" includes training and the performance of maintenance.

...."

PART VII. HATE CRIMES AGAINST EMERGENCY PERSONNEL

SECTION 7.(a) Article 52 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-401.14A. Hate crime against emergency personnel.**

(a) The following definitions apply in this section:

(1) Emergency personnel. – As defined in G.S. 14-288.9.

(2) Serious bodily injury. – As defined in G.S. 14-32.4.

(b) Unless the conduct is covered by another provision of law providing greater punishment, if anyone assaults another person because the person is emergency personnel and inflicts serious bodily injury on the first responder, the offender is guilty of a Class H felony.

(c) Unless the conduct is covered by another provision of law providing greater punishment, if anyone assaults another person with a firearm because the person is emergency personnel, the offender is guilty of a Class F felony.

(d) Anyone who, with the intent of harming a person who is emergency personnel, lures the person to a location by falsely reporting or having another individual falsely report that emergency services are needed and then assaults that person because the person is emergency personnel is guilty of a Class E felony."

SECTION 7.(b) This section becomes effective December 1, 2017, and applies to offenses committed on or after that date.

PART VIII. CONCEALED CARRY FOR CERTAIN EMERGENCY MEDICAL SERVICES PERSONNEL

SECTION 8.(a) G.S. 14-269 reads as rewritten:

"**§ 14-269. Carrying concealed weapons.**

(a) It shall be unlawful for any person willfully and intentionally to carry concealed about his or her person any bowie knife, dirk, dagger, slung shot, loaded cane, metallic knuckles, razor, shuriken, stun gun, or other deadly weapon of like kind, except when the person is on the person's own premises.

...

(b) This prohibition shall not apply to the following persons:

...

(10) Emergency medical services personnel, as defined in G.S. 131E-155, who are deployed providing tactical medical assistance to law enforcement in an emergency situation, including a Special Weapons And Tactics (SWAT) operation, as a part of their official duties. In order to qualify under this subdivision, emergency services personnel shall have completed an approved tactical medical assistance course for supporting tactical law enforcement operations that includes an element on firearms safety and training and involves the actual firing of handguns and instruction in the laws of this State governing the use of deadly force. For purposes of this subdivision, an approved course shall be any course which satisfies the requirements of this subdivision and is certified or sponsored by one or more of the following organizations:

a. The North Carolina Criminal Justice Education and Training Standards Commission.

b. The National Rifle Association.

c. A law enforcement agency, college, private or public institution or organization, or firearms training school, taught by instructors certified by the North Carolina Criminal Justice Education and Training Standards Commission or the National Rifle Association.

Every instructor of an approved course shall file a copy of the course description, outline, and proof of certification annually, or upon modification of the course if more frequently, with the North Carolina Criminal Justice Education and Training Standards Commission.

...."

SECTION 8.(b) State and local law enforcement agencies shall provide paramedics rendering tactical medical assistance during a Special Weapons and Tactics operation with the same protective equipment provided to other members of a Special Weapons and Tactics operation.

PART IX. EFFECTIVE DATE

SECTION 9. Except as otherwise provided, this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H D

HOUSE BILL 181
PROPOSED COMMITTEE SUBSTITUTE H181-CSRN-5 [v.5]

03/21/2017 02:29:33 PM

Short Title: First Responders Act of 2017. (Public

Sponsors:

Referred to:

February 23, 2017

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE LAWS APPLYING TO FIRST RESPONDERS.

The General Assembly of North Carolina enacts:

PART I. TAX DEDUCTION FOR FIREFIGHTERS

SECTION 1.(a) G.S. 105-153.5 is amended by adding a new subsection to read:

"(e) Other Adjustments. – In calculating North Carolina taxable income, a taxpayer who is an eligible firefighter or an eligible rescue squad worker may deduct from adjusted gross income the sum of two hundred fifty dollars ($250.00). In the case of a married couple filing a joint return, each spouse may qualify separately for the deduction allowed under this subsection. In order to claim the deduction allowed under this subsection, the taxpayer must submit with the tax return any documentation required by the Secretary. An individual may not claim a deduction as both an eligible firefighter and as an eligible rescue squad worker in a single taxable year. The following definitions apply in this subsection:

(1) Eligible firefighter. – An unpaid member of a volunteer fire department who attended at least 36 hours of fire department drills and meetings during the taxable year.

(2) Eligible rescue squad worker. – An unpaid member of a volunteer rescue or emergency medical services squad who attended at least 36 hours of rescue squad training and meetings during the taxable year."

SECTION 1.(b) This section is effective for taxable years beginning on or after January 1, 2017.

PART II. PROPERTY TAX HOMESTEAD EXCLUSION FOR SURVIVING SPOUSE OF QUALIFYING EMERGENCY PERSONNEL

SECTION 2.(a) Article 12 of Subchapter II of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-277.1E. Surviving spouse property tax homestead exclusion.**

(a) Classification. – A permanent residence owned and occupied by a qualifying owner is designated a special class of property under Section 2(2) of Article V of the North Carolina Constitution and is taxable in accordance with this section. The appraised value of the permanent residence is excluded from taxation. A qualifying owner who receives an exclusion under this section may not receive other property tax relief.

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

(1) Emergency personnel officer. – Firefighting, search and rescue, or emergency medical services personnel or any employee of any duly accredited State or local government agency possessing authority to enforce the criminal laws of the State who (i) is actively serving in a position with assigned primary duties and responsibilities for prevention and detection of crime or the general enforcement of the criminal laws of the State and (ii) possesses the power of arrest by virtue of an oath administered under the authority of the State.

(2) Permanent residence. – Defined in G.S. 105-277.1.

(3) Property tax relief. – Defined in G.S. 105-277.1.

(4) Qualifying owner. – An owner, as defined in G.S. 105-277.1, who is a North Carolina resident and is the surviving spouse who has not remarried of an emergency personnel officer who was killed in the line of duty.

(c) Temporary Absence. – An owner does not lose the benefit of this exclusion because of a temporary absence from his or her permanent residence for reasons of health or because of an extended absence while confined to a rest home or nursing home, so long as the residence is unoccupied or occupied by a dependent of the owner.

(d) Other Multiple Owners. – This subsection applies to co-owners who are not husband and wife. Each co-owner of a permanent residence must apply separately for the exclusion allowed under this section.

When one or more co-owners of a permanent residence qualify for the exclusion allowed under this section and none of the co-owners qualifies for the exclusion allowed under G.S. 105-277.1, each co-owner is entitled to the full amount of the exclusion allowed under this section. The exclusion allowed to one co-owner may not exceed the co-owner's proportionate share of the valuation of the property, and the amount of the exclusion allowed to all the co-owners may not exceed the exclusion allowed under this section.

When one or more co-owners of a permanent residence qualify for the exclusion allowed under this section and one or more of the co-owners qualify for the exclusion allowed under G.S. 105-277.1, each co-owner who qualifies for the exclusion allowed under this section is entitled to the full amount of the exclusion. The exclusion allowed to one co-owner may not exceed the co-owner's proportionate share of the valuation of the property, and the amount of the exclusion allowed to all the co-owners may not exceed the greater of the exclusion allowed under this section and the exclusion allowed under G.S. 105-277.1.

(e) Application. – An application for the exclusion allowed under this section should be filed during the regular listing period but may be filed and must be accepted at any time up to and through June 1 preceding the tax year for which the exclusion is claimed. Persons may apply for this property tax relief by entering the appropriate information on a form made available by the assessor under G.S. 105-282.1."

SECTION 2.(b) G.S. 105-282.1(a) reads as rewritten:

"(a) Application. – Every owner of property claiming exemption or exclusion from property taxes under the provisions of this Subchapter has the burden of establishing that the property is entitled to it. If the property for which the exemption or exclusion is claimed is appraised by the Department of Revenue, the application shall be filed with the Department. Otherwise, the application shall be filed with the assessor of the county in which the property is situated. An application must contain a complete and accurate statement of the facts that entitle the property to the exemption or exclusion and must indicate the municipality, if any, in which the property is located. Each application filed with the Department of Revenue or an assessor shall be submitted on a form approved by the Department. Application forms shall be made available by the assessor and the Department, as appropriate.

Except as provided below, an owner claiming an exemption or exclusion from property taxes must file an application for the exemption or exclusion annually during the listing period.

...

(2) Single application required. – An owner of one or more of the following properties eligible for a property tax benefit must file an application for the benefit to receive it. Once the application has been approved, the owner does not need to file an application in subsequent years unless new or additional property is acquired or improvements are added or removed, necessitating a change in the valuation of the property, or there is a change in the use of the property or the qualifications or eligibility of the taxpayer necessitating a review of the benefit.

a. Property exempted from taxation under G.S. 105-278.3, 105-278.4, 105-278.5, 105-278.6, 105-278.7, or 105-278.8.

b. Special classes of property excluded from taxation under G.S. 105-275(3), (7), (8), (12), (17), (18), (19), (20), (21), (31e), (35), (36), (38), (39), (41), or (45) or under G.S. 105-277.1E or G.S. 131A-21.

c. Special classes of property classified for taxation at a reduced valuation under G.S. 105-277(h), 105-277.1, 105-277.1C, 105-277.10, 105-277.13, 105-277.14, 105-277.15, 105-277.17, or 105-278.

...."

SECTION 2.(c) This section is effective for taxes imposed for taxable years beginning on or after July 1, 2017.

PART III. ALLOW COMPANY POLICE OFFICERS AND HOSPITAL SECURITY TO TAKE PERSONS INTO CUSTODY FOR EXAMINATION BY PHYSICIAN OR ELIGIBLE PSYCHOLOGIST

SECTION 3. The title of Part 7 of Article 5 of Chapter 122C of the General Statutes and G.S. 122C-261 read as rewritten:

"Part 7. Involuntary Commitment of ~~the Mentally Ill~~Persons with Mental Illness; Facilities for ~~the Mentally Ill.~~Persons With Mental Illness.

"**§ 122C-261. Affidavit and petition before clerk or magistrate when immediate hospitalization is not necessary; custody order.**

(a) Anyone who has knowledge of an individual who ~~is mentally ill~~has a mental illness and is either (i) dangerous to self, as defined in G.S. 122C-3(11)a., or dangerous to others, as defined in G.S. 122C-3(11)b., or (ii) in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness, may appear before a clerk or assistant or deputy clerk of superior court or a magistrate and execute an affidavit to this effect, and petition the clerk or magistrate for issuance of an order to take the respondent into custody for examination by a physician or eligible psychologist. The affidavit shall include the facts on which the affiant's opinion is based. If the affiant has knowledge or reasonably believes that the respondent, in addition to ~~being mentally ill,~~having a mental illness, ~~is also mentally retarded,~~has an intellectual disability, this fact shall be stated in the affidavit. Jurisdiction under this subsection is in the clerk or magistrate in the county where the respondent resides or is found.

(b) If the clerk or magistrate finds reasonable grounds to believe that the facts alleged in the affidavit are true and that the respondent ~~is~~ probably ~~mentally ill~~has a mental illness and is either (i) dangerous to self, as defined in G.S. 122C-3(11)a., or dangerous to others, as defined in G.S. 122C-3(11)b., or (ii) in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness, the clerk or magistrate shall issue an order to ~~a~~ take the respondent into custody for examination by a physician or eligible psychologist. The order shall be issued to any of the following persons:

(1) A law enforcement ~~officer~~ officer.
(2) A company police officer commissioned under Chapter 74E of the General Statutes who is present at and assigned to the 24-hour facility or area facility where the respondent is located.
(3) A security officer employed by the facility or employed by a company contracting with the facility who is present at and assigned to the 24-hour facility or area facility where the respondent is located.
(4) ~~or any~~Any other person authorized under ~~G.S. 122C-251 to take the respondent into custody for examination by a physician or eligible psychologist.~~G.S. 122C-251.

If the clerk or magistrate finds that, in addition to probably ~~being mentally ill,~~having a mental illness, the respondent ~~is also~~ probably ~~mentally retarded,~~has an intellectual disability, the clerk or magistrate shall contact the area authority before issuing a custody order and the area authority shall designate the facility to which the respondent is to be taken for examination by a physician or eligible psychologist. The clerk or magistrate shall provide the petitioner and the respondent, if present, with specific information regarding the next steps that will occur for the respondent.

...

(d) If the affiant is a physician or eligible psychologist, all of the following apply:

...

(6) If the clerk or magistrate finds probable cause to believe that the respondent, in addition to ~~being mentally ill,~~having a mental illness, ~~is also mentally retarded,~~has an intellectual disability, 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.

...

(f) When a petition is filed for an individual who is a resident of a single portal area, the procedures for examination by a physician or eligible psychologist as set forth in G.S. 122C-263 shall be carried out in accordance with the area plan. Prior to issuance of a custody order for a respondent who resides in an area authority with a single portal plan, the clerk or magistrate shall communicate with the area authority to determine the appropriate 24-hour facility to which the respondent should be admitted according to the area plan or to determine if there are more appropriate resources available through the area authority to assist the petitioner or the respondent. When an individual from a single portal area is presented for commitment at a 24-hour area or State facility directly, the individual may not be accepted for admission until the facility notifies the area authority and the area authority agrees to the admission. If the area authority does not agree to the admission, it shall determine the appropriate 24-hour facility to which the individual should be admitted according to the area plan or determine if there are more appropriate resources available through the area authority to assist the individual. If the area authority agrees to the admission, further planning of treatment for the client is the joint responsibility of the area authority and the facility as prescribed in the area plan.

Notwithstanding the provisions of this section, in no event shall an individual known or reasonably believed to ~~be mentally retarded~~have an intellectual disability be admitted to a State psychiatric hospital, except as follows:

(1) Persons described in G.S. 122C-266(b);
(2) Persons admitted pursuant to G.S. 15A-1321;
(3) Respondents who are so extremely dangerous as to pose a serious threat to the community and to other patients committed to non-State hospital psychiatric inpatient units, as determined by the Director of the Division of

Mental Health, Developmental Disabilities, and Substance Abuse Services or his designee; and

(4) Respondents who are so gravely disabled by both multiple disorders and medical fragility or multiple disorders and deafness that alternative care is inappropriate, as determined by the Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services or his designee.

Individuals transported to a State facility for ~~the mentally ill~~persons with mental illness who are not admitted by the facility may be transported by law enforcement officers or designated staff of the State facility in State-owned vehicles to an appropriate 24-hour facility that provides psychiatric inpatient care.

No later than 24 hours after the transfer, the responsible professional at the original facility shall notify the petitioner, the clerk of court, and, if consent is granted by the respondent, the next of kin, that the transfer has been completed."

PART IV. INTERSTATE ACCESS STUDY

SECTION 4.(a) Study. – The Department of Transportation shall study the needs of law enforcement, emergency medical and emergency management personnel, and firefighters to improve access to or within the interstate system within this State for the benefit of public safety. In conducting the study, the Department of Transportation may consult with the Division of Emergency Management of the Department of Public Safety, the Office of State Fire Marshal of the Department of Insurance, the Office of Emergency Medical Services of the Department of Health and Human Services, and any other State or local government organizations the Department of Transportation determines may be of assistance in the course of the study. In performing the study, the Department of Transportation shall, at a minimum, take the following steps:

(1) Consult with county Fire Marshal Divisions, Emergency Management Offices, and Emergency Medical Service Divisions to determine potential sites of interest for construction or improvement relevant to the study.

(2) Establish criteria to prioritize sites of interest for either construction or improvement.

(3) Review applicable federal and State laws, codes, standards, and studies relevant to the study.

(4) Review (i) existing Department of Transportation planning, design, and construction standards for interchanges, median crossovers, and access points and (ii) how those standards consider the needs of law enforcement, emergency medical and emergency management personnel, and firefighters.

(5) Consider the feasibility of providing opportunities for stakeholder input during the planning of future interstate improvements that focus on the needs of law enforcement, emergency medical and emergency management personnel, and firefighters.

(6) Examine any other matters the Department of Transportation deems relevant in the course of the study.

SECTION 4.(b) Report. – The Department of Transportation shall report the findings and recommendations, including any legislative proposals, to the Joint Legislative Oversight Committee on Justice and Public Safety, Joint Emergency Management Oversight Committee, and Joint Legislative Transportation Oversight Committee no later than March 1, 2018.

PART V. LOCAL FIREFIGHTER RELIEF FUND ELIGIBILITY

SECTION 5.(a) G.S. 58-84-35(a) reads as rewritten:

"**§ 58-84-35. Disbursement of funds by trustees.**

(a) The board of trustees shall have entire control of the funds derived from the provisions of this Article, and shall disburse the funds only for the following purposes:

...

(2a) To provide assistance, upon approval by the Executive Director of the North Carolina State Firefighters' Association, to a destitute member firefighter who has served or is serving honorably ~~for at least five years.~~with a certified fire department. The determination of destitute shall be based on the inability of the firefighters, through no fault of their own, to provide basic provisions to themselves or their families. Such basic provisions include, but are not limited to, assistance with housing, vehicle or commuting expenses, food, clothing, utilities, medical care, and funeral expenses.

...."

SECTION 5.(b) This section becomes effective July 1, 2017, and applies to distributions to local firefighters' relief funds on or after that date.

PART VI. CDL/CLARIFY EXEMPTION FOR EMERGENCY VEHICLES

SECTION 6.(a) G.S. 20-7(a)(3) reads as rewritten:

"(3) Class C. – A Class C license authorizes the holder to drive any of the following:

a. A Class C motor vehicle that is not a commercial motor vehicle.

b. When operated by a volunteer member of a fire department, a rescue squad, or an emergency medical service (EMS) in the performance of duty, a Class A or Class B fire-fighting, rescue, or EMS motor vehicle or a combination of these vehicles. For purposes of this sub-subdivision, (i) the term "performance of duty" includes any official business of a fire department, rescue squad, or EMS, that requires use of the vehicle, and (ii) the term "official business" includes training and the performance of maintenance.

c. A combination of noncommercial motor vehicles that have a GVWR of more than 10,000 pounds but less than 26,001 pounds. This sub-subdivision does not apply to a Class C license holder less than 18 years of age."

SECTION 6.(b) G.S. 20-37.16(e) reads as rewritten:

"(e) The requirements for a commercial drivers license do not apply to vehicles used for personal use such as recreational vehicles. A commercial drivers license is also waived for the following classes of vehicles as permitted by regulation of the United States Department of Transportation:

...

(2) Any vehicle when used as firefighting or emergency equipment for the purpose of preserving life or ~~property or to execute~~property; executing emergency governmental ~~functions.~~functions; or other official business of a fire department, rescue squad, or emergency medical service that requires use of the vehicle. For purposes of this subdivision, the term "official business" includes training and the performance of maintenance.

...."

PART VII. HATE CRIMES AGAINST EMERGENCY PERSONNEL

SECTION 7.(a) Article 52 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-401.14A. Hate crime against emergency personnel.**

(a) The following definitions apply in this section:
(1) Emergency personnel. – As defined in G.S. 14-288.9.
(2) Serious bodily injury. – As defined in G.S. 14-32.4.
(b) Unless the conduct is covered by another provision of law providing greater punishment, if anyone assaults another person because the person is emergency personnel and inflicts serious bodily injury on the other person, the offender is guilty of a Class H felony.
(c) Unless the conduct is covered by another provision of law providing greater punishment, if anyone assaults another person with a firearm because the person is emergency personnel, the offender is guilty of a Class F felony.
(d) Anyone who, with the intent of harming a person who is emergency personnel, lures the person to a location by falsely reporting or having another individual falsely report that emergency services are needed and then assaults that person because the person is emergency personnel is guilty of a Class E felony."

SECTION 7.(b) This section becomes effective December 1, 2017, and applies to offenses committed on or after that date.

PART VIII. CONCEALED CARRY FOR CERTAIN EMERGENCY MEDICAL SERVICES PERSONNEL

SECTION 8.(a) G.S. 14-269 reads as rewritten:

"§ 14-269. Carrying concealed weapons.

(a) It shall be unlawful for any person willfully and intentionally to carry concealed about his or her person any bowie knife, dirk, dagger, slung shot, loaded cane, metallic knuckles, razor, shuriken, stun gun, or other deadly weapon of like kind, except when the person is on the person's own premises.

...

(b) This prohibition shall not apply to the following persons:

...

(10) Emergency medical services personnel, as defined in G.S. 131E-155, while on duty, who are deployed as part of their official duties providing tactical medical assistance to law enforcement in an emergency situation, including a Special Weapons And Tactics (SWAT) operation. In order to qualify under this subdivision, emergency services personnel shall have completed an approved tactical medical assistance course for supporting tactical law enforcement operations. An approved course shall (i) include an element on firearms safety and training, (ii) include instruction in the laws of this State governing the use of deadly force, and (iii) require training and qualification on all weapons systems, both lethal and less than lethal, deemed necessary by any law enforcement agency the emergency services personnel supports. For purposes of this subdivision, an approved course shall be any course which satisfies the requirements of this subdivision and is certified or sponsored by one or more of the following organizations:
a. The North Carolina Criminal Justice Education and Training Standards Commission.
b. The National Rifle Association.
c. A law enforcement agency, college, private or public institution or organization, or firearms training school, taught by instructors certified by the North Carolina Criminal Justice Education and Training Standards Commission or the National Rifle Association.

Every instructor of an approved course shall file a copy of the course description, outline, and proof of certification annually, or upon modification

of the course if more frequently, with the North Carolina Criminal Justice Education and Training Standards Commission.

...."

SECTION 8.(b) State and local law enforcement agencies shall provide paramedics rendering tactical medical assistance during a Special Weapons and Tactics operation with the same protective equipment provided to other members of a Special Weapons and Tactics operation.

PART IX. EFFECTIVE DATE

SECTION 9. Except as otherwise provided, this act is effective when it becomes law.

HOUSE BILL 181:
First Responders Act of 2017.

Attachment 9

2017-2018 General Assembly

Committee:	House Judiciary III. If favorable, re-refer to Transportation. If favorable, re-refer to Finance	**Date:**	March 16, 2017
Introduced by:	Reps. Warren, Clampitt, Ford, Potts	**Prepared by:**	Trina Griffin, Susan Sitze, and Brad Krehely Staff Attorneys
Analysis of:	PCS to First Edition H181-CSRN-5		

OVERVIEW: House Bill 181 (proposed committee substitute) would make the following changes to the laws applying to first responders:

- ***Create a $250 income tax deduction for a person who works as an unpaid member for a volunteer fire department, volunteer rescue department, or an EMS squad and attends at least 36 hours of training during the year.***
- ***Create a property tax exclusion for property of a surviving spouse who has not remarried of an emergency personnel officer who was killed in the line of duty.***
- ***Allow company police officers and hospital security located at the evaluating facility to take persons into custody for examination by a physician or psychologist.***
- ***Direct the Department of Transportation to study the needs of law enforcement, emergency medical and emergency management personnel, and firefighters to improve access within the interstate system for the benefit of public safety and report its findings no later than March 1, 2018.***
- ***Expand eligibility for assistance from a local firefighter relief fund by removing the requirement that a firefighter have served at least five years.***
- ***Clarify the licensing exemptions for the operation of emergency vehicles.***
- ***Create new hate crimes for offenses against emergency personnel.***
- ***Exempt from the general prohibition against carrying a concealed weapon, emergency medical services personnel if they are deployed providing tactical medical assistance to law enforcement in an emergency situation and if they have had specific training.***

CURRENT LAW & BILL ANALYSIS:

PARTS I & II: TAX CHANGES

Income Tax Deduction. – There is currently no stand-alone income tax deduction available specifically for firefighters or rescue squad workers. In 2007, the General Assembly enacted a $250 deduction under the same conditions being proposed by this PCS. The deduction was in place from tax year 2007 through tax year 2013. In 2013, the General Assembly enacted the Tax Simplification and Reduction Act which made significant changes to the overall tax structure and reduced tax rates. In exchange,

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

several tax credits and tax deductions were repealed, including the deduction for volunteer firefighters and rescue workers.

Part I of the PCS would create a State income tax deduction for an individual who meets all three of the following conditions:

- Works as an unpaid member
- For a volunteer fire department, a volunteer rescue squad, or an emergency medical services squad
- Attends 36 hours of training and meetings during the taxable year.

The amount of the deduction is $250. An individual may only claim one deduction in a single taxable year. In the case of a married couple filing a joint return, each spouse must qualify separately for the deduction.

EFFECTIVE DATE: The deduction would be effective for taxable years beginning on or after January 1, 2017.

Property Tax Exclusion. –

Part II of the PCS would exclude from property tax 100% of the appraised value of a permanent residence owned and occupied by a person who is a North Carolina resident and who is the surviving spouse, who has not remarried, of an emergency personnel officer who was killed in the line of duty.

An emergency personnel officer means the following:

- Firefighting, search and rescue, or emergency services personnel
- Any employee of an accredited State or local government agency possessing authority to enforce the criminal laws of the State who is:
    - Actively serving in a position with assigned primary duties and responsibilities for prevention and detection of crime or the general enforcement of the criminal laws of this State; and
    - Possesses the power of arrest by virtue of an oath administered under the authority of this State.

An owner must apply for this benefit in order to receive it, but once the application has been approved, the owner does not have to reapply in subsequent years unless there is a change in the valuation or use of the property or the eligibility of the taxpayer.

EFFECTIVE DATE: This section would become effective for taxes imposed for taxable years beginning on or after July 1, 2017.

PART III: CUSTODIAL AUTHORITY FOR COMPANY POLICE OFFICERS AND HOSPITAL SECURITY

Part III of the PCS would modify the provision of current law that allows a magistrate to order a person who has a mental illness and is either (i) a danger to self or others, or (ii) in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness to be taken into custody for examination by a physician or eligible psychologist. G.S. 122C-261 currently allows the magistrate to issue the order to a law enforcement officer, in some limited cases a family member or immediate friend, or a specifically trained individual designated by the local government entity required to provide transportation for the examination.

The PCS would amend G.S. 122C-261 to add the following additional persons to whom the custody order could be issued:

- A company police officer commissioned under Chapter 74E of the General Statutes who is present at and assigned to the 24-hour facility or area facility where the respondent is located.
- A security officer employed by the facility or employed by a company contracting with the facility who is present at and assigned to the 24-hour facility or area facility where the respondent is located.

EFFECTIVE DATE: This section would become effective when the act becomes law.

PART IV: INTERSTATE ACCESS STUDY BY DOT

Part IV of the PCS would direct the Department of Transportation (DOT) to study improving access of emergency personnel to the interstate system within the State for the benefit of public safety. The PCS would require the DOT to report findings and recommendations, including any legislative proposals, to the Joint Legislative Oversight Committee on Justice and Public Safety, Joint Emergency Management Oversight Committee, and Joint Legislative Transportation Oversight Committee no later than March 1, 2018.

EFFECTIVE DATE: This section would become effective when the act becomes law.

PART V: LOCAL FIREFIGHTER RELIEF FUND ELIGIBILITY

Part V of the PCS would permit the board of trustees of a Local Firefighters' Relief fund to provide assistance, upon approval by the Executive Director of the North Carolina State Firefighters' Association, to a destitute member firefighter who has served or is serving honorably with a certified fire department. It removes the requirement that the firefighter must have served honorably for at least five years.

EFFECTIVE DATE: This section would become effective July 1, 2017, and would apply to distributions to local firefighters' relief funds on or after that date.

PART VI: LICENSING EXEMPTION FOR EMERGENCY VEHICLES

Part VI of the PCS would clarify the licensing requirements for operation of emergency vehicles. Section 6.(a) would amend G.S. 20-7(a)(3) to clarify that the performance of duty requirement for volunteer members of a fire department, rescue squad, or emergency medical services to operate certain Class A or Class B motor vehicles with only a Class C license includes any official business of the fire department, rescue squad, or EMS and that "official business" includes training and performance of maintenance. Section 6.(b) would amend G.S. 20-37.16(e) to clarify that a commercial driver's license is not required to operate firefighting or emergency equipment for official business, and that "official business" includes training and performance of maintenance.

EFFECTIVE DATE: This section would become effective when the act becomes law.

PART VII: NEW CRIMINAL OFFENSES

Part VII of the PCS would create new criminal offenses for hate crimes committed against emergency personnel, which includes law enforcement officers, firemen, ambulance attendants, utility workers, doctors, nurses, and other persons lawfully engaged in providing essential services during an emergency.

The new G.S. 14-401.14A would create the following new offenses:

- A Class H felony for assaulting a person because the person is emergency personnel and inflicting serious bodily injury.
- A Class F felony for assaulting a person with a firearm because the person is emergency personnel.
- A Class E felony for luring a person to a location by falsely reporting or having another individual falsely report that emergency services are needed with the intent to harm the person and then assaulting the person because the person is emergency personnel.

EFFECTIVE DATE: This section would become effective December 1, 2017, and would apply to offenses committed on or after that date.

PART VIII: CONCEALED CARRY FOR CERTAIN EMS PERSONNEL

Part VIII of the PCS would exempt emergency medical services personnel, while on duty, who are deployed providing tactical medical assistance to law enforcement in an emergency situation, including a Special Weapons and Tactics (SWAT) operation, as part of their official duties, from the general prohibition against concealed weapons if they have had specific training. This would also exclude them from prohibitions against weapons in certain other locations including educational property, the State Capitol, and courthouses while they are assisting in the emergency situation.

Section 8.(b) of the PCS would require State and local law enforcement agencies to provide paramedics providing tactical medical assistance during a SWAT operation with the same protective equipment provided to other members of the SWAT team.

EFFECTIVE DATE: This section would become effective when the act becomes law.

House Committee on Judiciary III
Wednesday, March 29, 2017 at 12:30 PM
Room 421 of the Legislative Office Building

Sergeant at Arms

1. **Bill Bass**
2. **Jonas Cherry**
3. **Mark Cone**
4. **Will Crocker**

House Committee on Judiciary III
Wednesday, March 29, 2017 at 12:30 PM
Room 421 of the Legislative Office Building

MINUTES

The House Committee on Judiciary III met at 12:30 PM on Wednesday, March 29, 2017 in Room 421 of the Legislative Office Building. Representatives Jordan, Zachary, Reives, Conrad, Hastings, Horn, Lehman, Quick, B. Turner and White attended. Brad Krehely, Kristen Harris and Billy Godwin (Research Staff Counsel), along with Emma Benson (Committee Clerk) were in attendance. A Visitor Registration list is attached and made part of these minutes (Attachment 1).

Representative Jonathan Jordan, Chair, presided. The chair called the meeting to order at 12:35 PM. He introduced the Sergeants at Arms (Attachment 2) and House Pages (Attachment 3). The following bills were considered:

House Bill 94, Proposed Committee Substitute (PCS) and a summary are provided (Attachments 4, 5 and 6).

HOUSE BILL 94: EMERGENCY MANAGEMENT/DRONE USE.

Chairman Jordan recognized Rep. Horn to make the motion for the PCS to be before the committee. The motion carried.

Chairman Jordan recognized Reps. Speciale and Cleveland to present the bill.

The PCS to House Bill 94 would authorize an emergency management agency, as defined in G.S. 166A-19.3(9) to use an unmanned aircraft system (UAS) in certain emergency response situations. The bill would be effective when it becomes law.

The PCS clarifies the title to reflect that the authorization would apply to an emergency management "agency" (rather than emergency management personnel) using a UAS for emergency "management" (rather than emergency medical) response purposes. The PCS defines emergency management agency as defined in G.S. 166A-19.3(9).

Chairman Jordan recognized Rep. Zachary to make the motion favorable to the PCS, unfavorable to the original bill. The motion passed without dissent.

House Bill 94 has a serial referral to the House Committee on Transportation.

House Bill 467 and a summary are provided (Attachments 7 and 8).

HOUSE BILL 467: AGRICULTURE AND FORESTRY NUISANCE REMEDIES

Due to the interest on this bill, the decision was made to have it heard for discussion only.

Chairman Jordan recognized Rep. Dixon to explain the bill.

House Bill 467 would limit the amount of compensatory damages that may be awarded in a private nuisance action against an agricultural or forestry operation to the fair market value or fair rental value of the plaintiff's property.

Chairman Jordan recognized Reps. Horn, Quick, Lehman, Reives, and Brian Turner to provide discussion on the bill.

Chairman Jordan recognized the following members of the public to speak on the bill – Victoria Cunningham, Larry Baldwin, Randy Davis, Ryke Longest, Naeema Muhammed, Elste Herring, Allie Sheffield, Danielle Purifoy, and Jessie Jarmon.

House Bill 150, PCS, and Bill Summary are provided (Attachments 9, 10. and 11).

HOUSE BILL 150: STANDARDS FOR CHIROPRACTIC REVIEW

Chairman Jordan recognized Rep. Horn to make the motion to bring the PCS before the committee.

Chairman Jordan recognized Rep. Conrad to explain the bill.

The PCS for House Bill 150 would require that when a third-party payer requests a review of motor vehicle liability claims for personal injury and medical payments claims involving chiropractic treatment that the review be performed by a chiropractor licensed in North Carolina. The review would be performed for the purpose of advising a third-party payer as to whether the services rendered by the treating chiropractor were clinically necessary and supported by the documentation.

The PCS would add a requirement that the treatment records being reviewed be redacted to remove any information that would identify the treating chiropractor.

Chairman Jordan recognized Reps. Horn, Lehman, and Zachary to ask questions on the bill.

After some discussion, Chairman Jordan recognized Rep. Reives to make the motion favorable to the PCS, unfavorable to original bill. The motion passed.

With there being no further business, Rep. Jordan adjourned the meeting at 1:50 PM.

Representative Jonathan Jordan, Chair
Presiding

Emma Benson, Committee Clerk

Attachments

1. Visitor Registration Sheet
2. Sergeants at Arms
3. House Pages
4. House Bill 94
5. House Bill 94 PCS
6. House Bill 94 Summary
7. House Bill 467
8. House Bill 467 Summary
9. House Bill 150
10. House Bill 150 PCS
11. House Bill 150 Summary

Sign Up to Speak 467

VISITOR REGISTRATION SHEET

House Judiciary III Committee — 03-29-2017
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
✓ Victoria Cunningham	4282 Shoals Rd P. Nnagle NC 27043
✓ Larry Baldwin	411 Church Rd New Bern NC 28560 nonprofit with Waterkeeper
✓ RANDY DAVIS	8226 STANCIL TOWN RD STANTONSBURG, NC 27883 plaintiff & homeowner
✓ Ryke Longest	Duke Law School
✓ Naeema Muhammed	Duplin/Sampson ~~plaintiff~~ community activist.
✓ Elsie Herring	" / " plaintiff/activist
✓ John Hughes / Bill Graham	attorneys Wallace & Graham.
✓ Allie Sheffield	Duplin County
~~Courtney Woods~~	~~Durham County~~
✓ Danielle Purifoy	Duke University
✓ Philip Isley	NCAJ
✓ Jessie Jackson	Duplin (REACH)

Mr. Chairs, your honors,

My name is Ryke Longest. I am a resident of Raleigh, but 7 generations of my family before me have lived in Duplin, Sampson, Pender and New Hanover counties. My Father is buried outside of Rose Hill and my Mother currently lives in Wallace. I served for fourteen years in the Attorney General's Office, representing the N.C. Soil and Water Conservation Commission and NC DENR. I left my work there nine years ago and I come today on my own behalf.

As a result of my work at the Attorney General's Office, I studied the laws which HB 467 are designed to change. I say change explicitly because HB 467 changes the law. It does not clarify existing law. It changes it. It tells some landowners that their property rights are not equal to those of others anymore.

North Carolina borrowed the common law regarding real property from Great Britain when we first became a state. In the Commentaries on the Laws of England, Sir William Blackstone laid down the common law in four volumes between 1765 and 1769. As to property rights, Blackstone quoted a Latin phrase to sum up the obligation of a property owner to their neighbor: *Sic utere tuo, alienum non laedas*. At that time, and forever since, the law of North Carolina has been that no property owner has a right to use their property in a way that harms their neighbor's use of their property.

In 1953, Mr. G.W. Morgan and his wife appeared before the NC Supreme Court to seek redress from their neighbor was using its property in a way that prevented them from using their property. In that case, the Supreme Court affirmed that the basis of the law had not changed since Blackstone recorded it. See Morgan v. High Penn Oil Company 238 N.C. 185 (1953). This case's reasoning was affirmed many times thereafter, most extensively in Watts v. Pama Mfg. Co. in 1952, before many of us were born. More recently cited in Hoffman v. Vulcan Materials co. 91 F. Supp. 2nd 881 (MDNC 1999).

Since 1953, the law has been clear on how a landowner can seek the aid of our courts to remedy their neighbor's invasion of their property rights. Every landowner has a right to be able to spread out a picnic or have a cookout on their lawn. Every landowner has a right to grow a garden or tend a grapevine on their property and enjoy the produce therefrom.

Every landowner had those rights, until you pass this law.

After you pass this law, no court can protect some landowners' rights to have a picnic, or cook outside, or grow a garden. If your neighbor's actions keep you from doing those things and the court finds the neighbor's use is included in the overly broad category of agricultural or forestry operations, then you are out of luck. When courts can no longer protect your property rights, you no longer will have them. All the Court can do is tell your neighbor to hand you a check. In effect, HB 467 is telling agricultural landowners that they have the right to condemn their neighbor's property?

And so it appears to me that HB 467 has a serious constitutional flaw in that it takes away rights long recognized at law and long protected by our courts.

There is no reason to change the law. Our courts have been open and our juries are fair.

I ask you to leave them to their job of protecting the property rights of all people.

I thank you for your time and for your sacrificial service to the People of North Carolina.

Attachment 1

VISITOR REGISTRATION SHEET

House Judiciary III Committee — 03-29-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Melvin Lashley	FH
Phoebe Landon	MWC
JEFF BARNHART	MWC
Laura Barnhart	Grange
Rayford Bennett	208 MB Bennett Lane Clinton NC
Katie Gammon	Governor's office
Ryhe Longest	1001 West South St. Raleigh
John S Hughes	Wallace + Graham, PA.
Jessie Sarmon	REACH
Luby WATERS	REACH
JERE CUNNINGHAM	PINNACLE, N.C.

VISITOR REGISTRATION SHEET

House Judiciary III Committee — 03-29-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Courtney Woods	Durham County
Danielle Purifoy	Durham County
Bria Ellerson	Press
[signature]	WTG
Alice Sheffield	Warsaw NC native
Whitney W Williams	WTG
Deborah Paterson	Wallace, N.C (Deep Bottom)

VISITOR REGISTRATION SHEET

House Judiciary III Committee — 03-29-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chris Wall	Policy Group
Angie Maier	NLPC
	~~NA~~
~~TERRY~~ COHEN	NM
Paul Jedgn	VL
Herbert J. Garner	~~NA~~ HF
Joe Garner	HF
Little Lowell	NA

VISITOR REGISTRATION SHEET

House Judiciary III Committee — 03-29-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Henry Jones	Odom Pace, etc.
Bernard Jarmon	Kenansville
Wallace Green	GIS, LLC
Anne Hayes	Citizen
John McMillan	MFOS
Pamela McMillan	
Linda Bing	
Erin High	
Geneva Pearson	Kenansville N.C.
Jacqueline Hicks	
Elsie Hockaday	

VISITOR REGISTRATION SHEET

House Judiciary III Committee — 03-29-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Robert PAschal	NC DOJ
Lisa Martin	Cap-Ad
Shawn Kostyz	CAA
RANDY DAVIS	8226 STANCIL TOWN RD STANTONSBURG, NC 27883
HARRY W Smith	Wallace & Graham
Michele Garner	Wallace and Graham
Ellis C. Tatum	Wallace & Graham
Judith Worrell	Wallace & Graham
Amanda Ng	NDA
Don Webb	CCRW
Elsie Herring	REACH, Warsaw

VISITOR REGISTRATION SHEET

House Judiciary III Committee — 03-29-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Larry Baldwin	Crystal Coast Waterkeeper 28557 700 Arendell St. Morehead City
Victoria Cunningham	4282 Shoals Rd Pinnacle, NC 27043
Lillie Stancil	Jones Street Consulting
Carolyn Taylor	N.C. Justice Sampson Co.
Lana Carter	NCEJN
Violet Branch	Duplin County Kenansville, NC

Attachment 2

Committee Sergeants at Arms

NAME OF COMMITTEE Judiciary III

DATE: 3-29-2017 Room: 421

House Sgt-At Arms:

1. Name: Bill Bass
2. Name: Jonas Cherry
3. Name: Mark Cone
4. Name: Will Crocker
5. Name: _____

Senate Sgt-At Arms:

1. Name: _____
2. Name: _____
3. Name: _____
4. Name: _____
5. Name: _____

House Pages
Assignments
Wednesday, March 29, 2017
Session: 2:00 PM

Committee	Room	Time	Staff	Comments	Member
State and Local Government	544	10:00 AM	Jon Edmonston		Rep. Grier Martin
			Brenton Lanier		Rep. Brenden Jones
			William Patterson, II		Rep. Holly Grange
			Greyson Siderio		Rep. Chris Malone
Alcoholic Beverage Control	544	11:00 AM	Troy Elbert		Rep. Marvin Lucas
			Benjamin Williams		Rep. Marvin Lucas
Health	643	11:00 AM	Situna Taliau		Rep. Speaker Tim Moore
			Naiia Pullen		Rep. Speaker Tim Moore
			Anthony Vincent		Rep. Speaker Tim Moore
			Diamond Smith		Rep. Speaker Tim Moore
Pensions and Retirement	415	12:00 PM	Sydney Todd		Rep. Speaker Tim Moore
			Megan Hammaker		Rep. Kevin Corbin
Judiciary III	421	12:30 PM	Ubaldo Velasco-Lopez		Rep. Speaker Tim Moore
			Christopher Tucker		Rep. Speaker Tim Moore
Judiciary I	415	1:00 PM	Darius Bellamy		Rep. Speaker Tim Moore
			Hunter Freeman		Rep. Speaker Tim Moore

Attachment 3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H 1

HOUSE BILL 94

Short Title:	Emergency Management/Drone Use.	(Public
Sponsors:	Representatives Speciale, Pittman, Torbett, and Cleveland (Primary Sponsors). *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	Judiciary III, if favorable, Transportation	

February 15, 2017

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE EMERGENCY MANAGEMENT SERVICES PERSONNEL TO USE UNMANNED AIRCRAFT SYSTEMS FOR EMERGENCY MEDICAL RESPONSE PURPOSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-300.1 reads as rewritten:

"**§ 15A-300.1. Restrictions on use of unmanned aircraft systems.**

...

(c) Law Enforcement Exceptions. – Notwithstanding the provisions of subsection (b) of this section, the use of unmanned aircraft systems by law enforcement agencies of the State or a political subdivision of the State is not prohibited in the following instances:

(1) To counter a high risk of a terrorist attack by a specific individual or organization if the United States Secretary of Homeland Security or the Secretary of the North Carolina Department of Public Safety determines that credible intelligence indicates that such a risk exists.

(2) To conduct surveillance in an area that is within a law enforcement officer's plain view when the officer is in a location the officer has a legal right to be.

(3) If the law enforcement agency first obtains a search warrant authorizing the use of an unmanned aircraft system.

(4) If the law enforcement agency possesses reasonable suspicion that, under particular circumstances, swift action is needed to prevent imminent danger to life or serious damage to property, to forestall the imminent escape of a suspect or the destruction of evidence, to conduct pursuit of an escapee or suspect, or to facilitate the search for a missing person.

(5) To photograph gatherings to which the general public is invited on public or private land.

(c1) Emergency Management Exceptions. – Notwithstanding the provisions of subsection (b) of this section, emergency management services personnel acting in the course and scope of their duties may use unmanned aircraft systems for incident command, area reconnaissance, personnel and equipment deployment monitoring, and other related emergency management response purposes.

...."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H D

HOUSE BILL 94
PROPOSED COMMITTEE SUBSTITUTE H94-CSBD-9 [v.3]

03/21/2017 01:30:23 PM

Short Title: Emergency Management/Drone Use. (Public

Sponsors:

Referred to:

February 15, 2017

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE AN EMERGENCY MANAGEMENT AGENCY TO USE UNMANNED AIRCRAFT SYSTEMS FOR EMERGENCY MANAGEMENT RESPONSE PURPOSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-300.1 reads as rewritten:

"**§ 15A-300.1. Restrictions on use of unmanned aircraft systems.**

...

(c) Law Enforcement Exceptions. – Notwithstanding the provisions of subsection (b) of this section, the use of unmanned aircraft systems by law enforcement agencies of the State or a political subdivision of the State is not prohibited in the following instances:

(1) To counter a high risk of a terrorist attack by a specific individual or organization if the United States Secretary of Homeland Security or the Secretary of the North Carolina Department of Public Safety determines that credible intelligence indicates that such a risk exists.

(2) To conduct surveillance in an area that is within a law enforcement officer's plain view when the officer is in a location the officer has a legal right to be.

(3) If the law enforcement agency first obtains a search warrant authorizing the use of an unmanned aircraft system.

(4) If the law enforcement agency possesses reasonable suspicion that, under particular circumstances, swift action is needed to prevent imminent danger to life or serious damage to property, to forestall the imminent escape of a suspect or the destruction of evidence, to conduct pursuit of an escapee or suspect, or to facilitate the search for a missing person.

(5) To photograph gatherings to which the general public is invited on public or private land.

(c1) Emergency Management Agency Exceptions. – Notwithstanding the provisions of subsection (b) of this section, an emergency management agency as defined in G.S. 166A-19.3(9), may use unmanned aircraft systems for incident command, area reconnaissance, personnel and equipment deployment monitoring, and other related emergency management response purposes.

...."

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

HOUSE BILL 94:
Emergency Management/Drone Use.

2017-2018 General Assembly

Committee:	House Judiciary III. If favorable, re-refer to Transportation	**Date:**	March 20, 2017
Introduced by:	Reps. Speciale, Pittman, Torbett, Cleveland	**Prepared by:**	Billy R. Godwin Staff Attorney
Analysis of:	PCS to First Edition H94-CSBD-9		

OVERVIEW: ***House Bill 94 (proposed committee substitute) would authorize an emergency management agency, as defined in G.S. 166A-19.3(9) to use an unmanned aircraft system (UAS) in certain emergency response situations. The bill would be effective when it becomes law.***

The PCS clarifies the title to reflect that the authorization would apply to an emergency management "agency" (rather than emergency management services personnel) using a UAS for emergency "management" (rather than emergency medical) response purposes. The PCS defines emergency management agency as it is defined in G.S. 166A-19.3(9).

CURRENT LAW: Subject to an exception for certain law enforcement activities and general newsworthy or public events, North Carolina law (G.S.15A-300.1) prohibits any person, entity, or State agency from using a UAS to (i) conduct non-consensual surveillance of persons, dwellings, or private real property or to (ii) photograph an individual with the intent to publish or disseminate the photograph. Persons subjected to unwarranted UAS surveillance or whose photograph is unlawfully taken for the purpose of publication or dissemination have a cause of action against the offending person, entity, or State agency. In lieu of actual damages a person whose photograph is unlawfully taken may elect to recover $5,000.00 for each photograph or video that is published or disseminated, and may obtain injunctive relief as well as reasonable costs and attorneys fees. G.S. 15A-300.1(e).

All State or local government UAS operators are required to complete a knowledge test demonstrating knowledge of State statutes and regulations regarding UAS operation. (G.S. 63-95)

BILL ANALYSIS: House Bill 94 (proposed committee substitute) would add an exception to the general prohibition against UAS use to allow an "*emergency management agency,*" defined under G.S. 166A-19.3(9) as *a State or local government agency charged with coordination of all emergency management activities for its jurisdiction*, to use a UAS for the following:

- Incident command.
- Area reconnaissance.
- Personnel and equipment deployment monitoring.
- Other related emergency management response purposes.

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

Karen Cochrane-Brown
Director

Legislative Analysis Division
919-733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

HOUSE BILL 467

Short Title: Agriculture and Forestry Nuisance Remedies. (Public

Sponsors: Representatives Dixon, Davis, Lewis, and J. Bell (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary III

March 27, 2017

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE REMEDIES AVAILABLE IN PRIVATE NUISANCE ACTIONS AGAINST AGRICULTURAL AND FORESTRY OPERATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 57 of Chapter 106 of the General Statutes is amended by adding a new section to read:

"**§ 106-702. Limitations on private nuisance actions against agricultural and forestry operations.**

(a) The compensatory damages that may be awarded to a plaintiff for a private nuisance action where the alleged nuisance emanated from an agricultural or forestry operation shall be as follows:

(1) If the nuisance is a permanent nuisance, compensatory damages shall be measured by the reduction in the fair market value of the plaintiff's property caused by the nuisance, but not to exceed the fair market value of the property.

(2) If the nuisance is a temporary nuisance, compensatory damages shall be limited to the diminution of the fair rental value of the plaintiff's property caused by the nuisance.

(b) If any plaintiff or plaintiff's successor in interest brings a subsequent private nuisance action against any agricultural or forestry operation, the combined recovery from all such actions shall not exceed the fair market value of his or her property. This limitation applies regardless of whether the subsequent action or actions were brought against a different defendant than the preceding action or actions.

(c) This Article shall apply to any private nuisance claim brought against any party based on that party's contractual or business relationship with an agricultural or forestry operation."

SECTION 2.(a) This act is effective when it becomes law and applies to actions filed, arising, or pending on or after that date.

SECTION 2.(b) If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part declared to be unconstitutional or invalid.

HOUSE BILL 467:
Agriculture and Forestry Nuisance Remedies.

2017-2018 General Assembly

Committee:	House Judiciary III	**Date:**	March 28, 2017
Introduced by:	Reps. Dixon, Davis, Lewis, J. Bell	**Prepared by:**	Brad Krehely Committee Co-Counsel
Analysis of:	First Edition		

OVERVIEW: House Bill 467 would limit the amount of compensatory damages that may be awarded in a private nuisance action against an agricultural or forestry operation to the fair market value or fair rental value of the plaintiff's property.

CURRENT LAW: Nuisance law in North Carolina is governed by the common law. Private nuisance is defined as any unreasonable invasion of a person's interest in the private use and enjoyment of his or her land by any type of liability-forming conduct. Determining whether an interference is unreasonable is largely fact-specific and determined by the circumstances in each case."[1]

G.S. 106-701 provides a "come-to-the-nuisance" defense against nuisance lawsuits for agricultural and forestry operations that have been in operation for more than one year. However, the operation can become a nuisance if: operated negligently/improperly or if the operation has had a fundamental change.

An agricultural operation is: "any facility for the production for commercial purposes of crops, livestock, poultry, livestock products, or poultry products." G.S. 106-701(b). A forestry operation includes "those activities involved in the growing, managing, and harvesting of trees." G.S. 106-701(b1).

BILL ANALYSIS: House Bill 467 would provide that in a private nuisance action where the alleged nuisance emanated from an agricultural or forestry operation, the compensatory damages that may be awarded to the plaintiff are:

- If the nuisance is a permanent nuisance, the reduction in the fair market value of the plaintiff's property caused by the nuisance, but not to exceed the fair market value of the property.
- If the nuisance is a temporary nuisance, the diminution in the fair rental value of the plaintiff's property caused by the nuisance.

If the plaintiff or the plaintiff's successor in interest brings a subsequent action against an agricultural or forestry operation, including a different defendant than in the plaintiff's initial action, the combined recovery from all nuisance actions may not exceed the fair market value of the plaintiff's property.

The bill would also provide that this Article applies to any private nuisance claim brought against any party based on that party's contractual or business relationship with an agricultural or forestry operation.

EFFECTIVE DATE: The act would be effective when it becomes law and would apply to actions filed, arising, or pending on or after that date.

*Chris Saunders, former Staff Attorney for the Legislative Analysis Division, contributed substantially to this summary.

[1] *Pake v. Morris*, 230 N.C. 424, 53 S.E.2d 300 (1949).

Karen Cochrane-Brown
Director

Legislative Analysis Division
919-733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

GENERAL ASSEMBLY OF NORTH CAROL
SESSION 2017

H 2

HOUSE BILL 150
Committee Substitute Favorable 3/14/17

Short Title: Standards for Chiropractic Peer Review. (Public)

Sponsors:

Referred to:

February 22, 2017

A BILL TO BE ENTITLED

AN ACT REQUIRING CHIROPRACTIC PEER REVIEW OF MOTOR VEHICLE LIABILITY AND MEDICAL PAYMENT CLAIMS TO BE PERFORMED BY INDIVIDUALS LICENSED TO PRACTICE CHIROPRACTIC IN THIS STATE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 8 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-153.1. Chiropractic peer review.**

(a) Claims Subject to This Section. – This section shall apply only to motor vehicle liability claims for personal injury and to motor vehicle medical payments claims. This section shall not apply to workers' compensation claims, general accident and health insurance claims, or claims submitted by, or on behalf of, enrollees to health benefit plans.

(b) Definitions. – As used in this section, "chiropractic peer review" means the retrospective review of the treatment records of a chiropractic patient, performed by an individual who was not the patient's treating chiropractor, for the purpose of advising a third-party payer as to whether, in the reviewer's opinion, the services rendered by the treating chiropractor were clinically necessary and supported by adequate documentation. Chiropractic peer review shall not include automated screening programs or reviews performed by individuals hired for the purpose of providing expert testimony in or preparing for litigation of personal injury claims.

(c) Qualifications of Reviewers. – Any individual who performs chiropractic peer review of a chiropractor licensed under this Article shall meet all of the following criteria:

(1) Holds a current license to practice chiropractic in this State.

(2) Has practiced chiropractic in this State during the five-year period immediately preceding the chiropractic peer review.

(3) Derives at least half of his or her professional income from providing care and treatment to chiropractic patients.

(4) If reviewing the treatment records of a chiropractor who has been certified as a Diplomate in a specialty recognized by the State Board of Chiropractic Examiners, holds a diploma in the same specialty.

(5) Does not collect a fee based on the extent to which the third-party payer reduces the treating chiropractor's bill.

(d) Standard of Care. – When performing a peer review, the reviewer shall apply the standards of acceptable care in effect in this State at the time services were rendered.

(e) Enforcement. – Any chiropractor licensed under this Article by the Board of Chiropractic Examiners is subject to disciplinary action under G.S. 90-154(b)(22).

(f) Penalties. – Any individual who performs chiropractic peer review without possessing a license as provided in this Article shall be subject to prosecution and injunctive action as provided in G.S. 90-147."

SECTION 2. G.S. 90-154(b) is amended by adding a new subdivision to read:

"(b) Any one of the following is grounds for disciplinary action by the Board under subsection (a):

...

(22) Failing to comply with G.S. 90-153.1 while performing a chiropractic peer review."

SECTION 3. This act becomes effective October 1, 2017, and applies to reviews conducted on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H D

HOUSE BILL 150

Committee Substitute Favorable 3/14/17
PROPOSED COMMITTEE SUBSTITUTE H150-CSTU-6 [v.1]
03/21/2017 03:55:08 PM

Short Title: Standards for Chiropractic Peer Review. (Public

Sponsors: Representatives Conrad, Lambeth, and Setzer (Primary Sponsors).

Referred to:

February 22, 2017

A BILL TO BE ENTITLED

AN ACT REQUIRING CHIROPRACTIC PEER REVIEW OF MOTOR VEHICLE LIABILITY AND MEDICAL PAYMENT CLAIMS TO BE PERFORMED BY INDIVIDUALS LICENSED TO PRACTICE CHIROPRACTIC IN THIS STATE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 8 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-153.1. Chiropractic peer review.**

(a) Claims Subject to This Section. – This section shall apply only to motor vehicle liability claims for personal injury and to motor vehicle medical payments claims. This section shall not apply to workers' compensation claims, general accident and health insurance claims, or claims submitted by, or on behalf of, enrollees to health benefit plans.

(b) Definitions. – As used in this section, "chiropractic peer review" means the retrospective review of the treatment records of a chiropractic patient, performed by an individual who was not the patient's treating chiropractor, for the purpose of advising a third-party payer as to whether, in the reviewer's opinion, the services rendered by the treating chiropractor were clinically necessary and supported by adequate documentation. Chiropractic peer review shall not include automated screening programs or reviews performed by individuals hired for the purpose of providing expert testimony in or preparing for litigation of personal injury claims. Materials submitted for chiropractic peer review shall be redacted to remove any information that would identify the provider of the chiropractic services.

(c) Qualifications of Reviewers. – Any individual who performs chiropractic peer review of a chiropractor licensed under this Article shall meet all of the following criteria:

(1) Holds a current license to practice chiropractic in this State.

(2) Has practiced chiropractic in this State during the five-year period immediately preceding the chiropractic peer review.

(3) Derives at least half of his or her professional income from providing care and treatment to chiropractic patients.

(4) If reviewing the treatment records of a chiropractor who has been certified as a Diplomate in a specialty recognized by the State Board of Chiropractic Examiners, holds a diploma in the same specialty.

(5) Does not collect a fee based on the extent to which the third-party payer reduces the treating chiropractor's bill.

(d) Standard of Care. – When performing a peer review, the reviewer shall apply the standards of acceptable care in effect in this State at the time services were rendered.

(e) Enforcement. – Any chiropractor licensed under this Article by the Board of Chiropractic Examiners is subject to disciplinary action under G.S. 90-154(b)(22).

(f) Penalties. – Any individual who performs chiropractic peer review without possessing a license as provided in this Article shall be subject to prosecution and injunctive action as provided in G.S. 90-147."

SECTION 2. G.S. 90-154(b) is amended by adding a new subdivision to read:

"(b) Any one of the following is grounds for disciplinary action by the Board under subsection (a):

...

(22) Failing to comply with G.S. 90-153.1 while performing a chiropractic peer review."

SECTION 3. This act becomes effective October 1, 2017, and applies to reviews conducted on or after that date.

HOUSE BILL 150:
Standards for Chiropractic Peer Review.

2017-2018 General Assembly

Committee:	House Judiciary III	**Date:**	March 29, 2017
Introduced by:	Reps. Conrad, Lambeth, Setzer	**Prepared by:**	Kristen L. Harris Committee Co-Counsel
Analysis of:	PCS to Second Edition H150-CSTU-6		

OVERVIEW: The Proposed Committee Substitute for House Bill 150 would require that when a third-party payer requests a review of motor vehicle liability claims for personal injury and medical payments claims involving chiropractic treatment that the review be performed by a chiropractor licensed in North Carolina. The review would be performed for the purpose of advising a third-party payer as to whether the services rendered by the treating chiropractor were clinically necessary and supported by the documentation.

[The PCS would add a requirement that the treatment records being reviewed be redacted to remove any information that would identify the treating chiropractor.]

BILL ANALYSIS:

Section 1 would do the following:

- Limit the peer reviews to only motor vehicle liability claims for personal injury claims and medical payments claims.
- Define "chiropractic peer review".
- Provide a list of qualifications that a chiropractor performing the peer reviews must meet.
- Require the peer reviewer to apply the North Carolina standards of care that were in effect at the time the treatment was provided.
- Subject any licensed chiropractor performing a peer review to disciplinary action for failure to comply with the peer review guidelines.
- Subject any individual who performs a peer review without a chiropractic license to prosecution (Class 1 misdemeanor) and injunctive action.

Section 2 would create a new ground of disciplinary action that could be taken by the Board if a chiropractor failed to comply with the peer review guidelines created in **Section 1**.

EFFECTIVE DATE: This act becomes effective October 1, 2017, and applies to reviews conducted on or after that date.

Karen Cochrane-Brown
Director

Legislative Analysis Division
919-733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

House Committee on Judiciary III
Wednesday, April 5, 2017 at 1:00 PM
Room 421 of the Legislative Office Building

Sergeant at Arms

1. **Bill Bass**
2. **Mark Cone**
3. **Will Crocker**
4. **Rex Foster**

House Committee on Judiciary III
Wednesday, April 5, 2017 at 1:00 PM
Room 421 of the Legislative Office Building

MINUTES

The House Committee on Judiciary III met at 1:00 PM on Wednesday, April 5, 2017 in Room 421 of the Legislative Office Building. Representatives Jordan, Zachary, Reives, Conrad, Hastings, Johnson, Quick, Szoka, B. Turner and White attended. Brad Krehely, Kristen Harris and Billy Godwin (Research Staff Counsel), along with Emma Benson (Committee Clerk) were in attendance. A Visitor Registration list is attached and made part of these minutes (Attachment 1).

Representative Jonathan Jordan, Chair, presided. The chair called the meeting to order at 1:01 PM. He introduced the Sergeants at Arms (Attachment 2) and House Pages (Attachment 3). The following bills were considered:

House Bill 370 and bill summary are included (Attachments 4 and 5).

HOUSE BILL 370: INTERSTATE COMPACT BILL.

Chairman Jordan recognized Rep. Stevens to present the bill.

House Bill 370 would amend three probation provisions to allow for administration under North Carolina's Interstate Compact for Adult Offender Supervision.

[As introduced, this bill was identical to S345, as introduced by Sen. Randleman, which is currently in Senate Rules and Operations of the Senate.]

Chairman Jordan recognized Rep. Zachary to present an amendment to House Bill 370 to do the following: moves to amend the bill on page 5, line 13, by deleting the phrase "G.S. 14-27.2A or G.S. 14-27.4A" and substituting the phrase "G.S. 14-27.23 or G.S. 14-27.28". (Attachment 6) The amendment was adopted.

Chairman Jordan recognized Rep. Zachary to make the motion to have the amendment rolled into a new PCS, favorable to the PCS, unfavorable to the original bill. The motion passed without dissent.

House Bill 84, PCS, and summary are provided (Attachments 7, 8, and 9).

HOUSE BILL 84: DL/DEAF OR HARD OF HEARING DESIGNATION

Chairman Jordan recognized Rep. Zachary to make the motion to have the PCS before the committee. With no objection, the motion carried.

Chairman Jordan recognized Reps. Insko and Ball to present the bill.

House Bill 84 (proposed committee substitute) would direct DMB to develop a voluntary driver's license designation for persons who are deaf or hard of hearing. The bill would become effective on January 1, 2018.

The PCS would:

- Add the Division of Services for the Deaf and Hard of Hearing to those with whom DMV must consult on the licenses.
- Add a requirement that the N.C. Criminal Justice Education and Training Standards Commission and the N.C. Sheriff's Education and Training Standards Commission established minimal training standards to recognize and appropriately interact with persons who are deaf or hard of hearing.
- Provide that nothing in the act would prohibit individuals from obtaining a license who are otherwise eligible under the law.
- Provide that individuals choosing to register or not register for a driver's license designation have not waived any rights.

Chairman Jordan recognized Rep. Szoka to make the motion favorable to the PCS, unfavorable to the original bill.The motion carried.

House Bill 467 and Bill Summary are attached (Attachments 10 and 11).

HOUSE BILL 467: AGRICULTURE AND FORESTRY NUISANCE REMEDIES

Chairman Jordan recognized Rep. Dixon to explain the bill.

House Bill 467 would limit the amount of compensatory damages that may be awarded in a private nuisance action against an agricultural or forestry operation to the fair market value or fair rental value of the plaintiff's property.

Chairman Jordan recognized Reps. Quick, Szoka, Brian Turner, and Reives to provide discussion on the bill.

Chairman Jordan recognized Rep. Reives to present an amendment that would move to amend the bill on page 1, lines 27-28, by rewriting those lines to read:

"Section 2.(a) This act is effective when it becomes law and applies to causes of action arising on or after that date. This act shall not affect pending litigation" (Attachment 12).

The amendment failed.

Chairman Jordan recognized the following members of the public to speak in favor of the bill – Hilton Monroe and Jeff Spedding.

Chairman Jordan recognized the following members of the public to speak against the bill – Issac Ward, Don Webb, and Mark Dovosin.

Chairman Jordan recognized Rep. Szoka to make the motion for a favorable report. The motion carried.

With no further business, Rep. Jordan adjourned the meeting at 1:48 PM.

Representative Jonathan Jordan, Chair
Presiding

Emma Benson, Committee Clerk

Attachments

1. Visitor Registration Sheet
2. Sergeants at Arms
3. House Pages
4. House Bill 370
5. House Bill 370 Bill Summary
6. Amendment to House Bill 370 (Rep. Zachary)
7. House Bill 84
8. House Bill 84 PCS
9. House Bill 84 Bill Summary
10. House Bill 467
11. House Bill 467 Summary
12. House Bill 467 Amendrnent (Rep. Reives)

VISITOR REGISTRATION SHEET

House Judiciary III — **Name of Committee**

04-05-2017 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Don Webb	CCRW
Ellen Lorscheider	NCDEQ
Molly Diggins	Sierra Club
[illegible]	CAA
[illegible]	Jordan Price
JAKE PARKER	NCFB

VISITOR REGISTRATION SHEET

House Judiciary III — 04-05-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dale Scism	Greenway
Stewart Webb	Smithfield
Will Hendrick	Waterkeeper Alliance
Marguerette Griffin	
Elsie Herring	Reach Warsaw
Rene' Miller	Reach Warsaw
Violet Branch	Reach Warsaw
Pamela McMillon	Reach Warsaw
Leighton Bannerman	Reach Warsaw
Dominique Woodard	Reach Willard
Kenyatta Johnson	Reach Willard

VISITOR REGISTRATION SHEET

House Judiciary III — 04-05-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	North Atlantic treaty organization 5 3 C main st United Nations http://www.un.org
Nicholas Woodard	NCEJN
RANDY DAVIS	STANTONSBURG
[illegible]	[illegible]
BRIAN DUCHARME	UNC Center for Civil Rights
Brian Powell	NC Conservation Ntwk
Hilton Monroe Sr	Smith Field Packing
Hilton Monroe Sr.	Smithfield Food
JEFF SPEDDING	SPEDDING FARMS
MARK DOROSIN	UNC Center for Civil Rights
ISAAC WARD	GREENE County

VISITOR REGISTRATION SHEET

House Judiciary III — 04-05-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill	WG
Mary K Williams	WEG
Ulysses Boykin	WEG
Matthew Starr	River Keeper
Brooks Rainey Pearson	SELC
	Inter.
Maggie P. Thomas	NCDOTJT
Brad Salmon	DPS
Lauren Bamhardt	Grange
Daniel Butler	Smithfield
Renee King	farmer

VISITOR REGISTRATION SHEET

House Judiciary III — 04-05-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Stephen Williamson	Farmer
Justin Edwards	Farmer
Justin Clayton	Governor

VISITOR REGISTRATION SHEET

House Judiciary III — 04-05-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Linda Doe	UCC
[illegible]	[illegible]
John Metcalf	Policy Groups
[illegible]	NCWC
[illegible]	NCWC
[illegible]	NA
[illegible]	CapAd
Jamie Cole	NCCN
Sarah Rice	NCDEQ
Cassie Gavin	Sierra Club
Luke Stancil	Jones Street Consulting

Committee Sergeants at Arms

NAME OF COMMITTEE Judiciary III

DATE: 4-05-2017 Room: 421

House Sgt-At Arms:

1. Name: Bill Bass
2. Name: Mark Cone
3. Name: Will Crocker
4. Name: Rex Foster
5. Name:

Senate Sgt-At Arms:

1. Name:
2. Name:
3. Name:
4. Name:
5. Name:

House Pages
Assignments
Wednesday, April 05, 2017

Committee	Room	Time	Staff	Comments	Member
Judiciary III	421	1:00 PM	Noah Ellington		Rep. Speaker Tim Moore
			Mary Margaret West		Rep. George Cleveland
			Chloe Worner		Rep. Harry Warren
State Personnel	425	1:00 PM	Caroline Byars		Rep. John Bradford
			Lizette Duarte		Rep. Sam Watford
			Madison Gunter		Rep. Mike Clampitt

Attachment 3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

HOUSE BILL 370

Short Title:	Interstate Compact Bill.	(Public
Sponsors:	Representative Stevens. *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	Judiciary III	

March 16, 2017

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE COURT TO IMPOSE CUSTODIAL SANCTIONS AND OTHER CONDITIONS IN RESPONSE TO VIOLATION ON AN OUT-OF-STATE PROBATION OFFENDER; TO CLARIFY THE LANGUAGE CONCERNING HEARING PROCEDURES FOR OFFENDERS BEING SUPERVISED UNDER THE INTERSTATE COMPACT; AND TO ALLOW THE SECTION OF COMMUNITY CORRECTIONS TO IMPOSE ADDITIONAL CONDITIONS OF PROBATION SUPERVISION FOR OFFENDERS BEING SUPERVISED UNDER THE INTERSTATE COMPACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1344 is amended by adding a new subsection to read:

"**§ 15A-1344. Response to violations; alteration and revocation.**

...

(d2) Confinement in Response to Violation. – When a defendant under supervision for a felony conviction has violated a condition of probation other than G.S. 15A-1343(b)(1) or G.S. 15A-1343(b)(3a), the court may impose a period of confinement of 90 consecutive days to be served in the custody of the Division of Adult Correction of the Department of Public Safety. The court may not revoke probation unless the defendant has previously received a total of two periods of confinement under this subsection. A defendant may receive only two periods of confinement under this subsection. The 90-day term of confinement ordered under this subsection for a felony shall not be reduced by credit for time already served in the case. Any such credit shall instead be applied to the suspended sentence. However, if the time remaining on the maximum imposed sentence on a defendant under supervision for a felony conviction is 90 days or less, then the term of confinement is for the remaining period of the sentence. Confinement under this section shall be credited pursuant to G.S. 15-196.1.

When a defendant under supervision for a misdemeanor conviction sentenced pursuant to Article 81B of Chapter 15A of the General Statutes has violated a condition of probation other than G.S. 15A-1343(b)(1) or G.S. 15A-1343(b)(3a), the court may impose a period of confinement pursuant to G.S. 15A-1343(a1)(3). The court may not revoke probation unless the defendant has previously received at least two periods of confinement for violating a condition of probation other than G.S. 15A-1343(b)(1) or G.S. 15A-1343(b)(3a). Those periods of confinement may have been imposed pursuant to G.S. 15A-1343(a1)(3), 15A-1343.2(e)(5), or 15A-1343.2(f)(6). The second period of confinement must have been imposed for a violation that occurred after the defendant served the first period of confinement. Confinement under this section shall be credited pursuant to G.S. 15-196.1.

When a defendant under supervision for a misdemeanor conviction not sentenced pursuant to Article 81B of Chapter 15A of the General Statutes has violated a condition of probation other than G.S. 15A-1343(b)(1) or G.S. 15A-1343(b)(3a), the court may impose a period of confinement of up to 90 consecutive days to be served where the defendant would have served an active sentence. The court may not revoke probation unless the defendant has previously received a total of two periods of confinement under this subsection. A defendant may receive only two periods of confinement under this subsection. Confinement under this section shall be credited pursuant to G.S. 15-196.1.

(d3) Where probation supervision of an offender in this State is being administered pursuant to the Interstate Compact for Adult Offender Supervision established by G.S. 148-65.5, which carries the weight of federal law and requires supervision consistent with the supervision of other similar offenders sentenced in this State, the court may, after notice and hearing pursuant to G.S. 15A-1345 and upon finding that the offender violated one or more conditions of probation, impose a custodial sanction in accordance with subdivision (1), (2), or (3) of this subsection and any other condition listed in G.S. 15A-1343 with the exception of an active term of imprisonment as a condition of special probation and criminal contempt. At no time is the court authorized to alter any condition imposed by the sending state or extend, transfer to unsupervised, revoke, or terminate the period of probation supervision.

(1) When an offender under probation supervision for a felony conviction has violated a condition of probation, the court may impose a period of confinement for 90 consecutive days to be served in the custody of the Division of Adult Correction of the Department of Public Safety. An offender may receive only two periods of confinement under this subsection. The 90-day term of confinement ordered under this subdivision for a felony shall not be reduced by credit for time already served in the case. Any such credit shall instead be applied to the suspended sentence.

(2) When an offender under probation supervision for a misdemeanor conviction has violated a condition of probation, the court may impose a period or periods of confinement in a local confinement facility for a total of no more than six days per month during any three separate months during the period of probation. The six days per month confinement provided for in this subdivision may only be imposed as two-day or three-day consecutive periods. When a defendant is on probation for multiple judgments, confinement periods imposed under this subdivision shall run concurrently and may total no more than six days per month.

(3) When an offender under supervision for a misdemeanor impaired driving conviction has violated a condition of probation, the court may impose a period of confinement of up to 90 consecutive days to be served in the statewide Misdemeanant Confinement Program. An offender may receive only two periods of confinement under this subdivision. Confinement under this subdivision shall be credited pursuant to G.S. 15-196.1.

If the time remaining on the maximum imposed sentence is equal to or less than the period of confinement that may be imposed in subdivision (1), (2), or (3) of this subsection, then confinement may not be ordered in response to the violation. The period of confinement imposed under this subsection on a defendant who is on probation for multiple offenses shall run concurrently on all cases related to the violation. Confinement shall be immediate unless otherwise specified by the court.

...."

SECTION 2. G.S. 148-65.8 reads as rewritten:

"**§ 148-65.8. Interstate parole and probation hearing ~~procedures.~~procedures for retaking by the sending state.**

(a) Where supervision of an offender is being administered pursuant to the Interstate Compact for Adult Offender Supervision, the appropriate judicial or administrative authorities in this State shall notify the Compact Administrator of the sending state whenever, in their view, consideration should be given to retaking ~~or reincarceration~~ for a parole, probation, or post-release supervision violation. Prior to the giving of any such notification, a hearing shall be held in accordance with this section within a reasonable time, unless such hearing is waived by the offender. Pending any proceeding pursuant to this section, the appropriate officers of this State may take custody of and detain the offender involved for a period not to exceed 15 days prior to the hearing. The offender shall not be entitled to bail pending the hearing.

...

(c1) A record of the hearing shall be made and preserved. As soon as practicable following termination of any hearing conducted pursuant to this section or the waiver of such hearing, the appropriate officer or officers of this State shall report to the sending state, furnish a copy of the hearing record, and make recommendations regarding the disposition to be made of the offender by the sending state. If the hearing recommendation is to retake ~~or reincarcerate~~ the offender, the hearing officer or officers may detain the offender until notice is received from the sending state. If the sending state provides notice that it intends to retake ~~or reincarcerate~~ the offender, the offender shall remain in custody for such reasonable period after the hearing or waiver as may be necessary to arrange for the ~~retaking or reincarceration.~~retaking.

...."

SECTION 3. G.S. 15A-1343.2 is amended by adding a new subsection to read:

"**§ 15A-1343.2. Special probation rules for persons sentenced under Article 81B.**

...

(g) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 19, s. 3.

(g1) Supervision Under Interstate Compact for Adult Offender Supervision. – In all cases in which probation supervision of an offender in this State is being administered pursuant to the Interstate Compact for Adult Offender Supervision established by G.S. 148-65.5, the Section of Community Corrections of the Division of Adult Correction of the Department of Public Safety may require an offender to do any of the following:

(1) Perform up to 20 hours of community service and pay the fee prescribed by law for that supervision.

(2) Report to the offender's probation officer on a frequency to be determined by the officer.

(3) Submit to substance abuse assessment, monitoring, or treatment.

(4) Submit to house arrest with electronic monitoring.

(5) Submit to a period or periods of confinement in a local confinement facility for a total of no more than six days per month during any three separate months during the period of supervision. The six days per month confinement period provided for in this subdivision may only be imposed as two-day or three-day consecutive periods. When a defendant is under supervision for multiple judgments, confinement periods imposed under this subdivision shall run concurrently and total no more than six days per month.

(6) Submit to a curfew that 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.

(7) Participate in an educational or vocational skills development program, including an evidence-based program.

(8) Obtain a specific sex offender assessment and follow all recommended treatment.

(9) Obtain a mental health assessment and follow all recommended treatment.

If the Section of Community Corrections imposes any of the above requirements, then it may subsequently reduce or remove those same requirements. The Section of Community Corrections may impose the conditions under this subsection only if it first determines that the offender has failed to comply with one or more of the conditions of supervision or the offender is determined to be high risk based upon the results of the risk assessment in G.S. 15A-1343.2, except that the condition provided for in subdivision (5) of this subsection may not be imposed unless the Section of Community Corrections determines that the offender failed to comply with one or more of the conditions of supervision.

…."

SECTION 4. G.S. 14-208.40B is amended by adding a new subsection to read:

"**§ 14-208.40B. Determination of satellite-based monitoring requirement in certain circumstances.**

…

(c) At the hearing, the court shall determine if the offender falls into one of the categories described in G.S. 14-208.40(a). The court shall hold the hearing and make findings of fact pursuant to G.S. 14-208.40A.

If the court finds that (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was an aggravated offense, or (iv) the conviction offense was a violation of G.S. 14-27.23 or G.S. 14-27.28, the court shall order the offender to enroll in satellite-based monitoring for life.

If the court finds that the offender committed an offense that involved the physical, mental, or sexual abuse of a minor, that the offense is not an aggravated offense or a violation of G.S. 14-27.23 or G.S. 14-27.28, and the offender is not a recidivist, the court shall order that the Division of Adult Correction do a risk assessment of the offender. The Division of Adult Correction shall have a minimum of 30 days, but not more than 60 days, to complete the risk assessment of the offender and report the results to the court. The Division of Adult Correction may use a risk assessment of the offender done within six months of the date of the hearing.

Upon receipt of a risk assessment from the Division of Adult Correction, the court shall determine whether, based on the Division of Adult Correction's risk assessment, the offender requires the highest possible level of supervision and monitoring. If the court determines that the offender does require the highest possible level of supervision and monitoring, the court shall order the offender to enroll in a satellite-based monitoring program for a period of time to be specified by the court.

(d) When an offender from another state is transferred to North Carolina under the Interstate Compact and the crime for which the offender will be under supervision in North Carolina equates to a reportable conviction under G.S. 14-208.6(4), but the court of the state transferring the offender did not consider or order satellite-based monitoring, a court of this State shall consider whether the offender's criminal conviction is one that requires satellite-based monitoring. The procedure for making that determination shall be as follows:

(1) The offender shall receive notice, before being transferred to North Carolina, that the offender may be subject to a judicial hearing in North Carolina to determine whether the offender's conviction requires the offender to enroll in satellite-based monitoring.

(2) The Division of Adult Correction shall make an initial determination as to whether the offender's crime is a reportable conviction under North Carolina law.

(3) The district attorney in the judicial district where the offender will be supervised shall schedule a hearing in the appropriate court in that judicial district to determine whether the offender must enroll in satellite-based monitoring. The Division of Adult Correction shall notify the offender of the

Division's determination and the date of the scheduled hearing by certified mail sent to the address provided by the offender. The hearing shall be scheduled no sooner than 15 days from the date the notification is mailed. Receipt of notification shall be presumed to be the date indicated by the certified mail receipt. If the court determines that an offender is indigent and entitled to counsel, the court shall assign counsel to represent the offender at the hearing pursuant to rules adopted by the Office of Indigent Defense Services. At the hearing, the court shall determine whether the offender's crime constitutes a reportable conviction under North Carolina law and shall make findings of fact pursuant to G.S. 14-208.40A.

(4) If the court determines that the offender may be classified as a sexually violent predator, is a recidivist, committed an aggravated offense, or committed a crime substantially similar to G.S. 14-27.2A or G.S. 14-27.4A, the court shall order the offender to enroll in satellite-based monitoring for the duration of the period of supervision in this State.

(5) If the court finds that the offender committed an offense involving the physical, mental, or sexual abuse of a minor but the offense is not one described in subdivision (4) of this subsection and the Division of Adult Correction's risk assessment requires the highest possible level of supervision and monitoring, the court shall order the offender to enroll in satellite-based monitoring for the duration of the period of supervision in this State."

SECTION 5. This act becomes effective December 1, 2017, and applies to offenders placed on probation on or after that date.

HOUSE BILL 370: Interstate Compact Bill.

2017-2018 General Assembly

Committee:	House Judiciary III	**Date:**	April 5, 2017
Introduced by:	Rep. Stevens	**Prepared by:**	Kristen L. Harris Committee Co-Counsel
Analysis of:	First Edition		

OVERVIEW: House Bill 370 would amend three probation provisions to allow for administration under North Carolina's Interstate Compact for Adult Offender Supervision.

[As introduced, this bill was identical to S345, as introduced by Sen. Randleman, which is currently in Senate Rules and Operations of the Senate.]

CURRENT LAW AND BACKGROUND: The 50 states, the District of Columbia, the U.S. Virgin Islands, and Puerto Rico form the Interstate Compact for Adult Offender Supervision (ICAOS). The ICAOS follows nearly identical guidelines on how to handle the transfer of adult offenders from one state to another. Article 4B in Chapter 148 of the General Statutes is North Carolina's Interstate Compact for Adult Offender Supervision. It was enacted in 2002.

BILL ANALYSIS:

Section 1 would provide custodial sanctions in addition to any condition under G.S. 15A-1343 [Conditions of probation] except an active term of imprisonment that the court could impose in response to a violation of probation administered under the Interstate Compact for Adult Offender Supervision.

- The custodial sanction for a felony conviction could be 90 consecutive days, limited to two periods of confinement to be served in the Division of Adult Correction of the Department of Public Safety.
- The custodial sanction for a misdemeanor conviction could be no more than six days per month during any three separate months during the period of probation to be served in a local confinement facility. The six days could only be imposed as two or three-day consecutive periods.
- The custodial sanction for a misdemeanor impaired driving conviction could be up to 90 consecutive days, limited to two periods of confinement to be served in the Misdemeanant Confinement Program.

Section 2 would allow North Carolina to recommend that the sending state "retake" but not "reincarcerate" an offender for a parole, probation, or post-release supervision violation.

Section 3 would allow the Section of Community Corrections to place additional probation requirements on offenders sentenced under structured sentencing when their probation is being administered under the Interstate Compact for Adult Offender Supervision.

Section 4 would provide the procedure for determining when an offender from another state who is transferred under the Interstate Compact may be subject to satellite-based monitoring.

EFFECTIVE DATE: This act becomes effective December 1, 2017, and applies to offenders placed on probation on or after that date.

Karen Cochrane-Brown
Director

Legislative Analysis Division
919-733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

Attachment 6

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 370

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

H370-ATU-11 [v.2]

Amends Title [NO]
First Edition

Date April 5 ,2017

Representative Zachary

moves to amend the bill on page 5, line 13, by deleting the phrase "G.S. 14-27.2A or G.S. 14-27.4A," and substituting the phrase "G.S. 14-27.23 or G.S. 14-27.28,".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROI
SESSION 2017

H **2**

HOUSE BILL 84
Committee Substitute Favorable 3/21/17

Short Title: DL/Deaf or Hard of Hearing Designation. (Public)

Sponsors:

Referred to:

February 13, 2017

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE DIVISION OF MOTOR VEHICLES TO DEVELOP A DESIGNATION FOR DRIVERS LICENSES THAT MAY BE GRANTED UPON REQUEST TO A PERSON WHO IS DEAF OR HARD OF HEARING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-7 is amended by adding a new subsection to read:

"(q2) Deaf or Hard of Hearing Designation. – The Division shall develop, in consultation with the Department of Public Safety and the State Highway Patrol, and pursuant to this subsection, a drivers license designation that may, upon request, be granted to a person who is deaf or hard of hearing. The Division shall comply with the following requirements applicable to the designation:

(1) At the request of a person who is deaf or hard of hearing, the Division shall place a unique numerical identifier on the front of the person's license. The unique numerical identifier placed on the license shall not include any further descriptor. The Division shall record the designation in the electronic record associated with the person's drivers license.

(2) At the request of a person who is deaf or hard of hearing, the Division shall enter the drivers license numerical identifier and a descriptor into the electronic record of any motor vehicle registered in the same name of the deaf or hard of hearing person.

(3) Medical certification or examination is not required to make a request pursuant to this subsection.

(4) Nothing in this subsection shall be construed as authorizing the issuance of a drivers license to a person ineligible under G.S. 20-9."

SECTION 2. G.S. 17C-6(a) is amended by adding a new subdivision to read:

"(17) Establish minimum educational and training standards for employment and continuing education for criminal justice officers concerning drivers license and vehicle registration identifiers of persons who are deaf or hard of hearing, as authorized by G.S. 20-7(q2)."

SECTION 3. G.S. 17E-4(a) is amended by adding a new subdivision to read:

"(13) Establish minimum educational and training standards for employment and continuing education for officers concerning drivers license and vehicle registration identifiers of persons who are deaf or hard of hearing, as authorized by G.S. 20-7(q2)."

SECTION 4. This act becomes effective January 1, 2018.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H I

HOUSE BILL 84
Committee Substitute Favorable 3/21/17
PROPOSED COMMITTEE SUBSTITUTE H84-CSBD-16 [v.2]
04/04/2017 05:28:58 PM

Short Title: DL/Deaf or Hard of Hearing Designation. (Publi

Sponsors:

Referred to:

February 13, 2017

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE DIVISION OF MOTOR VEHICLES TO DEVELOP A DESIGNATION FOR DRIVERS LICENSES THAT MAY BE GRANTED UPON REQUEST TO A PERSON WHO IS DEAF OR HARD OF HEARING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-7 is amended by adding a new subsection to read:

"(q2) Deaf or Hard of Hearing Designation. – The Division shall develop, in consultation with the Department of Public Safety, the State Highway Patrol, the Division of Services for the Deaf and Hard of Hearing, and pursuant to this subsection, a drivers license designation that may, upon request, be granted to a person who is deaf or hard of hearing. The Division shall comply with the following requirements applicable to the designation:

(1) At the request of a person who is deaf or hard of hearing, the Division shall place a unique numerical identifier on the front of the person's license. The unique numerical identifier placed on the license shall not include any further descriptor. The Division shall record the designation in the electronic record associated with the person's drivers license.

(2) At the request of a person who is deaf or hard of hearing, the Division shall enter the drivers license numerical identifier and a descriptor into the electronic record of any motor vehicle registered in the same name of the deaf or hard of hearing person.

(3) Medical certification or examination is not required to make a request pursuant to this subsection.

(4) Nothing in this subsection shall be construed as authorizing the issuance of a drivers license to a person ineligible under G.S. 20-9.

(5) Nothing in this subsection shall be construed as prohibiting the issuance of a drivers license to a person otherwise eligible under the law.

(6) Any individual who chooses to register or not to register shall not be deemed to have waived any protections under the law.

SECTION 2. G.S. 17C-6(a) is amended by adding a new subdivision to read:

(17) Establish minimum educational and training standards for employment and continuing education for criminal justice officers concerning:

a. Recognizing and appropriately interacting with persons who are deaf or hard of hearing.

b. Drivers license and vehicle registration identifiers of persons who are deaf or hard of hearing, as authorized by G.S. 20-7(q2), including that those identifiers are optional."

SECTION 3. G.S. 17E-4(a) is amended by adding a new subdivision to read:

"(13) Establish minimum educational and training standards for employment and continuing education for officers concerning:

a. Recognizing and appropriately interacting with persons who are deaf or hard of hearing.

b. Drivers license and vehicle registration identifiers of persons who are deaf or hard of hearing, as authorized by G.S. 20-7(q2), including that those identifiers are optional."

SECTION 4. This act becomes effective January 1, 2018.

HOUSE BILL 84:
DL/Deaf or Hard of Hearing Designation.

Attachment 9

2017-2018 General Assembly

Committee:	House Judiciary III	**Date:**	April 4, 2017
Introduced by:	Reps. Insko, Ball, Butler	**Prepared by:**	Billy R. Godwin
Analysis of:	PCS to Second Edition H84-CSBD-16		Staff Attorney

OVERVIEW: House Bill 84 (proposed committee substitute – PCS) would direct DMV to develop a voluntary driver's license designation for persons who are deaf or hard of hearing. The bill would become effective on January 1, 2018.

The PCS would:

- ***Add the Division of Services for the Deaf and Hard of Hearing to those with whom DMV must consult on the licenses.***
- ***Add a requirement that the N.C. Criminal Justice Education and Training Standards Commission and the N.C. Sheriff's Education and Training Standards Commission establish minimal training standards to recognize and appropriately interact with persons who are deaf or hard of hearing.***
- ***Provide that nothing in the act would prohibit individuals from obtaining a license who are otherwise eligible under the law.***
- ***Provide that Individuals choosing to register or not to register for a driver's license designation have not waived any rights.***

CURRENT LAW: Under current law, DMV is authorized to place various medical restrictions on a driver's license, such as vision, time of driving, and distance restrictions. DMV is also authorized to place designations on drivers' licenses for active duty military, and for American Indians. No specific designation for a deaf or hard of hearing person is currently authorized. G.S. 20-7.

BILL ANALYSIS:

Section 1 of House Bill 84 would:

- Direct DMV to develop, in consultation with the Department of Public Safety, the State Highway Patrol, and Division of Services for the Deaf and Hard of Hearing, a driver's license designation that may, upon request, be granted to a person who is deaf or hard of hearing.
- Direct DMV, at the request of a person who is deaf or hard of hearing, to place a unique numerical identifier on the front of the person's license.
- Direct DMV to record the requested designation in the electronic record associated with the person's driver's license.

Karen Cochrane-Brown
Director

Legislative Analysis
Division
919-733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

- Direct DMV, at the request of a person who is deaf or hard of hearing, to enter the drivers license numerical identifier and a descriptor into the electronic record of any motor vehicle registered in the same name of the deaf or hard of hearing person.
- Would not require medical certification or examination for the designation.
- Provide that nothing would prohibit individuals from obtaining a license who are otherwise eligible under the law.
- Provide that individuals choosing to register or not to register for a driver's license designation have not waived any rights under the law.

Section 2 of House Bill 84 would direct the NC Criminal Justice Education and Training Standards Commission to establish minimum educational and training standards for employment and continuing education for criminal justice officers concerning driver's license and vehicle registration identifiers of persons who are deaf or hard of hearing and to recognize and appropriately interact with persons who are deaf or hard of hearing

Section 3 of House Bill 84 would direct the NC Sheriffs' Education and Training Standards Commission to establish minimum educational and training standards for employment and continuing education for officers concerning driver's license and vehicle registration identifiers of persons who are deaf or hard of hearing and to recognize and appropriately interact with persons who are deaf or hard of hearing.

EFFECTIVE DATE: This act would become effective January 1, 2018.

Staff Attorney Giles Perry substantially contributed to this bill summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

HOUSE BILL 467

Short Title: Agriculture and Forestry Nuisance Remedies. (Publi

Sponsors: Representatives Dixon, Davis, Lewis, and J. Bell (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary III

March 27, 2017

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE REMEDIES AVAILABLE IN PRIVATE NUISANCE ACTIONS AGAINST AGRICULTURAL AND FORESTRY OPERATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 57 of Chapter 106 of the General Statutes is amended by adding a new section to read:

"**§ 106-702. Limitations on private nuisance actions against agricultural and forestry operations.**

(a) The compensatory damages that may be awarded to a plaintiff for a private nuisance action where the alleged nuisance emanated from an agricultural or forestry operation shall be as follows:

(1) If the nuisance is a permanent nuisance, compensatory damages shall be measured by the reduction in the fair market value of the plaintiff's property caused by the nuisance, but not to exceed the fair market value of the property.

(2) If the nuisance is a temporary nuisance, compensatory damages shall be limited to the diminution of the fair rental value of the plaintiff's property caused by the nuisance.

(b) If any plaintiff or plaintiff's successor in interest brings a subsequent private nuisance action against any agricultural or forestry operation, the combined recovery from all such actions shall not exceed the fair market value of his or her property. This limitation applies regardless of whether the subsequent action or actions were brought against a different defendant than the preceding action or actions.

(c) This Article shall apply to any private nuisance claim brought against any party based on that party's contractual or business relationship with an agricultural or forestry operation."

SECTION 2.(a) This act is effective when it becomes law and applies to actions filed, arising, or pending on or after that date.

SECTION 2.(b) If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part declared to be unconstitutional or invalid.

HOUSE BILL 467:
Agriculture and Forestry Nuisance Remedies.

2017-2018 General Assembly

Committee:	House Judiciary III	**Date:**	March 28, 2017
Introduced by:	Reps. Dixon, Davis, Lewis, J. Bell	**Prepared by:**	Brad Krehely
Analysis of:	First Edition		Committee Co-Counsel

OVERVIEW: House Bill 467 would limit the amount of compensatory damages that may be awarded in a private nuisance action against an agricultural or forestry operation to the fair market value or fair rental value of the plaintiff's property.

CURRENT LAW: Nuisance law in North Carolina is governed by the common law. Private nuisance is defined as any unreasonable invasion of a person's interest in the private use and enjoyment of his or her land by any type of liability-forming conduct. Determining whether an interference is unreasonable is largely fact-specific and determined by the circumstances in each case."[1]

G.S. 106-701 provides a "come-to-the-nuisance" defense against nuisance lawsuits for agricultural and forestry operations that have been in operation for more than one year. However, the operation can become a nuisance if: operated negligently/improperly or if the operation has had a fundamental change.

An agricultural operation is: "any facility for the production for commercial purposes of crops, livestock, poultry, livestock products, or poultry products." G.S. 106-701(b). A forestry operation includes "those activities involved in the growing, managing, and harvesting of trees." G.S. 106-701(b1).

BILL ANALYSIS: House Bill 467 would provide that in a private nuisance action where the alleged nuisance emanated from an agricultural or forestry operation, the compensatory damages that may be awarded to the plaintiff are:

- If the nuisance is a permanent nuisance, the reduction in the fair market value of the plaintiff's property caused by the nuisance, but not to exceed the fair market value of the property.
- If the nuisance is a temporary nuisance, the diminution in the fair rental value of the plaintiff's property caused by the nuisance.

If the plaintiff or the plaintiff's successor in interest brings a subsequent action against an agricultural or forestry operation, including a different defendant than in the plaintiff's initial action, the combined recovery from all nuisance actions may not exceed the fair market value of the plaintiff's property.

The bill would also provide that this Article applies to any private nuisance claim brought against any party based on that party's contractual or business relationship with an agricultural or forestry operation.

EFFECTIVE DATE: The act would be effective when it becomes law and would apply to actions filed, arising, or pending on or after that date.

*Chris Saunders, former Staff Attorney for the Legislative Analysis Division, contributed substantially to this summary.

[1] *Pake v. Morris*, 230 N.C. 424, 53 S.E.2d 300 (1949).

Karen Cochrane-Brown
Director

Legislative Analysis Division
919-733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

Attachment 12

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 467

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

H467-ARN-6 [v.5]

Amends Title [NO]
First Edition

Date _____, 2017

Representative Reives

moves to amend the bill on page 1, lines 27-28, by rewriting those lines to read:

"**SECTION 2.(a)** This act is effective when it becomes law and applies to causes of action arising on or after that date. This act shall not affect pending litigation.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED X TABLED _____

H467-ARN-6-V-5

House Committee on Judiciary III
Thursday, April 6, 2017 at 9:00 AM
Room 1228/1327 of the Legislative Building

Sergeant at Arms

1. **Bear Moore**
2. **Bill Riley**
3. **Bill Moore**
4. **David Linthicum**

House Committee on Judiciary III
Thursday, April 6, 2017 at 9:00 AM
Room 1228/1327 of the Legislative Building

MINUTES

The House Committee on Judiciary III met at 9:00 AM on Thursday April 6, 2017 in Room 1228/1327 of the Legislative Building. Representatives Jordan, Zachary, Reives, Hastings, Horn, Johnson, Quick and White attended. Brad Krehely, Kristen Harris, and Billy Godwin (Research Staff Counsel), along with Emma Benson (Committee Clerk) were in attendance. A Visitor Registration list is attached and made part of these minutes. (Attachment 1)

Representative Jonathan Jordan, Chair, presided. The chair called the meeting to order at 9:29 AM once a quorum was present. He introduced the Sergeants at Arms (Attachment 2) and House Pages (Attachment 3). The following bill was considered:

House Bill 384, Proposed Committee Substitute (PCS) and a summary are provided (Attachments 4, 5 and 6).

HOUSE BILL 384: INCREASE PENALITIES/ORGANIZED RETAIL THEFT

With no objection, Rep. Jordan brought the Proposed Committee Substitute (PCS) before the committee.

Chairman Jordan recognized Rep. Fraley to present the bill.

The PCS for House Bill 384 would amend the larceny from a merchant and organized retail theft statutes and amend the definition of currency converter to (i) include the purchase of gift cards and (ii) include itinerant merchants and websites located in North Carolina.

Chairman Jordan recognized Andy Ellen to speak on behalf of the Retail Merchant Association in favor of the bill.

Chairman Jordan recognized Sgt. Scott Womack of the Raleigh Police Department to speak in favor of the bill.

Chairman Jordan recognized Reps. Horn, Reives, Quick, and Johnson to discuss the bill.

Chairman Jordan recognized Rep. Hastings to make the motion unfavorable to the original bill, favorable to the PCS. The motion passed without dissent.

With no further business, Rep. Jordan adjourned the meeting at 9:49 AM.

Representative Jonathan Jordan, Chair
Presiding

Emma Benson, Committee Clerk

Attachments

1. Visitor Registration Sheet
2. Sergeants at Arms
3. House Pages
4. House Bill 384
5. House Bill 384 PCS
6. House Bill 384 Summary

VISITOR REGISTRATION SHEET

Judiciary III — **Name of Committee**

04-06-2017 — **Date**

Attachment 1

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLI

NAME	FIRM OR AGENCY AND ADDRESS
Andy Ellen	NCHA
Scott Womack	Raleigh Police Dept
Elizabeth Robinson	NCRMA
Jessica Edwin	NCRMA

VISITOR REGISTRATION SHEET

Judiciary III — 04-06-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Samuel Gunter	NCHC
Will Ramy. Hiers	NCHFA
LAURA PUMYEAR	MWC
Peter Bolac	NC St Bar
JOE LANIER	TSS

Attachment 2

4-6-17
(DATE)

J-3
(COMMITTEE)

House
~~SENATE~~ SERGEANT-AT-ARMS

BEAR MOORE	Dr. d cinthicum
Bill Riley	
Bill MOORE	

HOUSE SERGEANT-AT-ARMS

House Pages
Assignments
Thursday, April 06, 2017
Session: 2:00 PM

Committee	Room	Time	Staff	Comments	Member
Homeland Security, Military, and Veterans Affairs	421	9:00 AM	Caroline Byars		Rep. John Bradford
			Jared Diegelman		Rep. Dean Arp
			Madison Gunter		Rep. Mike Clampitt
			Chloe Worner		Rep. Harry Warren
Judiciary III	1228/1327	9:00 AM	Noah Ellington		Rep. Speaker Tim Moore
			Caroline Cholette		Rep. Mike Clampitt
			Jenna Varnell		Rep. Susan Martin
			Mary Margaret West		Rep. George Cleveland
Environment	1228/1327	11:00 AM	Caroline Cholette		Rep. Ted Davis, Jr.
			Lizette Duarte		Rep. Sam Watford
			Samantha Lenger		Rep. Duane Hall
			Mary Margaret West		Rep. George Cleveland
Health	643	11:00 AM	Audra Cloer		Rep. Kevin Corbin
			Ashley Holland		Rep. Pat Hurley
			Carolyn McCarthy		Rep. Susan Martin
			Joseph Pinnix		Rep. Chris Malone
Banking	1228/1327	12:00 PM	Caroline Byars		Rep. John Bradford
			Austin Calhoun		Rep. William Richardson
			Jared Diegelman		Rep. Dean Arp
			Chloe Worner		Rep. Harry Warren

Attachment 3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

HOUSE BILL 384

Short Title:	Increase Penalties/Organized Retail Theft.	(Public
Sponsors:	Representatives Fraley, Jordan, Warren, and Wray (Primary Sponsors). *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	Judiciary II	

March 20, 2017

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE ORGANIZED RETAIL THEFT LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-72.11 reads as rewritten:

"**§ 14-72.11. Larceny from a merchant.**

A person is guilty of a Class H felony if the person commits larceny against a merchant under any of the following circumstances:

(1) If the property taken has a value of more than two hundred dollars ($200.00), by using an exit door erected and maintained to comply with the requirements of 29 C.F.R. § 1910.36 and 29 C.F.R. § 1910.37 ~~upon which door has been placed a notice, sign, or poster providing information about the felony offense and punishment provided under this subsection,~~ to exit the premises of a store.

(2) By removing, destroying, or deactivating a component of an antishoplifting or inventory control device to prevent the activation of any antishoplifting or inventory control device.

(3) By affixing a product code created for the purpose of fraudulently obtaining goods or merchandise from a merchant at less than its actual sale price.

(4) When the property is infant formula valued in excess of one hundred dollars ($100.00). As used in this subsection, the term "infant formula," has the same meaning as found in 21 U.S.C. § 321(z).

(5) By exchanging stolen property for something of value, cash, a gift card, or a merchandise card.

(6) By returning stolen property and utilizing fictitious identification to prevent the merchant from properly identifying the person seeking to return the property."

SECTION 2. Article 16A of Chapter 14 of the General Statutes reads as rewritten:

"Article 16A.

"Organized Retail Theft.

"**§ 14-86.5. Definitions.**

The following definitions apply in this Article:

(1) "Organized retail theft enterprise." – Two or more persons who associate for the purpose of engaging in the conduct of organized retail theft.

~~(1)~~(1a) "Retail property." – Any article, product, commodity, item, or component intended to be sold in retail commerce.

(2) "Retail property fence." – A person or business that buys retail property knowing or believing that retail property is stolen.
(3) "Theft." – To take possession of, carry away, transfer, or cause to be carried away the retail property of another with the intent to steal the retail property.
(4) "Value." – The retail value of an item as advertised by the affected retail establishment, to include all applicable taxes."

"**§ 14-86.6. Organized retail theft.**

(a) A person is guilty of a Class H felony if the ~~person:~~person does either of the following:

(1) Conspires with another person to commit theft of retail property from retail establishments, with a value exceeding one thousand five hundred dollars ($1,500) aggregated over a 90-day period, with the intent to sell that retail property for monetary or other gain, and who takes or causes that retail property to be placed in the control of a retail property fence or other person in exchange for consideration.
(2) Receives or possesses any retail property that has been taken or stolen in violation of subdivision (1) of this subsection while knowing or having reasonable grounds to believe the property is stolen.

(a1) A person is guilty of a Class G felony if the person does either of the following:

(1) Conspires with another person to commit theft of retail property from retail establishments, with a value exceeding twenty thousand dollars ($20,000) aggregated over a 90-day period, with the intent to sell that retail property for monetary or other gain, and who takes or causes that retail property to be placed in the control of a retail property fence or other person in exchange for consideration.
(2) Acts as leader of an organized retail theft enterprise if the person conspires with others as an organizer, supervisor, financier, or manager to engage for profit in a scheme or course of conduct to effectuate the transfer or sale of property stolen from a merchant.

(b) Any interest a person has acquired or maintained in violation of this section shall be subject to forfeiture pursuant to the procedures for forfeiture set out in G.S. 18B-504.

(c) A violation of this section occurring in different counties that have been aggregated in one county may be prosecuted in any county in which one of the violations occurred."

SECTION 3. G.S. 66-387 reads as rewritten:

"**§ 66-387. Definitions.**

The following definitions apply in this Part:

(1) Cash. – Lawful currency of the United States.
(2) Currency converter. – A person engaged in the business of purchasing ~~goods~~ goods, including a gift card or merchandise card of any value not issued by the person, from the public for cash at a permanently located retail ~~store~~ store, an itinerant merchant as defined in G.S. 66-250(1), or a Web site located in North Carolina who holds himself or herself out to the public by signs, advertising, or other methods as engaging in that business. The term does not include any of the following:
a. ~~Pawnbrokers.~~Pawnbrokers, except with regard to the purchase of a gift card or merchandise card.
b. Persons whose goods purchases are made directly from manufacturers or wholesalers for their inventories.
c. Precious metals dealers, to the extent that their transactions are regulated under Part 2 of this Article.

d. Purchases by persons primarily in the business of obtaining from the public, either by purchase or exchange, used clothing, children's furniture, and children's products, ~~provided~~ provided (i) the amount paid for the individual item purchased is less than fifty dollars ~~($50.00).~~($50.00) and (ii) the individual item purchased is not a gift card or merchandise card of any value.

e. Purchases by persons primarily in the business of obtaining from the public, either by purchase or exchange, sporting goods and sporting equipment, ~~provided~~ provided (i) the amount paid for the individual item purchased is less than fifty dollars ~~($50.00).~~($50.00) and (ii) the individual item purchased is not a gift card or merchandise card of any value.

(3) Pawn or pawn transaction. – A written bailment of personal property as security for a debt, redeemable on certain terms within 180 days, unless renewed, and with an implied power of sale on default.

(4) Pawnbroker. – A person engaged in the business of lending money on the security of pledged goods and who may also purchase merchandise for resale from dealers and traders.

(5) Pawnshop. – The location at which, or premises in which, a pawnbroker regularly conducts business.

(6) Person. – Any individual, corporation, joint venture, association, or any other legal entity, however organized.

(7) Pledged goods. – Tangible personal property which is deposited with, or otherwise actually delivered into, the possession of a pawnbroker in the course of his business in connection with a pawn transaction.

(8) Purchase. – An item purchased from an individual for the purpose of resale whereby the seller no longer has a vested interest in the item."

SECTION 4. This act becomes effective December 1, 2017, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H D

HOUSE BILL 384
PROPOSED COMMITTEE SUBSTITUTE H384-CSSA-8 [v.1]

04/05/2017 11:24:59 AM

Short Title: Increase Penalties/Organized Retail Theft. (Public

Sponsors:

Referred to:

March 20, 2017

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE ORGANIZED RETAIL THEFT LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-72.11 reads as rewritten:

"**§ 14-72.11. Larceny from a merchant.**

A person is guilty of a Class H felony if the person commits larceny against a merchant under any of the following circumstances:

(1) If the property taken has a value of more than two hundred dollars ($200.00), by using an exit door erected and maintained to comply with the requirements of 29 C.F.R. § 1910.36 and 29 C.F.R. § 1910.37 ~~upon which door has been placed a notice, sign, or poster providing information about the felony offense and punishment provided under this subsection,~~ to exit the premises of a store.

(2) By removing, destroying, or deactivating a component of an antishoplifting or inventory control device to prevent the activation of any antishoplifting or inventory control device.

(3) By affixing a product code created for the purpose of fraudulently obtaining goods or merchandise from a merchant at less than its actual sale price.

(4) When the property is infant formula valued in excess of one hundred dollars ($100.00). As used in this subsection, the term "infant formula," has the same meaning as found in 21 U.S.C. § 321(z).

(5) By exchanging property, knowing or having reasonable grounds to believe the property is stolen, for cash, a gift card, a merchandise card, or some other item of value.

(6) By exchanging property, knowing or having reasonable grounds to believe the property is stolen, for cash, a gift card, a merchandise card, or some other item of value and utilizing fictitious identification to prevent the merchant from properly identifying the person seeking to exchange the property."

SECTION 2. G.S. 14-86.6 reads as rewritten:

"**§ 14-86.6. Organized retail theft.**

(a) A person is guilty of a Class H felony if the ~~person:~~person does either of the following:

(1) Conspires with another person to commit theft of retail property from retail establishments, with a value exceeding one thousand five hundred dollars ($1,500) aggregated over a 90-day period, with the intent to sell that retail property for monetary or other gain, and who takes or causes that retail

property to be placed in the control of a retail property fence or other person in exchange for consideration.

(2) Receives or possesses any retail property that has been taken or stolen in violation of subdivision (1) of this subsection while knowing or having reasonable grounds to believe the property is stolen.

(a1) A person is guilty of a Class G felony if the person does either of the following:

(1) Conspires with another person to commit theft of retail property from retail establishments, with a value exceeding twenty thousand dollars ($20,000) aggregated over a 90-day period, with the intent to sell that retail property for monetary or other gain, and who takes or causes that retail property to be placed in the control of a retail property fence or other person in exchange for consideration.

(2) Acts as leader of two or more other persons associated for the purpose of engaging in conduct in violation of this section, if the person conspires with others as an organizer, supervisor, financier, or manager to engage for profit in a scheme or course of conduct to effectuate the transfer or sale of property stolen from a merchant.

(b) Any interest a person has acquired or maintained in violation of this section shall be subject to forfeiture pursuant to the procedures for forfeiture set out in G.S. 18B-504.

(c) Thefts of retail property occurring in more than one county may be aggregated in alleging a violation of this section. Venue for prosecution of a violation of this section is appropriate in any county in which an aggragated theft of retail property occurred."

SECTION 3. G.S. 66-387 reads as rewritten:

"**§ 66-387. Definitions.**

The following definitions apply in this Part:

(1) Cash. – Lawful currency of the United States.

(2) Currency converter. – A person engaged in the business of purchasing ~~goods~~ goods, including a gift card or merchandise card of any value not issued by the person, from the public for cash at a permanently located retail ~~store~~ store, an itinerant merchant as defined in G.S. 66-250(1), or a Web site located in North Carolina who holds himself or herself out to the public by signs, advertising, or other methods as engaging in that business. The term does not include any of the following:

a. ~~Pawnbrokers.~~Pawnbrokers, except with regard to the purchase of a gift card or merchandise card.

b. Persons whose goods purchases are made directly from manufacturers or wholesalers for their inventories.

c. Precious metals dealers, to the extent that their transactions are regulated under Part 2 of this Article.

d. Purchases by persons primarily in the business of obtaining from the public, either by purchase or exchange, used clothing, children's furniture, and children's products, ~~provided~~ provided (i) the amount paid for the individual item purchased is less than fifty dollars ~~($50.00).~~($50.00) and (ii) the individual item purchased is not a gift card or merchandise card of any value.

e. Purchases by persons primarily in the business of obtaining from the public, either by purchase or exchange, sporting goods and sporting equipment, ~~provided~~ provided (i) the amount paid for the individual item purchased is less than fifty dollars ~~($50.00).~~($50.00) and (ii) the individual item purchased is not a gift card or merchandise card of any value.

(3) Pawn or pawn transaction. – A written bailment of personal property as security for a debt, redeemable on certain terms within 180 days, unless renewed, and with an implied power of sale on default.

(4) Pawnbroker. – A person engaged in the business of lending money on the security of pledged goods and who may also purchase merchandise for resale from dealers and traders.

(5) Pawnshop. – The location at which, or premises in which, a pawnbroker regularly conducts business.

(6) Person. – Any individual, corporation, joint venture, association, or any other legal entity, however organized.

(7) Pledged goods. – Tangible personal property which is deposited with, or otherwise actually delivered into, the possession of a pawnbroker in the course of his business in connection with a pawn transaction.

(8) Purchase. – An item purchased from an individual for the purpose of resale whereby the seller no longer has a vested interest in the item."

SECTION 4. This act becomes effective December 1, 2017, and applies to offenses committed on or after that date.

Attachment 6

HOUSE BILL 384:
Increase Penalties/Organized Retail Theft.

2017-2018 General Assembly

Committee:	House Judiciary III	**Date:**	April 6, 2017
Introduced by:	Reps. Fraley, Jordan, Warren, Wray	**Prepared by:**	Susan Sitze Staff Attorney
Analysis of:	PCS to First Edition H384-CSSA-8		

OVERVIEW: The proposed committee substitute (PCS) for House Bill 384 would amend the larceny from a merchant and organized retail theft statutes and amend the definition of currency converter to (i) include the purchase of gift cards and (ii) include itinerant merchants and websites located in North Carolina.

[As introduced, this bill was identical to S409, as introduced by Sens. Curtis, Meredith, Britt, which is currently in Senate Rules and Operations of the Senate.]

CURRENT LAW:

Larceny from a merchant pursuant to G.S. 14-72.11 is a Class H felony.

Organized retail theft pursuant to G.S. 14-86.6 is a Class H felony. The offense currently applies if a person conspires with another to steal property from merchants worth a total of $1,500 or more in a 90 day period, with the intent to sell the property and then fences that property, or a person receives such property knowing or having reasonable grounds to believe the property was stolen.

G.S. 66-250(1) defines "itinerant merchant" as follows:

> *A person, other than a merchant with an established retail store in the county, who transports an inventory of goods to a building, vacant lot, or other location in a county and who, at that location, displays the goods for sale and sells the goods at retail or offers the goods for sale at retail.*

BILL ANALYSIS:

Section 1 would amend G.S. 14-72.11, Larceny from a merchant, to include the following acts:

- Exchanging property, knowing or having reasonable grounds to believe the property is stolen, for cash, a gift card, a merchandise card, or some other item of value.
- Exchanging property, knowing or having reasonable grounds to believe the property is stolen, for cash, a gift card, a merchandise card, or some other item of value and utilizing fictitious identification to prevent the merchant from properly identifying the person seeking to exchange the property.

Section 2 would amend G.S. 14-86.6, Organized retail theft, to create a new Class G felony if a person does either of the following:

- Conspires to steal retail property with a value exceeding $20,000 in a 90 day period, with the intent to sell the property and then fences the property.

Karen Cochrane-Brown
Director

Legislative Analysis Division
919-733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

- Acts as a leader of two or more other persons associated for organized retail theft, if the person acts as an organizer, supervisor, financier, or manager in conduct designed to transfer or sell property stolen from a merchant.

This section would also provide that thefts of retail property that occur in more than one county may be aggregated in alleging a violation of organized retail theft and that the offense may be prosecuted in any county where one of the aggregated thefts of retail property occurred.

Section 3 would amend the definition of currency converter to include a gift card or merchandise card as a purchased "good" qualifying the business as a currency converter. The definition would also be amended to include an itinerant merchant or a Web site located in North Carolina, and to modify the exclusions from the definition to clarify that purchases of a gift card or merchandise card do qualify the person as a currency converter.

Inclusion in the definition of currency converter subjects the person to specific record keeping requirements for purchases pursuant to G.S. 66-392, including obtaining the name, address, phone number, date of birth, identification, and a physical description of the seller of the item, as well as requiring the seller to sign a statement that the item is not stolen.

EFFECTIVE DATE: This act would become effective December 1, 2017, and apply to offenses committed on or after that date.

House Committee on Judiciary III
Tuesday, April 11, 2017 at 11:00 AM
Room 421 of the Legislative Office Building

Sergeant at Arms

1. **Bill Bass**
2. **Mark Cone**
3. **Will Crocker**

House Committee on Judiciary III
Tuesday, April 11, 2017 at 11:00 AM
Room 421 of the Legislative Office Building

MINUTES

The House Committee on Judiciary III met at 11:00 AM on Tuesday April 11, 2017 in Room 421 of the Legislative Office Building. Representatives Jordan, Zachary, Hastings, Horn, Quick, Szoka, and B. Turner attended. Brad Krehely, Kristen Harris and Billy Godwin (Research Staff Counsel), along with Emma Benson (Committee Clerk) were in attendance. A Visitor Registration list is attached and made part of these minutes (Attachment 1).

Representative Jonathan Jordan, Chair, presided. The chair called the meeting to order at 11:02 AM. He introduced the Sergeants at Arms (Attachment 2). The following bill was considered:

House Bill 29, Proposed Committee Substitute (PCS) and a summary are provided (Attachments 3, 4, and 5).

HOUSE BILL 29: RECORD OF EXCUSALS FROM JURY DUTY

Chairman Jordan recognized Rep. Horn who made the motion to have the PCS before the committee. The motion carried.

Chairman Jordan recognized Rep. Cleveland to present the bill.

The PCS for House Bill 29 would provide that the name and address of each person who requests to be excused from jury duty on the basis that the person is not qualified to serve must be retained by the clerk of superior court for the remainder of the biennium. It also would provide that if a person is excused from jury duty for any reason related to qualifications to vote, then the person's name, address, reason for excusal, and date of excusal must be provided by the clerk of court electronically to the local board of election and the State Board of Elections quarterly. The act would become effective January 1, 2018.

The PCS differs from the 1st edition in the following ways:

1. Provides that excusals under G.S. 9-3 must be retained by the clerk of superior court for the remainder of the biennium (was for not less than two years)
2. Provides for excusals based on qualifications to vote, the information must be provided electronically, must go to the local board of elections and the State Board of Elections quarterly, and the State Board of Elections must retain the records for two years, and the clerk of superior court may destroy the records at the end of the biennium.

Chairman Jordan recognized Reps. B. Turner and Quick to provide discussion on the bill.

Chairman Jordan recognized Jamie Lassiter from the Conference of Clerks and Debra Barker, Person Co. Clerk, to speak in favor of the bill.

Chairman Jordan recognized Rep. Szoka to make the motion favorable to the PCS, unfavorable to the original bill. The motion passed without dissent.

House Bill 369, Proposed Committee Substitute (PCS) and a summary are provided (Attachments 5, 7, and 8).

HOUSE BILL 369: COMMUNITY CORRECTIONS AND PROBATIONS

Chairman Jordan recognized Rep. Zachary to make the motion for the PCS to be before the committee. The motion carried.

Chairman Jordan recognized Rep. McNeill to explain the bill.

The PCS for House Bill 369 would make various changes to probation conditions and the powers of probation officers as follows:

- Provide the power of peace officers on prison property and when aiding law enforcement at the request of law enforcement.
- Require probationers to submit a curfew set by the probation officer.
- Require probationers, post-release supervisees, and parolees to submit to warrantless searches of their cell phone, computer, or other electronic device for purposes reasonably related to the probation supervision.
- Amend delegated authority to allow probation officers to require a sex offender assessment or mental health assessment and compliance with recommended treatment.
- Authorize delegated authority for probationers on conditional discharge or a deferred prosecution, and for persons sentenced pursuant to G.S. 20-179.

Chairman Jordan recognized Reps. Horn, Quick, B. Turner, and Zachary to discuss the bill.

Chairman Jordan recognized George Pettygrew from the Department of Public safety to speak in favor of the bill, and to answer any questions from the members.

Chairman Jordan recognized Rep. Horn to make a motion favorable to the PCS, unfavorable to the original bill. The motion carried.

House Bill 409, Proposed Committee Substitute (PCS) and a summary are provided (Attachments 9, 10, and 11).

HOUSE BILL 409: STATE AGENCIES/ADJUST HIRING PRACTICES

Chairman Jordan recognized Rep. Quick to make a motion to have the PCS before the committee. The motion carried.

Chairman Jordan recognized Reps. R. Turner and Grange to explain the bill.

House Bill 409 would direct State agencies to adjust employment practices to reduce barriers to public employment for individuals with a criminal history. The act would be effective when it becomes law and would apply to applications for State employment on or after that date. The PCS corrects an error to a statutory citation.

There was no discussion on House Bill 409.

Chairman Jordan recognized Rep. Zachary to make a motion favorable to the PCS, unfavorable to the original bill. The motion carried without dissent.

Chairman Jordan recognized Rep. Zachary to chair.

House Bill 584, Proposed Committee Substitute (PCS) and a summary are provided. (Attachments 12, 13, and 14)

HOUSE BILL 584: REAL PROP./ERROR CORRECTION & TITLE CURATIVE

Chairman Zachary recognized Reps. Jordan and Dulin to explain the bill.

House Bill 584 would clarify the process for correcting non-material errors in recorded instruments of title, would create a curative procedure for obvious description errors in documents of title, and would create a 10-year curative provision for certain defects in recorded instruments of title. The act is effective when it becomes law and applies in curative affidavits filed on or after that date. The PCS makes technical changes only.

Chairman Zachary recognized Rep. Jordan to present 2 technical amendments to House Bill 584. (Attachments 15 and 16)

Chairman Zachary recognized Rep. Horn to make a motion to adopt amendment one. The motion carried.

Chairman Zachary recognized Rep. Szoka to make a motion to adopt amendment two. The motion carried.

Chairman Zachary recognized Reps. Horn and B. Turner to discuss the bill.

Chairman Jordan recognized Rep. Horn to make a motion to roll the amendments into a new PCS, favorable to the PCS and unfavorable to the original bill. The motion carried.

With no further business, Chairman Zachary adjourned the meeting at 12:17 PM.

Representative Jonathan Jordan, Chair
Presiding

Emma Benson, Committee Clerk

Attachments

1. Visitor Registration Sheet
2. Sergeants at Arms
3. House Bill 29
4. House Bill 29 PCS
5. House Bill 29 summary
6. House Bill 369
7. House Bill 369 PCS
8. House Bill 369 Summary
9. House Bill 409
10. House Bill 409 PCS
11. House Bill 409 Summary
12. House Bill 584
13. House Bill 584 PCS
14. House Bill 584 Summary
15. House Bill 584 Amendment 1
16. House Bill 584 Amendment 2

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

JUDICIARY III COMMITTEE REPORT
Representative Jonathan C. Jordan, Co-Chair
Representative Lee Zachary, Co-Chair

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL

HB **29** Record of Excusals From Jury Duty.

Draft Number:	H29-PCS40462-RN-8
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes
Floor Manager:	Cleveland

HB **369** Community Corrections and Probations.

Draft Number:	H369-PCS10281-SA-9
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes
Floor Manager:	McNeill

HB **409** State Agencies/Adjust Hiring Practices.

Draft Number:	H409-PCS40461-BD-20
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	R. Turner

TOTAL REPORTED: 3

CMR205-V-1

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES

JUDICIARY III COMMITTEE REPORT

Representative Jonathan C. Jordan, Co-Chair
Representative Lee Zachary, Co-Chair

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL

HB **584** Real Prop./Error Correction & Title Curative.

Draft Number:	H584-PCS40465-RN-9
Serial Referral:	None
Recommended Referral:	None
Long Title Amended:	No
Floor Manager:	Jordan

TOTAL REPORTED: 1

Attachment 1

VISITOR REGISTRATION SHEET

Judiciary III — 04-11-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLE

NAME	FIRM OR AGENCY AND ADDRESS
Deneran L Barker	Person County CSC, 105 S Main St. Roxboro NC
Tom L Ray	Haywood County CSC, 285 N. Main St. Waynesville, NC 28786
Kim Hooperson-Justice	Henderson County, CSC 200 N. Grove St Hendersonville, NC
Jamie Lassiter	Cont of Clerks
Sarah Wolfe	MWC
Jillian Totman	MWC
Sarah Hardin	NCEL
Casey House	Healing Transitions 1251 Goode St Raleigh NC. 27603
Crystal	Healing Transitions 1251 Goode St Raleigh NC 27603
Tessie Castillo	NC Harm Reduction Coalition
Mira Walker	NC Justice Center

VISITOR REGISTRATION SHEET

Judiciary III — 04-11-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Stuart Watts	~~NCABA~~
Starnes	OST
Harrell	B+H
Jennifer Haywood	NCJOL
Samantha Kanoza	NCJOL
Ken Cleveland	NBA
Mike Aspatti	NCABA
	DPS
Loyaldi	DPS
	DPS

VISITOR REGISTRATION SHEET

Judiciary III — 04-11-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Madler	NC Sentencing Commission
Steve Brown	Investors Title Insurance Company
Amanda Fyffe	IDA
Jason Deans	"
Mildred Spearman	NCAOC
Cady Thomas	Focus Carolina
David Ferrell	VB
Sarah Gillooly	ACLU

VISITOR REGISTRATION SHEET

Judiciary III — 04-11-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Matthew Herr	DRNC
Susanne Bordog	ACLU-NC
Kathryn Freeman	NC State Student
Tanck Cilda	CCJR
Dawn Blagrove	CJPC
Kris Parker	DPNC

Attachment 2

Committee Sergeants at Arms

NAME OF COMMITTEE Judiciary III

DATE: 04-11-2017 Room: 421

House Sgt-At Arms:

1. Name: Bill Bass
2. Name: Mark Cone
3. Name: Will Crocker
4. Name: _____
5. Name: _____

Senate Sgt-At Arms:

1. Name: _____
2. Name: _____
3. Name: _____
4. Name: _____
5. Name: _____

Attachment 3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

HOUSE BILL 29

Short Title:	Record of Excusals From Jury Duty.	(Publi
Sponsors:	Representative Cleveland.	
Referred to:	Judiciary III	

February 1, 2017

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE NAMES AND ADDRESSES OF PERSONS REQUESTING TO BE EXCUSED FROM JURY DUTY BASED ON DISQUALIFICATION SHALL BE RETAINED BY THE CLERK OF SUPERIOR COURT FOR NOT LESS THAN TWO YEARS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 9 of the General Statutes is amended by adding a new section to read:

"**§ 9-6.2. Records of excusals from jury duty based on disqualification.**

(a) The name and address of each person who requests to be excused from jury duty on the basis that he or she is not qualified to serve as a juror under G.S. 9-3, along with the reason for that request, shall be retained by the clerk of superior court for not less than two years from the date of excusal. The records retained by the clerk are not public records under G.S. 132-1.

(b) If a person is excused from jury duty for any reason relating to qualifications under G.S. 163-55, the record of his or her name, address, reason for excusal, and the date of excusal shall be a public record under G.S. 132-1 and shall be provided by the clerk of superior court to the State Board of Elections for the purposes listed in G.S. 163-82.14."

SECTION 2. G.S. 9-6(e) reads as rewritten:

"(e) The judge shall inform the clerk of superior court of persons excused under this section, and the clerk shall keep a record of excuses separate from the master jury ~~list.~~list in accordance with G.S. 9-6.2."

SECTION 3. The Administrative Office of the Courts shall amend the Rules of Recordkeeping to include procedures to implement the provisions of G.S. 9-6.2, as enacted by Section 1 of this act.

SECTION 4. This act becomes effective January 1, 2018.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H I

HOUSE BILL 29
PROPOSED COMMITTEE SUBSTITUTE H29-CSRN-8 [v.2]

04/10/2017 02:51:21 PM

Short Title: Record of Excusals From Jury Duty. (Publi

Sponsors: --

Referred to:

February 1, 2017

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE NAMES AND ADDRESSES OF PERSONS REQUESTING TO BE EXCUSED FROM JURY DUTY BASED ON DISQUALIFICATION SHALL BE RETAINED BY THE CLERK OF SUPERIOR COURT FOR THE REMAINDER OF THE BIENNIUM.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 9 of the General Statutes is amended by adding a new section to read:

"**§ 9-6.2. Records of excusals from jury duty based on disqualification.**

(a) The name and address of each person who requests to be excused from jury duty on the basis that the person is not qualified to serve as a juror under G.S. 9-3, along with the reason for that request, shall be retained by the clerk of superior court for the remainder of the biennium. The records retained by the clerk are not public records under G.S. 132-1.

(b) If a person is excused from jury duty for any reason relating to qualifications under G.S. 163-55, the record of the person's name, address provided, reason for excusal, and the date of excusal shall be a public record under G.S. 132.1 and shall be provided by the clerk of superior court electronically to the local board of elections and the State Board of Elections quarterly for the purposes listed in G.S. 163-82.14. The State Board of Elections shall retain the electronic record for two years. The clerk of superior court may destroy the records at the end of each biennium."

SECTION 2. G.S. 9-6(e) reads as rewritten:

"(e) The judge shall inform the clerk of superior court of persons excused under this section, and the clerk shall keep a record of excuses separate from the master jury ~~list.~~list in accordance with G.S. 9-6.2."

SECTION 3. The Administrative Office of the Courts shall amend the Rules of Recordkeeping to include procedures to implement the provisions of G.S. 9-6.2, as enacted by Section 1 of this act.

SECTION 4. This act becomes effective January 1, 2018.

HOUSE BILL 29:
Record of Excusals From Jury Duty.

2017-2018 General Assembly

Committee:	House Judiciary III	**Date:**	April 10, 2017
Introduced by:	Rep. Cleveland	**Prepared by:**	Brad Krehely
Analysis of:	PCS to First Edition H29-CSRN-8		Committee Co-Counsel

OVERVIEW: ***The Proposed Committee Substitute (PCS) for House Bill 29 would provide that the name and address of each person who requests to be excused from jury duty on the basis that the person is not qualified to serve must be retained by the clerk of superior court for the remainder of the biennium. It also would provide that if a person is excused from jury duty for any reason related to qualifications to vote, then the person's name, address, reason for excusal, and date of excusal must be provided by the clerk of court electronically to the local board of elections and the State Board of Elections quarterly. The act would become effective January 1, 2018.***

The PCS differs from the 1st edition in the following ways: (1) provides that excusals under G.S. 9-3 must be retained by the clerk of superior court for the remainder of the biennium (was for not less than two years) and (2) provides for excusals based on qualifications to vote, (i) the information must be provided electronically, (ii) must go to the local board of elections and the State Board of Elections quarterly, and (iii) the State Board of Elections must retain the records for two years, and the clerk of superior court may destroy the records at the end of the biennium.

[As introduced, this bill was identical to S60, as introduced by Sens. Krawiec, Dunn, Sanderson, which is currently in Senate Judiciary.]

CURRENT LAW: Each county's 3 person jury commission prepares a master list of prospective jurors using a list of registered voters and persons with drivers license records supplied by the Department of Motor Vehicles. The commission may use other sources of names if the Commission deems those sources to be reliable. The commission must merge the entire list of names from each source and randomly select the desired number to form the master list.

The master list must be maintained in the office of the clerk of court, along with a statement of the sources used and procedures followed in preparing the list, and be made available for public inspection during regular office hours. Addresses and dates of birth of prospective jurors are not subject to public disclosure without a court order.

Qualifications of prospective jurors under G.S. 9-3 include any persons who:

- Are citizens of the State and residents of the county,
- Have not served as jurors during the preceding two years or have not served a full term of service as a grand juror during the preceding six years,
- Are 18 years of age or older,
- Are physically and mentally competent,
- Can understand the English language,

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

- Have not been convicted of a felony or pleaded guilty or nolo contendere to an indictment charging a felony (unless they have had their citizenship restored following such a conviction or plea).

Any judge ruling on applications for excusals from jury duty is required to excuse any juror who is disqualified for the above reasons. The clerk of superior court is required to keep a list of all jurors who are excused for this, or any other reason.

BILL ANALYSIS:

Section 1 would provide:

- That the name and address of each person who requests to be excused from jury duty on the basis that the person is not qualified to serve must be retained by the clerk of superior court for the remainder of the biennium. The records are not a public record.
- That if a person is excused from jury duty for any reason related to qualifications to vote, then the person's name, address, reason for excusal, and date of excusal is a public record and must be provided by the clerk of court to the local board of elections and the State Board of Elections quarterly. The State Board of Elections must retain the records for two years, and the clerk of superior court may destroy the records at the end of the biennium.

Section 2 would make a conforming change.

Section 3 would require the Administrative Office of the Courts to adopt rules to implement the act.

EFFECTIVE DATE: January 1, 2018.

Augustus Willis, Attorney for the Legislative Analysis Division, contributed to this summary.

GENERAL ASSEMBLY OF NORTH CARC
SESSION 2017

H D

HOUSE BILL 369
PROPOSED COMMITTEE SUBSTITUTE H369-CSSA-9 [v.4]

04/10/2017 04:55:19 PM

Short Title: Community Corrections and Probations. (Public)

Sponsors:

Referred to:

March 16, 2017

A BILL TO BE ENTITLED

AN ACT TO PROVIDE PROBATION OFFICERS WITH ADDITIONAL POWERS WHEN ON PRISON PROPERTY AND WHEN RENDERING ASSISTANCE TO LAW ENFORCEMENT OFFICERS AT THE OFFICERS' REQUEST; TO PROVIDE THAT PROBATIONERS MUST SUBMIT TO A CURFEW SET BY THE PROBATION OFFICER AND TO SUBMIT TO WARRANTLESS SEARCHES OF A PROBATIONER'S PERSON, PROPERTY, RESIDENCE, VEHICLE, AND CELL PHONE; TO PROVIDE THAT OFFENDERS MUST OBTAIN A SEX OFFENDER ASSESSMENT AND A MENTAL HEALTH ASSESSMENT AND FOLLOW ALL RECOMMENDATIONS; AND TO PROVIDE THAT PROBATION OFFICERS HAVE DELEGATED AUTHORITY TO REQUIRE OFFENDERS ON SUPERVISED PROBATION FOR CONDITIONAL DISCHARGE OR DEFERRED PROSECUTION, OR SENTENCED PURSUANT TO G.S. 20-179, TO COMPLY WITH ADDITIONAL CONDITIONS OF PROBATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15-205 reads as rewritten:

"**§ 15-205. Duties and powers of the probation officers.**

(a) A probation officer shall investigate all cases referred to him for investigation by the judges of the courts or by the Secretary of Public Safety. Such officer shall keep informed concerning the conduct and condition of each person on probation under his supervision by visiting, requiring reports, and in other ways, and shall report thereon in writing as often as the court or the Secretary of Public Safety may require. Such officer shall use all practicable and suitable methods, not inconsistent with the conditions imposed by the court or the Secretary of Public Safety, to aid and encourage persons on probation to bring about improvement in their conduct and condition. Such officer shall keep detailed records of his work; shall make such reports in writing to the Secretary of Public Safety as he may require; and shall perform such other duties as the Secretary of Public Safety may require. A probation officer shall have, in the execution of his duties, the powers of arrest and, to the extent necessary for the performance of his duties, the same right to execute process as is now given, or that may hereafter be given by law, to the sheriffs of this State.

(b) Probation officers shall have the authority of peace officers on prison property for the purpose of protecting life and property, for the purpose of transferring prisoners from place to place as their duties might require, and for apprehending, arresting, and returning to prison escaped prisoners.

(c) Probation officers shall have authority to assist law enforcement officers in effecting arrests and preventing escapes from custody when requested to do so by the officer or when, in

the judgment of the probation officer, such assistance is necessary. When rendering assistance pursuant to this provision, probation officers have the same authority to effect an arrest or prevent escape from custody as the officer making the request."

SECTION 2. G.S. 15A-1343 reads as rewritten:

"**§ 15A-1343. Conditions of probation.**

(a) In General. – The court may impose conditions of probation reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so.

(a1) Community and Intermediate Probation Conditions. – In addition to any conditions a court may be authorized to impose pursuant to G.S. 15A-1343(b1), the court may include any one or more of the following conditions as part of a community or intermediate punishment:

(1) House arrest with electronic monitoring.

(1a) Submit to a curfew, as determined by the probation officer, which may be monitored electronically.

(2) Perform community service and pay the fee prescribed by law for this supervision.

(3) Submission to a period or periods of confinement in a local confinement facility for a total of no more than six days per month during any three separate months during the period of probation. The six days per month confinement provided for in this subdivision may only be imposed as two-day or three-day consecutive periods. When a defendant is on probation for multiple judgments, confinement periods imposed under this subdivision shall run concurrently and may total no more than six days per month.

(4) Substance abuse assessment, monitoring, or treatment.

(4a) Abstain from alcohol consumption and submit to continuous alcohol monitoring when alcohol dependency or chronic abuse has been identified by a substance abuse assessment.

(5) Participation in an educational or vocational skills development program, including an evidence-based program.

(6) Submission 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).

(b) Regular Conditions. – As regular conditions of probation, a defendant must:

...

(13) Submit ~~at reasonable times~~ to warrantless and suspicionless searches by a probation ~~officer~~officer, or by a law enforcement officer while assisting a probation officer, of the probationer's ~~person and of the probationer's vehicle and premises~~ person, property, place of residence, vehicle, and personal effects, while the probationer is ~~present, for purposes directly related to the probation supervision, but the~~ present. Submit to warrantless searches by a probation officer, or by a law enforcement officer while assisting a probation officer, of the probationer's cell phone, computer, or other electronic device, while the probationer is present, for purposes reasonably related to the probation supervision. The probationer may not be required to submit to any other search that would otherwise be unlawful.

...."

SECTION 3. G.S. 15A-1368.4(e)(10) reads as rewritten:

"**§ 15A-1368.4. Conditions of post-release supervision.**

...

(e) Controlling Conditions. – Appropriate controlling conditions, violation of which may result in revocation of post-release supervision, are:

...

(10) Submit ~~at reasonable times~~ to warrantless and suspicionless searches by a probation or parole officer or by a law enforcement officer while assisting a probation or parole officer of the supervisee's ~~person by a post-release supervision officer for purposes reasonably related to the post-release supervision.~~ person, property, place of residence, vehicle, and personal effects while the supervisee is present. Submit to warrantless searches by a probation officer, or by a law enforcement officer while assisting a probation officer, of the supervisee's cell phone, computer, or other electronic device, while the supervisee is present, for purposes reasonably related to the post-release supervision. The Commission shall not require as a condition of post-release supervision that the supervisee submit to any other searches that would otherwise be unlawful. Whenever the search consists of testing for the presence of illegal drugs, the supervisee may also be required to reimburse the Division of Adult Correction of the Department of Public Safety for the actual cost of drug testing and drug screening, if the results are positive."

SECTION 4. G.S. 15A-1374(b)(11) reads as rewritten:

"**§ 15A-1374. Conditions of parole.**

...

(b) Appropriate Conditions. – As conditions of parole, the Commission may require that the parolee comply with one or more of the following conditions:

...

(11) Submit ~~at reasonable times~~ to warrantless and suspicionless searches by a probation or parole officer of the parolee's ~~person and of the parolee's vehicle and premises~~ person, property, place of residence, vehicle, and personal effects, while the parolee is ~~present, for purposes reasonably related to the parole supervision.~~ present. Submit to warrantless searches by a probation or parole officer, or by a law enforcement officer while assisting a probation or parole officer, of the parolee's cell phone, computer, or other electronic device, while the parolee is present, for purposes reasonably related to the parole supervision. The Commission may not require as a condition of parole that the parolee submit to any other searches that would otherwise be unlawful. ~~If the parolee has been convicted of an offense which is a reportable conviction as defined in G.S. 14-208.6(4), or which involves the physical, mental, or sexual abuse of a minor, warrantless searches of the parolee's computer or other electronic mechanism which may contain electronic data shall be considered reasonably related to the parole supervision.~~ Whenever the search consists of testing for the presence of illegal drugs, the parolee may also be required to reimburse the Division of Adult Correction of the Department of Public Safety for the actual cost of drug testing and drug screening, if the results are positive."

SECTION 5. G.S. 15A-101.1 reads as rewritten:

"**§ 15A-101.1. Electronic technology in criminal process and procedure.**

As used in this Chapter, in Chapter 7A of the General Statutes, in Chapter 15 of the General Statutes, and in all other provisions of the General Statutes that deal with criminal process or procedure:

...

(3a) "Electronic monitoring" or "electronically monitor" or "satellite-based monitoring" means monitoring with an electronic monitoring device ~~that is not removed from a person's body,~~ that is utilized by the supervising agency in conjunction with a Web-based computer system that actively ~~monitors, identifies, tracks, and records a person's location at least once every minute~~

~~24 hours a day, that has a battery life of at least 48 hours without being recharged, that~~ monitors a person's location, timely records and reports or records the person's presence near or within a crime scene or prohibited area or the person's departure from a specified geographic location, and that has incorporated into the software the ability to automatically compare crime scene data with locations of all persons being electronically monitored so as to provide any correlation daily or in real time. In areas of the State where lack of cellular coverage requires the use of an alternative device, the supervising agency shall use an alternative device that works in concert with the software and records location and tracking data for later download and crime scene comparison.

...."

SECTION 6. G.S. 15A-1343.2 reads as rewritten:

"**§ 15A-1343.2. Special probation rules for persons sentenced under Article 81B.**

...

(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 Section of Community Corrections of the Division of Adult Correction of the Department of Public Safety may require an offender sentenced to community punishment to do any of the following:

(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.

(3) Submit to substance abuse assessment, monitoring or treatment.

(4) Submit to house arrest with electronic monitoring.

(5) Submit to a period or periods of confinement in a local confinement facility for a total of no more than six days per month during any three separate months during the period of probation. The six days per month confinement provided for in this subdivision may only be imposed as two-day or three-day consecutive periods. When a defendant is on probation for multiple judgments, confinement periods imposed under this subdivision shall run concurrently and may total no more than six days per month.

(6) 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.

(7) Participate in an educational or vocational skills development program, including an evidence-based program.

(8) Obtain a specific sex offender assessment and follow all recommended treatment.

(9) Obtain a mental health assessment and follow all recommended treatment.

If the Section imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

The probation officer may exercise authority delegated to him or her by the court pursuant to ~~subsection (e) of~~ this ~~section~~ subsection after administrative review and approval by a Chief Probation Officer. 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. However, the offender shall have no right of review if he or she has signed a written waiver of rights as required by this subsection. The Section 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~~ or the offender is

determined to be high risk based on the results of the risk assessment in G.S. 15A-1343.2, except that the condition at subdivision (5) of this subsection may not be imposed unless the Section determines that the offender failed to comply with one or more of the conditions ~~imposed by the court.~~of probation. Nothing in this section shall be construed to limit the availability of the procedures authorized under G.S. 15A-1345.

The Division shall adopt guidelines and procedures to implement the requirements of this section, which shall include a supervisor's approval prior to exercise of the delegation of authority authorized by this section. Prior to imposing confinement pursuant to subdivision (5) of this subsection, the probationer must first be presented with a violation report, with the alleged violations noted and advised of the right (i) to a hearing before the court on the alleged violation, with the right to present relevant oral and written evidence; (ii) to have counsel at the hearing, and that one will be appointed if the probationer is indigent; (iii) to request witnesses who have relevant information concerning the alleged violations; and (iv) to examine any witnesses or evidence. The probationer may be confined for the period designated on the violation report upon the execution of a waiver of rights signed by the probationer and by two officers acting as witnesses. Those two witnesses shall be the probation officer and another officer to be designated by the Chief of the Community Corrections Section in written Division policy.

(e1) Delegation to Probation Officer for Supervision for Conditional Discharge and Deferred Prosecution. – Unless the presiding judge specifically finds in the judgment of the court that delegation is not appropriate, the Section of Community Corrections of the Division of Adult Correction of the Department of Public Safety may require an offender placed on supervised probation for a conditional discharge or a deferred prosecution to comply with any of the conditions in subsection (e) of this section with the exception of subdivision (5) of subsection (e) of this section. If the Section of Community Corrections imposes any of the conditions in subsection (e) of this section, then it may subsequently reduce or remove those same conditions. The probation officer may exercise authority delegated to him or her by the court pursuant to this subsection after administrative review and approval by a chief probation officer. 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 Section of Community Corrections 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 or the offender is determined to be high risk based on the results of a validated instrument to assess each probationer for risk of reoffending. Nothing in this section shall be construed to limit the availability of the procedures authorized under G.S. 15A-1345.

(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 Section of Community Corrections of the Division of Adult Correction of the Department of Public Safety may require an offender sentenced to intermediate punishment to do any of the following:

(1) Perform up to 50 hours of community service, and pay the fee prescribed by law for this 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.

(3) Submit to substance abuse assessment, monitoring 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, including an evidence-based 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).
(6) Submit to a period or periods of confinement in a local confinement facility for a total of no more than six days per month during any three separate months during the period of probation. The six days per month confinement provided for in this subdivision may only be imposed as two-day or three-day consecutive periods. When a defendant is on probation for multiple judgments, confinement periods imposed under this subdivision shall run concurrently and may total no more than six days per month.
(7) Submit to house arrest with electronic monitoring.
(8) Report to the offender's probation officer on a frequency to be determined by the officer.
(9) Obtain a specific sex offender assessment and follow all recommended treatment.
(10) Obtain a mental health assessment and follow all recommended treatment.

If the Section imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

The probation officer may exercise authority delegated to him or her by the court pursuant to this subsection ~~(f) of this section~~ after administrative review and approval by a Chief Probation Officer. 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. However, the offender shall have no right of review if he or she has signed a written waiver of rights as required by this subsection. The Section 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~~ or the offender is determined to be high risk based on the results of the risk assessment in G.S. 15A-1343.2, except that the condition at subdivision (6) of this subsection may not be imposed unless the Section determines that the offender failed to comply with one or more of the conditions ~~imposed by the court.~~of probation. Nothing in this section shall be construed to limit the availability of the procedures authorized under G.S. 15A-1345.

The Division shall adopt guidelines and procedures to implement the requirements of this section, which shall include a supervisor's approval prior to exercise of the delegation of authority authorized by this section. Prior to imposing confinement pursuant to subdivision (6) of this subsection, the probationer must first be presented with a violation report, with the alleged violations noted and advised of the right (i) to a hearing before the court on the alleged violation, with the right to present relevant oral and written evidence; (ii) to have counsel at the hearing, and that one will be appointed if the probationer is indigent; (iii) to request witnesses who have relevant information concerning the alleged violations; and (iv) to examine any witnesses or evidence. The probationer may be confined for the period designated on the violation report upon the execution of a waiver of rights signed by the probationer and by two officers acting as witnesses. Those two witnesses shall be the probation officer and another officer to be designated by the Chief of the Community Corrections Section in written Division policy.

(f1) Mandatory Condition of Satellite-Based Monitoring for Some Sex Offenders. – Notwithstanding any other provision of this section, the court shall impose satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes as a condition of probation on any offender who is described by G.S. 14-208.40(a)(1).

(g) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 19, s. 3.

(h) Definitions. – For purposes of this section, the definitions in G.S. 15A-1340.11 apply."

SECTION 7. G.S. 20-179 is amended by adding a new subsection to read:

"**§ 20-179. Sentencing hearing after conviction for impaired driving; determination of grossly aggravating and aggravating and mitigating factors; punishments.**

...

(k4) Notwithstanding the provisions of subsections (g), (h), (k2), and (k3) of this section, 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.

(k5) Delegation to Probation Officer. – Unless the presiding judge specifically finds in the judgment of the court that delegation is not appropriate, the Section of Community Corrections of the Division of Adult Corrections of the Department of Public Safety may require an offender sentenced pursuant to this section and placed on supervised probation to do any of the following:

(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.

(3) Submit to substance abuse assessment, monitoring, or treatment.

(4) Submit to house arrest with electronic monitoring.

(5) Submit to a period or periods of confinement in a local confinement facility for a total of no more than six days per month during any three separate months during the period of probation. The six days per month confinement provided for in this subdivision may only be imposed as two-day or three-day consecutive periods. When a defendant is on probation for multiple judgments, confinement periods imposed under this subdivision shall run concurrently and may total no more than six days per month.

(6) 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.

(7) Participate in an educational or vocational skills development program, including an evidence-based program.

(8) Obtain a specific sex offender assessment and follow all recommended treatment.

(9) Obtain a mental health assessment and follow all recommended treatment.

If the Section imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

The probation officer may exercise authority delegated to him or her by the court pursuant to this subsection after administrative review and approval by a Chief Probation Officer. 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. However, the offender shall have no right of review if he or she has signed a written waiver of rights as required by this subsection. The Section 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 or the offender is determined to be high risk based on the results of a validated instrument to assess each probationer for risk of reoffending, except that the condition at subdivision (5) of this subsection may not be imposed unless the Section determines that the offender failed to comply with one or more of the conditions of probation. Nothing in this section shall be construed to limit the availability of the procedures authorized under G.S. 15A-1345.

The Division shall adopt guidelines and procedures to implement the requirements of this section, which shall include a supervisor's approval prior to exercise of the delegation of authority authorized by this section. Prior to imposing confinement pursuant to subdivision (5) of this subsection, the probationer must first be presented with a violation report, with the alleged violations noted and advised of the right (i) to a hearing before the court on the alleged violation, with the right to present relevant oral and written evidence; (ii) to have counsel at the hearing, and that one will be appointed if the probationer is indigent; (iii) to request witnesses who have relevant information concerning the alleged violations; and (iv) to examine any witnesses or evidence. The probationer may be confined for the period designated on the violation report upon the execution of a waiver of rights signed by the probationer and by two officers acting as witnesses. Those two witnesses shall be the probation officer and another officer to be designated by the Director of the Community Corrections Section in written Division policy."

SECTION 8. Sections 2, 3, 4, 6, and 7 of this act become effective December 1, 2017, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

HOUSE BILL 369

Short Title: Community Corrections and Probations. (Publi

Sponsors: Representative McNeill.
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary III

March 16, 2017

A BILL TO BE ENTITLED

AN ACT TO PROVIDE PROBATION OFFICERS WITH ADDITIONAL POWERS WHEN ON PRISON PROPERTY AND WHEN RENDERING ASSISTANCE TO LAW ENFORCEMENT OFFICERS AT THE OFFICERS' REQUEST; TO PROVIDE THAT PROBATIONERS MUST SUBMIT TO A CURFEW SET BY THE PROBATION OFFICER AND TO SUBMIT TO WARRANTLESS SEARCHES OF A PROBATIONER'S PERSON, PROPERTY, RESIDENCE, VEHICLE, AND CELL PHONE; TO PROVIDE THAT OFFENDERS MUST OBTAIN A SEX OFFENDER ASSESSMENT AND A MENTAL HEALTH ASSESSMENT AND FOLLOW ALL RECOMMENDATIONS; AND TO PROVIDE THAT PROBATION OFFICERS HAVE DELEGATED AUTHORITY TO REQUIRE OFFENDERS ON SUPERVISED PROBATION FOR CONDITIONAL DISCHARGE OR DEFERRED PROSECUTION TO COMPLY WITH ADDITIONAL CONDITIONS OF PROBATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15-205 reads as rewritten:

"**§ 15-205. Duties and powers of the probation officers.**

(a) A probation officer shall investigate all cases referred to him for investigation by the judges of the courts or by the Secretary of Public Safety. Such officer shall keep informed concerning the conduct and condition of each person on probation under his supervision by visiting, requiring reports, and in other ways, and shall report thereon in writing as often as the court or the Secretary of Public Safety may require. Such officer shall use all practicable and suitable methods, not inconsistent with the conditions imposed by the court or the Secretary of Public Safety, to aid and encourage persons on probation to bring about improvement in their conduct and condition. Such officer shall keep detailed records of his work; shall make such reports in writing to the Secretary of Public Safety as he may require; and shall perform such other duties as the Secretary of Public Safety may require. A probation officer shall have, in the execution of his duties, the powers of arrest and, to the extent necessary for the performance of his duties, the same right to execute process as is now given, or that may hereafter be given by law, to the sheriffs of this State.

(b) Probation officers shall have the authority of peace officers on prison property for the purpose of protecting life and property, for the purpose of transferring prisoners from place to place as their duties might require, and for apprehending, arresting, and returning to prison escaped prisoners.

(c) Probation officers shall have authority to assist law enforcement officers in effecting arrests and preventing escapes from custody when requested to do so by the officer or when, in

the judgment of the probation officer, such assistance is necessary. When rendering assistance pursuant to this provision, probation officers have the same authority to effect an arrest or prevent escape from custody as the officer making the request."

SECTION 2. G.S. 15A-1343 reads as rewritten:

"**§ 15A-1343. Conditions of probation.**

(a) In General. – The court may impose conditions of probation reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so.

(a1) Community and Intermediate Probation Conditions. – In addition to any conditions a court may be authorized to impose pursuant to G.S. 15A-1343(b1), the court may include any one or more of the following conditions as part of a community or intermediate punishment:

(1) House arrest with electronic monitoring.

(1a) Submit to a curfew as determined by the probation officer which may be monitored electronically.

(2) Perform community service and pay the fee prescribed by law for this supervision.

(3) Submission to a period or periods of confinement in a local confinement facility for a total of no more than six days per month during any three separate months during the period of probation. The six days per month confinement provided for in this subdivision may only be imposed as two-day or three-day consecutive periods. When a defendant is on probation for multiple judgments, confinement periods imposed under this subdivision shall run concurrently and may total no more than six days per month.

(4) Substance abuse assessment, monitoring, or treatment.

(4a) Abstain from alcohol consumption and submit to continuous alcohol monitoring when alcohol dependency or chronic abuse has been identified by a substance abuse assessment.

(5) Participation in an educational or vocational skills development program, including an evidence-based program.

(6) Submission 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).

(b) Regular Conditions. – As regular conditions of probation, a defendant must:

...

(13) Submit ~~at reasonable times~~ to warrantless and suspicionless searches by a probation ~~officer~~officer, or by a law enforcement officer while assisting a probation officer, of the probationer's ~~person and of the probationer's vehicle and premises~~ person, property, place of residence, vehicle, and personal effects, while the probationer is ~~present, for purposes directly related to the probation supervision, but the~~ present. Submit to warrantless searches by a probation officer, or by a law enforcement officer while assisting a probation officer, of the probationer's cell phone, computer, or other electronic device while the probationer is present for purposes reasonably related to the probation supervision. The probationer may not be required to submit to any other search that would otherwise be unlawful.

...."

SECTION 3. G.S. 15A-1368.4(e)(10) reads as rewritten:

"**§ 15A-1368.4. Conditions of post-release supervision.**

...

(e) Controlling Conditions. – Appropriate controlling conditions, violation of which may result in revocation of post-release supervision, are:

...

(10) Submit ~~at reasonable times~~ to warrantless and suspicionless searches by a probation or parole officer or by a law enforcement officer while assisting a probation or parole officer of the supervisee's ~~person by a post-release supervision officer for purposes reasonably related to the post-release supervision.~~ person, property, place of residence, vehicle, and personal effects while the supervisee is present. Submit to warrantless searches by a probation officer, or by a law enforcement officer while assisting a probation officer, of the supervisee's cell phone, computer, or other electronic device while the supervisee is present for purposes reasonably related to the post-release supervision. The Commission shall not require as a condition of post-release supervision that the supervisee submit to any other searches that would otherwise be unlawful. Whenever the search consists of testing for the presence of illegal drugs, the supervisee may also be required to reimburse the Division of Adult Correction of the Department of Public Safety for the actual cost of drug testing and drug screening, if the results are positive."

SECTION 4. G.S. 15A-1374(b)(11) reads as rewritten:

"**§ 15A-1374. Conditions of parole.**

...

(b) Appropriate Conditions. – As conditions of parole, the Commission may require that the parolee comply with one or more of the following conditions:

...

(11) Submit ~~at reasonable times~~ to warrantless searches and suspicionless searches by a probation or parole officer of the parolee's ~~person and of the parolee's vehicle and premises~~ person, property, place of residence, vehicle, and personal effects, while the parolee is ~~present, for purposes reasonably related to the parole supervision.~~ present. Submit to warrantless searches by a probation or parole officer, or by a law enforcement officer while assisting a probation or parole officer, or by a law enforcement officer while assisting a probation or parole officer, of the parolee's cell phone, computer, or other electronic device while the parolee is present for purposes reasonably related to the parole supervision. The Commission may not require as a condition of parole that the parolee submit to any other searches that would otherwise be unlawful. ~~If the parolee has been convicted of an offense which is a reportable conviction as defined in G.S. 14-208.6(4), or which involves the physical, mental, or sexual abuse of a minor, warrantless searches of the parolee's computer or other electronic mechanism which may contain electronic data shall be considered reasonably related to the parole supervision.~~ Whenever the search consists of testing for the presence of illegal drugs, the parolee may also be required to reimburse the Division of Adult Correction of the Department of Public Safety for the actual cost of drug testing and drug screening, if the results are positive."

SECTION 5. G.S. 15A-101.1 reads as rewritten:

"**§ 15A-101.1. Electronic technology in criminal process and procedure.**

As used in this Chapter, in Chapter 7A of the General Statutes, in Chapter 15 of the General Statutes, and in all other provisions of the General Statutes that deal with criminal process or procedure:

...

(3a) "Electronic monitoring" or "electronically monitor" or "satellite-based monitoring" means monitoring with an electronic monitoring device ~~that is not removed from a person's body,~~ that is utilized by the supervising agency in conjunction with a Web-based computer system that actively ~~monitors,~~

~~identifies, tracks, and records a person's location at least once every minute 24 hours a day, that has a battery life of at least 48 hours without being recharged, that~~ monitors a person's location, timely records and reports or records the person's presence near or within a crime scene or prohibited area or the person's departure from a specified geographic location, and that has incorporated into the software the ability to automatically compare crime scene data with locations of all persons being electronically monitored so as to provide any correlation daily or in real time. In areas of the State where lack of cellular coverage requires the use of an alternative device, the supervising agency shall use an alternative device that works in concert with the software and records location and tracking data for later download and crime scene comparison.

...."

SECTION 6. G.S. 15A-1343.2 reads as rewritten:

"**§ 15A-1343.2. Special probation rules for persons sentenced under Article 81B.**

...

(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 Section of Community Corrections of the Division of Adult Correction of the Department of Public Safety may require an offender sentenced to community punishment to do any of the following:

(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.

(3) Submit to substance abuse assessment, monitoring or treatment.

(4) Submit to house arrest with electronic monitoring.

(5) Submit to a period or periods of confinement in a local confinement facility for a total of no more than six days per month during any three separate months during the period of probation. The six days per month confinement provided for in this subdivision may only be imposed as two-day or three-day consecutive periods. When a defendant is on probation for multiple judgments, confinement periods imposed under this subdivision shall run concurrently and may total no more than six days per month.

(6) 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.

(7) Participate in an educational or vocational skills development program, including an evidence-based program.

(8) Obtain a specific sex offender assessment and follow all recommended treatment.

(9) Obtain a mental health assessment and follow all recommended treatment.

If the Section imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

The probation officer may exercise authority delegated to him or her by the court pursuant to ~~subsection (e) of~~ this ~~section~~ subsection after administrative review and approval by a Chief Probation Officer. 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. However, the offender shall have no right of review if he or she has signed a written waiver of rights as required by this subsection. The Section 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~~ or the offender is determined to be high risk based on the results of the risk assessment in G.S. 15A-1343.2, except that the condition at subdivision (5) of this subsection may not be imposed unless the Section determines that the offender failed to comply with one or more of the conditions ~~imposed by the court.~~of probation. Nothing in this section shall be construed to limit the availability of the procedures authorized under G.S. 15A-1345.

The Division shall adopt guidelines and procedures to implement the requirements of this section, which shall include a supervisor's approval prior to exercise of the delegation of authority authorized by this section. Prior to imposing confinement pursuant to subdivision (5) of this subsection, the probationer must first be presented with a violation report, with the alleged violations noted and advised of the right (i) to a hearing before the court on the alleged violation, with the right to present relevant oral and written evidence; (ii) to have counsel at the hearing, and that one will be appointed if the probationer is indigent; (iii) to request witnesses who have relevant information concerning the alleged violations; and (iv) to examine any witnesses or evidence. The probationer may be confined for the period designated on the violation report upon the execution of a waiver of rights signed by the probationer and by two officers acting as witnesses. Those two witnesses shall be the probation officer and another officer to be designated by the Chief of the Community Corrections Section in written Division policy.

(e1) Delegation to Probation Officer for Supervision for Conditional Discharge and Deferred Prosecution. – Unless the presiding judge specifically finds in the judgment of the court that delegation is not appropriate, the Section of Community Corrections of the Division of Adult Correction of the Department of Public Safety may require an offender placed on supervised probation for a conditional discharge or a deferred prosecution to comply with any of the conditions in subsection (e) of this section with the exception of subdivision (5) of subsection (e) of this section. If the Section of Community Corrections imposes any of the above requirements, then it may subsequently reduce or remove those same requirements. The probation officer may exercise authority delegated to him or her by the court pursuant to this subsection after administrative review and approval by a chief probation officer. 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 Section of Community Corrections 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 or the offender is determined to be high risk based on the results of a validated instrument to assess each probationer for risk of reoffending. Nothing in this section shall be construed to limit the availability of the procedures authorized under G.S. 15A-1345.

(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 Section of Community Corrections of the Division of Adult Correction of the Department of Public Safety may require an offender sentenced to intermediate punishment to do any of the following:

(1) Perform up to 50 hours of community service, and pay the fee prescribed by law for this 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.

(3) Submit to substance abuse assessment, monitoring 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, including an evidence-based 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).

(6) Submit to a period or periods of confinement in a local confinement facility for a total of no more than six days per month during any three separate months during the period of probation. The six days per month confinement provided for in this subdivision may only be imposed as two-day or three-day consecutive periods. When a defendant is on probation for multiple judgments, confinement periods imposed under this subdivision shall run concurrently and may total no more than six days per month.

(7) Submit to house arrest with electronic monitoring.

(8) Report to the offender's probation officer on a frequency to be determined by the officer.

(9) Obtain a specific sex offender assessment and follow all recommended treatment.

(10) Obtain a mental health assessment and follow all recommended treatment.

If the Section imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

The probation officer may exercise authority delegated to him or her by the court pursuant to this subsection ~~(f) of this section~~ after administrative review and approval by a Chief Probation Officer. 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. However, the offender shall have no right of review if he or she has signed a written waiver of rights as required by this subsection. The Section 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~~ or the offender is determined to be high risk based on the results of the risk assessment in G.S. 15A-1343.2, except that the condition at subdivision (6) of this subsection may not be imposed unless the Section determines that the offender failed to comply with one or more of the conditions ~~imposed by the court.~~of probation. Nothing in this section shall be construed to limit the availability of the procedures authorized under G.S. 15A-1345.

The Division shall adopt guidelines and procedures to implement the requirements of this section, which shall include a supervisor's approval prior to exercise of the delegation of authority authorized by this section. Prior to imposing confinement pursuant to subdivision (6) of this subsection, the probationer must first be presented with a violation report, with the alleged violations noted and advised of the right (i) to a hearing before the court on the alleged violation, with the right to present relevant oral and written evidence; (ii) to have counsel at the hearing, and that one will be appointed if the probationer is indigent; (iii) to request witnesses who have relevant information concerning the alleged violations; and (iv) to examine any witnesses or evidence. The probationer may be confined for the period designated on the violation report upon the execution of a waiver of rights signed by the probationer and by two officers acting as witnesses. Those two witnesses shall be the probation officer and another officer to be designated by the Chief of the Community Corrections Section in written Division policy.

(f1) Mandatory Condition of Satellite-Based Monitoring for Some Sex Offenders. – Notwithstanding any other provision of this section, the court shall impose satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes as a condition of probation on any offender who is described by G.S. 14-208.40(a)(1).

(g) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 19, s. 3.

(h) Definitions. – For purposes of this section, the definitions in G.S. 15A-1340.11 apply."

SECTION 7. G.S. 20-179 is amended by adding a new subsection to read:

"**§ 20-179. Sentencing hearing after conviction for impaired driving; determination of grossly aggravating and aggravating and mitigating factors; punishments.**

...

(k4) Notwithstanding the provisions of subsections (g), (h), (k2), and (k3) of this section, 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.

(k5) Delegation to Probation Officer. – Unless the presiding judge specifically finds in the judgment of the court that delegation is not appropriate, the Section of Community Corrections of the Division of Adult Corrections of the Department of Public Safety may require an offender sentenced pursuant to subsection (f3), (g), (h), (i), (j), or (k) of this section and placed on supervised probation to do any of the following:

(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.

(3) Submit to substance abuse assessment, monitoring, or treatment.

(4) Submit to house arrest with electronic monitoring.

(5) Submit to a period or periods of confinement in a local confinement facility for a total of no more than six days per month during any three separate months during the period of probation. The six days per month confinement provided for in this subdivision may only be imposed as two-day or three-day consecutive periods. When a defendant is on probation for multiple judgments, confinement periods imposed under this subdivision shall run concurrently and may total no more than six days per month.

(6) 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.

(7) Participate in an educational or vocational skills development program, including an evidence-based program.

(8) Obtain a specific sex offender assessment and follow all recommended treatment.

(9) Obtain a mental health assessment and follow all recommended treatment.

If the Section imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

The probation officer may exercise authority delegated to him or her by the court pursuant to this subsection after administrative review and approval by a Chief Probation Officer. 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. However, the offender shall have no right of review if he or she has signed a written waiver of rights as required by this subsection. The Section 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 or the offender is determined to be high risk based on the results of a validated instrument to assess each probationer for risk of reoffending, except that the condition at subdivision (5) of this subsection may not be imposed unless the Section determines that the offender failed to comply with one or more of the conditions of probation. Nothing in this section shall be construed to limit the availability of the procedures authorized under G.S. 15A-1345.

The Division shall adopt guidelines and procedures to implement the requirements of this section, which shall include a supervisor's approval prior to exercise of the delegation of authority authorized by this section. Prior to imposing confinement pursuant to subdivision (5) of this subsection, the probationer must first be presented with a violation report, with the alleged violations noted and advised of the right (i) to a hearing before the court on the alleged violation, with the right to present relevant oral and written evidence; (ii) to have counsel at the hearing, and that one will be appointed if the probationer is indigent; (iii) to request witnesses who have relevant information concerning the alleged violations; and (iv) to examine any witnesses or evidence. The probationer may be confined for the period designated on the violation report upon the execution of a waiver of rights signed by the probationer and by two officers acting as witnesses. Those two witnesses shall be the probation officer and another officer to be designated by the Director of the Community Corrections Section in written Division policy."

SECTION 8. This act becomes effective December 1, 2017, and applies to defendants placed on probation on or after that date.

HOUSE BILL 369:
Community Corrections and Probations.

2017-2018 General Assembly

Committee:	House Judiciary III	**Date:**	April 11, 2017
Introduced by:	Rep. McNeill	**Prepared by:**	Susan Sitze Staff Attorney
Analysis of:	PCS to First Edition H369-CSSA-9		

OVERVIEW: ***The proposed committee substitute (PCS) for House Bill 369 would make various changes to probation conditions and the powers of probation officers as follows:***

- ***Provide the power of peace officers on prison property and when aiding law enforcement at the request of law enforcement.***
- ***Require probationers to submit to a curfew set by the probation officer.***
- ***Require probationers, post-release supervisees, and parolees to submit to warrantless and suspicionless searches of their person, property, place of residence, vehicle, and personal effects.***
- ***Require probationers, post-release supervisees, and parolees to submit to warrantless searches of their cell phone, computer, or other electronic device, for purposes reasonably related to the probation supervision.***
- ***Amend delegated authority to allow probation officers to require a sex offender assessment or mental health assessment and compliance with recommended treatment.***
- ***Authorize delegated authority for probationers on conditional discharge or a deferred prosecution, and for persons sentenced pursuant to G.S. 20-179.***

BILL ANALYSIS:

Section 1 of the PCS would grant probation officers the following additional authority:

- The authority of peace officers on prison property for the following purposes:
  - Protecting life and property.
  - Transferring prisoners from place to place
  - Apprehending, arresting, and returning escaped prisoners.
- The authority to assist law enforcement officers in effecting arrests and preventing escapes when requested to do so by the law enforcement officer or when, in the judgment of the probation officer, assistance is necessary and the same authority as the law enforcement officer to make an arrest or prevent escape.

Section 2 of the PCS would amend the statutory conditions of probation as follows:

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Director

Legislative Analysis Division
919-733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

- To allow the court to require a person on probation for a community or intermediate punishment to submit to a curfew determined by the probation officer and to have that monitored electronically.
- To modify the warrantless search provision as follows:
  - Remove the "at reasonable times" requirement.
  - Provide that searches can be warrantless and suspicionless.
  - Provide searches can be conducted by a probation officer, or a law enforcement officer assisting a probation officer.
  - Provide searches can be of the probationer's person, property, place of residence, vehicle, and personal effects (previously person, vehicle, and premises).
  - Remove the requirement that the search be for "purposes directly related to the probation supervision".
  - Provide that searches of the probationer's cell phone, computer, or other electronic device may be warrantless (but not suspicionless) and must be for purposes reasonably related to the probation supervision.

Sections 3 and 4 of the PCS would make the same modifications contained in Section 2 of the PCS to the warrantless search provisions applicable to persons on post-release supervision and parole.

Section 5 of the PCS would modify the definition of electronic monitoring.

Section 6 of the PCS would amend the delegated authority of probation officers to allow them to require a probationer to obtain a specific sex offender assessment or a mental health assessment and follow all recommended treatment of either assessment. It would further amend delegated authority to allow the authority to be exercised when a probationer violates any condition of probation, instead of only conditions imposed by the court.

This section would also grant delegated authority to probation officers for probationers on probation under a conditional discharge or a deferred prosecution agreement.

Section 7 of the PCS would grant delegated authority to probation officers for probationers sentenced pursuant to G.S. 20-179, which includes persons sentenced for the following offenses:

- G.S. 20-138.1 (Impaired driving).
- G.S. 20-138.2 (Impaired driving in a commercial vehicle).
- A second or subsequent offense of G.S. 20-138.2A (Operating a commercial vehicle after consuming alcohol)
- A second or subsequent offense of G.S. 20-138.2B (Operating a school bus, school activity bus, child care vehicle, ambulance, other EMS vehicle, firefighting vehicle, or law enforcement vehicle after consuming alcohol).

EFFECTIVE DATE: Sections 2, 3, 4, 6, and 7 of this act would become effective December 1, 2017, and apply to offenses committed on or after that date. The remainder of this act would be effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

HOUSE BILL 409

Short Title:	State Agencies/Adjust Hiring Practices.	(Public)
Sponsors:	Representatives R. Turner, Hardister, Grange, and Pierce (Primary Sponsors). *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	State Personnel, if favorable, Judiciary III	

March 21, 2017

A BILL TO BE ENTITLED

AN ACT DIRECTING STATE AGENCIES TO ADJUST EMPLOYMENT PRACTICES TO REDUCE BARRIERS TO EMPLOYMENT FOR INDIVIDUALS WITH A CRIMINAL HISTORY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 6 of Chapter 126 of the General Statutes is amended by adding a new section to read:

"**§ 126-20. State agency hiring practices; criminal histories.**

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

(1) Applicant. – Any individual considered for, or who requests to be considered for, employment with the State or any current State employee considered for, or who requests to be considered for, another position in State employment.

(2) Criminal History. – A State or federal conviction of a crime, whether a misdemeanor or felony, that bears upon an applicant's fitness for public employment. The term includes a record of arrests that have not resulted in a conviction and those that have resulted in a favorable disposition such as a dismissal or a verdict of not guilty.

(3) Inquiry. – Any direct or indirect conduct intended to gather information, using any mode of communication.

(b) Findings and Purpose. – The General Assembly finds that the ability to procure meaningful employment is essential to reinstating good citizenship for individuals who have a criminal record. The General Assembly declares that the State encourages the successful reintegration of people with a criminal history and recognizes that reducing barriers to employment for persons with a criminal history is a matter of statewide concern. The purpose of this section is to implement hiring practices that will increase employment opportunities and will reduce recidivism and improve community stability.

(c) Scope. – This section applies to all State agencies and positions in State government employment, except that this section does not apply to any of the following:

(1) A public employer that is required by State or federal law to conduct a criminal history inquiry as a preliminary qualification to be considered for public employment.

(2) A position that includes law enforcement or public safety.

(3) A position that involves direct interaction with minors or the elderly.

(d) Applicant Criminal History. – An applicant shall not be asked to disclose, orally or in writing, information concerning the applicant's criminal record or history, including any inquiry on any employment application, until the applicant (i) has signed the appropriate waiver authorizing release, (ii) is being considered for a specific position, and (iii) has received an interview.

(e) Considerations. – If a background check has been lawfully completed and a criminal history exists, the following criteria shall be considered by the State agency before either proffering or denying an offer of employment:

(1) The nature and gravity of the offense.

(2) The length of time that has elapsed since the offense occurred.

(3) The age of the person at the time of the conviction.

(4) Whether the offense is reasonably related to the duties and responsibilities of the employment sought by the applicant.

(5) Any information pertaining to the degree of rehabilitation that may have taken place in the applicant.

The State agency must inform the applicant of the potential adverse employment decision based on the background check report prior to a final decision and must provide the applicant an opportunity to demonstrate that the applicant was not correctly identified in the background check report or that the report is otherwise inaccurate.

(f) Record of Arrest. – A record of arrest that did not result in conviction shall not be the basis for disqualification from public employment.

(g) Violations of This Section. – A grievance concerning an alleged violation of this section may be brought by an applicant under G.S. 126-34.01 and G.S. 126-34.02.

(h) Data Collection. – The Office of State Human Resources shall do the following:

(1) Record and log the positions that are statutorily required to conduct background checks prior to a conditional offer of employment.

(2) Conduct quarterly reviews to determine compliance with this Article and make a report on all such reviews to the General Assembly annually.

(3) Collect, and make available to the public, data on:

a. The number of applicants for public employment with criminal histories given conditional offers of employment.

b. The number of applicants for public employment with criminal histories who are subsequently employed.

c. The retention rate of public employees with criminal histories.

(i) Non-State Employers. – The General Assembly encourages comparable hiring practices among local governments and private employers operating in the State."

SECTION 2. G.S. 126-34.02(b) is amended by adding a new subdivision to read:

"(b) The following issues may be heard as contested cases after completion of the agency grievance procedure and the Office of State Human Resources review:

...

(6) Criminal History. – A grievance arising under G.S. 126-20 that is related to an applicant's or State employee's criminal history."

SECTION 3. G.S. 126-5 is amended by adding a new subsection to read:

"(c14) Notwithstanding any other provision of this Chapter, the provisions of G.S. 126-20 apply to all State employees and applicants for State employment, except as specifically excluded by that section."

SECTION 4. This act is effective when it becomes law and applies to positions posted for State employment on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 409
PROPOSED COMMITTEE SUBSTITUTE H409-CSBD-20 [v.1]
04/10/2017 06:53:56 PM

Short Title: State Agencies/Adjust Hiring Practices. (Publ

Sponsors:

Referred to:

March 21, 2017

A BILL TO BE ENTITLED

AN ACT DIRECTING STATE AGENCIES TO ADJUST EMPLOYMENT PRACTICES TO REDUCE BARRIERS TO EMPLOYMENT FOR INDIVIDUALS WITH A CRIMINAL HISTORY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 6 of Chapter 126 of the General Statutes is amended by adding a new section to read:

"**§ 126-20. State agency hiring practices; criminal histories.**

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

(1) Applicant. – Any individual considered for, or who requests to be considered for, employment with the State or any current State employee considered for, or who requests to be considered for, another position in State employment.

(2) Criminal History. – A State or federal conviction of a crime, whether a misdemeanor or felony, that bears upon an applicant's fitness for public employment. The term includes a record of arrests that have not resulted in a conviction and those that have resulted in a favorable disposition such as a dismissal or a verdict of not guilty.

(3) Inquiry. – Any direct or indirect conduct intended to gather information, using any mode of communication.

(b) Findings and Purpose. – The General Assembly finds that the ability to procure meaningful employment is essential to reinstating good citizenship for individuals who have a criminal record. The General Assembly declares that the State encourages the successful reintegration of people with a criminal history and recognizes that reducing barriers to employment for persons with a criminal history is a matter of statewide concern. The purpose of this section is to implement hiring practices that will increase employment opportunities and will reduce recidivism and improve community stability.

(c) Scope. – This section applies to all State agencies and positions in State government employment, except that this section does not apply to any of the following:

(1) A public employer that is required by State or federal law to conduct a criminal history inquiry as a preliminary qualification to be considered for public employment.

(2) A position that includes law enforcement or public safety.

(3) A position that involves direct interaction with minors or the elderly.

(d) Applicant Criminal History. – An applicant shall not be asked to disclose, orally or in writing, information concerning the applicant's criminal record or history, including any

inquiry on any employment application, until the applicant (i) has signed the appropriate waiver authorizing release, (ii) is being considered for a specific position, and (iii) has received an interview.

(e) Considerations. – If a background check has been lawfully completed and a criminal history exists, the following criteria shall be considered by the State agency before either proffering or denying an offer of employment:

(1) The nature and gravity of the offense.

(2) The length of time that has elapsed since the offense occurred.

(3) The age of the person at the time of the conviction.

(4) Whether the offense is reasonably related to the duties and responsibilities of the employment sought by the applicant.

(5) Any information pertaining to the degree of rehabilitation that may have taken place in the applicant.

The State agency must inform the applicant of the potential adverse employment decision based on the background check report prior to a final decision and must provide the applicant an opportunity to demonstrate that the applicant was not correctly identified in the background check report or that the report is otherwise inaccurate.

(f) Record of Arrest. – A record of arrest that did not result in conviction shall not be the basis for disqualification from public employment.

(g) Violations of This Section. – A grievance concerning an alleged violation of this section may be brought by an applicant under G.S. 126-34.01 and G.S. 126-34.02.

(h) Data Collection. – The Office of State Human Resources shall do the following:

(1) Record and log the positions that are statutorily required to conduct background checks prior to a conditional offer of employment.

(2) Conduct quarterly reviews to determine compliance with this Article and make a report on all such reviews to the General Assembly annually.

(3) Collect, and make available to the public, data on:

a. The number of applicants for public employment with criminal histories given conditional offers of employment.

b. The number of applicants for public employment with criminal histories who are subsequently employed.

c. The retention rate of public employees with criminal histories.

(i) Non-State Employers. – The General Assembly encourages comparable hiring practices among local governments and private employers operating in the State."

SECTION 2. G.S. 126-34.02(b) is amended by adding a new subdivision to read:

"(b) The following issues may be heard as contested cases after completion of the agency grievance procedure and the Office of State Human Resources review:

...

(7) Criminal History. – A grievance arising under G.S. 126-20 that is related to an applicant's or State employee's criminal history."

SECTION 3. G.S. 126-5 is amended by adding a new subsection to read:

"(c14) Notwithstanding any other provision of this Chapter, the provisions of G.S. 126-20 apply to all State employees and applicants for State employment, except as specifically excluded by that section."

SECTION 4. This act is effective when it becomes law and applies to positions posted for State employment on or after that date.

HOUSE BILL 409:
State Agencies/Adjust Hiring Practices.

2017-2018 General Assembly

Committee:	House Judiciary III	**Date:**	April 10, 2017
Introduced by:	Reps. R. Turner, Hardister, Grange, Pierce	**Prepared by:**	Billy R. Godwin
Analysis of:	PCS to First Edition H409-CSBD-20		Staff Attorney

OVERVIEW: House Bill 409 (Proposed Committee Substitute – PCS) would direct State agencies to adjust employment practices to reduce barriers to public employment for individuals with a criminal history. The act would be effective when it becomes law and would apply to applications for State employment on or after that date.

The PCS corrects an error to a statutory citation.

CURRENT LAW: Chapter 126 codifies the North Carolina Human Resources Act. In particular, Article 6 of Chapter 126 provides equal employment and compensation opportunity provisions and provisions related to obtaining State employment. The bill also amends G.S. 126-34.02 and G.S. 126-5. G.S. 126-34.02 sets forth the grounds for grievances and the grievance appeal process. G.S. 126-5 defines the employees for whom this Chapter is applicable, as well as any exemptions from the provisions in this Chapter.

BILL ANALYSIS:

Section 1 would add a new section to Article 6 of Chapter 126 requiring State agencies to adjust employment practices to reduce barriers to State employment for individuals with a criminal history.
Scope of Application. All State agencies and positions in State government employment would be subject to the bill except:

- A public employer required by State or federal law to conduct a criminal history inquiry as a preliminary qualification to be considered for public employment.
- Law enforcement or public safety positions.
- Positions involving direct interaction with minors or the elderly.

Disclosure of Criminal History. The bill would prohibit asking an applicant to disclose his or her criminal record or history until all of the following:

- The applicant has signed the appropriate waiver authorizing release.
- Is being considered for a specific position.
- Has received an interview.

Applicants with Criminal History. If a background check has been lawfully completed and a criminal history exists, the State would have to consider all of the following before offering or denying employment:

- The nature and gravity of the offense.

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

- The length of time that has elapsed since the offense occurred.
- The age of the person at the time of the conviction.
- Whether the offense is reasonably related to the duties and responsibilities of the employment sought by the applicant.
- Any information pertaining to the degree of rehabilitation that may have taken place in the applicant.

Before making a final employment decision on an applicant with a criminal history, the State would be required to inform the applicant of the potential for an adverse employment decision and provide the applicant an opportunity to show the criminal history is inaccurate. Arrests not resulting in conviction could not be the basis for disqualification of public employment.

Grievance Procedure. Any applicant aggrieved by a violation of the Article would be entitled to follow the grievance procedure of the State Human Resources Commission.

Data Collection, Compliance, Reporting. The Office of State Human Resources would be required to collect data identifying positions where background checks are statutorily required, to conduct compliance reviews, and to submit an annual report to the General Assembly. Certain data would be made available to the public.

Section 2 would authorize a contested case petition in the Office of Administrative Hearings for an applicant or employee grievance related to their criminal history.

Section 3 would provide that Section 1 would apply to all State employees and applicants for State employment, except as specifically excluded in Section 1.

EFFECTIVE DATE: This bill would become effective when it becomes law and apply to positions posted for State employment after that date.

Staff Attorney Tawanda N. Foster substantially contributed to this bill summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

HOUSE BILL 584

Short Title:	Real Prop./Error Correction & Title Curative.	(Publi
Sponsors:	Representatives Jordan, Stevens, and Dulin (Primary Sponsors). *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	Judiciary III	

April 6, 2017

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE PROCESS FOR CORRECTING NONMATERIAL ERRORS IN RECORDED INSTRUMENTS OF TITLE, TO CREATE A CURATIVE PROCEDURE FOR OBVIOUS DESCRIPTION ERRORS IN DOCUMENTS OF TITLE, AND TO CREATE A TEN-YEAR CURATIVE PROVISION FOR CERTAIN DEFECTS IN RECORDED INSTRUMENTS OF TITLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47-36.1 reads as rewritten:

"**§ 47-36.1. ~~Correction~~ Notice of errors in recorded ~~instruments.~~instruments of title.**

(a) Notwithstanding G.S. 47-14 and G.S. 47-17, notice of a nonmaterial typographical or other minor nonmaterial error in a deed or other instrument recorded with the register of deeds may be given by recording ~~an~~ a corrective notice affidavit. If ~~an~~ a corrective notice affidavit is conspicuously identified as a corrective notice or scrivener's affidavit in its title, the register of deeds shall index the name of the affiant, the names of the original parties in the instrument, the recording information of the instrument ~~being corrected,~~for which the corrective notice is being given, and the original parties as they are named in the affidavit. A copy of the previously recorded instrument to which the corrective notice affidavit applies may be attached to the corrective notice affidavit and need not be a certified copy. To the extent the correction is inconsistent with the originally recorded instrument, and only to that extent, notice of the corrective information as provided by the affiant in the corrective notice affidavit is deemed to have been given as of the time the corrective notice affidavit is registered. Nothing in this section invalidates or otherwise alters the legal effect of any instrument of correction authorized by statute in effect on the date the instrument was registered.

…."

SECTION 2. Article 2 of Chapter 47 of the General Statutes is amended by adding a new section to read:

"**§ 47-36.2. Cure of obvious description errors in recorded instruments.**

(a) The following definitions apply to this section, unless the context requires a different meaning:

(1) Authorized attorney. – An individual licensed to practice law under Chapter 84 of the General Statutes, who is one of the following:

a. The attorney who drafted the instrument containing the obvious description error to be corrected.

b. The attorney for any party to the transaction for which the instrument containing the obvious description error was recorded, including, for

example, but not limited to, the attorney for (i) the grantor or grantee in a deed; (ii) the mortgagor or mortgagee in a mortgage; (iii) the grantor or trustor in a deed of trust; (iv) the trustee or duly appointed substitute trustee in a deed of trust; (v) the beneficiary of record in a deed of trust or the assignee of record of the beneficial interest; (vi) the assignor or assignee in an assignment of leases, rents or profits; or (vii) any party to an instrument affecting title to real property.

(c) An attorney retained by a title insurance company or title insurance agent that either (i) has issued a policy of title insurance covering the subject property in the transaction in which the error occurred or in any subsequent transaction or (ii) proposed to issue a policy of title insurance in reliance on a curative affidavit recorded or to be recorded in accordance with the provisions of this section.

(2) Curative affidavit. – An affidavit executed by an authorized attorney to correct an obvious description error.

(3) Notice of intent. – A notice issued by an authorized attorney of the authorized attorney's intent to sign and record a curative affidavit.

(4) Obvious description error. – An error in the legal description of real property that is contained in an instrument affecting title to real property recorded in the office of the register of deeds in the county in which the real property or any part or parts thereof is located that is evidenced by any of the following:

a. The property is identified and shown on a recorded plat, but the legal description of the property appearing in the instrument is not consistent with the recorded plat.

b. The error is made apparent by reference to other information contained in the instrument or an attachment to the instrument, or by reference to another instrument in the chain of title for the subject parcel, including a recorded plat.

c. One or more of the following, as stated in the instrument, are inconsistent in that one or more identify the property incorrectly:

1. The legal description of the property.
2. The physical address of the property.
3. The tax map identification number of the property.
4. An incorrect plat reference.
5. An incorrect deed reference.

d. The legal description of the real property in the instrument contains one or more errors transcribing courses and distances, including, for example, the omission of one or more lines of courses and distances, the omission of angles and compass directions, or the reversal of courses.

e. The instrument contains an error in a lot or unit number or designation, and the lot or unit described is not owned by the grantor, trustor, mortgagor, or assignor at the time the instrument is executed.

f. The instrument omits an exhibit or attachment intended to supply the legal description of the subject property.

The term "obvious description error" does not include and shall not apply to (i) missing or improper signatures or acknowledgements; (ii) any designation of the type of ownership interest or right of survivorship; or (iii) any error in the legal description that operates to convey any interest in real property that the grantor, trustor, mortgagor, or assignor owned at the time of conveyance but did not intend to convey.

(5) Recorded plat. – A plat that has been prepared by a registered land surveyor licensed pursuant to Chapter 89C of the General Statutes and has been recorded with the register of deeds in the county where the property is situated.

(6) Recording data. – The book and page number or document number that indicates where an instrument is recorded in the office of the register of deeds.

(7) Title insurance agent. – A person or entity licensed by the Commissioner of Insurance and contractually authorized by one or more title insurance companies to issue commitments and policies on behalf of said title insurance company.

(8) Title insurance company. – A company certified pursuant to Article 26 of Chapter 58 of the General Statutes that has issued or intends to issue a policy of title insurance covering real property described in a recorded instrument needing correction.

(b) Notwithstanding G.S. 47-14 and G.S. 47-17, obvious description errors in a recorded instrument affecting title to real property may be cured by recording a curative affidavit with the register of deeds in every county where the real property is situated.

(c) Prior to recording a curative affidavit as described in subsection (b) of this section, the authorized attorney seeking to record the affidavit shall serve a notice of intent and a copy of the unsigned proposed curative affidavit on the persons identified in this subsection. Service of the notice of intent and copy of the unsigned proposed curative affidavit shall be made in any manner provided by Rule 4 of the Rules of Civil Procedure for service of a summons to affect personal jurisdiction. The persons entitled to service of the notice of intent and a copy of the unsigned proposed curative affidavit pursuant to this subsection are as follows:

(1) All parties to the instrument that is the subject of the curative affidavit. In the case of a deed of trust, the parties to the instrument shall include the grantor or trustor named in the deed of trust and the beneficiary of record, but need not include the trustee named in the deed of trust or any substitute trustee.

(2) The current record mortgagee, record beneficiary, record assignee, or record secured party in any mortgage, deed of trust, assignment of leases, rents or profits, or other recorded security instrument that may be adversely affected by the recording of the curative affidavit.

(3) The current record owner of the real property.

(4) The attorney who prepared the instrument that is the subject of the curative affidavit, if known.

(5) Any title insurance company and title insurance agent, if applicable and known, that (i) issued a policy of title insurance covering the subject property in the transaction in which the error occurred or in any subsequent transaction or (ii) proposes to issue a policy of title insurance in reliance on the proposed curative affidavit.

(6) The current record owners of all adjoining properties that may be adversely affected by the recording of the curative affidavit, the current record holders of any mineral or timber rights that may be adversely affected by the recording of the curative affidavit, and the record holders of any easement rights that may be adversely affected by the recording of the curative affidavit.

(d) Each person served with the notice of intent and a copy of the unsigned proposed curative affidavit described in subsection (c) of this section that wishes to object to the recordation of the proposed curative affidavit or dispute the facts recited in the proposed

curative affidavit must do so in a writing sent or delivered to the authorized attorney within 30 days after the service of the documents upon that person. If the authorized attorney receives a written objection to the recordation of the proposed curative affidavit or a written statement disputing the facts recited in the proposed curative affidavit from any person served with the notice of intent and a copy of the unsigned proposed curative affidavit within the prescribed 30-day time period applicable to the person so served, the authorized attorney shall not sign or record the proposed curative affidavit. If the authorized attorney does not receive a written objection to the recordation of the proposed curative affidavit or a written statement disputing the facts recited in the proposed curative affidavit from any person served with the notice of intent and a copy of the unsigned proposed curative affidavit within the prescribed 30-day time period for each person so served, the authorized attorney may sign and record the proposed curative affidavit.

(e) An affidavit is sufficient as a curative affidavit if it does all of the following:

(1) Contains a statement that the curative affidavit should be indexed as a "subsequent instrument" pursuant to G.S. 161-14.1.

(2) Contains a statement that the curative affidavit is recorded pursuant to G.S. 47-36.2 to correct an obvious description error contained in a previously recorded instrument.

(3) Contains a statement that the affiant is an attorney licensed to practice law in North Carolina and is an authorized attorney pursuant to G.S. 47-36.2(a)(1).

(4) Identifies each instrument subject to the curative affidavit by stating the title of the instrument, the parties to the instrument, and the recording data for the instrument.

(5) Identifies the obvious description error contained in each instrument subject to the curative affidavit.

(6) Corrects the obvious description error by stating the correct property description.

(7) Contains a statement that the affiant served a copy of the notice of intent required by subsection (c) of this section and a copy of the unsigned proposed curative affidavit on all persons entitled to notice pursuant to subsection (c) of this section and that service on each such person was properly effected in a manner prescribed for the service of a summons in accordance with Rule 4 of the North Carolina Rules of Civil Procedure.

(8) Contains a statement that the affiant did not receive any written objection to the recordation of the curative affidavit or any dispute of the facts recited in the curative affidavit from any person so served within the 30-day period following the date each person was served.

(9) Provides the name, telephone number, and mailing address of the affiant.

(10) Is signed and sworn to or affirmed by the authorized attorney as affiant before a notary public, with an appropriate jurat affixed by the notary public that conforms to the requirements of Article 1 of Chapter 10B of the General Statutes.

(f) A curative affidavit recorded pursuant to this section in the office of the register of deeds in the county where the real property is located shall operate as a correction of the instrument being corrected that relates back to, and is effective as of, the date the instrument being corrected was originally recorded in the office of the register of deeds, with the same effect as if the description of the property was correct when the instrument was first recorded, and all parties to the instrument being corrected shall be bound by the terms contained in the recorded curative affidavit and the instrument being corrected.

(g) Upon payment of the appropriate recordation fee, the register of deeds shall accept a curative affidavit for recording unless the curative affidavit (i) is submitted by a method or in a

medium not authorized for registration by the register of deeds under applicable law, (ii) is not signed by the affiant and sworn to or affirmed as required by law for an affidavit or affirmation, or (iii) lacks a proper jurat. A copy of the previously recorded instrument to which the curative affidavit applies may be attached to or recorded with the curative affidavit and need not be a certified copy. The register of deeds shall not be required to verify or make inquiry concerning (i) the truth of the matters stated in any curative affidavit or (ii) the authority of the person executing any curative affidavit to do so. The register of deeds shall index the curative affidavit in the name of the affiant and in the names of the various parties to each instrument being corrected as both grantees and grantors, irrespective of their designation in the instrument being corrected. The costs associated with the recording of a curative affidavit pursuant to this section shall be paid by the party submitting the affidavit to the register of deeds.

(h) A curative affidavit recorded in compliance with this section shall be prima facie evidence of the facts stated therein. Any person who wrongfully or erroneously records a curative affidavit is liable for actual damages sustained by any party as a result of the recordation, including reasonable attorneys' fees and costs.

(i) The remedies prescribed by this section are not exclusive and do not abrogate any rights or remedies otherwise available under the laws of this State, including any rights or remedies under G.S. 47-36.1.

(j) No particular phrasing is required for a curative affidavit. The following form of affidavit, when properly completed, is sufficient to satisfy the requirements of subsection (e) of this section for a curative affidavit:

"Curative Affidavit

This curative affidavit should be indexed as a "subsequent instrument" pursuant to G.S. 161-14.1.

I, _____, certify as follows:

1. This curative affidavit is recorded pursuant to G.S. 47-36.2 to correct an obvious description error contained in a previously recorded instrument.
2. I am an attorney licensed to practice law in North Carolina. I am an "authorized attorney" as defined in G.S. 47-36.2(a)(1).
3. The instrument or instruments containing an obvious description error requiring correction are identified as follows:

Insert here the following information regarding each instrument to be corrected: the title of the instrument, the parties to the instrument, and the recording data for the instrument.

4. The obvious description error contained in the instrument(s) to be corrected is identified or described as follows:

Insert here the erroneous description that requires correction.

5. The erroneous property description is corrected to read as follows:

Insert here the correct description of the real property.

6. I have served a copy of a notice of my intent to sign and record this curative affidavit and a copy of this curative affidavit, unsigned, on all persons entitled to notice pursuant to G.S. 47-36.2(c). Service on each such person was properly effected in a manner prescribed for the service of a summons in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. I did not receive any written objection to the recordation of this curative affidavit or any dispute of the facts recited in this curative affidavit from any person so served within the 30-day period following the date each such person was so served.
7. My name, telephone number, and mailing address are as follows:

Insert here the affiant's name, telephone number, and mailing address.

Date: _____

_____

Signature of Affiant

COUNTY OF _____, STATE OF _____

The foregoing curative affidavit was sworn to or affirmed and subscribed before me this day by _____.

Date: _____

_____

Signature of Notary Public

Official Seal

_____, Notary Public

Print or Type Notary's Name

My commission expires: _____"

(k) No particular phrasing is required for a notice of intent described in subsection (c) of this section. The following form, when properly completed, is sufficient to satisfy the requirements of subsection (c) of this section for a notice of intent:

"NOTICE OF INTENT TO CORRECT AN OBVIOUS DESCRIPTION ERROR

This is an important legal document that requires your immediate attention. Your property rights may be affected, and you may need to respond to this notice in writing.

I am an attorney licensed to practice law in North Carolina. My contact information is as follows:

Insert the name, telephone number and mailing address of the authorized attorney issuing the notice.

I have discovered or have been advised of an error in the description of real property contained in one or more instruments recorded as part of a real estate-related transaction. A copy of a proposed Curative Affidavit accompanies this notice. The proposed Curative Affidavit identifies the previously recorded instrument or instruments that contain the description errors that I plan to correct, the description error or errors that require correction, and the correct description of the real property. If I sign and record the proposed Curative Affidavit, it will have the legal effect of correcting the erroneous property description in the listed instrument or instruments that contain the description errors.

Real property you own may be affected if I correct the erroneous description of the real property in the instrument or instruments identified in the proposed Curative Affidavit. You should consult with your attorney promptly to determine whether and the extent to which my correction of the legal description in the instrument or instruments that need to be corrected will impact your property or property rights.

IF YOU WISH TO OBJECT TO MY SIGNING AND RECORDING THE PROPOSED CURATIVE AFFIDAVIT OR DISPUTE THE FACTS RECITED IN THE PROPOSED CURATIVE AFFIDAVIT, YOU MUST DO SO IN A WRITING SENT OR DELIVERED TO ME WITHIN 30 DAYS AFTER THE DATE YOU WERE SERVED WITH THIS NOTICE AND THE PROPOSED CURATIVE AFFIDAVIT.

If I do not receive a written objection disputing the facts recited in the proposed Curative Affidavit or objecting to my signing and recording the proposed Curative Affidavit from you or

any other person that receives this notice within the prescribed 30-day period applicable to each person so served, I intend to sign and record the Curative Affidavit. However, if I receive a written objection within the 30-day time period prescribed by statute, I am not permitted to sign or record the Curative Affidavit.

If you dispute the facts recited in the proposed Curative Affidavit or object to my signing and recording the Curative Affidavit, you need to write to me promptly at my address stated above. While I encourage you to call me if you have questions, your telephone call will not be sufficient – you must write to me if you dispute the facts recited in the proposed Curative Affidavit or object to my signing and recording the Curative Affidavit.

Date: _____

_____

Signature of authorized attorney"

(*l*) Nothing in this section requires that a curative affidavit be attached to an original or certified copy of a previously recorded instrument that is unchanged but rerecorded. Nothing in this section requires that a curative affidavit be attached to a copy of a previously recorded instrument that includes identified corrections or an original execution by a party or parties of the corrected instrument after the original recording with proof or acknowledgment of their execution of the correction of the instrument."

SECTION 3. Article 4 of Chapter 47 of the General Statutes is amended by adding a new section to read:

"**§ 47-108.28. Ten-year curative statute.**

(a) If (i) an instrument conveying or purporting to convey an interest in real property contains a material defect, irregularity, or omission; (ii) the instrument is recorded by the register of deeds in the county or counties where the property is situated; and (iii) the material defect, irregularity, or omission is not corrected within 10 years after the instrument was recorded, then the instrument shall be deemed effective to vest title as stated therein and to the same extent as though the instrument had not contained the material defect, irregularity, or omission. The proper recordation and indexing of a curative instrument or a notice of lis pendens shall act as a toll to the 10-year curative period.

(b) For the purposes of this section, a "material defect, irregularity, or omission" occurs when the recorded instrument facially fails to comply with any of the following:

(1) The proper execution of a form of acknowledgment as provided under Article 3 of Chapter 47 of the General Statutes.

(2) The proper recital of consideration paid, the residence of a party, the address of the property or party, or the date of the instrument or any instrument or obligation secured by the instrument.

(3) The proper affixation of seal by any person authorized to execute an instrument by virtue of an office or appointment held by the grantor that is required to affix the seal to the recorded instrument under applicable law.

(c) Nothing in this section is intended to modify any provisions of law pertaining to the competency or infancy of the grantor or the provisions of Chapter 22 of the General Statutes or to limit any remedies available under the laws of this State."

SECTION 4. G.S. 161-14.1(a) reads as rewritten:

"**§ 161-14.1. Recording subsequent entries as separate instruments.**

(a) As used in this section, the following terms mean:

...

(3) Subsequent instrument. – Any instrument presented for registration that indicates in its title or within the first two pages of its text that it is intended or purports to correct, modify, amend, supplement, assign, satisfy, terminate,

revoke, or cancel a previously registered instrument. Examples of subsequent instruments include the following:

a. The appointment or designation of a substitute trustee in a deed of trust.

b. A corrective affidavit registered pursuant to ~~G.S. 45-36.1.~~G.S. 45-36.1 or a curative affidavit registered pursuant to G.S. 45-36.2.

...."

SECTION 5. This act is effective when it becomes law and applies to curative affidavits filed on or after that date.

Attachment 13

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H]

HOUSE BILL 584
PROPOSED COMMITTEE SUBSTITUTE H584-CSRN-9 [v.1]
04/10/2017 08:22:12 PM

Short Title: Real Prop./Error Correction & Title Curative. (Publi

Sponsors:

Referred to:

April 6, 2017

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE PROCESS FOR CORRECTING NONMATERIAL ERRORS IN RECORDED INSTRUMENTS OF TITLE, TO CREATE A CURATIVE PROCEDURE FOR OBVIOUS DESCRIPTION ERRORS IN DOCUMENTS OF TITLE, AND TO CREATE A TEN-YEAR CURATIVE PROVISION FOR CERTAIN DEFECTS IN RECORDED INSTRUMENTS OF TITLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47-36.1 reads as rewritten:

"**§ 47-36.1. ~~Correction~~ Notice of errors in recorded ~~instruments.~~instruments of title.**

(a) Notwithstanding G.S. 47-14 and G.S. 47-17, notice of a nonmaterial typographical or other minor nonmaterial error in a deed or other instrument recorded with the register of deeds may be given by recording ~~an~~ a corrective notice affidavit. If ~~an~~ a corrective notice affidavit is conspicuously identified as a corrective notice or scrivener's affidavit in its title, the register of deeds shall index the name of the affiant, the names of the original parties in the instrument, the recording information of the instrument ~~being corrected,~~for which the corrective notice is being given, and the original parties as they are named in the affidavit. A copy of the previously recorded instrument to which the corrective notice affidavit applies may be attached to the corrective notice affidavit and need not be a certified copy. To the extent the correction is inconsistent with the originally recorded instrument, and only to that extent, notice of the corrective information as provided by the affiant in the corrective notice affidavit is deemed to have been given as of the time the corrective notice affidavit is registered. Nothing in this section invalidates or otherwise alters the legal effect of any instrument of correction authorized by statute in effect on the date the instrument was registered.

...."

SECTION 2. Article 2 of Chapter 47 of the General Statutes is amended by adding a new section to read:

"**§ 47-36.2. Cure of obvious description errors in recorded instruments.**

(a) The following definitions apply to this section, unless the context requires a different meaning:

(1) Authorized attorney. – An individual licensed to practice law under Chapter 84 of the General Statutes, who is one of the following:

a. The attorney who drafted the instrument containing the obvious description error to be corrected.

b. The attorney for any party to the transaction for which the instrument containing the obvious description error was recorded, including, for example, but not limited to, the attorney for (i) the grantor or grantee

in a deed; (ii) the mortgagor or mortgagee in a mortgage; (iii) the grantor or trustor in a deed of trust; (iv) the trustee or duly appointed substitute trustee in a deed of trust; (v) the beneficiary of record in a deed of trust or the assignee of record of the beneficial interest; (vi) the assignor or assignee in an assignment of leases, rents or profits; or (vii) any party to an instrument affecting title to real property.

(c) An attorney retained by a title insurance company or title insurance agent that either (i) has issued a policy of title insurance covering the subject property in the transaction in which the error occurred or in any subsequent transaction or (ii) proposed to issue a policy of title insurance in reliance on a curative affidavit recorded or to be recorded in accordance with the provisions of this section.

(2) Curative affidavit. – An affidavit executed by an authorized attorney to correct an obvious description error.

(3) Notice of intent. – A notice issued by an authorized attorney of the authorized attorney's intent to sign and record a curative affidavit.

(4) Obvious description error. – An error in the legal description of real property that is contained in an instrument affecting title to real property recorded in the office of the register of deeds in the county in which the real property or any part or parts thereof is located that is evidenced by any of the following:

a. The property is identified and shown on a recorded plat, but the legal description of the property appearing in the instrument is not consistent with the recorded plat.

b. The error is made apparent by reference to other information contained in the instrument or an attachment to the instrument, or by reference to another instrument in the chain of title for the subject parcel, including a recorded plat.

c. One or more of the following, as stated in the instrument, are inconsistent in that one or more identify the property incorrectly:

1. The legal description of the property.
2. The physical address of the property.
3. The tax map identification number of the property.
4. An incorrect plat reference.
5. An incorrect deed reference.

d. The legal description of the real property in the instrument contains one or more errors transcribing courses and distances, including, for example, the omission of one or more lines of courses and distances, the omission of angles and compass directions, or the reversal of courses.

e. The instrument contains an error in a lot or unit number or designation, and the lot or unit described is not owned by the grantor, trustor, mortgagor, or assignor at the time the instrument is executed.

f. The instrument omits an exhibit or attachment intended to supply the legal description of the subject property.

The term "obvious description error" does not include and shall not apply to (i) missing or improper signatures or acknowledgements; (ii) any designation of the type of ownership interest or right of survivorship; or (iii) any error in the legal description that operates to convey any interest in real property that the grantor, trustor, mortgagor, or assignor owned at the time of conveyance but did not intend to convey.

(5) Recording data. – The book and page number or document number that indicates where an instrument is recorded in the office of the register of deeds.

(6) Recorded plat. – A plat that has been prepared by a registered land surveyor licensed pursuant to Chapter 89C of the General Statutes and has been recorded with the register of deeds in the county where the property is situated.

(7) Title insurance agent. – A person or entity licensed by the Commissioner of Insurance and contractually authorized by one or more title insurance companies to issue commitments and policies on behalf of said title insurance company.

(8) Title insurance company. – A company certified pursuant to Article 26 of Chapter 58 of the General Statutes that has issued or intends to issue a policy of title insurance covering real property described in a recorded instrument needing correction.

(b) Notwithstanding G.S. 47-14 and G.S. 47-17, obvious description errors in a recorded instrument affecting title to real property may be cured by recording a curative affidavit with the register of deeds in every county where the real property is situated.

(c) Prior to recording a curative affidavit as described in subsection (b) of this section, the authorized attorney seeking to record the affidavit shall serve a notice of intent and a copy of the unsigned proposed curative affidavit on the persons identified in this subsection. Service of the notice of intent and copy of the unsigned proposed curative affidavit shall be made in any manner provided by Rule 4 of the Rules of Civil Procedure for service of a summons to affect personal jurisdiction. The persons entitled to service of the notice of intent and a copy of the unsigned proposed curative affidavit pursuant to this subsection are as follows:

(1) All parties to the instrument that is the subject of the curative affidavit. In the case of a deed of trust, the parties to the instrument shall include the grantor or trustor named in the deed of trust and the beneficiary of record, but need not include the trustee named in the deed of trust or any substitute trustee.

(2) The current record mortgagee, record beneficiary, record assignee, or record secured party in any mortgage, deed of trust, assignment of leases, rents or profits, or other recorded security instrument that may be adversely affected by the recording of the curative affidavit.

(3) The current record owner of the real property.

(4) The attorney who prepared the instrument that is the subject of the curative affidavit, if known.

(5) Any title insurance company and title insurance agent, if applicable and known, that (i) issued a policy of title insurance covering the subject property in the transaction in which the error occurred or in any subsequent transaction or (ii) proposes to issue a policy of title insurance in reliance on the proposed curative affidavit.

(6) The current record owners of all adjoining properties that may be adversely affected by the recording of the curative affidavit, the current record holders of any mineral or timber rights that may be adversely affected by the recording of the curative affidavit, and the record holders of any easement rights that may be adversely affected by the recording of the curative affidavit.

(d) Each person served with the notice of intent and a copy of the unsigned proposed curative affidavit described in subsection (c) of this section that wishes to object to the recordation of the proposed curative affidavit or dispute the facts recited in the proposed

curative affidavit must do so in a writing sent or delivered to the authorized attorney within 30 days after the service of the documents upon that person. If the authorized attorney receives a written objection to the recordation of the proposed curative affidavit or a written statement disputing the facts recited in the proposed curative affidavit from any person served with the notice of intent and a copy of the unsigned proposed curative affidavit within the prescribed 30-day time period applicable to the person so served, the authorized attorney shall not sign or record the proposed curative affidavit. If the authorized attorney does not receive a written objection to the recordation of the proposed curative affidavit or a written statement disputing the facts recited in the proposed curative affidavit from any person served with the notice of intent and a copy of the unsigned proposed curative affidavit within the prescribed 30-day time period for each person so served, the authorized attorney may sign and record the proposed curative affidavit.

(e) An affidavit is sufficient as a curative affidavit if it does all of the following:

(1) Contains a statement that the curative affidavit should be indexed as a "subsequent instrument" pursuant to G.S. 161-14.1.

(2) Contains a statement that the curative affidavit is recorded pursuant to G.S. 47-36.2 to correct an obvious description error contained in a previously recorded instrument.

(3) Contains a statement that the affiant is an attorney licensed to practice law in North Carolina and is an authorized attorney pursuant to G.S. 47-36.2(a)(1).

(4) Identifies each instrument subject to the curative affidavit by stating the title of the instrument, the parties to the instrument, and the recording data for the instrument.

(5) Identifies the obvious description error contained in each instrument subject to the curative affidavit.

(6) Corrects the obvious description error by stating the correct property description.

(7) Contains a statement that the affiant served a copy of the notice of intent required by subsection (c) of this section and a copy of the unsigned proposed curative affidavit on all persons entitled to notice pursuant to subsection (c) of this section and that service on each such person was properly effected in a manner prescribed for the service of a summons in accordance with Rule 4 of the North Carolina Rules of Civil Procedure.

(8) Contains a statement that the affiant did not receive any written objection to the recordation of the curative affidavit or any dispute of the facts recited in the curative affidavit from any person so served within the 30-day period following the date each person was served.

(9) Provides the name, telephone number, and mailing address of the affiant.

(10) Is signed and sworn to or affirmed by the authorized attorney as affiant before a notary public, with an appropriate jurat affixed by the notary public that conforms to the requirements of Article 1 of Chapter 10B of the General Statutes.

(f) A curative affidavit recorded pursuant to this section in the office of the register of deeds in the county where the real property is located shall operate as a correction of the instrument being corrected that relates back to, and is effective as of, the date the instrument being corrected was originally recorded in the office of the register of deeds, with the same effect as if the description of the property was correct when the instrument was first recorded, and all parties to the instrument being corrected shall be bound by the terms contained in the recorded curative affidavit and the instrument being corrected.

(g) Upon payment of the appropriate recordation fee, the register of deeds shall accept a curative affidavit for recording unless the curative affidavit (i) is submitted by a method or in a

medium not authorized for registration by the register of deeds under applicable law, (ii) is not signed by the affiant and sworn to or affirmed as required by law for an affidavit or affirmation, or (iii) lacks a proper jurat. A copy of the previously recorded instrument to which the curative affidavit applies may be attached to or recorded with the curative affidavit and need not be a certified copy. The register of deeds shall not be required to verify or make inquiry concerning (i) the truth of the matters stated in any curative affidavit or (ii) the authority of the person executing any curative affidavit to do so. The register of deeds shall index the curative affidavit in the name of the affiant and in the names of the various parties to each instrument being corrected as both grantees and grantors, irrespective of their designation in the instrument being corrected. The costs associated with the recording of a curative affidavit pursuant to this section shall be paid by the party submitting the affidavit to the register of deeds.

(h) A curative affidavit recorded in compliance with this section shall be prima facie evidence of the facts stated therein. Any person who wrongfully or erroneously records a curative affidavit is liable for actual damages sustained by any party as a result of the recordation, including reasonable attorneys' fees and costs.

(i) The remedies prescribed by this section are not exclusive and do not abrogate any rights or remedies otherwise available under the laws of this State, including any rights or remedies under G.S. 47-36.1.

(j) No particular phrasing is required for a curative affidavit. The following form of affidavit, when properly completed, is sufficient to satisfy the requirements of subsection (e) of this section for a curative affidavit:

"Curative Affidavit

This curative affidavit should be indexed as a "subsequent instrument" pursuant to G.S. 161-14.1.

I, _____, certify as follows:

1. This curative affidavit is recorded pursuant to G.S. 47-36.2 to correct an obvious description error contained in a previously recorded instrument.
2. I am an attorney licensed to practice law in North Carolina. I am an "authorized attorney" as defined in G.S. 47-36.2(a)(1).
3. The instrument or instruments containing an obvious description error requiring correction are identified as follows:

Insert here the following information regarding each instrument to be corrected: the title of the instrument, the parties to the instrument, and the recording data for the instrument.

4. The obvious description error contained in the instrument(s) to be corrected is identified or described as follows:

Insert here the erroneous description that requires correction.

5. The erroneous property description is corrected to read as follows:

Insert here the correct description of the real property.

6. I have served a copy of a notice of my intent to sign and record this curative affidavit and a copy of this curative affidavit, unsigned, on all persons entitled to notice pursuant to G.S. 47-36.2(c). Service on each such person was properly effected in a manner prescribed for the service of a summons in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. I did not receive any written objection to the recordation of this curative affidavit or any dispute of the facts recited in this curative affidavit from any person so served within the 30-day period following the date each such person was so served.
7. My name, telephone number, and mailing address are as follows:

Insert here the affiant's name, telephone number, and mailing address.

Date: _____

_____

Signature of Affiant

COUNTY OF _____, STATE OF _____
The foregoing curative affidavit was sworn to or affirmed and subscribed before me this day by _____.

Date: _____

_____
Signature of Notary Public
Official Seal
_____, Notary Public
Print or Type Notary's Name

My commission expires: _____"

(k) No particular phrasing is required for a notice of intent described in subsection (c) of this section. The following form, when properly completed, is sufficient to satisfy the requirements of subsection (c) of this section for a notice of intent:

"NOTICE OF INTENT TO CORRECT AN OBVIOUS DESCRIPTION ERROR

This is an important legal document that requires your immediate attention. Your property rights may be affected, and you may need to respond to this notice in writing.

I am an attorney licensed to practice law in North Carolina. My contact information is as follows:

Insert the name, telephone number and mailing address of the authorized attorney issuing the notice.

I have discovered or have been advised of an error in the description of real property contained in one or more instruments recorded as part of a real estate-related transaction. A copy of a proposed Curative Affidavit accompanies this notice. The proposed Curative Affidavit identifies the previously recorded instrument or instruments that contain the description errors that I plan to correct, the description error or errors that require correction, and the correct description of the real property. If I sign and record the proposed Curative Affidavit, it will have the legal effect of correcting the erroneous property description in the listed instrument or instruments that contain the description errors.

Real property you own may be affected if I correct the erroneous description of the real property in the instrument or instruments identified in the proposed Curative Affidavit. You should consult with your attorney promptly to determine whether and the extent to which my correction of the legal description in the instrument or instruments that need to be corrected will impact your property or property rights.

IF YOU WISH TO OBJECT TO MY SIGNING AND RECORDING THE PROPOSED CURATIVE AFFIDAVIT OR DISPUTE THE FACTS RECITED IN THE PROPOSED CURATIVE AFFIDAVIT, YOU MUST DO SO IN A WRITING SENT OR DELIVERED TO ME WITHIN 30 DAYS AFTER THE DATE YOU WERE SERVED WITH THIS NOTICE AND THE PROPOSED CURATIVE AFFIDAVIT.

If I do not receive a written objection disputing the facts recited in the proposed Curative Affidavit or objecting to my signing and recording the proposed Curative Affidavit from you or

any other person that receives this notice within the prescribed 30-day period applicable to each person so served, I intend to sign and record the Curative Affidavit. However, if I receive a written objection within the 30-day time period prescribed by statute, I am not permitted to sign or record the Curative Affidavit.

If you dispute the facts recited in the proposed Curative Affidavit or object to my signing and recording the Curative Affidavit, you need to write to me promptly at my address stated above. While I encourage you to call me if you have questions, your telephone call will not be sufficient – you must write to me if you dispute the facts recited in the proposed Curative Affidavit or object to my signing and recording the Curative Affidavit.

Date: _____

_____

Signature of authorized attorney"

(*l*) Nothing in this section requires that a curative affidavit be attached to an original or certified copy of a previously recorded instrument that is unchanged but rerecorded. Nothing in this section requires that a curative affidavit be attached to a copy of a previously recorded instrument that includes identified corrections or an original execution by a party or parties of the corrected instrument after the original recording with proof or acknowledgment of their execution of the correction of the instrument."

SECTION 3. Article 4 of Chapter 47 of the General Statutes is amended by adding a new section to read:

"**§ 47-108.28. Ten-year curative statute.**

(a) If (i) an instrument conveying or purporting to convey an interest in real property contains a material defect, irregularity, or omission; (ii) the instrument is recorded by the register of deeds in the county or counties where the property is situated; and (iii) the material defect, irregularity, or omission is not corrected within 10 years after the instrument was recorded, then the instrument shall be deemed effective to vest title as stated therein and to the same extent as though the instrument had not contained the material defect, irregularity, or omission. The proper recordation and indexing of a curative instrument or a notice of lis pendens shall act as a toll to the 10-year curative period.

(b) For the purposes of this section, a "material defect, irregularity, or omission" occurs when the recorded instrument facially fails to comply with any of the following:

(1) The proper execution of a form of acknowledgment as provided under Article 3 of Chapter 47 of the General Statutes.

(2) The proper recital of consideration paid, the residence of a party, the address of the property or party, or the date of the instrument or any instrument or obligation secured by the instrument.

(3) The proper affixation of seal by any person authorized to execute an instrument by virtue of an office or appointment held by the grantor that is required to affix the seal to the recorded instrument under applicable law.

(c) Nothing in this section is intended to modify any provisions of law pertaining to the competency or infancy of the grantor or the provisions of Chapter 22 of the General Statutes or to limit any remedies available under the laws of this State."

SECTION 4. G.S. 161-14.1(a) reads as rewritten:

"**§ 161-14.1. Recording subsequent entries as separate instruments.**

(a) As used in this section, the following terms mean:

...

(3) Subsequent instrument. – Any instrument presented for registration that indicates in its title or within the first two pages of its text that it is intended or purports to correct, modify, amend, supplement, assign, satisfy, terminate,

revoke, or cancel a previously registered instrument. Examples of subsequent instruments include the following:

a. The appointment or designation of a substitute trustee in a deed of trust.

b. A corrective notice affidavit registered pursuant to ~~G.S. 45-36.1.~~G.S. 45-36.1 or a curative affidavit registered pursuant to G.S. 45-36.2.

...."

SECTION 5. This act is effective when it becomes law and applies to curative affidavits filed on or after that date.

HOUSE BILL 584:
Real Prop./Error Correction & Title Curative.

2017-2018 General Assembly

Committee:	House Judiciary III	**Date:**	April 10, 2017
Introduced by:	Reps. Jordan, Stevens, Dulin	**Prepared by:**	Brad Krehely Committee Co-Counsel
Analysis of:	PCS to First Edition H584-CSRN-9		

OVERVIEW: ***House Bill 584 would clarify the process for correcting non-material errors in recorded instruments of title, would create a curative procedure for obvious description errors in documents of title, and would create a 10-year curative provision for certain defects in recorded instruments of title. The act is effective when it becomes law and applies to curative affidavits filed on or after that date. <u>The Proposed Committee substitute makes technical changes only.</u>***

BILL ANALYSIS:

Section 1 provides that notice of a non-material typographical or minor non-material error in a deed or instrument recorded with the register of deeds may be given by recording a corrective notice affidavit.

Section 2 creates G.S. 47-36.2 dealing with correction of errors in recorded instruments. It provides that obvious description errors in a recorded instrument affecting title to real property may be cured by recording a curative affidavit with the register of deeds in every county where the real property is located. Before recording a curative affidavit, the authorized attorney must serve a notice of intent and a copy of the unsigned proposed curative affidavit on the following persons:

- All parties to the instrument that is the subject of the curative affidavit.
- The current record mortgagee, record beneficiary, record assignee, or record secured party in any mortgage, deed of trust, assignment of leases, rents or profits, or other recorded security instrument that may be adversely affected by the curative affidavit.
- The current record owner of the real property.
- The attorney who prepared the instrument that is the subject of the curative affidavit, if known.
- Any title insurance company and title insurance agent, if known, that (i) issued a policy of title insurance covering the property in the transaction in which the error occurred or in any subsequent transaction or (ii) proposes to issue a policy of title insurance in reliance on the proposed curative affidavit.
- The following who may be adversely affected by the recording of the curative affidavit: (i) the current record owners of all adjoining properties, (ii) the current record holders of any mineral or timber rights, and (iii) the record holders of any easement rights.

If the authorized attorney does not receive a written objection to the recordation of the proposed curative affidavit or a written statement disputing the facts in the proposed curative affidavit from any person within 30 days, the authorized attorney may sign and record the proposed curative affidavit.

An affidavit is sufficient as a curative affidavit if it does the ten things which are set out in newly enacted G.S. 47-36.2(e).

A recorded curative affidavit operates as a correction of the instrument that relates back to and is effective as of the date the instrument was originally recorded. All parties to the instrument are bound by the terms of the curative affidavit and the instrument being recorded.

The register of deeds is directed to accept a curative affidavit unless it does not meet the requirements of newly enacted G.S. 47-36.2(g). The register of deeds is not required to verify or make inquiries about the truth of the matters in the curative affidavit or the authority of the person executing the curative affidavit.

A curative affidavit that is recorded in compliance with the statutes is prima facie evidence of the facts in the affidavit. A person who erroneously records a curative affidavit is liable for actual damages, including reasonable costs and attorneys' fees sustained by any party as a result of the error.

The statutes provide for an acceptable statutory form for curative affidavits and notices of intent to correct curative affidavits.

Section 3 creates a ten-year curative statute. If (i) an instrument conveying or purporting to convey an interest in real property contains a material defect, irregularity, or omission; (ii) the instrument is recorded by the register of deeds in the county or counties where the property is situated; and (iii) the material defect, irregularity, or omission is not corrected within 10 years after the instrument was recorded, then the instrument vests title as if the instrument had not contained the material defect, irregularity, or omission.

Section 4 makes a conforming change.

EFFECTIVE DATE: The act is effective when it becomes law and applies to curative affidavits filed on or after that date.

Attachment 15

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 584

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

H584-ARN-16 [v.1]

Amends Title [NO]
H584-CSRN-9

Date _____,2017

Representative Jordan

moves to amend the bill on page 3, line 4, by deleting the word "registered" and substituting the word "professional".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Attachment 16

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 584

AMENDMENT NO. (2)
(to be filled in by Principal Clerk)

H584-ARN-15 [v.2]

Amends Title [NO]
H584-CSRN-9

Date _____,2017

Representative Jordan

moves to amend the bill on page 4, line 40, by deleting the word "affixed" and substituting the word "completed".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

House Committee on Judiciary III
Wednesday, April 19, 2017 at 1:00 PM
Room 421 of the Legislative Office Building

Sergeant at Arms

1. **Bill Bass**
2. **Mark Cone**
3. **Will Crocker**

House Committee on Judiciary III
Wednesday, April 19, 2017 at 1:00 PM
Room 421 of the Legislative Office Building

MINUTES

The House Committee on Judiciary III met at 1:00 PM on Wednesday April 19, 2017 in Room 421 of the Legislative Office Building. Representatives Jordan, Reives, Conrad, Hastings, Horn, Johnson, Morey, Quick, Richardson, Szoka, B. Turner, and White attended. Brad Krehely, Kristen Harris and Billy Godwin (Research Staff Counsel), along with Emma Benson (Committee Clerk) were in attendance. A Visitor Registration list is attached and made part of these minutes (Attachment 1).

Representative Jonathan Jordan, Chair, presided. The chair called the meeting to order at 1:07 PM. He introduced the Sergeants at Arms (Attachment 2). The following bill was considered:

House Bill 650 and a bill summary are included (Attachments 3 and 4).

HOUSE BILL 650: STATE BOARD CONSTRUCTION CONTRACT CLAIM

Chairman Jordan recognized Reps. Arp and Boswell to present the bill.

The PCS for House Bill 650 would provide the time periods in which the Director of the Office of State Construction must issue a final order allowing or denying a contractor's verified written claim. The act would become effective January 1, 2018 and would apply to verified claims submitted on or after that date.

Chairman Jordan recognized Rep. Turner to make a motion favorable to the original bill. The motion carried without dissent.

House Bill 650 has a serial referral to the House Committee on State and Local Government II.

House Bill 807 is included (Attachments 5).

HOUSE BILL 807: ALE AND CAP. POLICE IN DPS.

Chairman Jordan recognized Rep. Boles to explain the bill.

House Bill 807 would establish Alcohol Law Enforcement and the State Capital Police as separate divisions of the Department of Public Safety.

Chairman Jordan recognized Rep. Reives to present a technical amendment to House Bill 807 (Attachment 6). The amendment was adopted.

Chairman Jordan recognized Rep. Conrad to make a motion to roll the amendment into a new PCS, favorable to the PCS and unfavorable to the original bill. The motion carried.

Chairman Jordan recognized Vice Chairman Reives to chair the meeting.

House Bill 507, Proposed Committee Substitute (PCS), and a bill summary are included (Attachments 7, 8, and 9).

HOUSE BILL 507: LAND-USE REGULATORY CHANGES

Vice Chairman Reives recognized Rep. B. Richardson to make a motion to have the PCS before the committee. The motion carried.

Vice Chairman Reives recognized Reps. Jordan, Conrad and W. Richardson to explain the bill.

House Bill 507 PCS makes changes to the land-use regulatory laws of the State.

Vice Chairman Reives recognized Hugh Johnson of the County Commissioner Association and Erin Wynia of the League of Municipalities to speak against the bill.

Vice Chairman Reives recognized Mike Carpenter of the North Carolina Home Builders Association to speak for the bill.

Vice Chairman Reives recognized Rep. Szoka to make a motion favorable to the PCS, unfavorable to the original bill. The motion carried.

House Bill 706 (PCS) and a summary are provided. (Attachments 10, 11 and 12)

HOUSE BILL 584: REAL PROP./ERROR CORRECTION & TITLE CURATIVE

Vice Chairman Reives recognized Reps. Jordan, Bradford and Earle to explain the bill.

The PCS to House Bill 706 would allow a plaintiff to request that a claim for summary ejectment be severed from a claim for monetary damages and provide a new method of service of process in summary ejectment proceedings. The PCS removes the requirement that small claims court be held at least twice a week in every judicial district.

Vice Chairman Reives recognized Reps. Quick, Richardson, Turner, and Morey to provide discussion on the bill.

Vice Chairman Reives recognized Carson Smith, First Vice Chairman of the Sherriff's Association and Erwin Carmichael of the Mecklenburg County Sheriffs to speak against the bill.

Vice Chairman Reives recognized Will Bradley and Mark Brown of the Clerk of Superior Court in Gaston County to speak on the bill.

After some discussion, Vice Chairman Reives recognized Rep. Szoka to make a motion favorable to the PCS, unfavorable to the original bill. The motion carried.

House Bill 37, a PCS, and a bill summary are included. (Attachments 13, 14, and 15)

HOUSE BILL 37: PROTECT LAW ENFORCEMENT OFFICERS

Vice Chairman Reives recognized Rep. Jordan to make a motion to have the PCS before the committee. The motion carried.

Vice Chairman Reives recognized Rep. Malone to explain the bill.

The PCS for House Bill 37 would protect municipal law enforcement officers who report improper or unlawful government activity for retaliation. The PCS makes the language of the bill identical to the First Edition of Senate Bill 596, the Senate companion bill, with two exceptions: (1) this PCS clarifies that any criminal penalties for filing false reports apply prospectively to offenses committed on or after October 1, 2017, and (2) it uses the correct term "municipal law enforcement officer" on page 2, line 21.

Vice Chairman Reives recognized Reps. Horn, Quick, and White to provide discussion on the bill.

Vice Chairman Reives recognized Rick Donathan, Randy Byrd and John Midgette of the Police Benevolent Association to speak in favor of the bill. He also recognized Robert Elliott and Ken Hunter, members of the public, to speak in favor of the bill.

Vice Chairman Reives recognized Graham Atkinson and Connie Wilson, members of the public, to speak against the bill.

After some discussion Vice Chairman Reives recognized Rep. Szoka to make a motion favorable to the PCS, unfavorable to the original bill. The motion carried.

House Bill 37 has a serial referral to House Committee on State and Local Government II.

House Bill 547 and a bill summary are included. (Attachments 16 and 17)
HOUSE BILL 547: CUMBERLAND 12C SUPERIOR COURT DISTRICTS

Vice Chairman Reives recognized Chairman Jordan to chair the meeting.

Chairman Jordan recognized Rep. Szoka to explain the bill.

House Bill 547 would require candidates for the office of Superior Court Judge in District 12C of Cumberland County to designate which seat among the two allocated to that district the candidate is seeking.

Chairman Jordan recognized Reps. Morey and Richardson to provide discussion on the bill.

Chairman Jordan recognized Rep. Szoka to make a motion favorable to the original bill. The motion carried.

With no further business, Chairman Jordan adjourned the meeting at 2:50 PM.

Representative Jonathan Jordan, Chair
Presiding

Emma Benson, Committee Clerk

Attachments

1. Visitor Registration Sheet
2. Sergeants at Arms
3. House Bill 650
4. House Bill 650 Bill Summary
5. House Bill 807
6. House Bill 807 Amendment
7. House Bill 507
8. House Bill 507 PCS
9. House Bill 507 Bill Summary
10. House Bill 706
11. House Bill 706 PCS
12. House Bill 706 Bill Summary
13. House Bill 37
14. House Bill 37 PCS

15. House Bill 37 Bill Summary
16. House Bill 547
17. House Bill 547 Bill Summary

Attachment 1

VISITOR REGISTRATION SHEET

Judiciary III — Name of Committee

04-19-2017 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLER

NAME	FIRM OR AGENCY AND ADDRESS
Eddie Caldwell	NC Sheriffs' Assn.
Wayne Coats	Sheriff Harnett County
Will Brownlee	AANC
Caroline Miller	AMGA
David Hess	NC Chiefs of Police Assoc.
JEFF SMYTHE	BURLINGTON P.D. & NC CHIEFS OF POLICE
Fred Baggett	NCACP
DAN House	Wrightsville Beach PD
PATRICK TRAYLOR	JACKSONVILLE PD
Tod Jones	Alexander County Sheriff
Michael Harrison	Alexander Co. Sheriff

VISITOR REGISTRATION SHEET

Judiciary III — 04-19-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Hugh Johnson	NCACC
Connie Wilson	ECNC
Jason Deans	
CHRIS DILLON	WAKE
Jillian Totman	MWC LLC
Major D.E. Johnson	Mecklenburg County Sheriff's Office
Sheriff Irw. Carmichael	Mecklenburg County Sheriff's Office
Sheriff William F. Oliver	Yadkin Co. Sheriff's Office
Lew Hagopian, Jr.	Watauga Co. Sheriff's Office
Isabel Villa-Garcia	NC REALTORS

VISITOR REGISTRATION SHEET

Judiciary III — 04-19-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tim Minn	NCHBA
David Ferrell	VB
Steve Anthony	NCPBA
Robert Elliot	Elliot Morgan Parsonage
Ken Hunter	NCPBA
Rick Donahan	NCPBA
Andy McFeaters	NCPBA
Randy Byrd	NCPBA
JOHN MIDGETTE	NCPBA.
William Wilke	NCPBA
Sarah Gillooly	ACLU

VISITOR REGISTRATION SHEET

Judiciary III — 04-19-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
LARRY BROWN	CLERK OF SUPERIOR COURT GASTON CO
Laura Kilian	Vista
carlye Wittek	perkinson law firm
Doug Lassiter	NCSTA
Bryan Gibson	NC FA
	SA
Erin Wynia	NCLM
Sowers Williams	NCAJE
Chase Jessica	VanWinkle LF
MIKE CALDWELL	NCAJA
Seth Palmer	NCAR

VISITOR REGISTRATION SHEET

Judiciary III — 04-19-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jay Stem	NCAA
TONI Dezonnts	NCACP/CARY PD
Skye David	NEWFRAME
Leslie Young	Ward and Smith, P.A
Brian Lewis	New Frame
Dan Miskun	PSG
Jorge Kohn	PSG.

VISITOR REGISTRATION SHEET

Judiciary III — 04-19-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Wm. Schafreiman	SHERIFF FORSYTH Co.
Graham Atkinson	Sheriff Surry County
Carson Smith	Sheriff Pender County
James Clemmons	Sheriff Richmond County

Attachment 2

Committee Sergeants at Arms

NAME OF COMMITTEE Judiciary III

DATE: 4-19-2017 Room: 421

House Sgt-At Arms:

1. Name: Bill Bass
2. Name: Mark Cone
3. Name: Will Crocker
4. Name: _____
5. Name: _____

Senate Sgt-At Arms:

1. Name: _____
2. Name: _____
3. Name: _____
4. Name: _____
5. Name: _____

Attachment 3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H 1

HOUSE BILL 650

Short Title:	State Board Construction Contract Claim.	(Public
Sponsors:	Representatives Arp, Brody, Boswell, and Millis (Primary Sponsors). *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	Judiciary III, if favorable, State and Local Government II	

April 11, 2017

A BILL TO BE ENTITLED

AN ACT PROVIDING THE TIME PERIOD IN WHICH THE DIRECTOR OF THE OFFICE OF STATE CONSTRUCTION SHALL ISSUE A FINAL ORDER ALLOWING OR DENYING A CONTRACTOR'S VERIFIED WRITTEN CLAIM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-135.3 reads as rewritten:

"**§ 143-135.3. Adjustment and resolution of State board construction contract claim.**

...

(c) A contractor who has completed a contract with a board for construction or repair work and who has not received the amount he claims is due under the contract may submit a verified written claim to the Director of the Office of State Construction of the Department of Administration for the amount the contractor claims is due. The claim shall be submitted within 60 days after the contractor receives a final statement of the board's disposition of his claim and shall state the factual basis for the claim.

~~The Director shall investigate a submitted claim within 90 days of receiving the claim, or within any longer time period upon which the Director and the contractor agree.~~ The contractor may appear before the Director, either in person or through counsel, to present facts and arguments in support of his claim. The Director may allow, deny, or compromise the claim, in whole or in part. The Director shall give the contractor a ~~written statement of the Director's decision on the contractor's claim.~~final written decision allowing or denying those portions of the contractor's claim that have not been previously compromised.

~~A contractor who is dissatisfied with the Director's decision on a claim submitted under this subsection may commence a contested case on the claim under Chapter 150B of the General Statutes. The contested case shall be commenced within 60 days of receiving the Director's written statement of the decision.~~

~~(c1) A contractor who is dissatisfied with the Director's decision on a claim submitted under subsection (c) of this section may commence a contested case on the claim under Chapter 150B of the General Statutes. The contested case shall be commenced within 60 days of receiving the Director's written statement of the decision.~~

(c2) If the verified claim under subsection (c) of this section was originally for an amount less than one hundred thousand dollars ($100,000), the Director shall investigate and issue a final written decision allowing or denying the claim, in whole or in part, within 120 days of receipt of the contractor's verified claim. If the verified claim under subsection (c) of this section was originally for an amount of one hundred thousand dollars ($100,000) but less than five million dollars ($5,000,000), the Director shall investigate and issue a final written

decision allowing or denying the claim, in whole or in part, within 180 days of receipt of the contractor's verified claim. If the verified claim under subsection (c) of this section was originally for an amount of five million dollars ($5,000,000) or more, the Director shall investigate and issue a final written decision allowing or denying the claim, in whole or in part, within 270 days of receipt of the contractor's verified claim. Prior to the expiration of the time periods provided for in this subsection, the Director and contractor may, in writing, extend the time in which the Director shall issue a final written decision. The Director's failure to issue a final written decision as provided in this subsection shall be deemed a denial of the portions of the claim not previously compromised, and the contractor may seek relief on those portions of the claim as provided in subsections (c3) and (d) of this section.

(c3) A contractor who is dissatisfied with the Director's final written decision on a claim, or any portion of a claim, submitted under subsection (c) of this section may commence a contested case on the claim under Chapter 150B of the General Statutes. The contested case shall be commenced within 60 days of receiving the Director's final written decision.

(d) As to any portion of a claim that is denied by the ~~Director,~~ Director under subsection (b) or (c) of this section, the contractor may, in lieu of the procedures set forth in ~~the preceding~~ subsection (c3) of this section, within six months of receipt of the Director's final written decision, institute a civil action for the sum he claims to be entitled to under the contract by filing a verified complaint and the issuance of a summons in the Superior Court of Wake County or in the superior court of any county where the work under the contract was performed. The procedure shall be the same as in all civil actions except that all issues shall be tried by the judge, without a jury.

...."

SECTION 2. G.S. 143-135.6 reads as rewritten:

"**§ 143-135.6. Adjustment and resolution of community college board construction contract claim.**

...

(b) A contractor who has completed a contract with a board of a community college for construction or repair work and who has not received the amount he claims is due under the contract may follow the same claims procedure in G.S. 143-135.3(c) through (d) that is available to a contractor who has contracted with a State board.

~~(c) A contractor who is dissatisfied with the Director's decision on any portion of a claim submitted pursuant to subsection (b) of this section may, within six months of receipt of the Director's final decision, institute a civil action for the sum he claims to be entitled to under the contract in the Superior Court of Wake County or in the superior court of any county where the work under the contract was performed. The procedure shall be the same as in all civil actions except that all issues shall be tried by the judge, without a jury. A contractor may not commence an action under Chapter 150B of the General Statutes.~~

...."

SECTION 3. This act becomes effective January 1, 2018, and applies to verified claims submitted on or after that date.

HOUSE BILL 650:
State Board Construction Contract Claim.

2017-2018 General Assembly

Committee:	House Judiciary III. If favorable, re-refer to State and Local Government II	**Date:**	April 17, 2017
Introduced by:	Reps. Arp, Brody, Boswell, Millis	**Prepared by:**	Brad Krehely Committee Co-Counsel
Analysis of:	First Edition		

OVERVIEW: House Bill 650 would provide the time periods in which the Director of the Office of State Construction must issue a final order allowing or denying a contractor's verified written claim. The act would become effective January 1, 2018, and would apply to verified claims submitted on or after that date.

CURRENT LAW: A contractor who has completed a contract with a board for construction or repair work and who has not received the amount the contractor claims is due under the contract may submit a verified written claim to the Director of the Office of State Construction of the Department of Administration (Director) for the amount the contractor claims is due. The claim must be submitted within 60 days after the contractor receives a final statement of the board's disposition of the claim.

The Director must investigate a submitted claim within 90 days of receiving the claim, or within any longer time period upon which the Director and the contractor agree. The Director may allow, deny, or compromise the claim, in whole or in part. The Director must give the contractor a written statement of the Director's decision on the contractor's claim.

A contractor who is dissatisfied with the Director's decision on a claim submitted under this subsection may commence a contested case on the claim under Chapter 150B of the General Statutes. The contested case shall be commenced within 60 days of receiving the Director's written statement of the decision.

For any portion of a claim denied by the Director, the contractor may institute a civil action in superior court, in lieu of commencing a contested case under Chapter 150B. The contractor must act within 6 months of receipt of the Director's final decision. G.S. 143-135.3.

BILL ANALYSIS: House Bill 650 would amend G.S. 143-135.3 to provide that the Director must give the contractor a final decision allowing or denying those parts of the claim that have not been compromised. It also would provide the following time periods for the Director to investigate and issue a final written decision:

- **Claims less than $100,000-** If the verified claim was originally for an amount less than $100,000, the Director must investigate and issue a final written decision allowing or denying the claim, in whole or in part, within 120 days of receipt of the contractor's verified claim.
- **Claims between $100,000 and $5 million-** If the verified claim was originally for an amount of $100,000, but less $5 million, the Director must investigate and issue a final written decision allowing or denying the claim, in whole or in part, within 180 days of receipt of the contractor's verified claim.

Karen Cochrane-Brown
Director

H650-SMRN-26-E1-V-4

Legislative Analysis Division
919-733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

- **Claims for $5 million or more-** If the verified claim was originally for an amount of $5 million or more, the Director must investigate and issue a final written decision allowing or denying the claim, in whole or in part, within 270 days of receipt of the contractor's verified claim.

The act provides that prior to the expiration of these time periods, the Director and contractor may, in writing, extend the time by which the Director must issue a final decision. If the Director fails to issue a final written decision, this is deemed a denial of the portions of the claim not previously compromised.

The act makes other conforming changes.

EFFECTIVE DATE: The act would become effective January 1, 2018 and would apply to verified claims submitted on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

HOUSE BILL 807

Short Title:	Create Divisions - ALE and Cap. Police in DPS.	(Public)
Sponsors:	Representatives Boles, J. Bell, Willingham, and McNeill (Primary Sponsors). *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	Judiciary III	

April 13, 2017

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH ALCOHOL LAW ENFORCEMENT AND THE STATE CAPITOL POLICE AS SEPARATE DIVISIONS OF THE DEPARTMENT OF PUBLIC SAFETY.

The General Assembly of North Carolina enacts:

PART I. CREATE DIVISION OF ALCOHOL LAW ENFORCEMENT IN THE DEPARTMENT OF PUBLIC SAFETY

SECTION 1.1. The Alcohol Law Enforcement Branch of the State Bureau of Investigation shall be relocated as a Division of the Department of Public Safety.

SECTION 1.2. Part 4 of Article 13 of Chapter 143B of the General Statutes is amended by adding a new Subpart to read:

"Subpart F. Alcohol Law Enforcement Division.

"§ 143B-990. Creation of Alcohol Law Enforcement Division of the Department of Public Safety.

There is created and established a division to be known as the Alcohol Law Enforcement Division of the Department of Public Safety with the organization, powers, and duties defined in Article 1 of this Chapter, except as modified in this Part."

SECTION 1.3. G.S. 143B-928 is repealed.

SECTION 1.4. G.S. 18B-500 reads as rewritten:

"**§ 18B-500. Alcohol law-enforcement agents.**

(a) Appointment. – The Director of the ~~State Bureau of Investigation shall~~ Division of Alcohol Law Enforcement of the Department of Public Safety may appoint ~~alcohol law-enforcement agents and other enforcement personnel.~~ a sufficient number of assistants who shall be competent and qualified to do the work of the Division. The Director ~~may also appoint regular employees of the Commission as alcohol law-enforcement agents.~~ shall be responsible for making all hiring and personnel decisions of the Division. Notwithstanding the provisions of this Chapter or Chapter 143A of the General Statutes, the Director may hire or fire personnel and transfer personnel within the Division. Alcohol law-enforcement agents shall be designated as "alcohol law-enforcement agents". Persons serving as reserve alcohol law-enforcement agents are considered employees of the Alcohol Law Enforcement Branch for workers' compensation purposes while performing duties assigned or approved by the Head of the Alcohol Law Enforcement Branch or the Head's designee.

(b) Subject Matter Jurisdiction. – After taking the oath prescribed for a peace officer, an alcohol law-enforcement agent shall have authority to arrest and take other investigatory and

enforcement actions for any criminal offense. The primary responsibility of an agent shall be enforcement of the ABC ~~and lottery laws.~~laws, lottery laws, and Article 5 of Chapter 90 of the General Statutes (The Controlled Substances Act).

...

(g) Shifting of Personnel From One District to Another. – The ~~Head~~ Director of the Alcohol Law Enforcement ~~Branch,~~ Division, under rules adopted by the Department of Public Safety may, from time to time, shift the forces from one district to another or consolidate more than one district force at any point for special purposes. Whenever an agent of the Alcohol Law Enforcement ~~Section~~ Division is transferred from one district to another for the convenience of the State or for reasons other than the request of the agent, the Department shall be responsible for transporting the household goods, furniture, and personal apparel of the agent and members of the agent's household."

SECTION 1.5. The Department of Public Safety shall continue to consolidate ALE and SBI Regions and Regional Offices in the same manner so that all district offices remain co-located.

SECTION 1.6. G.S. 143-651 reads as rewritten:

"**§ 143-651. Definitions.**

The following definitions apply in this Article:

...

~~(4a) Branch. – The Alcohol Law Enforcement Branch of the State Bureau of Investigation.~~

...

(7a) Division. – The Alcohol Law Enforcement Division of the Department of Public Safety.

...

(23b) Sanctioned amateur match. – Any match regulated by an amateur sports organization that has been recognized and approved by the ~~Branch.~~Division.

...."

SECTION 1.7. The following statutes are amended by deleting the word "Branch" wherever it appears in uppercase and substituting "Division": G.S. 18B-101(5), 18B-201, 18B-202, 18B-203, 18B-504, 18B-805, 18B-902, 18B-903, 18B-904, 18C-163(b), 19-2.1, 105-259(b)(15), and 143-652.1 through 143-656.

PART II. CREATE DIVISION OF STATE CAPITOL POLICE IN THE DEPARTMENT OF PUBLIC SAFETY

SECTION 2.1. The State Capitol Police Section of the State Highway Patrol shall be relocated as a Division of the Department of Public Safety.

SECTION 2.2. Subpart B of Part 4 of Article 13 of Chapter 143B of the General Statutes reads as rewritten:

"Subpart B. State Capitol ~~Police.~~Police Division.

"**§ 143B-911. Creation of State Capitol Police ~~Section~~ Division; powers and duties.**

(a) ~~Section~~ Division Established. – ~~There is hereby established, within the State Highway Patrol of the Department of Public Safety,~~ There is created and established a division to be known as the State Capitol Police ~~Section, which shall be organized and staffed in accordance with applicable laws and regulations and within the limits of authorized appropriations. The Chief, special officers, and employees of the State Capitol Police Section are not considered members of the State Highway Patrol.~~Division of the Department of Public Safety with the organization, powers, and duties defined in Article 1 of this Chapter, except as modified in this Part.

(b) Purpose. – The State Capitol Police ~~Section~~ Division shall serve as a special police agency of the Department of Public Safety. The Chief of the State Capitol Police, appointed by

the Secretary pursuant to G.S. 143B-602, with the approval of the Governor, may appoint as special police officers such reliable persons as ~~he~~ the Chief may deem necessary.

...."

SECTION 2.3. G.S. 143B-602(8) reads as rewritten:

"**§ 143B-602. Powers and duties of the Secretary of Public Safety.**

The Secretary of Public Safety shall have the powers and duties as are conferred on the Secretary by this Article, delegated to the Secretary by the Governor, and conferred on the Secretary by the Constitution and laws of this State. These powers and duties include the following:

...

(8) Other powers and duties. – The Secretary has the following additional powers and duties:

...

f. ~~Appointing, with the Governor's approval,~~ Appointing a special police officer to serve as Chief of the State Capitol Police ~~Section of the State Highway Patrol.~~Division.

....

i. Appointing the Director of the Division of Alcohol Law Enforcement."

SECTION 3. This act becomes effective July 1, 2017.

Attachment 6

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 807

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

H807-ABD-7 [v.2]

Amends Title [NO]
First Edition

Date APRIL 19 ,2017

Representative Reives

moves to amend the bill on page 1, lines 31-33, by rewriting those lines to read:

"agents are considered employees of the ~~Alcohol Law Enforcement Branch~~ Division for workers' compensation purposes while performing duties assigned or approved by the ~~Head~~ Director of the ~~Alcohol Law Enforcement Branch~~ Division or the ~~Head's~~ Director's designee.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

Attachment 7

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

HOUSE BILL 507*

Short Title:	Land-Use Regulatory Changes.	(Publi
Sponsors:	Representatives Jordan, J. Bell, Conrad, and W. Richardson (Primary Sponsors) *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	Regulatory Reform, if favorable, Judiciary III	

March 29, 2017

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE LAND-USE REGULATORY LAWS OF THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-755 reads as rewritten:

"**§ 143-755. Permit choice.**

(a) If a permit applicant submits a permit application for any type of development and a rule or ordinance ~~changes~~changes, including an amendment to a zoning map or text of any applicable land development regulation as defined in G.S. 160A-400.21 or a change to a State agency regulation affecting the development of property, between the time the permit application was submitted and a permit decision is made, the permit applicant may choose which version of the rule or ordinance will apply to the permit. The permit applicant shall not be required to wait for a pending rule or ordinance to be adopted in order to choose which version of the rule or ordinance applies to the permit.

(b) This section applies to all development permits issued by the State and by local governments. For purposes of development permits issued by local governments, the definitions contained in G.S. 160A-400.21 shall be applicable.

(c) Repealed by Session Laws 2015 246, s. 5(a), effective September 23, 2015.

(d) Any person aggrieved by the failure of a State agency or local government to comply with this section or G.S. 160A-360.1 or G.S. 153A-320.1 may apply to the appropriate division of the General Court of Justice for an order compelling compliance by the offending agency, and the court shall have jurisdiction to issue that order. Actions brought pursuant to any of these sections shall be set down for immediate hearing, and subsequent proceedings in those actions shall be accorded priority by the trial and appellate courts. If any State agency or local government takes action that is inconsistent with, or in violation of, this section, the permit applicant shall be entitled to any damages that can be demonstrated as a result of the State agency or local government's actions."

SECTION 2. G.S. 160A-360.1 reads as rewritten:

"**§ 160A-360.1. Permit choice.**

If a rule or ~~ordinance~~ordinance, including an amendment to a zoning map or text of any applicable land development regulation as defined in G.S. 160A-400.21, changes between the time a development permit application is submitted and a development permit decision is made, then G.S. 143-755 shall apply."

SECTION 3. G.S. 153A-320.1 reads as rewritten:

"**§ 153A-320.1. Permit choice.**

If a rule or ~~ordinance~~ordinance, including an amendment to a zoning map or text of any applicable land development regulation as defined in G.S. 160A-400.21, changes between the time a development permit application is submitted and a development permit decision is made, then G.S. 143-755 shall apply."

SECTION 4. G.S. 160A-400.21 reads as rewritten:

"**§ 160A-400.21. Definitions.**

The following definitions apply in this Part:

...

(4) Development permit. – A building permit, zoning permit, subdivision approval, special or conditional use permit, variance, site plan, or any other official action of local government having the effect of permitting the development of property.

...."

SECTION 5. G.S. 160A-385 reads as rewritten:

"**§ 160A-385. Changes.**

(a) Citizen Comments. –

(1) ~~Zoning~~ Subject to the limitations in this Chapter, zoning ordinances may from time to time be amended, supplemented, changed, modified or repealed. If any resident or property owner in the city submits a written statement regarding a proposed amendment, modification, or repeal to a zoning ~~ordinance~~ordinance, including a zoning map or text, that has been properly initiated as provided in G.S. 160A-384, to the clerk to the board at least two business days prior to the proposed vote on such change, the clerk to the board shall deliver such written statement to the city council. If the proposed change is the subject of a quasi-judicial proceeding under G.S. 160A-388, or any other statute, the clerk shall provide only the names and addresses of the individuals providing written comment, and the provision of such names and addresses to all members of the board shall not disqualify any member of the board from voting.

(2), (3) Repealed by Session Laws 2015-160, s. 1, effective August 1, 2015, and applicable to zoning ordinance changes initiated on or after that date.

(b) Amendments in land development regulations, as defined in G.S. 160A-400.21, including zoning ~~ordinances~~ordinances, subdivision ordinances, or unified development ordinances, shall not be applicable or enforceable without the written consent of the owner with regard to ~~buildings and uses for which either (i) building permits have been issued pursuant to G.S. 160A-417 prior to the enactment of the ordinance making the change or changes so long as the permits remain valid and unexpired pursuant to G.S. 160A-418 and unrevoked pursuant to G.S. 160A-422 or (ii)~~(i) uses of buildings or land, or subdivisions of land, for which a development permit, as defined in G.S. 160A-400.21, has been issued that authorizes the use or subdivision of land or (ii) buildings, or uses thereof, for which a building permit has been issued pursuant to this Chapter. The statutory vesting granted by this subsection commences when the applicable application for either such development permit or building permit is submitted in accordance with G.S. 143-755 prior to the change in the land development regulations so long as the permit remains valid and unexpired pursuant to law. Unless otherwise specified by statute, local development permits expire one year after issuance unless work authorized by such permit has substantially commenced. Amendments shall also not be applicable or enforceable without the written consent of the owner if a vested right has been established pursuant to G.S. 160A-385.1 and such vested right remains valid and unexpired pursuant ~~to G.S. 160A-385.1.~~thereto or if a vested right is established by the terms of a development agreement authorized by Part 3D of this Article. The establishment of a vested right under one subsection does not preclude vesting under one or more other subsections or

vesting by application of common law principles. A vested right, once established as provided for in this subsection, precludes any action by a city that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in the application, except where a change in State or federal law mandating local government enforcement occurs after the application is submitted that has a fundamental and retroactive effect on such development or use.

(c) Amendments in land development regulations, as defined in G.S. 160A-400.21, including zoning ordinances, subdivision ordinances, ~~and~~or unified development ~~ordinances~~ ordinances, shall not be applicable or enforceable without the written consent of the owner with regard to a multi-phased development as ~~defined in G.S. 160A-385.1(b)(7).~~provided for in this subsection. A multi-phased development shall be vested for the entire development with the ~~zoning ordinances, subdivision ordinances, and unified development ordinances~~land development regulations then in place at the time ~~a site plan approval is granted for the initial phase of the multi-phased development.~~the applicable application for a development permit is submitted in accordance with G.S. 143-755 prior to the change in the land development regulations, so long as the permit remains valid and unexpired pursuant to law. A right which has been vested as provided for in this subsection shall remain vested for a period of seven years from the time a site plan approval is granted for the initial phase of the multi-phased development. For purposes of this subsection, a "multi-phased development" shall mean a development containing 25 acres or more that (i) is submitted for development permit approval to occur in more than one phase and (ii) is subject to a master development plan with committed elements, showing the type and intensity of use of each phase."

SECTION 6. G.S. 160A-385.1 reads as rewritten:

"**§ 160A-385.1. Vested rights.**

...

(b) Definitions. –

...

~~(7) "Multi-phased development" means a development containing 100 acres or more that (i) is submitted for site plan approval for construction to occur in more than one phase and (ii) is subject to a master development plan with committed elements, including a requirement to offer land for public use as a condition of its master development plan approval.~~

...."

SECTION 7. G.S. 153A-344 reads as rewritten:

"**§ 153A-344. Planning board; zoning plan; certification to board of commissioners.**

...

(b) Amendments in land development regulations, as defined in G.S. 153A-349.2, including zoning ~~ordinances~~ordinances, subdivision ordinances, or unified development ordinances, shall not be applicable or enforceable without the written consent of the owner with regard to ~~buildings and uses for which either (i) building permits have been issued pursuant to G.S. 153A-357 prior to the enactment of the ordinance making the change or changes so long as the permits remain valid and unexpired pursuant to G.S. 153A-358 and unrevoked pursuant to G.S. 153A-362 or (ii)~~(i) uses of buildings or land, or subdivisions of land, for which a development permit, as defined in G.S.153A-349.2, has been issued that authorizes the use or subdivision of land or (ii) buildings, or uses thereof, for which a building permit has been issued pursuant to this Chapter. The statutory vesting granted by this subsection commences when the applicable application for either such development permit or building permit is submitted in accordance with G.S. 143-755 prior to the change in the land development regulations so long as the permit remains valid and unexpired pursuant to law. Unless otherwise specified by statute, local development permits expire one year after issuance unless work authorized by such permit has substantially commenced. Amendments shall also not be

applicable or enforceable without the written consent of the owner if a vested right has been established pursuant to G.S. 153A-344.1 and such vested right remains valid and unexpired pursuant ~~to G.S. 153A-344.1.~~thereto or if a vested right is established by the terms of a development agreement authorized by Part 3A of this Article. The establishment of a vested right under one subsection does not preclude vesting under one or more other subsections or vesting by application of common law principles. A vested right, once established as provided for in this subsection, precludes any action by a county that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in the application, except where a change in State or federal law mandating local government enforcement occurs after the application is submitted that has a fundamental and retroactive effect on such development or use.

(b1) Amendments in land development regulations, as defined in G.S. 153A-349.2, including zoning ordinances, subdivision ordinances, ~~and~~or unified development ~~ordinances~~ ordinances, shall not be applicable or enforceable without the written consent of the owner with regard to a multi-phased development ~~as defined in G.S. 153A-344.1(b)(7).~~as provided in this subsection. A multi-phased development shall be vested for the entire development with the ~~zoning ordinances, subdivision ordinances, and unified development ordinances~~land development regulations then in place at the time ~~a site plan approval is granted for the initial phase of the multi-phased development.~~the applicable application for a development permit is submitted in accordance with G.S. 143-755 prior to the change in the land development regulations, so long as the permit remains valid and unexpired pursuant to law. A right which has been vested as provided for in this subsection shall remain vested for a period of seven years from the time a site plan approval is granted for the initial phase of the multi-phased development. For purposes of this subsection, a "multi-phased development" shall mean a development containing 25 acres or more that (i) is submitted for development permit approval to occur in more than one phase and (ii) is subject to a master development plan with committed elements, showing the type and intensity of use of each phase."

SECTION 8. G.S. 153A-344.1 reads as rewritten:

"**§ 153A-344.1. Vesting rights.**

...

(b) Definitions.

...

~~(7) "Multi-phased development" means a development containing 100 acres or more that (i) is submitted for site plan approval for construction to occur in more than one phase and (ii) is subject to a master development plan with committed elements, including a requirement to offer land for public use as a condition of its master development plan approval.~~

...."

SECTION 9. G.S. 160A-384 reads as rewritten:

"**§ 160A-384. Method of procedure.**

(a) ~~The~~Subject to the limitations of this Chapter, the city council shall provide for the manner in which zoning regulations and restrictions and the boundaries of zoning districts shall be determined, established and enforced, and from time to time amended, supplemented or changed, in accordance with the provisions of this Article. The procedures adopted pursuant to this section shall provide that whenever there is a zoning map amendment, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of a public hearing on the proposed amendment by first class mail at the last addresses listed for such owners on the county tax abstracts. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the public hearing. No zoning map amendment shall be initiated nor shall it be enforceable without the written consent of all property owners whose

property is the subject of the zoning map amendment, unless the zoning map amendment is initiated by the city. ~~Except for a city-initiated zoning map amendment, when an application is filed to request a zoning map amendment and that application is not made by the owner of the parcel of land to which the amendment would apply, the applicant shall certify to the city council that the owner of the parcel of land as shown on the county tax listing has received actual notice of the proposed amendment and a copy of the notice of public hearing. The person or persons required to provide notice shall certify to the city council that proper notice has been provided in fact, and such certificate shall be deemed conclusive in the absence of fraud.~~

(b) The first class mail notice required under subsection (a) of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the city elects to use the expanded published notice provided for in this subsection. In this instance, a city may elect to either make the mailed notice provided for in subsection (a) of this section or may as an alternative elect to publish notice of the hearing as required by G.S. 160A-364, but provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified according to the provisions of subsection (a) of this section.

~~(b1) Actual notice of the proposed amendment and a copy of the notice of public hearing required under subsection (a) of this section shall be by any manner permitted under G.S. 1A-1, Rule 4(j). If notice cannot with due diligence be achieved by personal delivery, registered or certified mail, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2), notice may be given by publication consistent with G.S. 1A-1, Rule 4(j1). This subsection applies only to an application to request a zoning map amendment where the application is not made by the owner of the parcel of land to which the amendment would apply. This subsection does not apply to a city-initiated zoning map amendment.~~

(c) When a zoning map amendment is proposed, the city shall prominently post a notice of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right-of-way. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the city shall post sufficient notices to provide reasonable notice to interested persons."

SECTION 10. G.S. 153A-343 reads as rewritten:

"**§ 153A-343. Method of procedure.**

(a) The board of commissioners shall, in accordance with the provisions of this Article, provide for the manner in which zoning regulations and restrictions and the boundaries of zoning districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. The procedures adopted pursuant to this section shall provide that whenever there is a zoning map amendment, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of a public hearing on the proposed amendment by first class mail at the last addresses listed for such owners on the county tax abstracts. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the public hearing. No zoning map amendment shall be initiated nor shall it be enforceable without the written consent of all property owners whose property is the subject of the zoning map amendment, unless the zoning map amendment is initiated by the county. ~~Except for a county-initiated zoning map amendment, when an application is filed to request a zoning map amendment and that application is not made by the owner of the parcel of land to which the amendment would apply, the applicant shall certify to the board of commissioners that the owner of the parcel of land as shown on the county tax listing has received actual notice of the proposed amendment and a copy of the notice of public hearing. The person or persons~~

~~required to provide notice shall certify to the board of commissioners that proper notice has been provided in fact, and such certificate shall be deemed conclusive in the absence of fraud.~~

(b) The first class mail notice required under subsection (a) of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the county elects to use the expanded published notice provided for in this subsection. In this instance, a county may elect to either make the mailed notice provided for in subsection (a) of this section or may as an alternative elect to publish notice of the hearings required by G.S. 153A-323, but provided that each of the advertisements shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified according to the provisions of subsection (a) of this section.

~~(b1) Actual notice of the proposed amendment and a copy of the notice of public hearing required under subsection (a) of this section shall be by any manner permitted under G.S. 1A-1, Rule 4(j). If notice cannot with due diligence be achieved by personal delivery, registered or certified mail, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2), notice may be given by publication consistent with G.S. 1A-1, Rule 4(j1). This subsection applies only to an application to request a zoning map amendment where the application is not made by the owner of the parcel of land to which the amendment would apply. This subsection does not apply to a county-initiated zoning map amendment.~~

(c) Repealed by Session Laws 2005-418, s. 4, effective January 1, 2006.

(d) When a zoning map amendment is proposed, the county shall prominently post a notice of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right-of-way. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the county shall post sufficient notices to provide reasonable notice to interested persons."

SECTION 11. Part 3 of Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-393.1 Civil action for declaratory relief, injunctive relief, or other remedies.**

(a) Action for Relief Authorized. – Any landowner, permit applicant, or tenant aggrieved by a final and binding decision of an administrative official involving the application or enforcement of a city or county zoning or unified development ordinance or any other ordinance that regulates land use or development may, in lieu of an appeal to a board of adjustment prescribed by Chapter 153A or Chapter 160A of the General Statutes, maintain an original action in superior court for declaratory relief, injunctive relief, damages, or any other remedies provided by law or equity, where any of the following claims or defenses are asserted by the aggrieved party:

(1) That the ordinance, either on its face or as applied by the final decision of the administrative official, violates the United States or North Carolina Constitutions.

(2) That the ordinance or the final decision of the administrative official is invalid or unenforceable on grounds of ultra vires or preemption, or is otherwise in excess of authority.

(3) That the ordinance or the final decision of the administrative official violates common law or statutory vested rights of the aggrieved party.

(4) That the ordinance or final decision of the administrative official constitutes a taking of property.

In any action brought pursuant to this subsection, and notwithstanding G.S. 160A-388(b1), the aggrieved party may, in addition to the above, join any other available claims or defenses, arising from or relating to the final decision of the administrative official, including, without

limitation, claims or defenses relating to the interpretation or application of the ordinance. The burden of proof to show a violation of a city or county zoning or unified development ordinance or any other ordinance that regulates land-use or development rests with the party seeking to enforce such ordinance.

(b) Time for Commencement of Action. – Any action brought pursuant to this section shall be commenced within one year after the date on which written notice of the final decision is delivered to the aggrieved party by personal delivery, electronic mail, or by first-class mail.

(c) Availability of Alternative Remedy. – Any person entitled to maintain an action under this section may elect instead to present any of the claims or defenses set forth in subdivisions (a)(1) through (a)(3) of this section by way of appeal to the board of adjustment as provided in G.S. 160A-388(b1) and may thereafter appeal from an adverse decision by the board of adjustment as provided in G.S. 160A-393. Once an appeal setting forth such claims or defenses has been filed pursuant to G.S. 160A-388(b1)(1) and its related hearing before the board of adjustment commenced, a party may not thereafter bring an action as authorized by this section, provided, however, that nothing herein shall be deemed to preclude a party from maintaining an action under federal law or a takings claim.

(d) Notice to Abutting Landowners. – A person who commences an action pursuant to this section shall notify by first-class mail the owners of all parcels of land abutting the parcel of land that is the subject of the complaint that such action has been filed. The notice shall include a copy of the complaint. The party bringing the civil action may rely on the county tax listings to determine owners of property entitled to mailed notice and the applicable mailing addresses. The notice shall be mailed no later than 30 days after the commencement of the action, unless an extension, not to extend 30 days, is granted pursuant to Rule 6(b) of the North Carolina Rules of Civil Procedure."

SECTION 12. G.S. 160A-364.1 reads as rewritten:

"§ 160A-364.1. Statute of limitations.

...

(c) Nothing in this section or in G.S. 1-54(10) or G.S. 1-54.1 shall bar a party in an action involving the enforcement of a zoning or unified development ordinance or in an action authorized by G.S. 160A-393.1 from raising as a claim or defense ~~to such enforcement action~~in such proceedings the invalidity of the ordinance. Nothing in this section or in G.S. 1-54(10) or G.S. 1-54.1 shall bar a party who files a timely appeal from an order, requirement, decision, or determination made by an administrative official contending that such party is in violation of a zoning or unified development ordinance from raising in the appeal the invalidity of such ordinance as a defense to such order, requirement, decision, or determination. A party in an enforcement action or appeal may not assert the invalidity of the ordinance on the basis of an alleged defect in the adoption process unless the defense is formally raised within three years of the adoption of the challenged ordinance.

...."

SECTION 13. G.S. 160A-393 reads as rewritten:

"§ 160A-393. Appeals in the nature of certiorari.

...

(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)~~(i) of this section. Except that the court ~~may, in its discretion,~~shall 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~~petition raises any of the following ~~issues:~~issues, in which case the rules of discovery set forth in the North Carolina Rules of Civil Procedure shall apply to the supplementation of the record of said issues:

(1) Whether a petitioner or intervenor has standing.

(2) Whether, as a result of impermissible conflict as described in G.S. 160A-388(e)(2), 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.~~section, including an error related to the claims or defenses in subdivision (k)(4) 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 one set forth in sub-subdivisions a. through d. of subdivision (1) of this subsection, including whether the decision-making board erred in interpreting an ordinance, the court shall review that issue de novo. The court shall consider the interpretation of the decision-making board, but is not bound by that interpretation, and may freely substitute its judgment as appropriate.

(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) except for the items noted in sub-subdivisions a., b., and c. of this subdivision that are conclusively incompetent, 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~~shall, regardless of the lack of a timely objection, 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.

(4) The petitioner may assert and the court shall determine de novo, based on the record, as supplemented in accordance with subsection (j) of this section, any of the following claims or defenses:

a. That the ordinance, either on its face or as applied by the final decision of the administrative official, violates the United States or North Carolina Constitutions.

b. That the ordinance or the final decision of the administrative official is invalid or unenforceable on grounds of ultra vires or preemption, or is otherwise in excess of authority.

c. That the ordinance or the final decision of the administrative official violates common law or statutory vested rights of the petitioner.

(5) In order to raise any claim or defense listed in subdivision (4) of this subsection, to the extent that they do not involve some act of the decision-making board itself or any of its members, the claim or defense shall be made known to the decision-making board at the hearing.

(*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~~shall remand with instructions that the permit be issued, subject to ~~reasonable and appropriate conditions.~~any conditions expressly consented to by the permit applicant as part of the application or during the board of adjustment appeal or writ of certiorari appeal.

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.

c. If the court concludes that a zoning board decision upholding a zoning enforcement action was not supported by substantial competent evidence or was otherwise based on an error of law, the court shall reverse the decision.

...."

SECTION 14. Part 3 of Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-393.2. No estoppel effect when challenging unlawful conditions.**

A city or county may not assert before a board of adjustment or in any civil action the defenses of estoppel, waiver, release, acceptance, or other similar grounds as a result of actions by the landowner or permit applicant to proceed with development authorized by a rezoning or a development permit as defined in G.S. 160A-400.21 while said landowner or permit applicant challenges conditions imposed on said development."

SECTION 15. G.S. 6-21.7 reads as rewritten:

"**§ 6-21.7. Attorneys' fees; cities or counties acting outside the scope of their authority.**

In any action in which a city or county is a party, upon a finding by the court that the city or county ~~acted outside the scope of its legal authority,~~violated a statute or case law setting forth unambiguous limits on its authority, the court ~~may~~ shall award reasonable attorneys' fees and costs to the party who successfully challenged the city's or county's ~~action, provided that if the court also finds that the city's or county's action was an abuse of its discretion, the court shall award attorneys' fees and costs.~~action. In any action in which a city or county is a party, upon finding by the court that the city or county took action inconsistent with, or in violation of, G.S. 160A-360.1, 153A-320.1, or 143-755, the court shall award reasonable attorneys' fees and costs to the party who successfully challenged the local government's failure to comply with any of those provisions. In all other matters, the court may award reasonable attorneys' fees and costs to the prevailing private litigant. For purposes of this section, "unambiguous" means that the limits of authority are not reasonably susceptible to multiple constructions."

SECTION 16. G.S. 160A-372 reads as rewritten:

"**§ 160A-372. Contents and requirements of ordinance.**

...

(c) The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with municipal plans, policies, and standards. To assure compliance with these and other ordinance requirements, the ordinance may provide for performance guarantees ~~to assure successful completion of required improvements~~either at the time the plat is recorded as provided in subsection (b) of this ~~section.~~section or at a time subsequent to the recording of the plat to assure successful completion of required improvements. In the event a city fails to adopt an ordinance setting forth performance guarantees in compliance with subsection (g) of this section, a city shall not be authorized to require the successful completion of required improvements prior to a plat being recorded. For any specific development, the type and term of performance ~~guarantee~~guarantee, or any extension of the performance guarantee, shall be at the election of the ~~developer.~~developer provided that any performance guarantee or extension be available to assure the successful completion of improvements for which it is required. The developer shall be allowed, without limitation, to reduce the amount of the performance guarantee to reflect only the remaining incomplete items.

...

(g) For purposes of this section, all of the following shall apply with respect to performance guarantees:

(1) The term "performance guarantee" shall mean any of the following forms of guarantee:

a. Surety bond issued by any company authorized to do business in this State.

b. Letter of credit issued by any financial institution licensed to do business in this State.

c. Other form of guarantee that provides equivalent security to a surety bond or letter of credit.

(2) The performance guarantee shall be returned or released, as appropriate, in a timely manner upon the acknowledgement by the city or county that the improvements for which the performance guarantee is being required are

complete. If the improvements are not complete and the current performance guarantee is expiring, the performance guarantee shall be extended, or a new performance guarantee issued, for an additional period until such required improvements are complete. A developer shall demonstrate reasonable, good faith progress toward completion of the required improvements that are the subject of the performance guarantee or any extension. The form of any extension shall remain at the election of the developer.

(3) The amount of the performance guarantee shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of completion at the time the performance guarantee is issued. Any extension of the performance guarantee necessary to complete required improvements shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of completion of the remaining incomplete improvements still outstanding at the time the extension is obtained. At the election of the developer, one hundred twenty-five percent (125%) of the reasonably estimated cost of completion may be conclusively determined by a report provided under seal by an architect licensed under the provisions of Chapter 83A of the General Statutes or an engineer registered under the provisions of Chapter 89C of the General Statutes. This report may contain unit pricing information provided by a general contractor, licensed under Chapter 87 of the General Statutes, or any other competent source that the architect or engineer certifies, under seal, as accurate. The reasonably estimated cost of completion shall include all costs of inflation and costs of administration and enforcement, no matter how such related fees or charges are denominated.

(4) The performance guarantee shall only be used for completion of the required improvements and not for repairs or maintenance after completion.

(5) The developer shall have the option to post one form of a performance guarantee as provided for in subdivision (1) of this subsection, in lieu of multiple bonds, letters of credit or other equivalent security, for all development matters related to the same project requiring performance guarantees, including, without limitation, subdivision, erosion control, and stormwater.

(6) No person shall have or may claim any rights under or to any performance guarantee provided pursuant to this subsection or in the proceeds of any such performance guarantee other than the following:

a. The local government to whom such performance guarantee is provided.

b. The developer at whose request or for whose benefit such performance guarantee is given.

c. The person or entity issuing or providing such performance guarantee at the request of or for the benefit of the developer."

SECTION 17. G.S. 153A-331 reads as rewritten:

"**§ 153A-331. Contents and requirements of ordinance.**

...

(e) The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with county plans, policies, and standards. To assure compliance with these and other ordinance requirements, the ordinance may provide for performance guarantees ~~to assure successful completion of required improvements~~either at the time the plat is recorded as provided in subsection (b) of this ~~section.~~section or at a time subsequent to the recording of the plat to assure successful completion of required improvements. In the event a county fails to adopt an ordinance setting

forth performance guarantees in compliance with subsection (g) of this section, a county shall not be authorized to require the successful completion of required improvements prior to a plat being recorded. For any specific development, the type and term of performance ~~guarantee from the range specified by the county~~ guarantee, or any extension of the performance guarantee, shall be at the election of the ~~developer.~~developer, provided that any performance guarantee or extension be available to assure the successful completion of the improvements for which it is required. The developer shall be allowed, without limitation, to reduce the amount of the performance guarantee to reflect only the remaining incomplete items.

...."

SECTION 18. G.S. 160A-381 reads as rewritten:

"**§ 160A-381. Grant of power.**

...

(c) The regulations may also provide that the board of adjustment, the planning board, or the city council may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Conditions and safeguards imposed under this subsection shall not include requirements for which the city does not have authority under statute to regulate nor requirements for which the courts have held to be unenforceable if imposed directly by the ~~city.~~city, including, without limitation, taxes, impact fees, building design elements within the scope of subsection (h) of this section not voluntarily offered by the petitioner, street improvements in excess of those allowed in G.S. 160A-372, driveway-related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or use of land. When deciding special use permits or conditional use permits, the city council or planning board shall follow quasi-judicial procedures. Notice of hearings on special or conditional use permit applications shall be as provided in G.S. 160A-388(a2). No vote greater than a majority vote shall be required for the city council or planning board to issue such permits. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite majority. Every such decision of the city council or planning board shall be subject to review of the superior court in the nature of certiorari in accordance with G.S. 160A-388.

Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made of recreational space and facilities. Notwithstanding anything to the contrary, a development permit authorized pursuant to this subsection shall not be denied on the basis that existing public facilities are inadequate to serve the property described in the permit application regardless of the type of use or development of said property.

...."

SECTION 19. G.S. 153A-340 reads as rewritten:

"**§ 153A-340. Grant of power.**

...

(c1) The regulations may also provide that the board of adjustment, the planning board, or the board of commissioners may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Conditions and safeguards imposed under this subsection shall not include requirements for which the county does not have authority under statute to regulate nor requirements for which the courts have held to be unenforceable if imposed directly by the ~~county.~~county, including, without limitation, taxes, impact fees, building design elements within the scope of subsection (*l*) of this section not voluntarily offered by the petitioner, street

improvements in excess of those allowed in G.S. 160A-372, driveway-related improvements in excess of those allowed in G.S. 136-18(29), or other unauthorized limitations on the development or use of land. Where appropriate, the conditions may include requirements that street and utility rights-of-way be dedicated to the public and that recreational space be provided. Notwithstanding anything to the contrary, a development permit authorized pursuant to this subsection shall not be denied on the basis that existing public facilities are inadequate to serve the property described in the permit application regardless of the type of use or development of said property. When deciding special use permits or conditional use permits, the board of county commissioners or planning board shall follow quasi-judicial procedures. Notice of hearings on special or conditional use permit applications shall be as provided in G.S. 160A-388(a2). No vote greater than a majority vote shall be required for the board of county commissioners or planning board to issue such permits. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite majority. Every such decision of the board of county commissioners or planning board shall be subject to review of the superior court in the nature of certiorari consistent with G.S. 160A-388.

...."

SECTION 20. G.S. 153A-352 reads as rewritten:

"**§ 153A-352. Duties and responsibilities.**

...

(b) Except as provided in G.S. 153A-364, a county may not adopt a new local ordinance or resolution or any other policy or enforce an existing local ordinance, resolution, or policy that requires regular, routine inspections of buildings or structures constructed in compliance with the North Carolina Residential Code for One- and Two-Family Dwellings in addition to the specific inspections required by the North Carolina Building Code without first obtaining approval from the North Carolina Building Code Council. The North Carolina Building Code Council shall review all applications for additional inspections requested by a county and shall, in a reasonable manner, approve or disapprove the additional inspections. This subsection does not limit the authority of the county to require inspections upon unforeseen or unique circumstances that require immediate action. In performing the specific inspections required by the North Carolina Building Code, the inspector shall conduct all inspections requested by the permit holder for each scheduled inspection visit. For each requested inspection, the inspector shall inform the permit holder of instances in which the work inspected is incomplete or otherwise fails to meet the requirements of the North Carolina Residential Code for One- and Two-Family Dwellings.

...."

SECTION 21. G.S. 160A-412 reads as rewritten:

"**§ 160A-412. Duties and responsibilities.**

...

(b) Except as provided in G.S. 160A-424, a city may not adopt a new local ordinance or resolution or any other policy or enforce an existing local ordinance, resolution, or policy that requires regular, routine inspections of buildings or structures constructed in compliance with the North Carolina Residential Code for One- and Two-Family Dwellings in addition to the specific inspections required by the North Carolina Building Code without first obtaining approval from the North Carolina Building Code Council. The North Carolina Building Code Council shall review all applications for additional inspections requested by a city and shall, in a reasonable manner, approve or disapprove the additional inspections. This subsection does not limit the authority of the city to require inspections upon unforeseen or unique circumstances that require immediate action. In performing the specific inspections required by the North Carolina Building Code, the inspector shall conduct all inspections requested by the permit holder for each scheduled inspection visit. For each requested inspection, the inspector

shall inform the permit holder of instances in which the work inspected is incomplete or otherwise fails to meet the requirements of the North Carolina Residential Code for One- and Two-Family Dwellings.

...."

SECTION 22. G.S. 160A-37 reads as rewritten:

"**§ 160A-307. Curb cut regulations.**

A city may by ordinance regulate the size, location, direction of traffic flow, and manner of construction of driveway connections into any street or alley. The ordinance may require the construction or reimbursement of the cost of construction and public dedication of medians, acceleration and deceleration lanes, and traffic storage lanes for driveway connections into any street or alley if:

(1) The need for such improvements is reasonably attributable to the traffic using the driveway; and

(2) The improvements serve the traffic of the driveway.

No street or alley under the control of the Department of Transportation may be improved without the consent of the Department of Transportation. ~~However, if there is a conflict between the written driveway regulations of the Department of Transportation and the related driveway improvements required by the city, the more stringent requirement shall apply.~~A city may not require the applicant to acquire right-of-way from property not owned by the applicant."

SECTION 23. G.S. 160A-385(c), as enacted by Section 5 of this act, and G.S. 153A-344(b1), as enacted by Section 7 of this act, are effective with respect to phased development approvals that are valid and unexpired on the effective date of this act. The remainder of this act is effective when it becomes law and applies to permits previously issued that remain valid and unexpired on the date this act becomes law and to permit actions filed, actions filed in court, and claims and defenses asserted on or after that date.

Attachment 8

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H I

HOUSE BILL 507
PROPOSED COMMITTEE SUBSTITUTE H507-CSST-13 [v.3]
04/18/2017 03:34:49 PM

Short Title: Land-Use Regulatory Changes. (Publi

Sponsors:

Referred to:

March 29, 2017

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE LAND-USE REGULATORY LAWS OF THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-755 reads as rewritten:

"**§ 143-755. Permit choice.**

(a) If a development permit applicant submits a permit application for any type of development and a rule or ordinance ~~changes~~is amended, including an amendment to a zoning map or text of any applicable land development regulation or a change to a State agency regulation affecting the development of property, between the time the development permit application was submitted and a development permit decision is made, the development permit applicant may choose which adopted version of the rule or ordinance will apply to the permit. If the development permit applicant opts for the version of the rule or ordinance applicable at the time of the permit application, the development permit applicant shall not be required to wait for the outcome of the pending rule or ordinance.

(b) This section applies to all development permits issued by the State and by local governments.

(c) Repealed by Session Laws 2015 246, s. 5(a), effective September 23, 2015.

(d) Any person aggrieved by the failure of a State agency or local government to comply with this section or G.S. 160A-360.1 or G.S. 153A-320.1 may apply to the appropriate division of the General Court of Justice for an order compelling compliance by the offending agency, and the court shall have jurisdiction to issue that order. Actions brought pursuant to any of these sections shall be set down for immediate hearing, and subsequent proceedings in those actions shall be accorded priority by the trial and appellate courts. If any State agency or local government takes action that is inconsistent with, or in violation of, this section, the development permit applicant shall be entitled to any damages that can be demonstrated as a result of the State agency or local government's actions.

(e) For purposes of this section, the following definitions shall apply:

(1) Development. – The planning for or carrying out of a building activity, the making of a material change in the use or appearance of any structure or property, or the dividing of land into two or more parcels, including the planning for and all other activity customarily associated with it.

(2) Development permit. – A building permit, zoning permit, subdivision approval, special or conditional use permit, variance, site plan, or any other official action of State or local government having the effect of permitting the development of property.

(3) Land development regulation. – Ordinances and regulations enacted by the State or the appropriate governing body for the regulation of any aspect of development and includes zoning, subdivision, or any other land development ordinances."

SECTION 2. G.S. 160A-360.1 reads as rewritten:

"**§ 160A-360.1. Permit choice.**

If a rule or ~~ordinance~~ordinance, including an amendment to a zoning map or text of any applicable land development regulation, changes between the time a development permit application is submitted and a development permit decision is made, then G.S. 143-755 shall apply."

SECTION 3. G.S. 153A-320.1 reads as rewritten:

"**§ 153A-320.1. Permit choice.**

If a rule or ~~ordinance~~ordinance, including an amendment to a zoning map or text of any applicable land development regulation, changes between the time a development permit application is submitted and a development permit decision is made, then G.S. 143-755 shall apply."

SECTION 4. G.S. 160A-385 reads as rewritten:

"**§ 160A-385. Changes.**

(a) Citizen Comments. –

(1) ~~Zoning~~ Subject to the limitations in this Chapter, zoning ordinances may from time to time be amended, supplemented, changed, modified or repealed. If any resident or property owner in the city submits a written statement regarding a proposed amendment, modification, or repeal to a zoning ~~ordinance~~ordinance, including a zoning map or text, that has been properly initiated as provided in G.S. 160A-384, to the clerk to the board at least two business days prior to the proposed vote on such change, the clerk to the board shall deliver such written statement to the city council. If the proposed change is the subject of a quasi-judicial proceeding under G.S. 160A-388, or any other statute, the clerk shall provide only the names and addresses of the individuals providing written comment, and the provision of such names and addresses to all members of the board shall not disqualify any member of the board from voting.

(2), (3) Repealed by Session Laws 2015-160, s. 1, effective August 1, 2015, and applicable to zoning ordinance changes initiated on or after that date.

(b) Amendments in land development regulations, including zoning ~~ordinances~~ordinances, subdivision ordinances, or unified development ordinances, shall not be applicable or enforceable without the written consent of the owner with regard to ~~buildings and uses for which either (i) building permits have been issued pursuant to G.S. 160A-417 prior to the enactment of the ordinance making the change or changes so long as the permits remain valid and unexpired pursuant to G.S. 160A-418 and unrevoked pursuant to G.S. 160A-422 or (ii)~~(i) uses of buildings or land, or subdivisions of land, for which a development permit has been issued that authorizes the use or subdivision of land or (ii) buildings, or uses thereof, for which a building permit has been issued pursuant to this Chapter. Upon issuance of a development permit, the statutory vesting granted by this subsection commences at the time the application for the development permit is submitted in accordance with G.S. 143-755 prior to the change in the land development regulations so long as the permit remains valid and unexpired pursuant to law. Unless otherwise specified by statute, local development permits expire one year after issuance unless work authorized by such permit has substantially commenced. Amendments shall also not be applicable or enforceable without the written consent of the owner if a vested right has been established pursuant to G.S. 160A-385.1 and such vested right remains valid and unexpired pursuant ~~to G.S. 160A-385.1.~~thereto or if a

vested right is established by the terms of a development agreement authorized by Part 3D of this Article. The establishment of a vested right under one subsection does not preclude vesting under one or more other subsections or vesting by application of common law principles. A vested right, once established as provided for in this subsection, precludes any action by a city that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in the application, except where a change in State or federal law mandating local government enforcement occurs after the application is submitted that has a fundamental and retroactive effect on such development or use.

(c) Amendments in land development regulations including zoning ordinances, subdivision ordinances, ~~and~~or unified development ~~ordinances~~ ordinances, shall not be applicable or enforceable without the written consent of the owner with regard to a multi-phased development as ~~defined in G.S. 160A-385.1(b)(7).~~provided for in this subsection. A multi-phased development shall be vested for the entire development with the ~~zoning ordinances, subdivision ordinances, and unified development ordinances~~land development regulations then in place at the time ~~a site plan approval is granted for the initial phase of the multi-phased development.~~the applicable application for a development permitis submitted in accordance with G.S. 143-755 prior to the change in the land development regulations, so long as the permit remains valid and unexpired pursuant to law. A right which has been vested as provided for in this subsection shall remain vested for a period of seven years from the time a site plan approval is granted for the initial phase of the multi-phased development. For purposes of this subsection, a "multi-phased development" shall mean a development containing 25 acres or more that (i) is submitted for development permit approval to occur in more than one phase and (ii) is subject to a master development plan with committed elements, showing the type and intensity of use of each phase.

(d) For purposes of this section, the definitions in G.S. 143-755 shall apply."

SECTION 5. G.S. 160A-385.1 reads as rewritten:

"**§ 160A-385.1. Vested rights.**

…

(b) Definitions. –

…

~~(7) "Multi-phased development" means a development containing 100 acres or more that (i) is submitted for site plan approval for construction to occur in more than one phase and (ii) is subject to a master development plan with committed elements, including a requirement to offer land for public use as a condition of its master development plan approval.~~

…."

SECTION 6. G.S. 153A-344 reads as rewritten:

"**§ 153A-344. Planning board; zoning plan; certification to board of commissioners.**

…

(b) Amendments in land development regulations, including zoning ~~ordinances~~ordinances, subdivision ordinances, or unified development ordinances, shall not be applicable or enforceable without the written consent of the owner with regard to ~~buildings and uses for which either (i) building permits have been issued pursuant to G.S. 153A-357 prior to the enactment of the ordinance making the change or changes so long as the permits remain valid and unexpired pursuant to G.S. 153A-358 and unrevoked pursuant to G.S. 153A-362 or (ii)~~(i) uses of buildings or land, or subdivisions of land, for which a development permit has been issued that authorizes the use or subdivision of land or (ii) buildings, or uses thereof, for which a building permit has been issued pursuant to this Chapter. Upon issuance of a development permit, the statutory vesting granted by this subsection commences at the time the application for the development permit is submitted in accordance with G.S. 143-755 prior to the change in the land development regulations so long as the permit remains valid and

unexpired pursuant to law. Unless otherwise specified by statute, local development permits expire one year after issuance unless work authorized by such permit has substantially commenced. Amendments shall also not be applicable or enforceable without the written consent of the owner if a vested right has been established pursuant to G.S. 153A-344.1 and such vested right remains valid and unexpired pursuant ~~to G.S. 153A-344.1.~~thereto or if a vested right is established by the terms of a development agreement authorized by Part 3A of this Article. The establishment of a vested right under one subsection does not preclude vesting under one or more other subsections or vesting by application of common law principles. A vested right, once established as provided for in this subsection, precludes any action by a county that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in the application, except where a change in State or federal law mandating local government enforcement occurs after the application is submitted that has a fundamental and retroactive effect on such development or use.

(b1) Amendments in land development regulations, including zoning ordinances, subdivision ordinances, ~~and~~or unified development ~~ordinances~~ ordinances, shall not be applicable or enforceable without the written consent of the owner with regard to a multi-phased development ~~as defined in G.S. 153A-344.1(b)(7).~~as provided in this subsection. A multi-phased development shall be vested for the entire development with the ~~zoning ordinances, subdivision ordinances, and unified development ordinances~~land development regulations then in place at the time ~~a site plan approval is granted for the initial phase of the multi-phased development.~~the applicable application for a development permit is submitted in accordance with G.S. 143-755 prior to the change in the land development regulations, so long as the permit remains valid and unexpired pursuant to law. A right which has been vested as provided for in this subsection shall remain vested for a period of seven years from the time a site plan approval is granted for the initial phase of the multi-phased development. For purposes of this subsection, a "multi-phased development" shall mean a development containing 25 acres or more that (i) is submitted for development permit approval to occur in more than one phase and (ii) is subject to a master development plan with committed elements, showing the type and intensity of use of each phase.

(c) For purposes of this section, the definitions in G.S. 143-755 shall apply."

SECTION 7. G.S. 153A-344.1 reads as rewritten:

"§ 153A-344.1. Vesting rights.

…

(b) Definitions.

…

~~(7) "Multi-phased development" means a development containing 100 acres or more that (i) is submitted for site plan approval for construction to occur in more than one phase and (ii) is subject to a master development plan with committed elements, including a requirement to offer land for public use as a condition of its master development plan approval.~~

…."

SECTION 8. G.S. 160A-384 reads as rewritten:

"§ 160A-384. Method of procedure.

(a) ~~The~~Subject to the limitations of this Chapter, the city council shall provide for the manner in which zoning regulations and restrictions and the boundaries of zoning districts shall be determined, established and enforced, and from time to time amended, supplemented or changed, in accordance with the provisions of this Article. The procedures adopted pursuant to this section shall provide that whenever there is a zoning map amendment, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of a public hearing on the proposed amendment by first class mail at the last addresses listed for such

owners on the county tax abstracts. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the public hearing. No zoning map amendment shall be initiated nor shall it be enforceable without the written consent of all property owners whose property is the subject of the zoning map amendment, unless the zoning map amendment is initiated by the city. ~~Except for a city-initiated zoning map amendment, when an application is filed to request a zoning map amendment and that application is not made by the owner of the parcel of land to which the amendment would apply, the applicant shall certify to the city council that the owner of the parcel of land as shown on the county tax listing has received actual notice of the proposed amendment and a copy of the notice of public hearing. The person or persons required to provide notice shall certify to the city council that proper notice has been provided in fact, and such certificate shall be deemed conclusive in the absence of fraud.~~

(b) The first class mail notice required under subsection (a) of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the city elects to use the expanded published notice provided for in this subsection. In this instance, a city may elect to either make the mailed notice provided for in subsection (a) of this section or may as an alternative elect to publish notice of the hearing as required by G.S. 160A-364, but provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified according to the provisions of subsection (a) of this section.

~~(b1) Actual notice of the proposed amendment and a copy of the notice of public hearing required under subsection (a) of this section shall be by any manner permitted under G.S. 1A-1, Rule 4(j). If notice cannot with due diligence be achieved by personal delivery, registered or certified mail, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2), notice may be given by publication consistent with G.S. 1A-1, Rule 4(j1). This subsection applies only to an application to request a zoning map amendment where the application is not made by the owner of the parcel of land to which the amendment would apply. This subsection does not apply to a city-initiated zoning map amendment.~~

(c) When a zoning map amendment is proposed, the city shall prominently post a notice of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right-of-way. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the city shall post sufficient notices to provide reasonable notice to interested persons."

SECTION 9. G.S. 153A-343 reads as rewritten:

"**§ 153A-343. Method of procedure.**

(a) The board of commissioners shall, in accordance with the provisions of this Article, provide for the manner in which zoning regulations and restrictions and the boundaries of zoning districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. The procedures adopted pursuant to this section shall provide that whenever there is a zoning map amendment, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of a public hearing on the proposed amendment by first class mail at the last addresses listed for such owners on the county tax abstracts. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the public hearing. No zoning map amendment shall be initiated nor shall it be enforceable without the written consent of all property owners whose property is the subject of the zoning map amendment, unless the zoning map amendment is initiated by the county. ~~Except for a county-initiated zoning map amendment, when an application is filed to request a zoning map amendment and that application is not made by the owner of the parcel of land to which the~~

~~amendment would apply, the applicant shall certify to the board of commissioners that the owner of the parcel of land as shown on the county tax listing has received actual notice of the proposed amendment and a copy of the notice of public hearing. The person or persons required to provide notice shall certify to the board of commissioners that proper notice has been provided in fact, and such certificate shall be deemed conclusive in the absence of fraud.~~

(b) The first class mail notice required under subsection (a) of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the county elects to use the expanded published notice provided for in this subsection. In this instance, a county may elect to either make the mailed notice provided for in subsection (a) of this section or may as an alternative elect to publish notice of the hearings required by G.S. 153A-323, but provided that each of the advertisements shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified according to the provisions of subsection (a) of this section.

~~(b1) Actual notice of the proposed amendment and a copy of the notice of public hearing required under subsection (a) of this section shall be by any manner permitted under G.S. 1A-1, Rule 4(j). If notice cannot with due diligence be achieved by personal delivery, registered or certified mail, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2), notice may be given by publication consistent with G.S. 1A-1, Rule 4(j1). This subsection applies only to an application to request a zoning map amendment where the application is not made by the owner of the parcel of land to which the amendment would apply. This subsection does not apply to a county-initiated zoning map amendment.~~

(c) Repealed by Session Laws 2005-418, s. 4, effective January 1, 2006.

(d) When a zoning map amendment is proposed, the county shall prominently post a notice of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right-of-way. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the county shall post sufficient notices to provide reasonable notice to interested persons."

SECTION 10. Part 3 of Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-393.1 Civil action for declaratory relief, injunctive relief, or other remedies.**

(a) Action for Relief Authorized. – Any party who is either an owner of an interest in real property that is the subject matter of a local government enforcement action or a permit applicant, who is aggrieved by a final and binding decision of an administrative official involving the application or enforcement of a city or county zoning or unified development ordinance or any other ordinance that regulates land use or development may, in lieu of an appeal to a board of adjustment prescribed by Chapter 153A or Chapter 160A of the General Statutes, maintain an original action in superior court for declaratory relief, injunctive relief, damages, or any other remedies provided by law or equity, where any of the following claims or defenses are asserted by the aggrieved party:

(1) That the ordinance, either on its face or as applied by the final decision of the administrative official, violates the United States or North Carolina Constitutions.

(2) That the ordinance or the final decision of the administrative official is invalid or unenforceable on grounds of ultra vires or preemption, or is otherwise in excess of authority.

(3) That the ordinance or the final decision of the administrative official violates common law or statutory vested rights of the aggrieved party.

(4) That the ordinance or final decision of the administrative official constitutes a taking of property.

In any action brought pursuant to this subsection, and notwithstanding G.S. 160A-388(b1), the aggrieved party may, in addition to the above, join any other available claims or defenses, arising from or relating to the final decision of the administrative official, including, without limitation, claims or defenses relating to the interpretation or application of the ordinance. The burden of proof to show a violation of a city or county zoning or unified development ordinance or any other ordinance that regulates land-use or development rests with the party seeking to enforce such ordinance.

(b) Time for Commencement of Action. – Any action brought pursuant to this section shall be commenced within one year after the date on which written notice of the final decision is delivered to the aggrieved party by personal delivery, electronic mail, or by first-class mail.

(c) Availability of Alternative Remedy. – Any person entitled to maintain an action under this section may elect instead to present any of the claims or defenses set forth in subdivisions (a)(1) through (a)(3) of this section by way of appeal to the board of adjustment as provided in G.S. 160A-388(b1) and may thereafter appeal from an adverse decision by the board of adjustment as provided in G.S. 160A-393. Once an appeal setting forth such claims or defenses has been filed pursuant to G.S. 160A-388(b1)(1) and its related hearing before the board of adjustment commenced, a party may not thereafter bring an action as authorized by this section, provided, however, that nothing herein shall be deemed to preclude a party from maintaining an action under federal law or a takings claim.

(d) Notice to Abutting Landowners. – A person who commences an action pursuant to this section shall notify by first-class mail the owners of all parcels of land abutting the parcel of land that is the subject of the complaint that such action has been filed. The notice shall include a copy of the complaint. The party bringing the civil action may rely on the county tax listings to determine owners of property entitled to mailed notice and the applicable mailing addresses. The notice shall be mailed no later than 30 days after the commencement of the action, unless an extension, not to extend 30 days, is granted pursuant to Rule 6(b) of the North Carolina Rules of Civil Procedure.

(e) Determination of Issues Other Than Damages. – In any action brought pursuant to this section, a judge shall hear and determine any and all issues of fact or law raised by the pleadings or otherwise consented to other than the issue of damages which may be determined by a jury, if requested by any party."

SECTION 11. G.S. 160A-364.1 reads as rewritten:

"§ 160A-364.1. Statute of limitations.

...

(c) Nothing in this section or in G.S. 1-54(10) or G.S. 1-54.1 shall bar a party in an action involving the enforcement of a zoning or unified development ordinance or in an action authorized by G.S. 160A-393.1 from raising as a claim or defense ~~to such enforcement action~~in such proceedings the invalidity of the ordinance. Nothing in this section or in G.S. 1-54(10) or G.S. 1-54.1 shall bar a party who files a timely appeal from an order, requirement, decision, or determination made by an administrative official contending that such party is in violation of a zoning or unified development ordinance from raising in the appeal the invalidity of such ordinance as a defense to such order, requirement, decision, or determination. A party in an enforcement action or appeal may not assert the invalidity of the ordinance on the basis of an alleged defect in the adoption process unless the defense is formally raised within three years of the adoption of the challenged ordinance.

...."

SECTION 12. G.S. 160A-393 reads as rewritten:

"§ 160A-393. Appeals in the nature of certiorari.

...

(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)~~(i) of this section. Except that the court ~~may, in its discretion,~~shall 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~~petition raises any of the following ~~issues:~~issues, in which case the rules of discovery set forth in the North Carolina Rules of Civil Procedure shall apply to the supplementation of the record of said issues:

(1) Whether a petitioner or intervenor has standing.

(2) Whether, as a result of impermissible conflict as described in G.S. 160A-388(e)(2), 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.~~section, including an error related to the claims or defenses in subdivision (k)(4) 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 one set forth in sub-subdivisions a. through d. of subdivision (1) of this subsection, including whether the decision-making board erred in interpreting an ordinance, the court shall review that issue de novo. The court shall consider the interpretation of the decision-making board, but is not bound by that interpretation, and may freely substitute its judgment as appropriate.

(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) except for the items noted in sub-subdivisions a., b., and c. of this subdivision that are conclusively incompetent, 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~~shall, regardless of the lack of a timely objection, 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.

(4) The petitioner may assert and the court shall determine de novo, based on the record, as supplemented in accordance with subsection (j) of this section, any of the following claims or defenses:

a. That the ordinance, either on its face or as applied by the final decision of the administrative official, violates the United States or North Carolina Constitutions.

b. That the ordinance or the final decision of the administrative official is invalid or unenforceable on grounds of ultra vires or preemption, or is otherwise in excess of authority.

c. That the ordinance or the final decision of the administrative official violates common law or statutory vested rights of the petitioner.

(5) In order to raise any claim or defense listed in subdivision (4) of this subsection, to the extent that they do not involve some act of the decision-making board itself or any of its members, the claim or defense shall be made known to the decision-making board at the hearing.

(*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~~shall remand with instructions that the permit be issued, subject to ~~reasonable and appropriate conditions.~~any conditions expressly consented to by the permit applicant as part of the application or during the board of adjustment appeal or writ of certiorari appeal.

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.

c. If the court concludes that a zoning board decision upholding a zoning enforcement action was not supported by substantial competent evidence or was otherwise based on an error of law, the court shall reverse the decision.

…."

SECTION 13. Part 3 of Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-393.2. No estoppel effect when challenging development conditions.**

A city or county may not assert before a board of adjustment or in any civil action the defenses of estoppel, waiver, release, acceptance, or other similar grounds as a result of actions by the landowner or permit applicant to proceed with development authorized by a rezoning or a development permit as defined in G.S. 160A-400.21 while said landowner or permit applicant challenges conditions imposed on said development."

SECTION 14. G.S. 6-21.7 reads as rewritten:

"**§ 6-21.7. Attorneys' fees; cities or counties acting outside the scope of their authority.**

In any action in which a city or county is a party, upon a finding by the court that the city or county ~~acted outside the scope of its legal authority,~~violated a statute or case law setting forth unambiguous limits on its authority, the court ~~may~~ shall award reasonable attorneys' fees and costs to the party who successfully challenged the city's or county's ~~action, provided that if the court also finds that the city's or county's action was an abuse of its discretion, the court shall award attorneys' fees and costs.~~action. In any action in which a city or county is a party, upon finding by the court that the city or county took action inconsistent with, or in violation of, G.S. 160A-360.1, 153A-320.1, or 143-755, the court shall award reasonable attorneys' fees and costs to the party who successfully challenged the local government's failure to comply with any of those provisions. In all other matters, the court may award reasonable attorneys' fees and costs to the prevailing private litigant. For purposes of this section, "unambiguous" means that the limits of authority are not reasonably susceptible to multiple constructions."

SECTION 15. G.S. 160A-372 reads as rewritten:

"**§ 160A-372. Contents and requirements of ordinance.**

…

(c) The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with municipal plans, policies, and standards. To assure compliance with these and other ordinance requirements, the ordinance may provide for performance guarantees ~~to assure successful completion of required improvements~~either at the time the plat is recorded as provided in subsection (b) of this ~~section.~~section or at a time subsequent to the recording of the plat to assure successful completion of required improvements. In the event a city fails to adopt an ordinance setting forth performance guarantees in compliance with subsection (g) of this section, a city shall not be authorized to require the successful completion of required improvements prior to a plat being recorded. For any specific development, the type and term of performance ~~guarantee~~guarantee, or any extension of the performance guarantee, shall be at the election of the ~~developer.~~developer provided that any performance guarantee or extension be available to assure the successful completion of improvements for which it is required. The developer shall be allowed, without limitation, to reduce the amount of the performance guarantee to reflect only the remaining incomplete items.

…

(g) For purposes of this section, all of the following shall apply with respect to performance guarantees:

(1) The term "performance guarantee" shall mean any of the following forms of guarantee:

a. Surety bond issued by any company authorized to do business in this State.
b. Letter of credit issued by any financial institution licensed to do business in this State.
c. Other form of guarantee that provides equivalent security to a surety bond or letter of credit.

(2) The performance guarantee shall be returned or released, as appropriate, in a timely manner upon the acknowledgement by the city or county that the improvements for which the performance guarantee is being required are complete. If the improvements are not complete and the current performance guarantee is expiring, the performance guarantee shall be extended, or a new performance guarantee issued, for an additional period until such required improvements are complete. A developer shall demonstrate reasonable, good faith progress toward completion of the required improvements that are the subject of the performance guarantee or any extension. The form of any extension shall remain at the election of the developer.

(3) The amount of the performance guarantee shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of completion at the time the performance guarantee is issued. Any extension of the performance guarantee necessary to complete required improvements shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of completion of the remaining incomplete improvements still outstanding at the time the extension is obtained. At the election of the developer, one hundred twenty-five percent (125%) of the reasonably estimated cost of completion may be conclusively determined by a report provided under seal by an architect licensed under the provisions of Chapter 83A of the General Statutes or an engineer registered under the provisions of Chapter 89C of the General Statutes. This report may contain unit pricing information provided by a general contractor, licensed under Chapter 87 of the General Statutes, or any other competent source that the architect or engineer certifies, under seal, as accurate. The reasonably estimated cost of completion shall include all costs of inflation and costs of administration and enforcement, no matter how such related fees or charges are denominated.

(4) The performance guarantee shall only be used for completion of the required improvements and not for repairs or maintenance after completion.

(5) The developer shall have the option to post one form of a performance guarantee as provided for in subdivision (1) of this subsection, in lieu of multiple bonds, letters of credit or other equivalent security, for all development matters related to the same project requiring performance guarantees, including, without limitation, subdivision, erosion control, and stormwater.

(6) No person shall have or may claim any rights under or to any performance guarantee provided pursuant to this subsection or in the proceeds of any such performance guarantee other than the following:
a. The local government to whom such performance guarantee is provided.
b. The developer at whose request or for whose benefit such performance guarantee is given.
c. The person or entity issuing or providing such performance guarantee at the request of or for the benefit of the developer."

SECTION 16. G.S. 153A-331 reads as rewritten:

"**§ 153A-331. Contents and requirements of ordinance.**

…

(e) The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with county plans, policies, and standards. To assure compliance with these and other ordinance requirements, the ordinance may provide for performance guarantees ~~to assure successful completion of required improvements~~either at the time the plat is recorded as provided in subsection (b) of this ~~section.~~section or at a time subsequent to the recording of the plat to assure successful completion of required improvements. In the event a county fails to adopt an ordinance setting forth performance guarantees in compliance with subsection (g) of this section, a county shall not be authorized to require the successful completion of required improvements prior to a plat being recorded. For any specific development, the type and term of performance ~~guarantee from the range specified by the county~~ guarantee, or any extension of the performance guarantee, shall be at the election of the ~~developer.~~developer, provided that any performance guarantee or extension be available to assure the successful completion of the improvements for which it is required. The developer shall be allowed, without limitation, to reduce the amount of the performance guarantee to reflect only the remaining incomplete items.

…."

SECTION 17. G.S. 160A-381 reads as rewritten:

"**§ 160A-381. Grant of power.**

…

(c) The regulations may also provide that the board of adjustment, the planning board, or the city council may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Conditions and safeguards imposed under this subsection shall not include requirements for which the city does not have authority under statute to regulate nor requirements for which the courts have held to be unenforceable if imposed directly by the ~~city.~~city, including, without limitation, taxes, impact fees, building design elements within the scope of subsection (h) of this section not voluntarily offered by the petitioner, street improvements in excess of those allowed in G.S. 160A-372, driveway-related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or use of land. When deciding special use permits or conditional use permits, the city council or planning board shall follow quasi-judicial procedures. Notice of hearings on special or conditional use permit applications shall be as provided in G.S. 160A-388(a2). No vote greater than a majority vote shall be required for the city council or planning board to issue such permits. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite majority. Every such decision of the city council or planning board shall be subject to review of the superior court in the nature of certiorari in accordance with G.S. 160A-388.

Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made of recreational space and facilities. Notwithstanding anything to the contrary, a development permit authorized pursuant to this subsection shall not be denied on the basis that existing public facilities are inadequate to serve the property described in the permit application regardless of the type of use or development of said property.

…."

SECTION 18. G.S. 153A-340 reads as rewritten:

"**§ 153A-340. Grant of power.**

…

(c1) The regulations may also provide that the board of adjustment, the planning board, or the board of commissioners may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Conditions and safeguards imposed under this subsection shall not include requirements for which the county does not have authority under statute to regulate nor requirements for which the courts have held to be unenforceable if imposed directly by the ~~county.~~county, including, without limitation, taxes, impact fees, building design elements within the scope of subsection (*l*) of this section not voluntarily offered by the petitioner, street improvements in excess of those allowed in G.S. 160A-372, driveway-related improvements in excess of those allowed in G.S. 136-18(29), or other unauthorized limitations on the development or use of land. Where appropriate, the conditions may include requirements that street and utility rights-of-way be dedicated to the public and that recreational space be provided. Notwithstanding anything to the contrary, a development permit authorized pursuant to this subsection shall not be denied on the basis that existing public facilities are inadequate to serve the property described in the permit application regardless of the type of use or development of said property. When deciding special use permits or conditional use permits, the board of county commissioners or planning board shall follow quasi-judicial procedures. Notice of hearings on special or conditional use permit applications shall be as provided in G.S. 160A-388(a2). No vote greater than a majority vote shall be required for the board of county commissioners or planning board to issue such permits. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite majority. Every such decision of the board of county commissioners or planning board shall be subject to review of the superior court in the nature of certiorari consistent with G.S. 160A-388.

...."

SECTION 19.(a) G.S. 153A-352(b) reads as rewritten:

"(b) Except as provided in G.S. 153A-364, a county may not adopt or enforce a local ordinance or resolution or any other policy that requires regular, routine inspections of buildings or structures constructed in compliance with the North Carolina Residential Code for One- and Two-Family Dwellings in addition to the specific inspections required by the North Carolina Building Code without first obtaining approval from the North Carolina Building Code Council. The North Carolina Building Code Council shall review all applications for additional inspections requested by a county and shall, in a reasonable manner, approve or disapprove the additional inspections. This subsection does not limit the authority of the county to require inspections upon unforeseen or unique circumstances that require immediate action. In performing the specific inspections required by the North Carolina Building Code, the inspector shall conduct all inspections requested by the permit holder for each scheduled inspection visit. For each requested inspection, the inspector shall inform the permit holder of instances in which the work inspected is incomplete or otherwise fails to meet the requirements of the North Carolina Residential Code for One- and Two-Family Dwellings"

SECTION 19.(b) G.S. 160A-412(b) reads as rewritten:

"(b) Except as provided in G.S. 160A-424, a city may not adopt or enforce a local ordinance or resolution or any other policy that requires regular, routine inspections of buildings or structures constructed in compliance with the North Carolina Residential Code for One- and Two-Family Dwellings in addition to the specific inspections required by the North Carolina Building Code without first obtaining approval from the North Carolina Building Code Council. The North Carolina Building Code Council shall review all applications for additional inspections requested by a city and shall, in a reasonable manner, approve or disapprove the additional inspections. This subsection does not limit the authority of the city to require inspections upon unforeseen or unique circumstances that require immediate action. In

performing the specific inspections required by the North Carolina Building Code, the inspector shall conduct all inspections requested by the permit holder for each scheduled inspection visit. For each requested inspection, the inspector shall inform the permit holder of instances in which the work inspected is incomplete or otherwise fails to meet the requirements of the North Carolina Residential Code for One- and Two-Family Dwellings."

SECTION 19.(c) If House Bill 252, Edition, of the 2017 Regular Session, becomes law, this section is repealed.

SECTION 20. G.S. 160A-37 reads as rewritten:

"**§ 160A-307. Curb cut regulations.**

(a) A city may by ordinance regulate the size, location, direction of traffic flow, and manner of construction of driveway connections into any street or alley. The ordinance may require the construction or reimbursement of the cost of construction and public dedication of medians, acceleration and deceleration lanes, and traffic storage lanes for driveway connections into any street or alley ~~if:~~if all of the following apply:

(1) The need for such improvements is reasonably attributable to the traffic using the ~~driveway; and~~driveway.

(2) The improvements serve the traffic of the driveway.

(b) No street or alley under the control of the Department of Transportation may be improved without the consent of the Department of Transportation. ~~However, if there is a conflict between the written driveway regulations of the Department of Transportation and the related driveway improvements required by the city, the more stringent requirement shall apply.~~A city shall not require the applicant to acquire right-of-way from property not owned by the applicant. However, an applicant may voluntarily agree to acquire such right of way."

SECTION 21. G.S. 160A-385(c), as enacted by Section 4 of this act, and G.S. 153A-344(b1), as enacted by Section 6 of this act, are effective with respect to phased development approvals that are valid and unexpired on the effective date of this act. The remainder of this act is effective when it becomes law and applies to permits previously issued that remain valid and unexpired on the date this act becomes law and to permit actions filed, actions filed in court, and claims and defenses asserted on or after that date.

HOUSE BILL 507:
Land-Use Regulatory Changes.

2017-2018 General Assembly

Committee:	House Judiciary III	**Date:**	April 18, 2017
Introduced by:	Reps. Jordan, J. Bell, Conrad, W. Richardson	**Prepared by:**	Giles Perry and Erika Churchill, Staff Attorneys
Analysis of:	PCS to First Edition H507-CSST-13		

OVERVIEW: The proposed committee substitute for House Bill 507 makes changes to the land-use regulatory laws of the State.

[As introduced, this bill was identical to S575, as introduced by Sens. Gunn, Wade, Krawiec, which is currently in Senate Rules and Operations of the Senate.]

BILL ANALYSIS:

Sections 1-8 Permit Choice Changes

Current law provides that if a State agency, county, or city rule or ordinance changes between the time a permit application was submitted and the permit decision is made, the applicant can choose which version of the rule or ordinance will apply. Sections 1 through 8 make changes to the laws applicable to permit choice.

Modification of Permit Choice Statute Applicability, Expedited Court Hearing, Damages, Definition of Development Permit.

Section 1:

- Clarifies that the permit choice statutes apply to zoning map or text amendments, land development regulation amendments, and State regulation amendments affecting the development of property by adding definitions to the statute.
- Provides that if the applicant opts for the version of a rule or ordinance in place at the time of the application for the development permit, that applicant cannot be required to wait for action on the outcome of any pending changes to that rule or ordinance.
- Provides that any person asserting a claim for non-compliance by the State or a local government with the permit choice statutes may ask the Court for an order compelling compliance.
- Provides for expedited calendaring and review of permit choice related court actions at both the trial and appellate level.
- Provides that if any State agency or local government takes action in violation of the permit choice statutes, the permit applicant is entitled to damages.

Sections 2 and 3 amend county and city permit choice statutes to clarify that they apply to zoning map or text amendments and land development regulation amendments.

Vested Rights Statutes Changes

Sections 4 through 7 provide all of the following related to the county and city statutes concerning vested rights[1].

- That unless the land owner grants written consent, land development regulation amendments do not apply in any of the following situation:
    - Uses of buildings or land, or subdivisions of land, for which a development permit has been issued that authorizes the use or subdivision of land.
    - Buildings, or uses thereof, for which a building permit has been issued.
    - A vested right has been established and the vested right remains valid.
    - A vested right is established by the terms of a development agreement.
- Statutory vesting starts when the application for the development permit or building permit is submitted, and lasts as long as the permit remains valid.
- Provides that local development permits expire one year after issuance unless work authorized by the permit has substantially commenced, unless otherwise specified in statute.
- Provides that the establishment of a vested right under one law does not preclude vesting under another, or vesting by application of common law principles.
- Provides that a vested right, once established, precludes any action by a county or city that would change, delay, or stop the development or use of the property, except where a change in State or federal law applies.
- **Multi-Phase Development Changes: Time of Vesting, Change to Applicability.**
    - Current G.S. 153A-344(b1) and G.S. 160A-385(b1) provide that a right which has been vested as provided for in this subsection shall remain vested for a period of seven years from the time a site plan approval is granted for the initial phase of the multi phased development.
    - Sections 5-8 provide that a multi-phased development is vested for the entire development with land development regulations in place at the time the application for a development permit is submitted prior to the change in the land development regulations, as long as the permit remains valid; and redefines a "multi-phased development" to mean a development containing 25 acres or more (100 acres in current law) that (i) is submitted for development permit approval to occur in more than one phase and (ii) is subject to a master development plan with committed elements, showing the type and intensity of use of each phase.

Initiation of Rezoning Only by Property Owner, or Applicable County or City

Sections 8 and 9 provide that county or city zoning map amendments can only be initiated by property owner, or the applicable county or city.

Forum for Certain Claims-Superior Court

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[1]G.S. 160A-385.1(b)(6) "Vested right" means the right to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan or an approved phased development plan.

Sections 10 and 11 adds a new Section to the General Statutes authorizing landowners or permit applicants to bring challenges to county or city land use ordinances directly to Superior Court, for claims of unconstitutionality; preemption, or other lack of authority; violation of vested rights; or taking without just compensation.

These sections also provide that a landowner may assert any other available claims in this action, that the burden of proof is on the county or city asserting a violation, the action must be commenced by the landowner with one year, and adjoining landowners must be notified.

Changes to the Procedure Applicable to Land Use Appeals to Superior Court.

Section 12 makes changes to the procedure applicable to appeals to Superior Court of quasi-judicial land use regulatory decisions of local governments. Specifically, this Section:

- Requires that the court allow the record to be supplemented, under the rules of discovery of the NC Rules of Civil Procedure, if the following issues are raised: standing, impartiality of the decision making body, or error, including error related to claims or defenses concerning constitutionality, preemption, or violation of common law or vested rights.

No Estoppel[2] Effect when Challenging Rezoning Conditions or Development Permit Conditions Conditions

Section 13 adds a new section to the General Statutes providing that a county or city may not assert estoppel[3] when a landowner challenges rezoning conditions or development permit conditions on a development authorized by a rezoning or development permit, while proceeding with the authorized development subject to the conditions.

Award of Attorneys' Fees and Costs when a County or City Acts Outside the Scope of its Authority – Changes

Section 14 makes changes concerning when a county or city must pay attorneys' fees and costs for acting outside the scope of its authority. Specifically, this Section:

- Requires a county or city to pay attorneys' fees and costs when a county or city is found by the court to have "violated a statute or case law setting forth unambiguous limits on its authority". Under current law, mandatory attorneys' fees and costs are awarded only when an abuse of discretion is also found, in addition to an action outside the scope of a county's or city's authority.
- Requires award of attorneys' fees and costs if the court finds that a violation of the "permit choice" statutes has occurred.

Performance Guarantee Changes – Cities

Sections 15 make changes to the law governing city subdivision ordinance provisions providing for performance guarantees to ensure completion of required improvements. Specifically, this Section provides:

- A city may require a performance guarantee either at the time the subdivision plat is recorded, or after the recording of the subdivision plat.

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[2] "Estoppel" means a legal bar or prohibition on a person from asserting or denying facts because of a person's previous words or actions to the contrary.
[3] See Note 2

- If a city fails to adopt an ordinance requiring performance guarantees, they may not later require the completion of required improvements prior to a plat being recorded.
- For any specific development, the type and term of performance guarantee, or any extension of the performance guarantee, shall be at the election of the developer.
- At the election of the developer, 125% of the reasonably estimated cost of completion may be determined by a licensed architect or registered engineer, with unit pricing provided by a licensed general contractor or other competent source.
- The developer shall have the option to post one form of a performance guarantee in lieu of multiple forms, for all development matters related to the same project requiring performance guarantees.
- The developer shall be allowed to reduce the amount of the performance guarantee to reflect only the remaining incomplete items.
- No person shall have or may claim any rights under or to any performance guarantee provided pursuant to this subsection or in the proceeds of any such performance guarantee other than the following:
    - The local government to whom such performance guarantee is provided.
    - The developer at whose request or for whose benefit such performance guarantee is given.
    - The person or entity issuing or providing such performance guarantee at the request of or for the benefit of the developer.

Performance Guarantee Changes – Counties

Section 16 make changes to the law governing County subdivision ordinance provisions providing for performance guarantees to ensure completion of required improvements. Specifically, this Section provides:

- A county may require a performance guarantee after the recording of the plat.
- If a county fails to adopt an ordinance requiring performance guarantees, they may not later require the completion of required improvements prior to a plat being recorded.
- For any specific development, the type and term of performance guarantee, or any extension of the performance guarantee, shall be at the election of the developer.
- The developer shall be allowed to reduce the amount of the performance guarantee to reflect only the remaining incomplete items.

Limitation on Specified Special Use or Conditional Use Permit Conditions under County and City Development Regulation Ordinances

Sections 17 and 18 amend existing law limitations on unauthorized or judicially prohibited special or conditional use permit condition, to specifically prohibit unauthorized taxes, impact fees, or building design elements; street or driveway improvements in excess of those authorized by law; or other unauthorized limitations on the development or use of land.

In addition, these sections prohibit denial of a county or city development permit on the basis of inadequate public facilities.

Clarify Applicability of Law Prohibiting Local Residential Inspections Beyond What NC Building Code Requires

Section 19 amends current law prohibition on counties or cities adopting local ordinances that require one or two-family residential unit inspections beyond what is required in the NC Building Code, to clarify that the restriction applies to existing local ordinances, as well as new ones.

Municipal Driveway Connection Regulatory Authority

Section 20 amends current municipal driveway connection regulatory authority to provide:

- On State roads, DOT's driveway permit rules cannot be superseded by more stringent municipal driveway permit rule.
- A municipality may not require a driveway permit applicant to acquire right-of-way from property the applicant does not own. Nothing would prohibit the applicant from voluntarily agreeing to acquire the right-of-way.

EFFECTIVE DATE:

- G.S. 160A-385(c), as enacted by Section 4 of this act, and G.S. 153A-344(b1), as enacted by Section 7 of this act, are effective with respect to phased development approvals that are valid and unexpired on the effective date of this act.
- The remainder of this act is effective when it becomes law and applies to permits previously issued that remain valid and unexpired on the date this act becomes law and to permit actions filed, actions filed in court, and claims and defenses asserted on or after that date.

Attachment 10

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

HOUSE BILL 706

Short Title:	Landlord/Tenant-Alias & Pluries Summary Eject.	(Publi
Sponsors:	Representatives Jordan, Bradford, and Earle (Primary Sponsors). *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	Judiciary III	

April 11, 2017

A BILL TO BE ENTITLED

AN ACT TO ALLOW FOR SEVERANCE OF SUMMARY EJECTMENT AND MONETARY CLAIMS IN SMALL CLAIMS ACTIONS WHEN SERVICE OF PROCESS ONLY MEETS SUMMARY EJECTMENT STANDARDS; TO ALLOW FOR THE SEVERED MONETARY CLAIM TO BE CONTINUED WITH ALIAS AND PLURIES SUMMONS; TO PROVIDE FOR AN ELECTION BY THE PLAINTIFF TO UTILIZE A PRIVATE PROCESS SERVER IN COUNTIES WITH POPULATIONS OF TWO HUNDRED THOUSAND OR GREATER; AND TO CLARIFY THAT THE DISTRICT COURT JUDGE MUST HOLD SMALL CLAIMS COURT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-223 reads as rewritten:

"**§ 7A-223. Practice and procedure in small claim actions for summary ejectment.**

(a) In any small claim action demanding summary ejectment or past due rent, or both, the complaint may be signed by an agent acting for the plaintiff who has actual knowledge of the facts alleged in the complaint. If a small claim action demanding summary ejectment is assigned to a magistrate, the practice and procedure prescribed for commencement, form and service of process, assignment, pleadings, and trial in small claim actions generally are observed, except that if the defendant by written answer denies the title of the plaintiff, the action is placed on the civil issue docket of the district court division for trial before a district judge. In such event, the clerk withdraws assignment of the action from the magistrate and immediately gives written notice of withdrawal, by any convenient means, to the plaintiff and the magistrate to whom the action has been assigned. The plaintiff, within five days after receipt of the notice, and the defendant, in his answer, may request trial by jury. Failure to request jury trial within the time limited is a waiver of the right to trial by jury.

(b) If either party in a small claim action for summary ejectment moves for a continuance, the magistrate shall render a decision on the motion in accordance with Rule 40(b) of the Rules of Civil Procedure. The magistrate shall not continue a matter for more than five days or until the next session of small claims court, whichever is longer, without the consent of both parties.

(b1) In any small claim action demanding summary ejectment and monetary damages, and where service of process has been achieved solely by first-class mail and affixing the summons and complaint to the premises pursuant to G.S. 42-29, the plaintiff, or an agent pursuant to subsection (a) of this section, may request that the claim for summary ejectment be severed from the claim for monetary damages. Upon a finding that personal service was not achieved for one or more defendants, the magistrate shall sever the claim for monetary

damages and proceed with the claim for summary ejectment. If the magistrate severs the claim for monetary damages, the plaintiff may extend the action in accordance with G.S. 1A-1, Rule 4(d). The judgment of the magistrate in the severed claim for summary ejectment shall not prejudice the claims or defenses of any party in the severed claim for monetary damages.

(c) The Administrative Office of the Courts is directed to develop a form for parties in small claim actions for summary ejectment to inform them of the time line and process in summary ejectment actions. The clerk of superior court shall make the form available to the parties."

SECTION 2. G.S. 1A-1, Rule 4(h1), reads as rewritten:

"**Rule 4. Process.**

...

(h1) Summons – When process returned unexecuted. – If a proper officer returns a summons or other process unexecuted, the plaintiff or his agent or attorney may cause service to be made by anyone who is not less than 21 years of age, who is not a party to the action, and who is not related by blood or marriage to a party to the action or to a person upon whom service is to be made. This subsection shall not apply to executions pursuant to Article 28 of ~~Chapter 1 or summary ejectment pursuant to Article 3 of Chapter 42 of the General Statutes.~~Chapter 1 of the General Statutes."

SECTION 3. G.S. 42-28 reads as rewritten:

"**§ 42-28. Summons issued by clerk.**

(a) When the lessor or his assignee files a complaint pursuant to G.S. 42-26 or 42-27, and asks 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. The plaintiff may claim rent in arrears, and damages for the occupation of the premises since the cessation of the estate of the lessee, not to exceed the jurisdictional amount established by G.S. 7A-210(1), but if he omits to make such claim, he shall not be prejudiced thereby in any other action for their recovery.

(b) In counties with 200,000 or more residents as of the most recent decennial federal census, after the summons is issued, at the election of the plaintiff, the clerk shall either (i) return the summons to the plaintiff or (ii) forward the summons to the sheriff for service. If the magistrate severs the claim for monetary damages pursuant to G.S. 7A-223(b1), the plaintiff may extend the action in accordance with G.S. 1A-1, Rule 4(d)."

SECTION 4. G.S. 42-29 reads as rewritten:

"**§ 42-29. Service of summons.**

(a) 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, 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.

(b) As used in this Article, and only with respect to service for summary ejectment proceedings in counties with 200,000 or more residents as of the most recent decennial federal census, the term "process server" shall mean any person over the age of 21 years who is not a party to the action, who is not related by blood or marriage to a party to the action or to a person upon whom service is to be made, and who is hired by the plaintiff or the plaintiff's agent or attorney for the purpose of serving the summons and complaint for summary ejectment; and the term "officer" shall mean the sheriff of the county where the subject premises is situated.

(c) As used in this Article, and only with respect to service for summary ejectment proceedings in counties with 200,000 or more residents as of the most recent decennial federal census, a process server may effectuate proper service upon a defendant solely for purposes of summary ejectment by mailing a copy of the issued summons and signed complaint to the defendant no later than the end of the next business day after receipt of said summons and complaint 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 process server shall then deliver a copy of the summons together with a copy of the complaint to the defendant by affixing copies of same to some conspicuous part of the premises claimed and make due return showing compliance with this section in the form of an affidavit of service. Said affidavit of service shall set forth the time, place, and manner by which the requirements set forth herein were completed."

SECTION 5. G.S. 7A-146 is amended by adding a new subdivision to read:

"**§ 7A-146. Administrative authority and duties of chief district judge.**

The chief district judge, subject to the general supervision of the Chief Justice of the Supreme Court, has administrative supervision and authority over the operation of the district courts and magistrates in his district. These powers and duties include, but are not limited to, the following:

(1) Arranging schedules and assigning district judges for sessions of district courts.

(2) Arranging or supervising the calendaring of noncriminal matters for trial or hearing.

(3) Supervising the clerk of superior court in the discharge of the clerical functions of the district court.

(4) Assigning matters to magistrates, and consistent with the salaries set by the Administrative Officer of the Courts, prescribing times and places at which magistrates shall be available for the performance of their duties; however, the chief district judge may in writing delegate his authority to prescribe times and places at which magistrates in a particular county shall be available for the performance of their duties to another district court judge or the clerk of the superior court, or the judge may appoint a chief magistrate to fulfill some or all of the duties under subdivision (12) of this section, and the person to whom such authority is delegated shall make monthly reports to the chief district judge of the times and places actually served by each magistrate.

(5) Making arrangements with proper authorities for the drawing of civil court jury panels and determining which sessions of district court shall be jury sessions.

(6) Arranging for the reporting of civil cases by court reporters or other authorized means.

(7) Arranging sessions, to the extent practicable for the trial of specialized cases, including traffic, domestic relations, and other types of cases, and assigning

district judges to preside over these sessions so as to permit maximum practicable specialization by individual judges.

(8) Repealed by Session Laws 1991 (Regular Session, 1992), c. 900, s. 118(b), effective July 15, 1992.

(9) Assigning magistrates during an emergency to temporary duty outside the county of their residence but within that district pursuant to the policies and procedures prescribed under G.S. 7A-343(11); and, upon the request of a chief district judge of an adjoining district and upon the approval of the Administrative Officer of the Courts, to temporary duty in the district of the requesting chief district judge pursuant to the policies and procedures prescribed under G.S. 7A-343(11).

(10) Designating another district judge of his district as acting chief district judge, to act during the absence or disability of the chief district judge.

(11) Designating certain magistrates to appoint counsel and accept waivers of counsel pursuant to Article 36 of this Chapter. This designation does not give any magistrate the authority to appoint counsel or accept waivers of counsel for potentially capital offenses, as defined by rules adopted by the Office of Indigent Defense Services.

(12) Designating a full-time magistrate in a county to serve as chief magistrate for that county for an indefinite term and at the judge's pleasure. The chief magistrate shall have the derivative administrative authority assigned by the chief district court judge under subdivision (4) of this section. This subdivision applies only to counties in which the chief district court judge determines that designating a chief magistrate would be in the interest of justice.

(13) Ensuring small claims court is held at least twice per week."

SECTION 6. Section 5 of this act is effective when it becomes law. The remainder of this act becomes effective October 1, 2017, and applies to actions for summary ejectment filed on or after that date.

Attachment 11

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H D

HOUSE BILL 706
PROPOSED COMMITTEE SUBSTITUTE H706-CSTU-9 [v.2]
04/18/2017 10:18:14 AM

Short Title: Landlord/Tenant-Alias & Pluries Summary Eject. (Public

Sponsors: Representatives Jordan, Bradford, and Earle (Primary Sponsors).

Referred to:

April 11, 2017

A BILL TO BE ENTITLED

AN ACT TO ALLOW FOR SEVERANCE OF SUMMARY EJECTMENT AND MONETARY CLAIMS IN SMALL CLAIMS ACTIONS WHEN SERVICE OF PROCESS ONLY MEETS SUMMARY EJECTMENT STANDARDS; TO ALLOW FOR THE SEVERED MONETARY CLAIM TO BE CONTINUED WITH ALIAS AND PLURIES SUMMONS; AND TO PROVIDE FOR AN ELECTION BY THE PLAINTIFF TO UTILIZE A PRIVATE PROCESS SERVER IN COUNTIES WITH POPULATIONS OF TWO HUNDRED THOUSAND OR GREATER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-223 reads as rewritten:

"**§ 7A-223. Practice and procedure in small claim actions for summary ejectment.**

(a) In any small claim action demanding summary ejectment or past due rent, or both, the complaint may be signed by an agent acting for the plaintiff who has actual knowledge of the facts alleged in the complaint. If a small claim action demanding summary ejectment is assigned to a magistrate, the practice and procedure prescribed for commencement, form and service of process, assignment, pleadings, and trial in small claim actions generally are observed, except that if the defendant by written answer denies the title of the plaintiff, the action is placed on the civil issue docket of the district court division for trial before a district judge. In such event, the clerk withdraws assignment of the action from the magistrate and immediately gives written notice of withdrawal, by any convenient means, to the plaintiff and the magistrate to whom the action has been assigned. The plaintiff, within five days after receipt of the notice, and the defendant, in his answer, may request trial by jury. Failure to request jury trial within the time limited is a waiver of the right to trial by jury.

(b) If either party in a small claim action for summary ejectment moves for a continuance, the magistrate shall render a decision on the motion in accordance with Rule 40(b) of the Rules of Civil Procedure. The magistrate shall not continue a matter for more than five days or until the next session of small claims court, whichever is longer, without the consent of both parties.

(b1) In any small claim action demanding summary ejectment and monetary damages, and where service of process has been achieved solely by first-class mail and affixing the summons and complaint to the premises pursuant to G.S. 42-29, the plaintiff, or an agent pursuant to subsection (a) of this section, may request that the claim for summary ejectment be severed from the claim for monetary damages. Upon a finding that personal service was not achieved for one or more defendants, the magistrate shall sever the claim for monetary damages and proceed with the claim for summary ejectment. If the magistrate severs the claim for monetary damages, the plaintiff may extend the action in accordance with G.S. 1A-1, Rule

4(d). The judgment of the magistrate in the severed claim for summary ejectment shall not prejudice the claims or defenses of any party in the severed claim for monetary damages.

(c) The Administrative Office of the Courts is directed to develop a form for parties in small claim actions for summary ejectment to inform them of the time line and process in summary ejectment actions. The clerk of superior court shall make the form available to the parties."

SECTION 2. G.S. 1A-1, Rule 4(h1), reads as rewritten:

"**Rule 4. Process.**

...

(h1) Summons – When process returned unexecuted. – If a proper officer returns a summons or other process unexecuted, the plaintiff or his agent or attorney may cause service to be made by anyone who is not less than 21 years of age, who is not a party to the action, and who is not related by blood or marriage to a party to the action or to a person upon whom service is to be made. This subsection shall not apply to executions pursuant to Article 28 of ~~Chapter 1 or summary ejectment pursuant to Article 3 of Chapter 42 of the General Statutes.~~Chapter 1 of the General Statutes."

SECTION 3. G.S. 42-28 reads as rewritten:

"**§ 42-28. Summons issued by clerk.**

(a) When the lessor or his assignee files a complaint pursuant to G.S. 42-26 or 42-27, and asks 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. The plaintiff may claim rent in arrears, and damages for the occupation of the premises since the cessation of the estate of the lessee, not to exceed the jurisdictional amount established by G.S. 7A-210(1), but if he omits to make such claim, he shall not be prejudiced thereby in any other action for their recovery.

(b) In counties with 200,000 or more residents as of the most recent decennial federal census, after the summons is issued, at the election of the plaintiff, the clerk shall either (i) return the summons to the plaintiff or (ii) forward the summons to the sheriff for service. If the magistrate severs the claim for monetary damages pursuant to G.S. 7A-223(b1), the plaintiff may extend the action in accordance with G.S. 1A-1, Rule 4(d)."

SECTION 4. G.S. 42-29 reads as rewritten:

"**§ 42-29. Service of summons.**

(a) 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, 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.

(b) As used in this Article, and only with respect to service for summary ejectment proceedings in counties with 200,000 or more residents as of the most recent decennial federal

census, the term "process server" shall mean any person over the age of 21 years who is not a party to the action, who is not related by blood or marriage to a party to the action or to a person upon whom service is to be made, and who is hired by the plaintiff or the plaintiff's agent or attorney for the purpose of serving the summons and complaint for summary ejectment; and the term "officer" shall mean the sheriff of the county where the subject premises is situated.

(c) As used in this Article, and only with respect to service for summary ejectment proceedings in counties with 200,000 or more residents as of the most recent decennial federal census, a process server may effectuate proper service upon a defendant solely for purposes of summary ejectment by mailing a copy of the issued summons and signed complaint to the defendant no later than the end of the next business day after receipt of said summons and complaint 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 process server shall then deliver a copy of the summons together with a copy of the complaint to the defendant by affixing copies of same to some conspicuous part of the premises claimed and make due return showing compliance with this section in the form of an affidavit of service. Said affidavit of service shall set forth the time, place, and manner by which the requirements set forth herein were completed."

SECTION 5. This act becomes effective October 1, 2017, and applies to actions for summary ejectment filed on or after that date.

Attachment 12

HOUSE BILL 706: Landlord/Tenant-Alias & Pluries Summary Eject.

2017-2018 General Assembly

Committee:	House Judiciary III	**Date:**	April 19, 2017
Introduced by:	Reps. Jordan, Bradford, Earle	**Prepared by:**	Kristen L. Harris Committee Co-Counsel
Analysis of:	PCS to First Edition H706-CSTU-9		

OVERVIEW: ***The Proposed Committee Substitute to House Bill 706 would allow a plaintiff to request that a claim for summary ejectment be severed from a claim for monetary damages and provide a new method of service of process in summary ejectment proceedings.***

[The PCS removes the requirement that small claims court be held at least twice a week in every judicial district.]

CURRENT LAW: Jurisdiction over a defendant in a small claim summary ejectment case may be obtained in four ways: 1) by delivering a copy of the summons and complaint to the defendant or leaving copies at the defendant's house with a person of suitable age and discretion residing there, 2) by registered or certified mail, signature confirmation, or designated service as provided under the North Carolina Rules of Civil Procedure, 3) by the defendant's written acceptance of service or voluntary appearance, or 4) by sheriff as provided in G.S. 42-29.

BILL ANALYSIS:

Section 1 would do the following:

- Require a magistrate to allow a plaintiff's request to sever a claim for summary ejectment from a claim for monetary damages where 1) service of process was achieved solely by first-class mail and affixing the summons and complaint to the defendant's last known address and 2) upon a finding that personal service was not achieved on one or more defendants.
- Allow the plaintiff to continue with his or her summary ejectment claim and extend the claim for monetary damages through an alias and pluries summons.

Section 2 would no longer require unexecuted summons and other processes in summary ejectment actions to be served by an officer.

Section 3 would allow a plaintiff, in counties with 200,000 or more residents as of the most recent decennial federal census, to elect to have the clerk either 1) return the summons to the plaintiff or 2) forward it to the sheriff for service.

Subsection 4 would do the following:

- Define the terms "process server" and "officer".
- Allow service for summary ejectment proceedings in counties with 200,000 or more residents as of the most recent decennial federal census to be executed by a process server and not just an officer.

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

EFFECTIVE DATE: This act becomes effective October 1, 2017, and applies to actions for summary ejectment filed on or after that date.

BACKGROUND: According to the most recent decennial federal census, Buncombe, Cumberland, Durham, Forsyth, Gaston, Guilford, Mecklenburg, New Hanover, Union, and Wake counties have 200,000 or more residents.

Attachment 13

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H 1

HOUSE BILL 37

Short Title:	Protect Law Enforcement Officers.	(Public
Sponsors:	Representatives Malone, Dollar, Conrad, and Jackson (Primary Sponsors). *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	Judiciary I, if favorable, State and Local Government II	

February 6, 2017

A BILL TO BE ENTITLED

AN ACT TO PROTECT MUNICIPAL LAW ENFORCEMENT OFFICERS WHO REPORT IMPROPER OR UNLAWFUL GOVERNMENT ACTIVITY FROM RETALIATION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 13 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-290. Protection from retaliation for municipal law enforcement officers.**

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

(1) Employing agency. – A city or unified city-county government police agency.

(2) Municipal law enforcement officer. – A full-time paid employee of an employing agency who is actively serving in a position with assigned primary duties and responsibilities for prevention and detection of crime or the general enforcement of the criminal laws of the State or serving civil processes and who possesses the power of arrest by virtue of an oath administered under the authority of the State.

(b) Statement of Policy. – It is the policy of this State that municipal law enforcement officers shall be encouraged to report verbally or in writing to their supervisor, department head, or other appropriate authority evidence of activity constituting any of the following:

(1) A violation of State or federal law, rule, or regulation.

(2) Fraud.

(3) Misappropriation of State and local government resources.

(4) Substantial and specific danger to the public health and safety.

(5) Gross mismanagement, a gross waste of monies, or gross abuse of authority.

Further, it is the policy of this State that municipal law enforcement officers be free of intimidation or harassment when reporting to public bodies about matters of public concern, including offering testimony to or testifying before appropriate legislative or judicial panels.

(c) Protection from Retaliation. –

(1) No employing agency shall discharge, threaten, or otherwise discriminate against a municipal law enforcement officer regarding the officer's compensation, terms, conditions, location, or privileges of employment because the officer or a person acting on behalf of the officer reports or is about to report verbally or in writing any activity described in subsection (b) of this section, unless the officer knows or has reason to believe that the report is inaccurate.

(2) No municipal law enforcement officer shall retaliate against another municipal law enforcement officer because the officer or a person acting on behalf of the officer reports or is about to report verbally or in writing any activity described in subsection (b) of this section.

(3) No employing agency shall discharge, threaten, or otherwise discriminate against a municipal law enforcement officer regarding the officer's compensation, terms, conditions, location, or privileges of employment because the officer has refused to carry out a directive which in fact constitutes a violation of State or federal law, rule, or regulation or poses a substantial and specific danger to the public health and safety.

(4) No municipal law enforcement officer shall retaliate against another municipal law enforcement officer because the officer has refused to carry out a directive which may constitute a violation of State or federal law, rule, or regulation or pose a substantial and specific danger to the public health and safety.

(d) Civil Actions for Injunctive Relief or Other Remedies. – For claims arising under this section only, a municipal law enforcement officer injured by a violation of this section may maintain an action in superior court for damages, an injunction, or other remedies provided in this section against the person or employing agency who committed the violation within one year after the occurrence of the alleged violation of this section. Any claim arising under Article 21 of Chapter 95 of the General Statutes may be maintained pursuant to the provisions of that Article only and may be redressed only by the remedies and relief available under that Article.

(e) Remedies. – A court, in rendering a judgment in an action brought pursuant to this section, may order an injunction, damages, reinstatement of the municipal law enforcement officer, the payment of back wages, full reinstatement of fringe benefits and seniority rights, costs, reasonable attorneys' fees, or any combination of these. If an application for a permanent injunction is granted, the officer shall be awarded costs and reasonable attorneys' fees. If, in an action for damages, the court finds that the officer was injured by a willful violation of this section, the court shall award as damages three times the amount of actual damages plus costs and reasonable attorneys' fees against the person or employing agency found to be in violation of this section.

(f) Notice of Employee Protections and Obligations. – It shall be the duty of the employing agency of the municipal law enforcement officer to post notice in accordance with G.S. 95-9 or use other appropriate means to keep municipal law enforcement officers informed of their protections and obligations under this section."

SECTION 2. This act becomes effective October 1, 2017, and applies to acts incurring liability on or after that date.

Attachment 14

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H D

HOUSE BILL 37
PROPOSED COMMITTEE SUBSTITUTE H37-CSRN-10 [v.2]
04/17/2017 11:35:59 AM

Short Title: Protect Law Enforcement Officers. (Public

Sponsors:

Referred to:

February 6, 2017

A BILL TO BE ENTITLED

AN ACT TO PROTECT MUNICIPAL LAW ENFORCEMENT OFFICERS WHO REPORT IMPROPER OR UNLAWFUL GOVERNMENT ACTIVITY FROM RETALIATION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 13 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-290. Protection from retaliation for municipal law enforcement officers.**

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

(1) Employing agency. – A city or unified city-county government police agency.

(2) Municipal law enforcement officer. – A full-time paid employee of an employing agency who is actively serving in a position with assigned primary duties and responsibilities for prevention and detection of crime or the general enforcement of the criminal laws of the State or serving civil processes and who possesses the power of arrest by virtue of an oath administered under the authority of the State.

(b) Statement of Policy. – It is the policy of this State that municipal law enforcement officers shall be encouraged to report in writing to their supervisor, department head, or other appropriate authority evidence of activity constituting any of the following:

(1) A violation of State or federal law, rule, or regulation.

(2) Fraud.

(3) Misappropriation of State and local government resources.

(4) Substantial and specific danger to the public health and safety.

(5) Gross mismanagement, a gross waste of monies, or gross abuse of authority.

(c) Protections. – In the absence of binding personnel policies, Codes of Conduct, or other procedures protecting employees from retaliation:

(1) No employing agency shall discharge, threaten, or otherwise discriminate against a municipal law enforcement officer regarding the officer's compensation, terms, conditions, location, or privileges of employment because the officer or a person acting on behalf of the officer reports or is about to report in writing any activity described in subsection (b) of this section, unless the officer knows or has reason to believe that the report is inaccurate.

(2) No municipal law enforcement officer shall retaliate against another municipal law enforcement officer because the officer or a person acting on

behalf of the officer reports or is about to report in writing any activity described in subsection (b) of this section.

(d) Civil Actions for Injunctive Relief or Other Remedies. – For claims arising under this section only, a municipal law enforcement officer injured by a violation of this section may maintain an action in superior court for damages, an injunction, or other remedies provided in this section against the person or employing agency who committed the violation within one year after the occurrence of the alleged violation of this section. Any claim arising under Article 21 of Chapter 95 of the General Statutes may be maintained pursuant to the provisions of that Article only and may be redressed only by the remedies and relief available under that Article.

(e) Remedies. – A court, in rendering a judgment in an action brought pursuant to this section, may order an injunction, damages, reinstatement of the municipal law enforcement officer, the payment of back wages, full reinstatement of fringe benefits and seniority rights, costs, reasonable attorneys' fees, or any combination of these. If an application for a permanent injunction is granted, the officer shall be awarded costs and reasonable attorneys' fees.

(f) Notice of Employee Protections and Obligations. – It shall be the duty of the employing agency of the municipal law enforcement officer to post notice in accordance with G.S. 95-9 or use other appropriate means to keep municipal law enforcement officers informed of their protections and obligations under this section. It shall be the responsibility of the State to pay for the production of these postings for distribution.

(g) If any municipal law enforcement officer knowingly files a false writing under the provisions of this section and is found guilty in a judicial proceeding, the offense shall be punishable as a Class 2 misdemeanor."

SECTION 2. This act becomes effective October 1, 2017, and applies to acts incurring liability and offenses committed on or after that date.

HOUSE BILL 37:
Protect Law Enforcement Officers.

2017-2018 General Assembly

Committee:	House Judiciary III. If favorable, re-refer to State and Local Government II	**Date:**	April 17, 2017
Introduced by:	Reps. Malone, Dollar, Conrad, Jackson	**Prepared by:**	Brad Krehely
Analysis of:	PCS to First Edition H37-CSRN-10		Committee Co-Counsel

OVERVIEW: The Proposed Committee Substitute (PCS) for House Bill 37 would protect municipal law enforcement officers who report improper or unlawful government activity for retaliation. The PCS makes the language of the bill identical to the First Edition of Senate Bill 596, the Senate companion bill, with two exceptions: (1) this PCS clarifies that any criminal penalties for filing false reports apply prospectively to offenses committed on or after October 1, 2017, and (2) it uses the correct term "municipal law enforcement officer" on page 2, line 21.

BILL ANALYSIS: The PCS for House Bill 37 creates a new section in Chapter 160A to protect law enforcement officers from retaliation.

Definitions- The act creates definitions of "employing agency" and "municipal law enforcement officer." Employing agencies would include a city or a city–county combined police agency.

Statement of Policy- The act provides that it is the policy of the State that municipal law enforcement officers must be encouraged to report, in writing, evidence of the following information to their supervisor, department head, or other appropriate authority:

- A violation of State or federal law, rule, or regulation.
- Fraud.
- Misappropriation of State and local government resources.
- Substantial and specific danger to the public health and safety.
- Gross mismanagement, a gross waste of monies, or gross abuse of authority.

Protections- In the absence of binding personnel policies, codes of conduct, or other procedures protecting employees from retaliation, the following apply:

- **No adverse action by the employing agency-** No employing agency shall discharge, threaten, or otherwise discriminate against a municipal law enforcement officer regarding the officer's compensation or terms of employment because the officer or a person acting on behalf of the officer reports or is about to report any activity described in the "Statement of Policy" section unless the officer knows or has reason to believe that the report is inaccurate.
- **No adverse action by another municipal law enforcement officer-** No municipal law enforcement officer shall retaliate against another municipal law enforcement officer because the officer or a person acting on behalf of the officer reports or is about to report any activity described in the "Statement of Policy" section.

Civil Actions and Remedies- A municipal law enforcement officer who is injured under this section may maintain an action in superior court within one year after the occurrence of the alleged violation. A court may order damages, an injunction, reinstatement of the officer, payment of back wages, reinstatement of fringe benefits and seniority rights, costs, and reasonable attorneys' fees. If a permanent injunction is granted, the officer must receive costs and reasonable attorneys' fees.

Notice of Protections- The employing agency must keep municipal law enforcement officers informed of their protections and obligations under this section. The State is responsible for the costs of producing these postings for distribution.

Criminal Penalty for Filing a False Writing- A municipal law enforcement officer who knowingly files a false writing under this section is guilty of a Class 2 misdemeanor.

EFFECTIVE DATE: The act becomes effective October 1, 2017, and applies to acts incurring liability and offenses committed on or after that date.

Attachment 16

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

HOUSE BILL 547

Short Title:	Cumberland 12C Superior Court Districts.	(Publi
Sponsors:	Representative Szoka. *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	Judiciary III, if favorable, Elections and Ethics Law	

April 4, 2017

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CANDIDATES FOR DISTRICT 12C OF THE SUPERIOR COURT IN CUMBERLAND COUNTY TO DESIGNATE THE SEAT TO WHICH THAT CANDIDATE SEEKS ELECTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-41(b)(14) reads as rewritten:

"**§ 7A-41. Superior court divisions and districts; judges.**

...

(b) For superior court districts of less than a whole county, or with part of one county with part of another, the composition of the district and the number of judges is as follows:

...

(14) District 12C: Cumberland County: VTD: AL51, VTD: CC04, VTD: CC06, VTD: CC07, VTD: CC08, VTD: CC10, VTD: CC12, VTD: CC13: Block(s) 0510009004000, 0510009004020; VTD: CC14, VTD: CC15: Block(s) 0510006001000, 0510006001001, 0510006001002, 0510006001003, 0510006001004, 0510006001005, 0510006001006, 0510006001007, 0510006001008, 0510006001009, 0510006001010, 0510006001011, 0510006001012, 0510006001013, 0510006001014, 0510006001015, 0510006001016, 0510006002000, 0510006002001, 0510006002002, 0510006002003, 0510006002004, 0510006002005, 0510006002006, 0510006002007, 0510006002008, 0510006002009, 0510018001000, 0510018001001, 0510018001002, 0510018001003, 0510018001004, 0510018001005, 0510018001006, 0510018001007, 0510018001008, 0510018001009, 0510018002000, 0510018002001, 0510018002002, 0510038003035; VTD: CC18: 0510007022006, 0510007022010, 0510007022011, 0510007022013, 0510007022014, 0510007022015, 0510007022016, 0510007022017, 0510007022018, 0510007022019, 0510007022020, 0510007022021, 0510007022022, 0510007022023, 0510007022024, 0510007022025, 0510007022026, 0510038003030, 0510038003031, 0510038003032, 0510038003055; VTD: CC21, VTD: CC24: Block(s) 0510020011006, 0510020011007, 0510020011008, 0510020011010, 0510020011011, 0510020011012, 0510020011013, 0510020011014, 0510020011015, 0510020011016, 0510020011025, 0510020011026, 0510020011030, 0510020011031, 0510020011032, 0510020011033, 0510020011034, 0510020011035, 0510020011036,

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...

(c) In subsection (b) above, the names and boundaries of voting tabulation districts, tracts, block groups, and blocks specified in this section are as shown on the 2010 Census Redistricting TIGER/Line Shapefiles.

...."

SECTION 2. This act becomes effective January 1, 2019, and elections in 2018 and thereafter shall be held accordingly.

Attachment 17

HOUSE BILL 547:
Cumberland 12C Superior Court Districts.

2017-2018 General Assembly

Committee:	House Judiciary III. If favorable, re-refer to Elections and Ethics Law	**Date:**	April 18, 2017
Introduced by:	Rep. Szoka	**Prepared by:**	Erika Churchill
Analysis of:	First Edition		Staff Attorney

OVERVIEW: House Bill 547 would require candidates for the office of Superior Court Judge in District 12C of Cumberland County to designate which seat among the two allocated to that district the candidate is seeking.

CURRENT LAW: "The General Court of Justice shall constitute a unified judicial system for purposes of jurisdiction, operation, and administration, and shall consist of an Appellate Division, a Superior Court Division, and a District Court Division." Sec. 2 of Article IV of the North Carolina Constitution. The General Assembly is tasked with dividing the State into a convenient number of Superior Court and District Court judicial districts. The General Assembly must provide for the election of one or more Superior Court Judges for each district, and a District Court must sit in at least one place in each county. Each judge must be a resident of the district to which he or she is elected. Superior court judges serve eight-year terms; district court judges serve four-year terms. Article IV of the North Carolina Constitution.

Currently, there are 70 superior court districts with 97 elected judges and 12 special judges. There are 44 District Court districts with 270 elected judges. Four Superior Court judges are allocated to Cumberland County, with one judge each in two single-member districts (Districts 12A and 12B) and two judges in one two-member district (District 12C). G.S. 7A-41. The term of office for both judges serving in District 12C expires in 2018.

BILL ANALYSIS: House Bill 547 would require candidates seeking office in Superior Court District 12C, which is allocated two judges both running in the same year, to specify when filing for office which judicial seat that candidate is seeking.

EFFECTIVE DATE: Effective with the 2018 elections.

Karen Cochrane-Brown
Director

H547-SMST-10 E1 -V-2

Legislative Analysis Division
919-733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

House Committee on Judiciary III
Monday, April 24, 2017 at 2:00 PM
Room 423 of the Legislative Office Building

Sergeant at Arms

1. **Jones Cherry**
2. **Rey Cooke**
3. **Dean Marshbourne**

House Committee on Judiciary III
Monday, April 24, 2017 at 2:45 PM
Room 423 of the Legislative Office Building

MINUTES

The House Committee on Judiciary III met at 2:00 PM on Monday April 24, 2017 in Room 423 of the Legislative Office Building. Representatives Jordan, Zachary, Horn, Johnson, Morey, Quick, Szoka, and White attended. Brad Krehely, Kristen Harris and Billy Godwin (Research Staff Counsel), along with Emma Benson (Committee Clerk) were in attendance. A Visitor Registration list is attached and made part of these minutes (Attachment 1).

Representative Jonathan Jordan, Chair, presided. The chair called the meeting to order at 2:50 PM. He introduced the Sergeants at Arms (Attachment 2). The following bill was considered:

House Bill 701, Proposed Committee Substitute (PCS) and a summary are provided (Attachments 3, 4, and 5).

HOUSE BILL 701: OLB UNIFORM DISCIPLINE AND INCREASE OVERSIGHT

Chairman Jordan recognized Rep. Zachary to chair.

Chairman Zachary recognized Rep. Szoka who made the motion to have the PCS before the committee. The motion carried.

Chairman Zachary recognized Reps. Jordan and Stevens to present the bill.

The PCS for House Bill 701 would require occupational licensing boards to adopt rules governing hearings in order to exercise the power to summarily suspend licenses and to increase oversight of occupational licensing boards and would make a number of changes to the statutes governing occupational licensing boards (OLBs) to increase oversight of the OLBs. The PCS rewrites Sections 1 and 2. The remainder of the PCS adds the contents of the 2nd edition of House Bill 142. These provisions passed 2nd and 3rd Readings in the House of Representatives on March6, 2017, before House Bill 142 was modified to become "Reset of S.L. 2016-3."

Chairman Zachary recognized Rep. White to ask if there's any opposition to the bill. Rep. Stevens explained that this bill was created by all of the major boards, and that there was no opposition.

Chairman Zachary recognized Rep. Jordan to present an amendment (Attachment 6).

Chairman Zachary recognized Rep. Szoka to motion for adoption of the amendment. The motion carried.

Chairman Zachary recognized Rep. Szoka to motion for the amendments to be rolled into a new PCS, favorable to the PCS and unfavorable to the original. The motion carried without dissent.

House Bill 771 and a summary are provided (Attachments 7 and 8).

HOUSE BILL 771: JUVENILE/PARENT COMM. SERVICE

Chairman Zachary recognized Reps. Destin Hall and Elmore to explain the bill.

House Bill 771 authorizes a court to order a parent, guardian, or custodian to perform community service with a juvenile adjudicated as delinquent for assaulting a school employee or school volunteer.

Chairman Zachary recognized Reps. Horn, Morey, Zachary, Quick, Johnson, Szoka, and White to discuss the bill.

Chairman Zachary recognized Rep. Jordan to make a motion favorable to the bill. The motion failed.

Chairman Zachary recognized Rep. Jordan to chair the meeting.

House Bill 774 and a summary are provided. (Attachments 9 and 10)

HOUSE BILL 774: REQUIRE COUNTY DSS TO REVIEW PLACEMENTS

Chairman Jordan recognized Rep. Stevens to explain the bill.

House Bill 774 requires county departments of social services to follow their placements and review the cases of juveniles in their custody.

Chairman Jordan recognized Reps. Szoka, Quick, and Horn to discuss the bill.

Chairman Jordan recognized Rep. Horn to make a motion favorable of the original bill. The motion carried without dissent.

House Bill 803 and a summary are provided (Attachments 11 and 12).

HOUSE BILL 803: LANDLORD LIABILITY CHANGES.

Chairman Jordan recognized Rep. Hardister to explain the bill.

House Bill 803 would address the relationship between a residential tenant's criminal record and a landlord's liabilities and make changes to the laws regarding the removal of a decedent's personal property from a leased premises.

Chairman Jordan recognized Rep. Szoka to present an amendment (Attachment 13). The amendment was adopted.
There was no discussion on House Bill 803.

Chairman Jordan recognized Rep. Zachary to make a motion unfavorable to the original bill, favorable to the PCS. The motion carried without dissent.

With no further business, Chairman Jordan adjourned the meeting at 3:35 PM.

Representative Jonathan Jordan, Chair
Presiding

Emma Benson, Committee Clerk

Attachments

1. Visitor Registration Sheet
2. Sergeants at Arms
3. House Bill 701
4. House Bill 701 PCS
5. House Bill 701 Summary
6. House Bill 701 Amendment 1
7. House Bill 771
8. House Bill 771Summary
9. House Bill 774
10. House Bill 774 Summary
11. House Bill 803
12. House Bill 803 Summary
13. House Bill 803 Amendment

Attachment 1

VISITOR REGISTRATION SHEET

Judiciary III — 04-24-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Crystal Feldmen	SA
Bill Rowe	NC Justice Center
Tony Adams	adams and assoc.
[illegible]	[illegible]
Peter Bolac	NC St Bar
Janet Thoren	NCREC
Fred Moreno	NCREC
Kevin Kelley	NCDHHS-DSS
Robert Sparks	Daily Bulletin
Tonya Hoban	TSS
David Finch	WB

VISITOR REGISTRATION SHEET

Judiciary III — 04-24-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Susanna Birdsong	ACLU-NC

VISITOR REGISTRATION SHEET

Judiciary III — 04-24-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Laura Puryear	MWC
Deb Clary	NCSP
Johanna Reese	NCACC
Jen Ryall	NCFPC
Lil File	AAMC
Alex Miller	AMGA

Attachment 2

Committee Sergeants at Arms

NAME OF COMMITTEE House Committee on Judiciary III

DATE: April 24th, 2017 Room: 423

House Sgt-At Arms:

1. Name: Jonas Cherry
2. Name: Rey Cooke
3. Name: Dean Marshbourne
4. Name:
5. Name:

Senate Sgt-At Arms:

1. Name:
2. Name:
3. Name:
4. Name:
5. Name:

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

HOUSE BILL 701

Short Title: Occupational Licensing Injunctive Relief. (Public

Sponsors: Representatives Jordan and Stevens (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary III

April 11, 2017

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE ABILITY OF OCCUPATIONAL LICENSING BOARDS TO OBTAIN INJUNCTIVE RELIEF AND TO REMOVE GENERAL AUTHORITY FOR OCCUPATIONAL LICENSING BOARDS TO SUMMARILY SUSPEND LICENSES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 93B of the General Statutes is amended by adding a new section to read:

"**§ 93B-17. Injunctive relief.**

An occupational licensing board may appear in its own name in superior court in actions for injunctive relief to restrain the violation of the provisions of a statute administered by the board or a rule or order of the board. The superior court shall have the jurisdiction to grant these injunctions or restraining orders or take other appropriate action even if criminal prosecution has been or may be instituted as a result of the violations or whether the person is a licensee of the board. No board shall issue such orders independently of the superior court unless specifically authorized to do so by law.

SECTION 2. G.S. 150B-3 reads as rewritten:

"**§ 150B-3. Special provisions on licensing.**

(a) When an applicant or a licensee makes a timely and sufficient application for issuance or renewal of a license or occupational license, including the payment of any required license fee, the existing license or occupational license does not expire until a decision on the application is finally made by the agency, and if the application is denied or the terms of the new license or occupational license are limited, until the last day for applying for judicial review of the agency order. This subsection does not affect agency action summarily suspending a license ~~or occupational license~~ under subsections (b) and (c) of this section.

…

(c) If the agency finds that the public health, safety, or welfare requires emergency action and incorporates this finding in its order, summary suspension of a license ~~or occupational license~~ may be ordered effective on the date specified in the order or on service of the certified copy of the order at the last known address of the licensee, whichever is later, and effective during the proceedings. The proceedings shall be promptly commenced and determined.

Nothing in this subsection shall be construed as amending or repealing any special statutes, in effect prior to February 1, 1976, which provide for the summary suspension of a license.

…."

SECTION 3. This act is effective when it becomes law and applies to licensing board actions occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H D

HOUSE BILL 701
PROPOSED COMMITTEE SUBSTITUTE H701-CSRN-14 [v.3]
04/21/2017 04:36:55 PM

Short Title: OLB Uniform Discipline and Increase Oversight. (Public

Sponsors:

Referred to:

April 11, 2017

A BILL TO BE ENTITLED

AN ACT TO REQUIRE OCCUPATIONAL LICENSING BOARDS TO ADOPT RULES GOVERNING HEARINGS IN ORDER TO EXERCISE THE POWER TO SUMMARILY SUSPEND LICENSES AND TO INCREASE OVERSIGHT OF OCCUPATIONAL LICENSING BOARDS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 93B of the General Statutes is amended by adding a new section to read:

"**§ 93B-17. Occupational board discipline of licensees.**

No occupational licensing board shall summarily suspend a license unless the licensing board has adopted rules governing the conduct of its hearings in accordance with G.S. 150B-38(h).

SECTION 2. G.S. 150B-3 reads as rewritten:

"**§ 150B-3. Special provisions on licensing.**

…

(c) If the agency finds that the public health, safety, or welfare requires emergency action and incorporates this finding in its order, summary suspension of a license or occupational license may be ordered effective on the date specified in the order or on service of the certified copy of the order at the last known address of the licensee, whichever is later, and effective during the proceedings. The proceedings shall be promptly commenced and determined. An occupational licensing board, as defined in Chapter 93B of the General Statutes, shall not summarily suspend an occupational license unless the occupational licensing board has first adopted rules governing the conduct of its hearings in accordance with G.S. 150B-38(h).

Nothing in this subsection shall be construed as amending or repealing any special statutes, in effect prior to February 1, 1976, which provide for the summary suspension of a license.

…."

SECTION 3. G.S. 93B-1 reads as rewritten:

"**§ 93B-1. ~~Definitions.~~Definitions; List of occupational licensing boards.**

(a) As used in this ~~Chapter:~~Chapter, the following definitions apply:

(1) ~~"License" means any license (other than a privilege license),~~License. – Any license, other than a privilege license, certificate, or other evidence of qualification which an individual is required to obtain before he or she may engage in or represent himself or herself to be a member of a particular profession or occupation.

(2) ~~"Occupational licensing board" means any~~Occupational licensing board. – Any board, committee, commission, or other agency in North Carolina which receives no General Fund revenue and is ~~established for the primary purpose of regulating the entry of persons into, and/or the conduct of persons within, a particular profession or occupation, and which is authorized to issue licenses; "occupational licensing board" does not include State agencies, staffed by full-time State employees, which as a part of their regular functions may issue licenses.~~given statutory authority to do all of the following:

a. Determine minimum qualifications required for licensure for a particular profession or occupation.

b. Issue licenses to qualified applicants.

c. Regulate the conduct of licensees within a particular profession or occupation.

d. Seek injunctive relief to prohibit unlicensed individuals or entities from engaging in certain activities as defined by statute.

e. Collect fees to support agency operations.

(b) Occupational licensing boards include only those boards specifically identified in this subsection. No additional boards or commissions shall be added to this list without first having been approved by the Joint Legislative Administrative Procedure Oversight Committee of the General Assembly as being necessary in that the profession subject to licensure affects the health, safety, or welfare of the public and that mandatory licensure is necessary to ensure minimum standards of competency so as to protect the public from unqualified persons or unprofessional conduct by persons or entities practicing in the profession. Occupational licensing boards shall include only the following:

(1) Acupuncture Licensing Board.
(2) Alarm Systems Licensing Board.
(3) Board of Examiners for Speech and Language Pathologists and Audiologists.
(4) Midwifery Joint Subcommittee.
(5) North Carolina Appraisal Board.
(6) North Carolina Auctioneers Commission.
(7) North Carolina Board for Licensing of Geologists.
(8) North Carolina Board for Licensing of Soil Scientists.
(9) North Carolina Board of Architecture.
(10) North Carolina Board of Athletic Trainer Examiners.
(11) North Carolina Board of Cosmetic Art Examiners.
(12) North Carolina Board of Dietetics/Nutrition.
(13) North Carolina Board of Electrolysis Examiners.
(14) North Carolina Board of Funeral Service.
(15) North Carolina Board of Landscape Architects.
(16) North Carolina Board of Licensed Professional Counselors.
(17) North Carolina Board of Massage and Bodywork Therapy.
(18) North Carolina Board of Nursing.
(19) North Carolina Board of Occupational Therapy.
(20) North Carolina Board of Pharmacy.
(21) North Carolina Board of Physical Therapy Examiners.
(22) North Carolina Board of Podiatry Examiners.
(23) North Carolina Board of Recreational Therapy Licensure.
(24) North Carolina Cemetery Commission.

(25) North Carolina Criminal Justice Education and Training Standards Commission.
(26) North Carolina Home Inspector Licensure Board.
(27) North Carolina Interpreter and Transliterator Licensing Board.
(28) North Carolina Irrigation Contractors' Licensing Board.
(29) North Carolina Landscape Contractors' Licensing Board.
(30) North Carolina Locksmith Licensing Board.
(31) North Carolina Marriage and Family Therapy Licensure Board.
(32) North Carolina Medical Board.
(33) North Carolina On-Site Wastewater Contractors and Inspectors Certification Board.
(34) North Carolina Psychology Board.
(35) North Carolina Real Estate Commission.
(36) North Carolina Respiratory Care Board.
(37) North Carolina Social Work Certification and Licensure Board.
(38) North Carolina State Board of Dental Examiners.
(39) North Carolina State Board of Examiners for Engineers and Surveyors.
(40) North Carolina State Board of Examiners for Nursing Home Administrators.
(41) North Carolina State Board of Examiners in Optometry.
(42) North Carolina State Board of Examiners of Fee-Based Practicing Pastoral Counselors.
(43) North Carolina State Board of Opticians.
(44) North Carolina State Hearing Aid Dealers and Fitters Board.
(45) North Carolina State Licensing Board for General Contractors.
(46) North Carolina Substance Abuse Professional Practice Board.
(47) North Carolina Veterinary Medical Board.
(48) Private Protective Services Board.
(49) Public Librarian Certification Commission.
(50) Sheriffs' Education and Training Standards Commission.
(51) State Board of Barber Examiners.
(52) State Board of Certified Public Accountant Examiners.
(53) State Board of Chiropractic Examiners.
(54) State Board of Environmental Health Specialist Examiners.
(55) State Board of Examiners of Electrical Contractors.
(56) State Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors.
(57) State Board of Refrigeration Examiners.
(58) State Board of Registration for Foresters."

SECTION 4. G.S. 93B-2 reads as rewritten:

"**§ 93B-2. Annual reports required; contents; open to inspection; sanction for failure to report.**

(a) No later than October 31 of each year, each occupational licensing board shall file electronically with the ~~Secretary of State, the Attorney General, and the~~ Joint Legislative Administrative Procedure Oversight ~~Committee~~ Committee, the Department of Commerce, the State Auditor, the Office of State Budget and Management, and the State Controller an annual report containing all of the following information:

(1) The address of the board, and the names of its members and officers.
(1a) The total number of licensees supervised by the board.
(2) The number of persons who applied to the board for examination.
(3) The number who were refused examination.
(4) The number who took the examination.

(5) The number to whom initial licenses were issued.
(5a) The number who failed the examination.
(6) The number who applied for license by reciprocity or comity.
(7) The number who were granted licenses by reciprocity or comity.
(7a) The number of official complaints received involving licensed and unlicensed activities.
(7b) The number of disciplinary actions taken against licensees, or other actions taken against nonlicensees, including injunctive relief.
(8) The number of licenses suspended or revoked.
(9) The number of licenses terminated for any reason other than failure to pay the required renewal fee.
(10) The substance of any anticipated request by the occupational licensing board to the General Assembly to amend statutes related to the occupational licensing board.
(11) The substance of any anticipated change in rules adopted by the occupational licensing board or the substance of any anticipated adoption of new rules by the occupational licensing board.
(12) A financial report that includes the source and amount of all funds credited to the occupational licensing board and the purpose and amount of all funds disbursed by the occupational licensing board during the previous fiscal year.
(13) The certification of a proper system of internal control and other financial information as required by G.S. 143D-7.
(14) A report of all civil penalties, civil forfeitures, and civil fines collected and remitted to the Civil Penalty and Forfeiture Fund pursuant to G.S. 115C-457.2.
(15) The statute or rule authorizing each fee collected, the amount of the fee, the date the fee was last changed, the number of times the fee was collected during the prior reporting period, and the total receipts resulting from the fee during the prior reporting period.
(16) If the occupational licensing board has a budget of at least fifty thousand dollars ($50,000), a financial audit of its operations.

~~(b) No later than October 31 of each year, each occupational licensing board shall file electronically with the Secretary of State, the Attorney General, the Office of State Budget and Management, and the Joint Legislative Administrative Procedure Oversight Committee a financial report that includes the source and amount of all funds credited to the occupational licensing board and the purpose and amount of all funds disbursed by the occupational licensing board during the previous fiscal year.~~

(c) The reports required by this section shall be open to public ~~inspection.~~inspection and shall be posted on the Internet Web site of the occupational licensing board.

(c1) Each occupational licensing board shall provide the Joint Legislative Administrative Procedure Oversight Committee with the name and contact information of the individual responsible for filing the reports required by this section. Each occupational licensing board shall keep this information current and notify the Committee within 30 days of any changes in this information.

(d) The Joint Legislative Administrative Procedure Oversight Committee shall review the reports submitted pursuant to this section and shall notify any board that fails to file the reports required by this section. Failure of a board to comply with the reporting requirements of this section by October 31 of each year shall result in a suspension of the board's authority to expend any funds until such time as the board files the required reports. Suspension of a board's authority to expend funds under this subsection shall not affect the board's duty to issue and

renew licenses or the validity of any application or license for which fees have been tendered in accordance with law. Each board shall adopt rules establishing a procedure for implementing this subsection and shall maintain an escrow account into which any fees tendered during a board's period of suspension under this subsection shall be deposited."

SECTION 5. G.S. 93B-4 reads as rewritten:

"**§ 93B-4. Audit of Occupational Licensing Boards; payment of costs.**

(a) The State Auditor shall audit occupational licensing boards from time to time to ensure their proper operation. The books, records, and operations of each occupational licensing board shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. In accordance with G.S. 147-64.7(b), the State Auditor may contract with independent professionals to meet the requirements of this section.

~~(b) Each occupational licensing board with a budget of at least fifty thousand dollars ($50,000) shall conduct an annual financial audit of its operations and provide a copy to the State Auditor.~~"

SECTION 6. G.S. 93B-5 reads as rewritten:

"**§ 93B-5. Compensation, employment, and training of board members.**

(a) ~~Board~~ Notwithstanding the provisions of G.S. 138-5, board members shall receive as compensation for their services per diem not to exceed ~~one~~ two hundred dollars ~~($100.00)~~ ($200.00) for each day during which they are engaged in the official business of the board.

...

(g) Within six months of a board member's initial appointment to the board, and at least once within every two calendar years thereafter, a board member shall receive training, either from the board's staff, including its legal advisor, or from an outside educational institution such as the School of Government of the University of North Carolina, on the statutes governing the board and rules adopted by the board, as well as the following State and federal laws, in order to better understand the obligations and limitations of a State agency:

(1) Chapter 150B, The Administrative Procedure Act.
(2) Chapter 132, The Public Records Law.
(3) Article 33C of Chapter 143, The Open Meetings Act.
(4) Articles 31 and 31A of Chapter 143, The State Tort Claims Act and The Defense of State Employees Law.
(5) Chapter 138A, The State Government Ethics Act.
(6) Chapter 120C, Lobbying.
(7) Antitrust law and State action immunity.

Completion of the training requirements contained in Chapter 138A and Chapter 120C of the General Statutes satisfies the requirements of subdivisions (5) and (6) of this subsection."

SECTION 7.(a) Chapter 93B of the General Statutes is amended by adding six new sections to read:

"**§ 93B-17. Occupational licensing board rule making.**

(a) Each occupational licensing board shall adopt rules for the receipt and resolution of complaints, for taking disciplinary or enforcement actions against its licensees, and for taking enforcement actions against persons not licensed by the board.

(b) Any interpretation, clarification, or other delineation of the scope of practice of an occupational licensing board shall be adopted as a rule.

"**§ 93B-18. Unlicensed activity.**

(a) An occupational licensing board shall have the authority to investigate unlicensed activity and notify unlicensed persons and entities of the possible violation of the law and administrative rules and any civil action or criminal penalty that may be imposed by a court. The notification shall not indicate that the occupational licensing board has made any finding of a violation but may indicate the board's belief or opinion that a particular act may violate the board's enabling statutes, include factual information regarding legislation and court

proceedings concerning the potential violation, and provide notice of the board's intention to pursue administrative remedies or court proceedings with regard to the potential violation.

(b) Any occupational licensing board providing notification to unlicensed persons and entities of a possible violation of the law and administrative rules and any civil action or criminal penalty that may be imposed by a court shall include the following statement in the notification:

> You are hereby notified that the opinion expressed herein is not a legal determination. An occupational licensing board does not have the authority to order you to discontinue your current practices. Only a court may determine that you have violated or are violating any law and, if appropriate, impose a remedy or penalty for the violation. Further, pursuant to G.S. 150B-4, you may have the right, prior to initiation of any court action by the occupational licensing board, to request a declaratory ruling regarding whether your particular conduct is lawful. You are further notified that any right to a declaratory ruling supplements any other legal rights that you may already have to establish the legality of your conduct with respect to the goods or services you offer or provide.

"**§ 93B-19. Venue for court enforcement.**

The venue for occupational licensing boards seeking a court order for injunctive relief or to show cause for failure to comply with a subpoena lawfully issued by the occupational licensing board shall be in the superior court of the county where the defendant resides or in the county where the occupational licensing board has its principal place of business.

"**§ 93B-20. Injunctive relief.**

An occupational licensing board may appear in its own name in superior court in actions for injunctive relief to restrain the violation of the provisions of a statute administered by the board or a rule or order of the board. The superior court shall have the jurisdiction to grant these injunctions or restraining orders or take other appropriate action even if criminal prosecution has been or may be instituted as a result of the violations, or whether the person is a licensee of the board. No board shall issue such orders independently of the superior court unless specifically authorized to do so by law.

"**§ 93B-21. Jurisdictional disputes between boards.**

It is the policy of the State that jurisdictional disputes among occupational licensing boards shall be resolved through informal procedures. If a jurisdictional dispute among occupational licensing boards cannot be resolved through informal procedures, any affected board may commence an administrative proceeding to resolve the jurisdictional dispute by filing a petition with the Office of Administrative Hearings and serving the petition on all affected boards. Once the petition is filed and the required fee is paid, the dispute shall become a contested case and shall be conducted by the Office of Administrative Hearings under Articles 3 and 4 of Chapter 150B of the General Statutes.

"**§ 93B-22. Complaint process.**

Each occupational licensing board shall develop and implement a complaint process that provides for all of the following:

(1) A description of the complaint process on the board's Web site, including the types of violations that are under the jurisdictional authority of the board.

(2) Electronic complaint submission via the board's Web site, including a prominently displayed link to a complaint form.

(3) The ability to provide complainants with a written description of the final disposition of each complaint."

SECTION 7.(b) The complaint process provided for in G.S. 93B-22 shall be implemented and active on each board's Web site no later than January 1, 2018.

SECTION 8. G.S. 115C-457.2 reads as rewritten:

"**§ 115C-457.2. Remittance of moneys to the Fund.**

The clear proceeds of all civil penalties, civil forfeitures, and civil fines that are collected by a State agency and that the General Assembly is authorized to place in a State fund pursuant to Article IX, Section 7(b) of the Constitution shall be remitted to the Office of State Budget and Management by the officer having custody of the funds within 10 days after the close of the calendar month in which the revenues were received or collected. Notwithstanding any other law, all such funds shall be deposited in the Civil Penalty and Forfeiture Fund. The clear proceeds of these funds include the full amount of all civil penalties, civil forfeitures, and civil fines collected under authority conferred by the State, diminished only by the actual costs of collection, not to exceed twenty percent (20%) of the amount collected. The collection cost percentage to be used by a State agency shall be established and approved by the Office of State Budget and Management on an annual basis based upon the computation of actual collection costs by each agency for the prior fiscal year. Occupational licensing boards as defined in G.S. 93B-1 shall satisfy the annual reporting obligation imposed under this section by including the information required in the occupational licensing board's annual report required pursuant to G.S. 93B-2."

SECTION 9. G.S. 143C-9-4 reads as rewritten:

"**§ 143C-9-4. Biennial fee report.**

The Office of State Budget and Management shall prepare a report biennially on the fees charged by each State department, bureau, division, board, commission, institution, and agency during the previous two fiscal years. The report shall include the statutory or regulatory authority for each fee, the amount of the fee, when the amount of the fee was last changed, the number of times the fee was collected during the prior fiscal year, and the total receipts from the fee during the prior fiscal year. The Office of State Budget and Management shall obtain the information required under this section for occupational licensing boards as defined in G.S. 93B-1 from the annual report filed by each occupational licensing board pursuant to G.S. 93B-2."

SECTION 10. G.S. 143D-7 reads as rewritten:

"**§ 143D-7. Agency management responsibilities.**

(a) The management of each State agency bears full responsibility for establishing and maintaining a proper system of internal control within that agency. Each principal executive officer and each principal fiscal officer shall annually certify, in a manner prescribed by the State Controller, that the agency has in place a proper system of internal control. The State Controller shall develop policies and procedures to direct agencies in their evaluation.

(b) The management of each State agency also bears the responsibility periodically to submit accurate and complete financial information to the State Controller for compilation into North Carolina State government's various financial reports and other related financial information disseminated to the public. With the submission of such periodic reports to the State Controller, each agency's principal executive officer and each agency's principal fiscal officer shall certify, in a manner prescribed by the State Controller, to the accuracy and completeness of the financial information submitted.

(c) Occupational licensing boards as defined in G.S. 93B-1 shall satisfy the annual reporting obligation imposed under this section by including the information required in the occupational licensing board's annual report required pursuant to G.S. 93B-2."

SECTION 11. G.S. 150B-38(a) reads as rewritten:

"**§ 150B-38. Scope; hearing required; notice; venue.**

(a) The provisions of this Article shall apply to:

(1) Occupational licensing ~~agencies.~~boards, as defined by G.S. 93B-1.

(2) The State Banking Commission, the Commissioner of Banks, and the Credit Union Division of the Department of Commerce.

(3) The Department of Insurance and the Commissioner of Insurance.

(4) The State Chief Information Officer in the administration of the provisions of Article 14 of Chapter 143B of the General Statutes.
(5) The North Carolina State Building Code Council.
(6) The State Board of Elections in the administration of any investigation or audit under the provisions of Article 22A of Chapter 163 of the General Statutes.
(7) The Securities Division of the Department of the Secretary of State."

SECTION 12. G.S. 150B-45 reads as rewritten:

"**§ 150B-45. Procedure for seeking review; waiver.**

(a) Procedure. – To obtain judicial review of a final decision under this Article, the person seeking review must file a petition within 30 days after the person is served with a written copy of the decision. The petition must be filed as follows:

(1) Contested tax cases. – A petition for review of a final decision in a contested tax case arising under G.S. 105-241.15 must be filed in the Superior Court of Wake County.
(2) Other final decisions. – A petition for review of any other final decision under this Article must be filed in the superior court of the county where the person aggrieved by the administrative decision resides, in the county where the agency has its principal place of business, or in the case of a person residing outside the State, in the county where the contested case which resulted in the final decision was filed. If a petitioner files a petition in a county other than as provided in this subdivision, the superior court may order a change of venue pursuant to G.S. 1-83; provided, however, that improper venue shall not be grounds for dismissal of the petition.

(b) Waiver. – A person who fails to file a petition within the required time waives the right to judicial review under this Article. For good cause shown, however, the superior court may accept an untimely petition."

SECTION 13. The Joint Legislative Administrative Procedure Oversight Committee shall continue to monitor and study the effects of the opinion in *North Carolina State Board of Dental Examiners v. Federal Trade Commission* and other issues related to the scope of practice jurisdiction of occupational licensing boards.

SECTION 14.(a) G.S. 86A-3 reads as rewritten:

"**§ 86A-3. Qualifications for certificate as a registered barber.**

A certificate of registration as a registered barber shall be issued by the Board to any person who meets all of the following qualifications:

(1) Has attended an approved barber school for at least 1528 hours.
(2) Has completed a 12-month apprenticeship under the supervision of a licensed barber, as provided in G.S. 86A-24.
(3) Has passed a clinical examination conducted by the Board.
(4) Has submitted to the Board the affidavit required by G.S. 86A-24(c) certifying that the applicant has served the apprenticeship required by subdivision (2).
(5) Has received a high school diploma or its equivalency or a high school graduation equivalency certificate and provided documentation thereof to the Board."

SECTION 14.(b) G.S. 86A-22 reads as rewritten:

"**§ 86A-22. Licensing and regulating barber schools and colleges.**

The North Carolina State Board of Barber Examiners may approve barber schools or colleges in the State, and may prescribe rules and regulations for their operation. The Board shall adopt rules establishing criteria for barber schools and colleges to maintain their

accreditation. No barber school or college shall be approved by the Board unless the school or college meets all of the following requirements:

(1) Each school shall provide a course of instruction of at least ~~1528~~ 1,528 hours.

(2) Each school shall employ at least two instructors for the first 40 enrolled students and employ at least one additional instructor for every additional 20 enrolled students. Schools that are organized as nonprofits and have obtained a ruling from the Internal Revenue Service recognizing their tax-exempt status shall have at least one instructor for every 20 enrolled students. No school, whether for profit or nonprofit, shall provide practical training and theoretical training simultaneously unless at least two instructors are present.

(2a) Each student shall have received a high school diploma or its equivalency or a high school graduation equivalency certificate and provided documentation thereof to the Board and the school.

(3) An application for a student's permit, on a form prescribed by the Board, must be filed with the Board before the student enters school. No student may enroll without having obtained a student's permit.

...."

SECTION 15. G.S. 143B-68 reads as rewritten:

"**§ 143B-68. Public Librarian Certification Commission – members; selection; quorum; compensation.**

The Public Librarian Certification Commission of the Department of Natural and Cultural Resources shall consist of five members as follows: (i) ~~the chairman of the North Carolina Association of Library Trustees, (ii)~~ the chairman of the public libraries section of the North Carolina Library Association, ~~(iii) an individual~~ (ii) two individuals named by the Governor upon the nomination of the North Carolina Library Association, ~~(iv)~~(iii) the dean of a State or regionally accredited graduate school of librarianship in North Carolina appointed by the ~~Governor~~ Governor, and ~~(v)~~(iv) one member at large appointed by the Governor.

The members shall serve four-year terms or while holding the appropriate chairmanships. Any appointment to fill a vacancy created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, and nonfeasance according to the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem, and necessary travel expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of the Department through the regular staff of the Department."

SECTION 16. Except as otherwise provided, the act is effective when it becomes law and applies to licensing board actions occurring on or after that date.

Attachment 5

HOUSE BILL 701:
OLB Uniform Discipline and Increase Oversig

2017-2018 General Assembly

Committee:	House Judiciary III	**Date:**	April 21, 2017
Introduced by:	Reps. Jordan, Stevens	**Prepared by:**	Brad Krehely
Analysis of:	PCS to First Edition H701-CSRN-14		Committee Co-Coun

OVERVIEW: ***The Proposed Committee Substitute (PCS) for House Bill 701 would require occupational licensing boards to adopt rules governing hearings in order to exercise the power to summarily suspend licenses and to increase oversight of occupational licensing boards and would make a number of changes to the statutes governing occupational licensing boards (OLBs) to increase oversight of the OLBs. The PCS rewrites Sections 1 and 2. The remainder of the PCS adds the contents of the 2nd edition of House Bill 142. These provisions passed 2nd and 3rd Readings in the House of Representatives on March 6, 2017, before House Bill 142 was modified to become "Reset of S.L. 2016-3."***

BACKGROUND: In *North Carolina State Board of Dental Examiners v. Federal Trade Commission,* 135 S. Ct. 1101 (2015), the US Supreme Court found that the NC Dental Board was not protected from antitrust actions under the doctrine of state action immunity because the Board was controlled by active market participants and was not subject to active supervision by the State.

Sections 3-15 are a recommendation of the Joint Legislative Administrative Procedure Oversight Committee (APO) designed to respond to the supervision concerns raised in *North Carolina State Board of Dental Examiners v. Federal Trade Commission.*

BILL ANALYSIS:

Sections 1 and 2 would provide that no licensing board must summarily suspend a license unless the licensing board has adopted rules governing the conduct of its hearings in accordance with the APA.

Section 3 would amend the definition of "occupational licensing board" and create an exclusive list of all OLBs in the State. This section would also provide that no board or commission could be added to the list without the approval of the Joint Legislative Administrative Procedure Oversight Committee (APO).

Section 4 would delete the Secretary of State and the Attorney General and add the Department of Commerce, the State Auditor, the Office of State Budget and Management, and the State Controller as recipients of the annual report that OLBs are required to submit. This section would also expand the information the annual report is required to include and require OLBs to update their contact information.

Section 5 would make a conforming change.

Section 6 would increase the per diem authorization for OLB members from $100 to $200 per day and would require OLB members to receive training in antitrust law and State action immunity.

Section 7 would add several new sections to Chapter 93B as follows:

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

- G.S. 93B-17 would require OLBs to adopt rules for the receipt and resolution of complaints, for taking disciplinary or enforcement actions against its licensees, and for taking enforcement actions against persons not licensed by the board. This new statute would also require that any interpretation, clarification, or other delineation of the scope of practice of an OLB be adopted as a rule.
- G.S. 93B-18 would clarify OLBs' authority to investigate unlicensed activity and to notify unlicensed person of possible violations of laws and rules. This section would also provide standardized language for notifying unlicensed persons and entities of possible violations of the law. The notification would not indicate that the OLB has made a finding of a violation, but may indicate the OLB's belief or opinion that an unlicensed activity may violate the OLB's enabling statutes, include factual information regarding legislation and court proceedings concerning the potential violation, and provide notice of the OLB's intent to pursue administrative remedies or court proceedings.
- G.S. 93B-19 would provide that the venue for injunctive relief sought by an OLB is the superior court of the county where the defendant resides or in the county where the OLB has its principal place of business.
- G.S. 93B-20 would authorize an OLB to appear in its own name in actions for injunctive relief and authorize the superior court to grant injunctions, restraining orders, or take other appropriate action even if criminal prosecution has be instituted. No OLB shall issue orders independently of the superior court unless specifically authorized to do so by law.
- G.S. 93B-21 would encourage the resolution of jurisdictional disputes among OLBs by informal procedures and would authorize the use of the administrative hearing process if informal procedures fail.
- G.S. 93B-22 would require each OLB to implement a complaint process, with the requirements specified, and implement that process no later than January 1, 2018.

Sections 8, 9, and 10 would amend other statutes requiring certain information be reported by OLBs by providing that the report required by G.S. 93B-2 will satisfy these reporting requirements.

Section 11 would add a clarifying cross-reference to the statute governing the scope of agencies that may hear their own contested cases and would add the Securities Division of the Department of the Secretary of State to the list of such agencies.

Section 12 would clarify venue for superior court review of administrative final decisions.

Section 13 would provide that APO shall continue to monitor and study the effects of *North Carolina State Board of Dental Examiners v. Federal Trade Commission* and other issues related to the scope of practice jurisdiction of OLBs.

Section 14 would add to the requirements for barber certification that an applicant for certification must have a high school diploma or its equivalent. This section would also add to the approval requirements for barber schools and colleges that each student must have received a high school diploma or its equivalent.

Section 15 would amend the membership of the Public Librarian Certification Commission by eliminating the chairman of the North Carolina Association of Library Trustees and giving the Governor an additional appointment upon nomination by the North Carolina Library Association.

EFFECTIVE DATE: The PCS would be effective when it becomes law and would apply to licensing board actions occurring on or after that date.

**Jeffrey Hudson, Staff Attorney for the Legislative Analysis Division, contributed substantially to the drafting of this summary.*

Attachment 6

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 701

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

H701-ARN-18 [v.1]

Amends Title [NO]
H701-CSRN-14

Date _____,2017

Representative Jordan

moves to amend the bill on page 1, lines 7-12, by deleting those lines and renumbering the remaining sections accordingly; and

On page 5, line 42, by inserting the following at the end of the line:

"No occupational licensing board shall summarily suspend a license unless the licensing board has adopted rules governing the conduct of its hearings in accordance with G.S. 150B-38(h).".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H 1

HOUSE BILL 771

Short Title:	Juvenile/Parent Comm. Service.	(Public
Sponsors:	Representatives Destin Hall, Elmore, Jordan, and K. Hall (Primary Sponsors). *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	Judiciary III, if favorable, Homelessness, Foster Care, and Dependency	

April 13, 2017

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE A COURT TO ORDER A PARENT, GUARDIAN, OR CUSTODIAN TO PERFORM COMMUNITY SERVICE WITH A JUVENILE ADJUDICATED AS DELINQUENT FOR ASSAULTING A SCHOOL EMPLOYEE OR SCHOOL VOLUNTEER.

The General Assembly of North Carolina enacts:

SECTION 1. Article 27 of Chapter 7B of the General Statutes is amended by adding the following new section to read:

"**§ 7B-2701.5. Parental community service performed with the juvenile under certain circumstances.**

If a juvenile has been adjudicated delinquent for a violation of G.S. 14-33(c)(6) and ordered to perform community service in a dispositional order pursuant to G.S. 7B-2506 or in an order of probation pursuant to G.S. 7B-2510, and if the court finds that it is in the best interests of the juvenile, the court may order at least one parent, guardian, or custodian of the juvenile to perform community service with the juvenile."

SECTION 2. This act becomes effective December 1, 2017, and applies to offenses committed on or after that date.

HOUSE BILL 771:
Juvenile/Parent Comm. Service.

2017-2018 General Assembly

Committee:	House Judiciary III. If favorable, re-refer to Homelessness, Foster Care, and Dependency	**Date:**	April 21, 2017
Introduced by:	Reps. Destin Hall, Elmore, Jordan, K. Hall	**Prepared by:**	Tawanda N. Foster Staff Attorney
Analysis of:	First Edition		

OVERVIEW: House Bill 771 authorizes a court to order a parent, guardian, or custodian to perform community service with a juvenile adjudicated as delinquent for assaulting a school employee or school volunteer.

CURRENT LAW: G.S. 14-33(c)(6) provides it is a Class A1 misdemeanor if in the course of an assault, assault and battery, or affray a person assaults a school employee or school volunteer when the employee or volunteer is discharging or attempting to discharge his or her duties as an employee or volunteer, or if a person assaults a school employee or school volunteer as a result of the discharge or attempt to discharge that individual's duties as a school employee or school volunteer.

BILL ANALYSIS: This bill adds a new section to Article 27 of Chapter 7B to allow a court to order at least one parent, guardian, or custodian of a juvenile to perform community service with the juvenile if the juvenile is adjudicated delinquent for assaulting a school employee or volunteer and is ordered to perform community service. The court must also find it is in the best interests of the child to make such an order.

EFFECTIVE DATE: This bill would become effective December 1, 2017.

Karen Cochrane-Brown
Director

H771-SMTV-20-E1-V-1

Legislative Analysis
Division
919-733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H 1

HOUSE BILL 774

Short Title:	Require County DSS to Review Placements.	(Public)
Sponsors:	Representatives Stevens and Clampitt (Primary Sponsors).	
	For a complete list of sponsors, refer to the North Carolina General Assembly web site.	
Referred to:	Judiciary III	

April 13, 2017

A BILL TO BE ENTITLED

AN ACT TO REQUIRE COUNTY DEPARTMENTS OF SOCIAL SERVICES TO FOLLOW THE PLACEMENTS AND REVIEW THE CASES OF JUVENILES IN THEIR CUSTODY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-505 is amended by adding a new subsection to read:

"(e) When a juvenile is placed in nonsecure custody with the department of social services pursuant to this section, the department of social services shall follow the placement and review the case of the juvenile for whom the department of social services has taken custody throughout final disposition of the case or until permanency is achieved."

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

Attachment 10

HOUSE BILL 774:
Require County DSS to Review Placements.

2017-2018 General Assembly

Committee:	House Judiciary III	**Date:**	April 21, 2017
Introduced by:	Reps. Stevens, Clampitt	**Prepared by:**	Tawanda N. Foster
Analysis of:	First Edition		Staff Attorney

OVERVIEW: ***House Bill 774 requires county departments of social services to follow their placements and review the cases of juveniles in their custody.***

CURRENT LAW: G.S. 7B-505 allows a juvenile in nonsecure custody with the department of social services or a person designated in the order for temporary placement in the order for temporary residential placement to be placed in:

1. A licensed foster home or a home otherwise authorized by law to provide such care; or
2. A facility operated by the department of social services; or
3. Any other home or facility, including a relative's home approved by the court and designated in the order.

This section also requires the department of social services to make diligent efforts and consider other certain factors when placing a child who is in nonsecure custody.

BILL ANALYSIS: This bill adds a new subsection to require the department of social services to follow and review the cases of juveniles for whom they have nonsecure custody throughout the final disposition of the case or until permanency is achieved.

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

Karen Cochrane-Brown
Director

H774-SMTV-21-E1-V-1

Legislative Analysis
Division
919-733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

HOUSE BILL 803

Short Title:	Landlord Liability Changes.	(Public
Sponsors:	Representatives Hardister, Ross, Goodman, and W. Richardson (Primary Sponsors). *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	Judiciary III	

April 13, 2017

A BILL TO BE ENTITLED

AN ACT TO CODIFY *DAVENPORT V. D.M. RENTAL PROPERTIES, INC.*, REGARDING CRIMINAL RECORDS OF TENANTS, OCCUPANTS, AND GUESTS AND TO ALLOW FOR AUTHORIZED INDIVIDUALS TO DIRECT THE REMOVAL OR DISPOSAL OF CERTAIN PERSONAL PROPERTY OF A DECEDENT LOCATED IN LEASED PREMISES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Article 1 of Chapter 42 of the General Statutes is amended by adding a new section to read:

"**§ 42-14.5. Foreseeability not created by criminal record; no duty to screen.**

Notwithstanding any other duty or obligation which may be defined by this Chapter or otherwise provided by law or any theory of liability, the criminal record of any prospective or current lessee, occupant, or guest shall not make any future injury or damage arising from that lessee, occupant, or guest foreseeable by the lessor or lessor's agent, nor shall a lessor or a lessor's agent have a duty to screen for, or to refuse to rent because of, the criminal record of a prospective or current lessee, occupant, or guest."

SECTION 1.(b) G.S. 42-25.7 reads as rewritten:

"**§ 42-25.7. Distress and distraint not permitted.**

It is the public policy of the State of North Carolina that distress and distraint are prohibited and that landlords of residential rental property shall have rights concerning the personal property of their residential tenants only in accordance with G.S. 42-25.9(d), 42-25.9(g), 42-25.9(h), 42-36.2, 28A-25-2, or 28A-25-7."

SECTION 2.(a) G.S. 28A-25-1 reads as rewritten:

"**§ 28A-25-1. Collection of property by affidavit when decedent dies intestate.**

(a) When a decedent dies intestate leaving personal property, less liens and encumbrances thereon, not exceeding twenty thousand dollars ($20,000) in value, at any time after 30 days from the date of death, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the public administrator appointed pursuant to G.S. 28A-12-1, or an heir or creditor of the decedent, not disqualified under G.S. 28A-4-2, upon being presented a certified copy of an affidavit filed in accordance with subsection (b) and made by or on behalf of the heir or creditor or the public administrator stating:

(1) The name and address of the affiant and the fact that the affiant is the public administrator or an heir or creditor of the decedent;
(2) The name of the decedent and the decedent's residence at time of death;
(3) The date and place of death of the decedent;
(4) That 30 days have elapsed since the death of the decedent;
(5) That the value of all the personal property owned by the estate of the decedent, less liens and encumbrances thereon, does not exceed twenty thousand dollars ($20,000);
(6) That no application or petition for appointment of a personal representative is pending or has been granted in any jurisdiction;
(7) The names and addresses of those persons who are entitled, under the provisions of the Intestate Succession Act, to the personal property of the decedent and their relationship, if any, to the decedent; and
(8) A description sufficient to identify each tract of real property owned by the decedent at the time of the decedent's death.

In those cases in which the affiant is the surviving spouse and sole heir of the decedent, not disqualified under G.S. 28A-4-2, the property described in this subsection that may be collected pursuant to this section may exceed twenty thousand dollars ($20,000) in value but shall not exceed thirty thousand dollars ($30,000) in value, after reduction for any spousal allowance paid to the surviving spouse pursuant to G.S. 30-15. In such cases, the affidavit shall state: (i) the name and address of the affiant and the fact that the affiant is the surviving spouse and is entitled, under the provisions of the Intestate Succession Act, to all of the property of the decedent; (ii) that the value of all of the personal property owned by the estate of the decedent, less liens and encumbrances thereon, does not exceed thirty thousand dollars ($30,000); and (iii) the information required under subdivisions (2), (3), (4), (6), and (8) of this subsection.

...

(d) The public administrator or an heir that has presented an affidavit as provided in subsection (a) of this section shall be entitled to remove or otherwise dispose of the decedent's personal property located in demised premises."

SECTION 2.(b) G.S. 28A-25-1.1 reads as rewritten:

"**§ 28A-25-1.1. Collection of property by affidavit when decedent dies testate.**

(a) When a decedent dies testate leaving personal property, less liens and encumbrances thereon, not exceeding twenty thousand dollars ($20,000) in value, at any time after 30 days from the date of death, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the public administrator appointed pursuant to G.S. 28A-12-1, a person named or designated as executor in the will, devisee, heir or creditor, of the decedent, not disqualified under G.S. 28A-4-2, upon being presented a certified copy of an affidavit filed in accordance with subsection (b) and made by or on behalf of the heir, the person named or designated as executor in the will of the decedent, the creditor, the public administrator, or the devisee, stating:

(1) The name and address of the affiant and the fact that the affiant is the public administrator, a person named or designated as executor in the will, devisee, heir or creditor, of the decedent;
(2) The name of the decedent and the decedent's residence at time of death;
(3) The date and place of death of the decedent;
(4) That 30 days have elapsed since the death of the decedent;

(5) That the decedent died testate leaving personal property, less liens and encumbrances thereon, not exceeding twenty thousand dollars ($20,000) in value;
(6) That the decedent's will has been admitted to probate in the court of the proper county and a duly certified copy of the will has been recorded in each county in which is located any real property owned by the decedent at the time of the decedent's death;
(7) That a certified copy of the decedent's will is attached to the affidavit;
(8) That no application or petition for appointment of a personal representative is pending or has been granted in any jurisdiction;
(9) The names and addresses of those persons who are entitled, under the provisions of the will, or if applicable, of the Intestate Succession Act, to the property of the decedent; and their relationship, if any, to the decedent; and
(10) A description sufficient to identify each tract of real property owned by the decedent at the time of the decedent's death.

In those cases in which the affiant is the surviving spouse, is entitled to all of the property of the decedent, and is not disqualified under G.S. 28A-4-2, the property described in this subsection that may be collected pursuant to this section may exceed twenty thousand dollars ($20,000) in value but shall not exceed thirty thousand dollars ($30,000) in value, after reduction for any spousal allowance paid to the surviving spouse pursuant to G.S. 30-15. In such cases, the affidavit shall state: (i) the name and address of the affiant and the fact that the affiant is the surviving spouse and is entitled, under the provisions of the decedent's will, or if applicable, of the Intestate Succession Act, to all of the property of the decedent; (ii) that the decedent died testate leaving personal property, less liens and encumbrances thereon, not exceeding thirty thousand dollars ($30,000); and (iii) the information required under subdivisions (2), (3), (4), (6), (7), (8), and (10) of this subsection.

...

(d) The public administrator, a person named or designated as executor in the will, devisee, or an heir that has presented an affidavit as provided in subsection (a) of this section shall be entitled to remove or otherwise dispose of the decedent's personal property located in the demised premises."

SECTION 2.(c) G.S. 28A-25-2 reads as rewritten:

"**§ 28A-25-2. Effect of affidavit.**

The person paying, delivering, transferring or issuing personal property or the evidence thereof pursuant to an affidavit meeting the requirements of G.S. 28A-25-1(a) or G.S. 28A-25-1.1(a) is discharged and released to the same extent as if the person dealt with a duly qualified personal representative of the decedent. A lessor of the demised premises that, at the direction of an affiant authorized pursuant to G.S. 28A-25-1(d) or G.S. 28A-25-1.1(d), removes, throws away, or otherwise disposes of the personal property located in demised premises is discharged and released to the same extent as if the lessor dealt with a duly qualified personal representative of the decedent. The person or lessor is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in an action brought for that purpose by or on behalf of the persons entitled thereto. The court costs and attorney's fee incident to the action shall be taxed against the person whose refusal to comply with the provisions of G.S. 28A-25-1(a) or G.S. 28A-25-1.1(a) made the action necessary. The heir or creditor to whom payment, delivery, transfer or issuance is made is answerable and accountable therefor to any duly qualified personal representative or collector of the decedent's estate or to any other person having an interest in the estate."

SECTION 3. Section 1 of this act is effective when it becomes law. The remainder of this act is effective when it becomes law and applies to affidavits submitted on or after that date.

Attachment 12

HOUSE BILL 803:
Landlord Liability Changes.

2017-2018 General Assembly

Committee:	House Judiciary III	**Date:**	April 24, 2017
Introduced by:	Reps. Hardister, Ross, Goodman, W. Richardson	**Prepared by:**	Kristen L. Harris Committee Co-Coun
Analysis of:	First Edition		

OVERVIEW: House Bill 803 would address the relationship between a residential tenant's criminal record and a landlord's liabilities and make changes to the laws regarding the removal of a decedent's personal property from a leased premises.

CURRENT LAW: Article 7 of Chapter 42 [Landlord and Tenant] of the General Statutes is entitled "Expedited Eviction of Drug Traffickers and Other Criminals".

Pursuant to G.S. 28A-25-7, when a decedent who is the sole occupant of a leased unit dies and leaves personal property in the unit, the landlord may take possession of the property under certain circumstances.

BILL ANALYSIS:

LANDLORD LIABILITY

Section 1.(a) would provide that a tenant's criminal record would not affect the foreseeability of any future injury or damage caused by him or her, and that a landlord would have no duty to screen a potential renter's criminal history or refuse to rent to a person because of his or her criminal record.

REMOVAL OF A DECEDENT'S PERSONAL PROPERTY FROM A LEASED PROPERTY

Section 2.(a) would allow the public administrator or heir of a tenant that dies without a will, who has presented a proper affidavit, to remove and dispose of the decedent's personal property from a leased premises. **Section 2.(b)** would allow for the same process, but for a tenant that dies with a will.

Section 1.(b) and Section 2.(c) would allow a landlord to dispose of a deceased tenant's personal property and be discharged and released from such acts at the direction of an affiant (as described in **Section 2.(a)**). The landlord would not be required to authenticate the information in the affidavit.

EFFECTIVE DATE: Section 1 of this act is effective when it becomes law. The remainder of this act is effective when it becomes law and applies to affidavits submitted on or after that date.

BACKGROUND: In *Davenport v. D.M. Rental Properties, Inc.*, the N.C. Court of Appeals found that the altercation between two tenants at a mobile home park was not foreseeable and that there was no duty on a landlord to screen potential tenants and no liability for failing to evict a tenant.

Karen Cochrane-Brown
Director

Legislative Analysis Division
919-733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

Attachment 13

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 803

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

H803-ATU-18 [v.1]

Amends Title [NO]
First Edition

Date April 24 ,2017

Representative Szoka

moves to amend the bill on page 1, lines 13, 14, and 16, by inserting the phrase "residential" before the phrase "lessee";

and on page 1, line 14, by inserting the phrase "residential" before the phrase "lessor" each time it appears;

and on page 1, lines 14 and 15, by inserting the phrase "residential" before the phrase "lessor's".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

House Committee on Judiciary III
Wednesday, April 26, 2017 at 12:00 PM
Room 421 of the Legislative Office Building

Sergeant at Arms

1. **Jones Cherry**
2. **Will Crocker**
3. **Bill Bass**

House Committee on Judiciary III
Wednesday, April 26, 2017 at 12:00 PM
Room 421 of the Legislative Office Building

MINUTES

The House Committee on Judiciary III met at 12:00 PM on Wednesday April 26, 2017 in Room 421 of the Legislative Office Building. Representatives Jordan, Zachary, Reives, Conrad, Hastings, Horn, Johnson, Morey, Quick, Szoka, and White attended. Brad Krehely, Kristen Harris and Billy Godwin (Research Staff Counsel), along with Emma Benson (Committee Clerk) were in attendance. A Visitor Registration list is attached and made part of these minutes. (Attachment 1)

Representative Zachary, Chair, presided. The chair called the meeting to order at 2:03 PM. He introduced the Sergeants at Arms (Attachment 2) and house pages. (Attachment 3) The following bills were considered:

House Bill 573 is provided. (Attachments 4)

HOUSE BILL 573: VACANT BUILDING RECEIVERSHIP

Chairman Zachary recognized Rep. Faircloth to present the bill.

House Bill 573 would authorize municipalities to petition the superior court to appoint a receiver to rehabilitate, demolish, or sell a vacant building, structure, or dwelling where the owner has failed to comply with an order to do so and to charge the owner an administrative fee.

Chairman Zachary recognized Rep. Horn to make a motion for a favorable report of the bill. The motion carried.

House Bill 573 has a serial referral to the House Committee on Finance.

House Bill 131 and a summary are provided. (Attachments 5 and 6)

HOUSE BILL 131: MOTIONS FOR APPROPRIATE RELIEF

Chairman Zachary recognized Rep. Destin Hall to explain the bill.

House Bill 131 would make various changes in the law relating to motions for appropriate relief under Chapter 15A of the General Statutes, as recommended by the North Carolina Courts Commission, and would make clarifying and technical changes to G.S. 7A-451 regarding the

entitlement of an indigent person to services of counsel. The act would become effective December 1, 2017, and would apply to all motions for appropriate relief filed on or after that date.

Chairman Zachary recognized Rep. Szoka to make a motion for a favorable report of the bill. The motion carried.

House Bill 707, PCS, and a summary are provided. (Attachments 7, 8, and 9)

HOUSE BILL 707: LIEN AGENT/NOTICE OF CANCELLATION

Chairman Zachary recognized Rep. Jordan to explain the bill.

House Bill 707 PCS would allow a potential lien claimant to cancel and renew a Notice to Lien Agent by using the Internet Web site approved by the designated lien agent. The PCS would require cancellation of the Notice to Lien Agent under certain circumstances, provide a process to renew a Notice to Lien Agent, explain that the cancellation and renewal are done on a Web site, set a five-year renewal period, and clarify that canceling a Notice to Lien Agent does not cancel a claim of lien on real property or affect priority of lien rights.

Chairman Zachary recognized Rep. Horn to make a motion of unfavorable to the original bill, favorable to the PCS. The motion carried.

House Bill 710, PCS, and a bill summary are provided. (Attachments 10, 11, and 12)

HOUSE BILL 710: PRIVATE PARKING/IMMOBILIZATION DEVICE

Chairman Zachary recognized Rep. Jordan to explain the bill.

House Bill 710 PCS would authorize immobilization companies to use immobilization devices on vehicles unlawfully parked in a private owned or leased parking space, and would create criminal offenses for unlawful parking and tampering or removing immobilization devices. The bill becomes effective December 1, 2017.

Chairman Zachary recognized Rep. Jordan to present an amendment to the bill. (Attachment 13). The amendment was adopted.

Chairman Zachary recognized Reps. Szoka, Turner, White, Horn, Morey, and Reives to provide discussion on the bill.

Chairman Zachary recognized Erin Wynia of the League of Municipalities to speak against the bill.

Chairman Zachary recognized Rep. Turner to make a motion unfavorable to the original bill, favorable to the PCS. The motion carried.

House Bill 776 and a bill summary are provided. (Attachments 14 and 15)
HOUSE BILL 776: ADOPTION LAW CHANGES

Chairman Zachary recognized Rep. Jordan to present the bill.

House Bill 776 amends various provisions under the laws governing adoptions.

Chairman Zachary recognized Rep. Turner to make a motion for a favorable report of the bill. The motion carried without dissent.

House Bill 852 and a bill summary are provided. (Attachments 16 and 17)

HOUSE BILL 852: REAL PROPERTY TECHNICAL CORRECTIONS

Chairman Zachary recognized Rep. Jordan to explain the bill.

House Bill 852 would make changes and amendments to various real property statutes as recommended by the Real Property Section of the North Carolina Bar Association. The bill would become effective when it becomes law.

Chairman Zachary recognized Rep. Hastings to provide discussion on the bill.

Chairman Zachary recognized Rep. Hastings to make a motion for a favorable report of the bill. The motion carried.

House Bill 852 has a serial referral to The House Committee on Finance.

House Bill 653, PCS, and bill summary are provided. (Attachments 18 and 19)

HOUSE BILL 653: REPORT/CAR ACCIDENT CAUSED BY SEIZURE OR COMA

Chairman Zachary recognized Rep. Conrad to make a motion to have the PCS before the committee. The motion carried.

Chairman Zachary recognized Rep. Dobson to explain the bill.

House Bill 653 would require accident reports to include information as to whether an accident was caused by a driver suffering an epileptic seizure or a hypoglycemic incident and to require the Division of Motor Vehicles to evaluate whether the driver can safely operate a motor vehicle after receiving the report.

Chairman Zachary recognized Reps. White, Reives, and Morey to discuss the bill.

Chairman Zachary recognized Rep. Horn to make a motion favorable to the PCS, unfavorable to the original bill. The motion carried.

With no further business, Chairman Zachary adjourned the meeting at 12:46 PM.

Representative Zachary, Chair
Presiding

Emma Benson, Committee Clerk

Attachments

1. Visitor Registration Sheet
2. Sergeants at Arms
3. House Pages
4. House Bill 573
5. House Bill 131
6. House Bill 131 Summary
7. House Bill 707
8. House Bill 707 PCS
9. House Bill 707 Summary
10. House Bill 710
11. House Bill 710 PCS
12. House Bill 710 Amendment
13. House Bill776
14. House Bill 776 Summary
15. House Bill 852
16. House Bill 852 Summary
17. House Bill 653
18. House Bill 653 PCS

VISITOR REGISTRATION SHEET

House Judiciary III — 04-26-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
CJPC	David Blagrove
John T. McLean	BB&T Insurance
Matthew Hoy	DRNC
Tim Mims	NCHBA
Mike Carpenter	NCHBA
Steven Cogburn	Clerk's Conference
David Ferrell	UB
Jay Stem	NCAA
Cady Thomas	Focus
Chris Ladd	PG
Barbara Moon	NCAOC

VISITOR REGISTRATION SHEET

House Judiciary III — 04-26-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Pamela Gilyard	NCDMV
Hope Mazej	NCDMV
Jonathan Puryear	NCDMV
Michelle Frazier	SMC
Mildred Spearman	NCAOC
Sarah Collins	NCLM
Jane Ryall	NCFPC
Kim Leonard	NCBH
George Robinson	DOI
Meghan Cook	DOI

VISITOR REGISTRATION SHEET

House Judiciary III — **Name of Committee**

04-26-2017 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jennifer Filipowski	EVERYONE'S NC 5260 WILSON HILL CT WS NC 27104
Corey Williams	Everyone's NC 129 Ruskin Chapel Hill
Alyssa Crockett	1021 Laurel Hill Rd. Chapel Hill
SueAnn Forrest	NCMS
Rivian Menvald	WM
Pheobe Landon	MW
Brinton Wright	NC Bar Association
LT McCrimmon	DHHS
Connie Wear	CRMCA
Mary	NCACP
MICHAEL EISENBERG	CONCERNED CITIZEN

VISITOR REGISTRATION SHEET

House Judiciary III — 04-26-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Metcalf	Policy Group
Jamie Lassiter	Conf of Clerks
Julie Ryan	NCGA
Kris Parks	DLNL
Nathan Batts	NCBA
[illegible]	Speakers staff
Julie White	NCMMC
Erin Wynia	NCLM
Henry Jones	Jordan Price

4-26-17
(DATE)

House Jud III
(COMMITTEE)

SENATE SERGEANT-AT-ARMS

HOUSE SERGEANT-AT-ARMS

Jonas Cherry	Bill Bass
~~Dean Marshbourne~~	
~~Ray Cooke~~	
Will Crocker	

House Pages
Assignments
Wednesday, April 26, 2017
Session: 2:00 PM

Committee	Room	Time	Staff	Comments	Member
Judiciary IV	1228/1327	1:00 PM	Alyssa Scott		Rep. Jimmy Dixon
			Marko Stefanovic		Speaker Tim Moore
Rules, Calendar, and Operations of the House	544	10:00 AM	Christopher Barber		Rep. Donna White
			Zaccary Grierson		Rep. John Szoka
Education - Community Colleges	423	11:00 AM	Angel Wagner		Rep. Donna White
			Jordan Goode		Rep. Terry Garrison
Health	643	11:00 AM	Duncan Mills		Rep. Brian Turner
			Arran Walton		Speaker Tim Moore
Judiciary III	421	12:00 PM	Claire Morris-Benedict		Rep. Mickey Michaux, Jr.
			Marko Stefanovic		Speaker Tim Moore
State Personnel	1228/1327	12:00 PM	Jessica Lanier		Rep. George Graham
			Alyssa Scott		Rep. Jimmy Dixon
Energy and Public Utilities	643	1:00 PM	Angel Wagner		Rep. Donna White
			Jordan Goode		Rep. Terry Garrison
Judiciary I	415	~~1:00 PM~~ 12:00PM	Christopher Barber		Rep. Donna White
			Zaccary Grierson		Rep. John Szoka

HOUSE BILL 573

Short Title:	Vacant Building Receivership.	(Public)
Sponsors:	Representatives Faircloth, Ross, Blust, and Brockman (Primary Sponsors). *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	Judiciary III	

April 6, 2017

A BILL TO BE ENTITLED

AN ACT AUTHORIZING MUNICIPALITIES TO PETITION THE SUPERIOR COURT TO APPOINT A RECEIVER TO REHABILITATE, DEMOLISH, OR SELL A VACANT BUILDING, STRUCTURE, OR DWELLING WHERE THE OWNER HAS FAILED TO COMPLY WITH AN ORDER TO DO SO AND TO CHARGE THE OWNER AN ADMINISTRATIVE FEE.

The General Assembly of North Carolina enacts:

SECTION 1. Part 5 of Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read as follows:

"**§ 160A-439.1. Vacant building receivership.**

(a) Nuisance Per Se. – A building or structure under this Part or a dwelling under Part 6 of this Article is a nuisance per se, and a city may petition the superior court for the appointment of a receiver to rehabilitate, demolish, or sell the vacant building, structure, or dwelling if the owner fails to do any of the following:

(1) Fails to comply with an order issued pursuant to G.S. 160A-429 from which no appeal has been taken.

(2) Fails to comply with an order of the city council issued pursuant to G.S. 160A-429 following an appeal.

(3) Fails to comply with an order to repair, alter, or improve, remove, or demolish a structure issued under G.S. 160A-443.

(b) Petition for Appointment of Receiver. – The petition for the appointment of a receiver shall include all of the following: (i) a copy of the original violation notice or order issued by the city; (ii) a verified pleading that avers that the required rehabilitation or demolition has not been completed and identifies the proposed receiver and states the person's qualifications to serve; and (iii) the names of the respondents, which shall include the owner of the property, as recorded with the register of deeds, and any mortgagee with a recorded interest in the property. If the petition fails to name a respondent as required by this subsection, the proceeding may continue, but the receiver's lien for expenses incurred in rehabilitating, demolishing, or selling the vacant building, structure, or dwelling, as authorized by subsection (e) of this section, shall not have priority over the lien of that respondent.

(c) Notice of Proceeding. – Within 10 days after filing the petition, the city shall give notice of the pendency and nature of the proceeding by regular and certified mail to the last known address of all judgment creditors and lienholders with a recorded interest in the property. Within 30 days of the date on which the notice was mailed, a judgment creditor or lienholder may apply to intervene in the proceeding and to be appointed as receiver. If the city

fails to give notice to any judgment creditor or lienholder as required by this subsection, the proceeding may continue, but the receiver's lien for expenses incurred in rehabilitating, demolishing, or selling the vacant building, structure, or dwelling, as authorized by subsection (e) of this section, shall not have priority over the lien of that judgment creditor or lienholder.

(d) Appointment of Receiver. – The court shall appoint a receiver if the provisions of subsections (b) and (c) of this section have been satisfied. However, the court may, instead of appointing a receiver to rehabilitate or sell a vacant building, structure, or dwelling, permit an owner, mortgagee, or other person with an interest in the property to rehabilitate or demolish the property if that person (i) demonstrates the ability to complete the rehabilitation or demolition within a reasonable time, (ii) agrees to comply with a specified schedule for rehabilitation or demolition, and (iii) posts a bond in an amount determined by the court as security for the performance of the required work in compliance with the specified schedule. If, at any time, it appears to the city that the owner, a mortgagee, or other person appointed under this subsection is not proceeding with due diligence or in compliance with the court-ordered schedule, the city may apply to the court for immediate revocation of that person's appointment and for the appointment of a receiver. If the court revokes the appointment and appoints a receiver, the bond posted by the owner, mortgagee, or other person shall be applied to the receiver's expenses in rehabilitating, demolishing, or selling the vacant building, structure, or dwelling. If no qualified person with an ownership interest in the building, structure, or dwelling requests appointment to rehabilitate or demolish the property or if an appointee is dismissed, the court shall appoint a receiver for the purpose of rehabilitating and managing the property, demolishing the property, or selling the property to a qualified buyer. To be considered qualified, a person must show (i) the financial ability to complete the purchase or rehabilitation of the property; (ii) the knowledge of, or experience in, the rehabilitation of vacant real property; and (iii) the absence of any building code violations issued by the city on other real property owned by the person or any member, principal, officer, major stockholder, parent, subsidiary, predecessor, or others affiliated with the person or the person's business.

(e) Receiver Authority Exclusive. – Upon the appointment of a receiver under subsection (d) of this section, all other parties are divested of any authority to rehabilitate, demolish, or sell the building, structure, or dwelling subject to the receivership. Any party other than the appointed receiver who actively attempts to rehabilitate, demolish, or sell the property may be held in contempt of court and shall be subject to the penalties authorized by law for that offense. Any costs or fees incurred by a receiver appointed under this section shall constitute a lien against the property, and the receiver's lien shall have priority over all other liens and encumbrances, except taxes or other government assessments.

(f) Receiver's Authority to Rehabilitate or Demolish. – In addition to all necessary and customary powers, a receiver appointed to rehabilitate or demolish a vacant building, structure, or dwelling shall have the right of possession with authority to do all of the following:

(1) Contract for necessary labor and supplies for rehabilitation or demolition.

(2) Borrow money for rehabilitation or demolition from an approved lending institution or through a governmental agency or program, using the receiver's lien against the property as security.

(3) Manage the property after rehabilitation, with all the powers of a landlord, for a period of up to two years and apply the rent received to current operating expenses and repayment of outstanding rehabilitation expenses.

(4) Foreclose on the receiver's lien or accept a deed in lieu of foreclosure.

(g) Receiver's Authority to Sell. – In addition to all necessary and customary powers, a receiver appointed to sell a vacant building, structure, or dwelling shall have the authority to do all of the following: (i) sell the property to the highest bidder at public sale, following the same presale notice provisions that apply to a mortgage foreclosure under Article 2A of Chapter 45 of the General Statutes, and (ii) sell the property privately for fair market value if no party to

the receivership objects to the amount and procedure. In the notice of public sale authorized under this subsection, it shall be sufficient to describe the property by a street address and reference to the book and page or other location where the property deed is registered. Prior to any sale under this subsection, the applicants to bid in the public sale or the proposed buyer in the private sale shall demonstrate the ability and experience needed to rehabilitate the property within a reasonable time. After deducting the expenses of the sale, the amount of outstanding taxes and other government assessments, and the amount of the receiver's lien, the receiver shall apply any remaining proceeds of the sale first to the city's costs and expenses, including reasonable attorneys' fees, and then to the liens against the property in order of priority. Any remaining proceeds shall be remitted to the property owner.

(h) Receiver Forecloses on Lien. – A receiver may foreclose on the lien authorized by subsection (e) of this section by selling the property subject to the lien at a public sale, following public notice and notice to interested parties in the manner as a mortgage foreclosure under Article 2A of Chapter 45 of the General Statutes. After deducting the expenses of the sale and the amount of any outstanding taxes and other government assessments, the receiver shall apply the proceeds of the sale to the liens against the property, in order of priority. In lieu of foreclosure, and only if the receiver has rehabilitated the property, an owner may pay the receiver's costs, fees, including reasonable attorneys' fees, and expenses or may transfer his or her ownership in the property to either the receiver or an agreed upon third party for an amount agreed to by all parties to the receivership as being the property's fair market value.

(i) Deed After Sale. – Following the court's ratification of the sale of the property under this section, the receiver shall sign a deed conveying title to the property to the buyer, free and clear of all encumbrances. Upon the sale of the property, the receiver shall at the same time file with the court a final accounting and a motion to dismiss the action.

(j) Receiver's Tenure. – The tenure of a receiver appointed to rehabilitate, demolish, or sell a vacant building, structure, or dwelling shall extend no longer than two years after the rehabilitation, demolition, or sale of the property. Any time after the rehabilitation, demolition, or sale of the property, any party to the receivership may file a motion to dismiss the receiver upon the payment of the receiver's outstanding costs, fees, and expenses. Upon the expiration of the receiver's tenure, the receiver shall file a final accounting with the court that appointed the receiver.

(k) Administrative Fee Charged. – The city may charge the owner of the building, structure, or dwelling subject to the receivership an administrative fee that is equal to five percent (5%) of the profits from the sale of the building, structure, or dwelling or one hundred dollars ($100.00), whichever is less."

SECTION 2. This act applies only to cities with a population of 30,000 or more as of July 2013, according to the annual estimate of the Office of State Budget and Management, and with a majority of the corporate boundaries in a county with a Tier 1 or Tier 2 annual ranking as designated by the Department of Commerce pursuant to G.S. 143B-437.08.

SECTION 3. This act becomes effective October 1, 2017, and applies to any nuisance per se described in G.S. 160A-439.1, as enacted by this act, that occurs on or after that date.

HOUSE BILL 131

Short Title:	Motions for Appropriate Relief.	(Public)
Sponsors:	Representatives Destin Hall, Rogers, Duane Hall, and John (Primary Sponsors). *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	Judiciary III	

February 20, 2017

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING THE USE OF MOTIONS FOR APPROPRIATE RELIEF, AS RECOMMENDED BY THE NORTH CAROLINA COURTS COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1413(d) reads as rewritten:

"(d) All motions for appropriate relief filed in superior court shall, when filed, be referred to the senior resident superior court judge, who shall assign the motion as provided by this section for review and administrative action, including, as may be appropriate, dismissal, calendaring for hearing, entry of a scheduling order for subsequent events in the case, including disclosure of expert witness information described in G.S. 15A-903(a)(2) and G.S. 15A-905(c)(2) for expert witnesses reasonably expected to be called at a hearing on the motion, or other appropriate actions.

All motions for appropriate relief filed in district court shall, when filed, be referred to the chief district court judge, who shall assign the motion as provided by this section for review and administrative action, including, as may be appropriate, dismissal, calendaring for hearing, entry of a scheduling order for subsequent events in the case, or other appropriate actions."

SECTION 2. G.S. 15A-1420(b1) reads as rewritten:

"**§ 15A-1420. Motion for appropriate relief; procedure.**

...

(b1) Filing Motion With Clerk. –

(1) The proceeding shall be commenced by filing with the clerk of superior court of the district wherein the defendant was indicted a motion, with service on the district attorney in noncapital cases, and service on both the district attorney and Attorney General in capital cases.

(2) The clerk, upon receipt of the motion, shall place the motion on the criminal docket. When a motion is placed on the criminal docket, the clerk shall promptly bring the motion, or a copy of the motion, to the attention of the senior resident superior court judge or chief district court judge, as appropriate, for assignment to the appropriate judge pursuant to G.S. 15A-1413.

(3) The judge assigned to the motion shall conduct an initial review of the motion. If the judge determines that all of the claims alleged in the motion are frivolous, the judge shall deny the motion. If the motion presents sufficient information to warrant a hearing or the interests of justice so require, the judge shall appoint counsel for an indigent defendant who is not represented by counsel. Counsel so appointed shall review the motion filed by the petitioner and either adopt the

motion or file an amended motion. After post-conviction counsel files an initial or amended motion, or a determination is made that the petitioner is proceeding without counsel, the judge may direct the State to file an answer. Should the State contend that as a matter of law the defendant is not entitled to the relief sought, the State may request leave to file a limited answer so alleging."

SECTION 3. G.S. 7A-451(a) reads as rewritten:

"**§ 7A-451. Scope of entitlement.**

(a) An indigent person is entitled to services of counsel in the following actions and proceedings:

(1) Any case in which imprisonment, or a fine of five hundred dollars ($500.00), or more, is likely to be ~~adjudged;~~adjudged.

(2) A hearing on a petition for a writ of habeas corpus under Chapter 17 of the General ~~Statutes;~~Statutes.

(3) A motion for appropriate relief under Chapter 15A of the General Statutes if appointment of counsel is authorized by Chapter 15A of the General Statutes and the defendant has been convicted of a felony, has been fined five hundred dollars ($500.00) or more, or has been sentenced to a term of ~~imprisonment;~~imprisonment.

(4) A hearing for revocation of ~~probation;~~probation.

(5) A hearing in which extradition to another state is ~~sought;~~sought.

(6) A proceeding for an inpatient involuntary commitment to a facility under Part 7 of Article 5 of Chapter 122C of the General Statutes, or a proceeding for commitment under Part 8 of Article 5 of Chapter 122C of the General Statutes.

(7) In any case of execution against the person under Chapter 1, Article 28 of the General Statutes, and in any civil arrest and bail proceeding under Chapter 1, Article 34, of the General ~~Statutes;~~Statutes.

(8) In the case of a juvenile, a hearing as a result of which commitment to an institution or transfer to the superior court for trial on a felony charge is ~~possible;~~possible.

(9) A hearing for revocation of parole at which the right to counsel is provided in accordance with the provisions of Chapter 148, Article 4, of the General ~~Statutes;~~Statutes.

(10) Repealed by Session Laws 2003, c. 13, s. 2(a), effective April 17, 2003, and applicable to all petitions for sterilization pending and orders authorizing sterilization that have not been executed as of April 17, 2003.

(11) A proceeding for the provision of protective services according to Chapter 108A, Article 6 of the General ~~Statutes;~~Statutes.

(12) In the case of a juvenile alleged to be abused, neglected, or dependent under Subchapter I of Chapter 7B of the General ~~Statutes;~~Statutes.

(13) A proceeding to find a person incompetent under Subchapter I of Chapter 35A, of the General ~~Statutes;~~Statutes.

(14) A proceeding to terminate parental rights where a guardian ad litem is appointed pursuant to ~~G.S. 7B-1101;~~G.S. 7B-1101.

(15) An action brought pursuant to Article 11 of Chapter 7B of the General Statutes to terminate an indigent person's parental rights.

(16) A proceeding involving consent for an abortion on an unemancipated minor pursuant to Article 1A, Part 2 of Chapter 90 of the General Statutes. G.S. 7A-450.1, 7A-450.2, and 7A-450.3 shall not apply to this proceeding.

(17) A proceeding involving limitation on freedom of movement or access pursuant to G.S. 130A-475 or G.S. 130A-145.

(18) A proceeding involving placement into satellite monitoring under Part 5 of Article 27A of Chapter 14 of the General Statutes."

SECTION 4. This act becomes effective December 1, 2017, and applies to motions for appropriate relief filed on or after that date.

HOUSE BILL 131:
Motions for Appropriate Relief.

2017-2018 General Assembly

Committee:	House Judiciary III	**Date:**	April 25, 2017
Introduced by:	Reps. Destin Hall, Rogers, Duane Hall, John	**Prepared by:**	Brad Krehely
Analysis of:	First Edition		Committee Co-Counsel

OVERVIEW: House Bill 131 would make various changes in the law relating to motions for appropriate relief under Chapter 15A of the General Statutes, as recommended by the North Carolina Courts Commission, and would make clarifying and technical changes to G.S. 7A-451 regarding the entitlement of an indigent person to services of counsel. The act would become effective December 1, 2017, and would apply to all motions for appropriate relief filed on or after that date.

BACKGROUND: Article 89 of Chapter 15A of the General Statutes governs motions for appropriate relief. A motion for appropriate relief (MAR) is a motion made after judgment in a criminal case to correct any errors that occurred before, during, or after a criminal trial or proceeding, including errors related to the entry of a guilty plea. *See, Motions for Appropriate Relief*, by Jessica Smith, 2013, at http://benchbook.sog.unc.edu/sites/benchbook.sog.unc.edu/files/pdf/Motions for Appropriate Relief.pdf.

BILL ANALYSIS:

Section 1 would provide that, upon the filing of an MAR in superior court, the senior resident superior court judge must enter a scheduling order for disclosure of certain expert witness information for expert witnesses who are reasonably expected to be called at a hearing on the motion.

Section 2 would clarify the procedure to be followed by a judge assigned to a motion that was filed with the clerk of superior court, as follows:

- Requires the assigned judge to review the motion and to deny it upon a determination that all the claims are frivolous.
- Requires the judge to appoint counsel for an unrepresented indigent defendant upon a determination that a hearing is warranted or the interests of justice so require.
- Requires appointed counsel to review the motion and to adopt it or to file an amended motion.
- Allows the judge to require the State to file an answer to the motion.
- Allows the State to request leave to file a limited answer.

Section 3 would clarify that an indigent person is entitled to services of counsel in proceedings on a motion for appropriate relief under Chapter 15A if the defendant has been convicted of a felony, has been fined $500 or more, or has been sentenced to a term of imprisonment *and* the judge has reviewed the motion and determined that counsel should be appointed in accordance with Chapter 15A. This section also makes technical (formatting) changes.

EFFECTIVE DATE: The bill would become effective December 1, 2017, and apply to all motions for appropriate relief filed on or after that date.

*Janice Paul, Former Attorney for the Legislative Analysis Division, contributed substantially to this summary.

Karen Cochrane-Brown
Director

H131-SMRN-38 E1 -V-2

Legislative Analysis
Division
919-733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

HOUSE BILL 707

Short Title:	Lien Agent/Notice of Cancellation.	(Public)
Sponsors:	Representatives Jordan, Stevens, and B. Turner (Primary Sponsors). *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	Judiciary III	

April 11, 2017

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE STATUTES GOVERNING LIEN AGENTS FOR THE PURPOSE OF PROVIDING FOR THE CANCELLATION OF A NOTICE TO LIEN AGENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 44A-11.1 reads as rewritten:

"**§ 44A-11.1. Lien agent; designation and duties.**

...

(f) Any attorney who, in connection with a transaction involving improved real property subject to this section for which the attorney is serving as the closing attorney, contacts the lien agent in writing and requests copies of the notices to lien agent and cancellations of notice to lien agent received by the lien agent relating to the real property not more than five business days prior to the date of recordation of a deed or deed of trust on the real property, shall be deemed to have fulfilled the attorney's professional obligation as closing attorney to check such notices to lien agent and cancellations of notice to lien agent and shall have no further duty to request that the lien agent provide information pertaining to notices or cancellations received subsequently by the lien agent."

SECTION 2. G.S. 44A-11.2 reads as rewritten:

"**§ 44A-11.2. Identification of lien agent; notice to lien agent; effect of notice.**

...

(q) For any improvement to real property subject to G.S. 44A-11.1, if a potential lien claimant has been paid an amount satisfactory to resolve the Notice to Lien Agent previously filed, the potential lien claimant may file a Cancellation of Notice to Lien Agent with the designated lien agent within 15 days of receipt of payment utilizing an Internet Web site, approved for such use by the designated lien agent, containing all information required to notify the lien agent of its cancellation. A potential lien claimant may file a Cancellation of Notice to Lien Agent with the designated lien agent for any reason at any time. A Cancellation of Notice to Lien Agent may only be filed for preexisting Notice to Lien Agent filings.

(r) The Cancellation of Notice to Lien Agent to be given pursuant to subsection (q) of this section shall include the following information:

"CANCELLATION OF NOTICE TO LIEN AGENT

(1) Potential lien claimant's name, mailing address, telephone number, fax number (if available), and electronic mailing address (if available):

(2) Name of the party with whom the potential lien claimant has contracted to improve the real property described below:

(3) A description of the real property sufficient to identify the real property, such as the name of the project, if applicable, the physical address as shown on the building permit, or notice received from the owner:

(4) Date, entry number, and other identifying information about the Notice to Lien Agent to be cancelled:

(5) I give notice of my cancellation of my Notice to Lien Agent and my release and waiver of the corresponding protections under G.S. 44A-11.2 regarding the real property described in this notice.

(6) Date of execution of the Cancellation of Notice to Lien Agent:

(7) Person executing the Cancellation of Lien Notice to Lien Agent on behalf of the Potential Lien Claimant:"

(s) A Cancellation of Notice to Lien Agent received by the lien agent from a potential lien claimant shall have the effect of cancelling and discharging the Notice to Lien Agent and the corresponding protections provided under this section as to the subject matter of the notice to lien agent. A later filed Notice to Lien Agent filed by the potential lien claimant for improvements to same real property would only have the protections provided under this section from the date of the filing of the later filed notice, and such a notice or claim would not relate back to or renew the cancelled filing.

(t) A Notice to Lien Agent is discharged five years from the date of filing if not cancelled or renewed pursuant to the procedures described in this section."

SECTION 3. G.S. 58-26-45 reads as rewritten:

"**§ 58-26-45. Registration as a lien agent.**

...

(b) Upon receipt of the notice of designation by the owner pursuant to G.S. 44A-11.1, a lien agent shall have the duty to do all of the following:

...

(9) Receive cancellations of notices to lien agent and renewals of notice to lien agent delivered by potential lien claimants pursuant to G.S. 44A-11.2.

...

(d) For services rendered pursuant to each designation as a lien agent for improvements to real property comprising one- or two-family dwellings, a lien agent shall collect a fee of ~~twenty-five~~thirty dollars ~~($25.00)~~($30.00) from the owner. For services rendered pursuant to each designation as a lien agent for all other improvements to real property, the lien agent shall collect a fee of ~~fifty~~ fifty-eight dollars ~~($50.00)~~($58.00) from the owner.

(e) The Department shall publish on its Web site a current list of lien agents registered pursuant to this section."

SECTION 4. This act becomes effective January 1, 2018.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H D

HOUSE BILL 707
PROPOSED COMMITTEE SUBSTITUTE H707-CSTU-10 [v.4]
04/25/2017 10:46:52 AM

Short Title: Lien Agent/Notice of Cancellation. (Public)

Sponsors: Representatives Jordan, Stevens, and B. Turner (Primary Sponsors).

Referred to:

April 11, 2017

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE STATUTES GOVERNING LIEN AGENTS FOR THE PURPOSE OF PROVIDING FOR THE CANCELLATION AND RENEWAL OF A NOTICE TO LIEN AGENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 44A-11.1 reads as rewritten:

"**§ 44A-11.1. Lien agent; designation and duties.**

...

(f) Any attorney who, in connection with a transaction involving improved real property subject to this section for which the attorney is serving as the closing attorney, contacts the lien agent in writing and requests copies of the notices to lien agent and cancellations of notice to lien agent received by the lien agent relating to the real property not more than five business days prior to the date of recordation of a deed or deed of trust on the real property, shall be deemed to have fulfilled the attorney's professional obligation as closing attorney to check such notices to lien agent and cancellations of notice to lien agent and shall have no further duty to request that the lien agent provide information pertaining to notices or cancellations received subsequently by the lien agent."

SECTION 2. G.S. 44A-11.2 reads as rewritten:

"**§ 44A-11.2. Identification of lien agent; notice to lien agent; effect of notice.**

...

(q) For any improvement to real property comprising of one- or two-family dwellings subject to G.S. 44A-11.1, if a potential lien claimant has filed a Notice to Lien Agent and has received final payment in an amount satisfactory to resolve the Notice to Lien Agent previously filed, the potential lien claimant shall cancel the Notice to Lien Agent within a reasonable time of receipt of final payment by utilizing the Internet Web site approved for such use by the designated lien agent. A potential lien claimant may cancel a Notice to Lien Agent by utilizing the Internet Web site approved for such use by the designated lien agent for any reason at any time.

(r) A Notice to Lien Agent cancelled pursuant to subsection (q) shall have the effect of cancelling and discharging the Notice to Lien Agent and the corresponding protections provided under this section as to the subject matter of the Notice to Lien Agent. Cancelling a Notice to Lien Agent pursuant to subsection (q) does not act to cancel a claim of lien on real property filed or affect priority of lien rights pursuant to this section.

(s) A Notice to Lien Agent, not otherwise cancelled or renewed pursuant to this section, expires and is discharged five (5) years from the date of filing.

(t) A Notice to Lien Agent may be renewed prior to its cancellation or automatic expiration for one five-year period by utilizing the Internet Web site approved for such use by the designated lien agent. Such renewal shall extend the date of expiration by five (5) years.

(u) If a Notice to Lien Agent is timely renewed prior to cancellation or expiration pursuant to this section, the renewal shall maintain and relate back to the original filing date of the Notice to Lien Agent.

(v) If the Notice to Lien Agent is cancelled or automatically expires pursuant to this section, a later filed Notice to Lien Agent filed by the potential lien claimant for improvements to same real property would only have the protections provided under this section from the date of the filing of the later filed notice, and such notice to lien agent would not relate back to or renew the cancelled filing."

SECTION 3. G.S. 58-26-45 reads as rewritten:

"**§ 58-26-45. Registration as a lien agent.**

...

(b) Upon receipt of the notice of designation by the owner pursuant to G.S. 44A-11.1, a lien agent shall have the duty to do all of the following:

...

(9) Receive cancellations of notices to lien agent and renewals of notices to lien agent pursuant to G.S. 44A-11.2.

...

(d) For services rendered pursuant to each designation as a lien agent for improvements to real property comprising one- or two-family dwellings, a lien agent shall collect a fee of ~~twenty-five~~thirty dollars ~~($25.00)~~($30.00) from the owner. For services rendered pursuant to each designation as a lien agent for all other improvements to real property, the lien agent shall collect a fee of ~~fifty~~ fifty-eight dollars ~~($50.00)~~($58.00) from the owner.

(e) The Department shall publish on its Web site a current list of lien agents registered pursuant to this section."

SECTION 4. This act becomes effective October 1, 2018.

HOUSE BILL 707:
Lien Agent/Notice of Cancellation.

2017-2018 General Assembly

Committee:	House Judiciary III	**Date:**	April 26, 2017
Introduced by:	Reps. Jordan, Stevens, B. Turner	**Prepared by:**	Kristen L. Harris Committee Co-Counsel
Analysis of:	PCS to First Edition H707-CSTU-10		

OVERVIEW: ***The Proposed Committee Substitute to House Bill 707 would allow a potential lien claimant to cancel and renew a Notice to Lien Agent by using the Internet Web site approved by the designated lien agent.***

[The PCS would require cancellation of the Notice to Lien Agent under certain circumstances, provide a process to renew a Notice to Lien Agent, explain that the cancellation and renewal are done on a Web site, set a five-year renewal period, and clarify that canceling a Notice to Lien Agent does not cancel a claim of lien on real property or affect priority of lien rights.]

[As introduced, this bill was identical to S602, as introduced by Sen. Lee, which is currently in Senate Judiciary.]

CURRENT LAW: There is no statutory process that allows a potential lien claimant to cancel and renew a Notice to Lien Agent.

BILL ANALYSIS:

Section 1 would require a closing attorney to request copies of cancellations of notices to lien agent from a lien agent in order to fulfill his or her professional obligation as a closing attorney.

Section 2

Subsection (q) would require a potential lien claimant to cancel a filed Notice to Lien Agent within a reasonable time after receiving a final payment satisfactory to resolve the lien. The cancellation would have to be done on the Web site approved for such use by the designated lien agent.

A potential lien claimant could also cancel a Notice to Lien Agent at any time for any reason.

This section would apply to improvements to one- or two-family dwellings for which the costs are $30,000 or more.

Subsection (r) would provide that a cancelled Notice to Lien Agent pursuant to **Subsection (q)** would cancel and discharge the lien and any corresponding protections, but it would not cancel a claim of lien on real property filed or affect the priority of lien rights pursuant to this section.

Subsection (s) would provide that if not cancelled or renewed, a Notice to Lien Agent would expire and discharge five (5) years from the date of filing.

Subsection (t) would provide that a Notice to Lien Agent could be renewed prior to its cancellation or expiration for one (1) five-year period by using the Web site, and that the renewal would extend the date of expiration for five years.

Karen Cochrane-Brown
Director

Legislative Analysis
Division
919-733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

Subsection (u) would provide that if a Notice to Lien Agent is timely renewed before cancellation or expiration, the renewal would maintain and relate back to the original filing date of the Notice to Lien Agent.

Subsection (v) would provide that if the Notice to Lien Agent is cancelled or expires, a later filed Notice to Lien Agent filed by the potential lien claimant for improvement to same real property would only have the protections from the date of the filing of the later filed notice and the notice to lien agent would not relate back to or renew the cancelled filing.

Section 3

Subsection (b) would add receiving cancellations of notices to lien agent and renewals of notices to lien agent to the list of duties of a designated lien agent.

Subsection (d) would increase a designated lien agent's fee from $25.00 to $30.00 for improvements to one- or two-family dwellings and from $50.00 to $58.00 for all other properties.

EFFECTIVE DATE: This act becomes effective October 1, 2018.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H D

HOUSE BILL 710
PROPOSED COMMITTEE SUBSTITUTE H710-PCS30402-BG-18

Short Title: Private Parking/Immobilization Device. (Public)

Sponsors:

Referred to:

April 11, 2017

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE USE OF IMMOBILIZATION DEVICES ON VEHICLES UNLAWFULLY PARKED IN PRIVATELY OWNED OR LEASED PARKING LOTS OR SPACES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-219.5. Immobilization of unauthorized vehicles in private lots.**

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

(1) Immobilization company. – A person or company engaged in the business of attaching immobilization devices to vehicles.

(2) Immobilization device. – A device attached to the wheel or wheels of a vehicle for the purpose of preventing the vehicle from being moved from a parking space or lot until the device is removed by the immobilization company that attached the device to the vehicle. This term includes wheel locks, wheel clamps, and wheel boots.

(b) Unlawful Parking. – It shall be unlawful for any person other than the owner or lessee of a privately owned or leased parking space to park any vehicle in the private parking space without the express permission of the owner or lessee of the space if the private parking lot is clearly designated as private by a sign no smaller than 24 inches by 24 inches prominently displayed at all entrances to the parking lot, displaying the current name and current phone number of the immobilization company, and, if individually owned or leased, the parking lot or spaces within the lot are clearly marked by signs setting forth the name of each individual lessee or owner.

(c) Immobilization Authority. – A vehicle parked in a privately owned parking space in violation of subsection (b) of this section may be immobilized in the space upon the written request of the parking space owner or lessee and the registered owner of the vehicle shall become liable for removal of the immobilization device. Except as otherwise provided in this subsection, any person who attaches a mobilization device pursuant to this section shall not be liable for damages for the installation, removal, or installation and removal of the immobilization device to the owner, lienholder, or other person legally entitled to the possession of the vehicle immobilized. Any person who intentionally or negligently damages a vehicle while installing or removing the immobilization device may be liable for damages.

(d) Tampering or Removal. – It shall be unlawful for any person other than the immobilization company that attached the immobilization device to remove or otherwise tamper with an immobilization device attached to a vehicle in accordance with this section.

(e) Penalties. – The following penalties apply to violations of this section:

(1) Except as provided in subdivision (2) of this subsection, a person who commits a violation of subsection (b) or (d) of this section is guilty of an infraction punishable by a fine of not more than one hundred dollars ($100.00).

(2) A person who violates subsection (d) of this section and causes damage to the immobilization device to the extent that the device is unusable for its primary purpose, or otherwise prevents the immobilization company from further using the device, is guilty of a Class 1 misdemeanor.

(f) Local Ordinance. – Notwithstanding any other provision of law, no local government may pass an ordinance regulating the immobilization of vehicles unlawfully parked in privately owned or leased parking spaces or lots."

SECTION 2. This act becomes effective December 1, 2017, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H 2

HOUSE BILL 710*
Committee Substitute Favorable 4/25/17

Short Title: Private Parking/Immobilization Device. (Public)

Sponsors:

Referred to:

April 11, 2017

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE USE OF IMMOBILIZATION DEVICES ON VEHICLES UNLAWFULLY PARKED IN PRIVATELY OWNED OR LEASED PARKING LOTS OR SPACES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-219.5. Immobilization of unauthorized vehicles in private lots.**

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

(1) Immobilization company. – A person or company engaged in the business of attaching immobilization devices to vehicles.

(2) Immobilization device. – A device attached to the wheel or wheels of a vehicle for the purpose of preventing the vehicle from being moved from a parking space or lot until the device is removed by the immobilization company that attached the device to the vehicle. This term includes wheel locks, wheel clamps, and wheel boots.

(b) Unlawful Parking. – It shall be unlawful for any person other than the owner or lessee of a privately owned or leased parking space to park any vehicle in the private parking space without the express permission of the owner or lessee of the space if the private parking lot is clearly designated as private by a sign no smaller than 24 inches by 24 inches prominently displayed at all entrances to the parking lot, displaying the current name and current phone number of the immobilization company, and, if individually owned or leased, the parking lot or spaces within the lot are clearly marked by signs setting forth the name of each individual lessee or owner.

(c) Immobilization Authority. – A vehicle parked in a privately owned parking space in violation of subsection (b) of this section may be immobilized in the space upon the written request of the parking space owner or lessee and the registered owner of the vehicle shall become liable for removal of the immobilization device. Except as otherwise provided in this subsection, any person who attaches a mobilization device pursuant to this section shall not be liable for damages for the installation, removal, or installation and removal of the immobilization device to the owner, lienholder, or other person legally entitled to the possession of the vehicle immobilized. Any person who intentionally or negligently damages a vehicle while installing or removing the immobilization device may be liable for damages.

(d) Tampering or Removal. – It shall be unlawful for any person other than the immobilization company that attached the immobilization device to remove or otherwise tamper with an immobilization device attached to a vehicle in accordance with this section.

(e) Penalties. – The following penalties apply to violations of this section:

(1) Except as provided in subdivision (2) of this subsection, a person who commits a violation of subsection (b) or (d) of this section is guilty of an infraction punishable by a fine of not more than one hundred dollars ($100.00).

(2) A person who violates subsection (d) of this section and causes damage to the immobilization device to the extent that the device is unusable for its primary purpose, or otherwise prevents the immobilization company from further using the device, is guilty of a Class 1 misdemeanor.

(f) Local Ordinance. – Notwithstanding any other provision of law, no local government may pass an ordinance regulating the immobilization of vehicles unlawfully parked in privately owned or leased parking spaces or lots."

SECTION 2. This act becomes effective December 1, 2017, and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 710*

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

H710-ABD-11 [v.3]

Amends Title [NO]
Second Edition

Date _____,2017

Representative Jordan

moves to amend the bill on page 1, line 29, by deleting "a mobilization" and substituting the words "an immobilization".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

HOUSE BILL 776

Short Title:	Adoption Law Changes.	(Public)
Sponsors:	Representatives Jordan, Rogers, Stevens, and Duane Hall (Primary Sponsors). *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	Judiciary III	

April 13, 2017

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS PROVISIONS UNDER THE LAWS GOVERNING ADOPTIONS.

The General Assembly of North Carolina enacts:

PART I. AFFIDAVITS AS PROOF OF IDENTITY

SECTION 1.1. G.S. 48-3-605 reads as rewritten:

"**§ 48-3-605. Execution of consent: procedures.**

...

(b) A parent who has not reached the age of 18 years shall have legal capacity to give consent to adoption and to release that parent's rights in a child, and shall be as fully bound as if the parent had attained 18 years of age. ~~In addition to other methods of identification permitted by Chapter 10B of the General Statutes or other applicable law, a parent who has not reached the age of 18 years may be identified to an individual authorized to administer oaths or take acknowledgements by an affidavit of an adult relative of the minor parent, a teacher, a licensed professional social worker, or a health service provider.~~

...

(h) In addition to other methods of identification permitted by Chapter 10B of the General Statutes or other applicable law, a parent or adoptee who has not reached the age of 18 years may be identified to an individual authorized to administer oaths or take acknowledgments by an affidavit of an adult relative of the minor, a teacher, a social worker employed by an agency or a county department of social services, a health service provider, or, if none of the foregoing persons to whom the minor does not object is available, an adult who has known the minor for more than two years."

PART II. READOPTION/FOREIGN JURISDICTIONS

SECTION 2.1. G.S. 48-2-205 reads as rewritten:

"**§ 48-2-205. Recognition of adoption decrees from other jurisdictions.**

A final adoption decree issued by any other state must be recognized in this State. Where a minor child has been previously adopted in a foreign country by a petitioner or petitioners seeking to readopt the child under the laws of North Carolina, the adoption order entered in the foreign country may be accepted in lieu of the consent of the biological parent or parents or the guardian of the child to the readoption. ~~A man and a woman~~Two persons who adopted a minor child in a foreign country while married to one another must readopt jointly, regardless of whether they have since divorced. If either does not join in the petition, he or she must be

joined as a necessary party as provided in G.S. 1A-1, Rule 19. If two persons have adopted a minor child in a foreign county while married to one another and one of them has died, then the survivor may petition for readoption, and the court shall issue any decree of adoption in the names of both of the persons who adopted the minor child in a foreign country."

SECTION 2.2. G.S. 48-2-301(c) reads as rewritten:

"(c) If the individual who files the petition is unmarried, no other individual may join in the petition, except that ~~a man and a woman~~two persons who jointly adopted a minor child in a foreign country while married to one another must readopt jointly as provided in ~~G.S. 48-2-205.~~G.S. 48-2-205, and the survivor of two persons who jointly adopted a minor child in a foreign country while married to one another may file to readopt in the names of both as provided in G.S. 48-2-205."

PART III. NAME DESIGNATION/NEWBORN PLACEMENT

SECTION 3.1. G.S. 48-3-606(3) reads as rewritten:

"**§ 48-3-606. Content of consent; mandatory provisions.**

A consent required from a minor to be adopted, a parent, or a guardian under G.S. 48-3-601 must be in writing and state each of the following:

...

(3) The date of birth or the expected delivery date, the sex, and the name of the minor to be adopted, if known. A consent to adoption of a newborn minor may give the minor's name as "Baby [Last Name of Biological Mother]" or a similar designation."

SECTION 3.2. G.S. 48-3-703(a)(3) reads as rewritten:

"**§ 48-3-703. Content of relinquishment; mandatory provisions.**

(a) A relinquishment executed by a parent or guardian under G.S. 48-3-701 must be in writing and state the following:

...

(3) The date of birth or the expected delivery date, the sex, and the name of the minor, if known. A relinquishment of a newborn minor may give the minor's name as "Baby [Last Name of Biological Mother]" or similar designation."

PART IV. ACQUISITION OF SOCIAL SECURITY NUMBER

SECTION 4.1. G.S. 48-3-607 is amended by adding a new subsection to read:

"(d) A prospective adoptive parent with whom a minor has been placed in an independent adoption and who has filed a petition for adoption of the minor may, after the time within which the consenting parent or guardian may revoke the consent has expired, apply ex parte to a clerk of superior court for an order finding that the child has been placed with the petitioner and confirming that the petitioner has legal and physical custody of the minor for the purposes of obtaining a certified copy of the child's birth certificate, a Social Security number, or federal and State benefits for the minor."

SECTION 4.2. G.S. 48-3-705 is amended by adding a new subsection to read:

"(e) An agency or county department of social services to whom a minor has been relinquished may, after the time within which the relinquishing parent or guardian may revoke the relinquishment has expired, apply ex parte to a clerk of superior court for an order finding that the child has been relinquished to the agency and confirming that the agency or county department of social services has legal custody of the minor for the purposes of obtaining a certified copy of the child's birth certificate, a Social Security number, or federal and State benefits for the minor."

PART V. NOTICE OF SERVICE BY PUBLICATION/PRE-BIRTH DETERMINATIONS

SECTION 5.1. G.S. 48-2-206(e) reads as rewritten:

"(e) The manner of service under this section shall be the same as set forth in G.S. 48-2-402. If the identity or whereabouts of the biological father cannot be ascertained and the biological father is served by publication, then the 30-day notice requirements otherwise required by this section shall not apply, and the biological father shall have 40 days from the date of first publication to answer in accordance with this section."

PART VI. PRELIMINARY HEARING/UNKNOWN PARENT

SECTION 6.1. G.S. 7B-1105 is amended by adding a new subsection to read:

"(g) No summons shall be required for a parent whose name or identity is unknown and who is served by publication as provided in this section."

PART VII. SERVICE BY PUBLICATION

SECTION 7.1. G.S. 48-2-402(c) reads as rewritten:

"(c) In an agency placement under Article 3 of this Chapter, the agency or other proper person shall file a petition to terminate the parental rights of an unknown parent or possible parent instead of serving notice under subsection (b) of this section, and the court shall stay any adoption proceeding already ~~filed, except that nothing~~filed. However, nothing in this subsection shall require that the agency or other proper person file a petition to terminate the parental rights of (i) any known or possible parent who has been served notice as provided under G.S. 1A-1, Rule 4(j)(1) of the Rules of Civil ~~Procedure.~~Procedure, or (ii) if the parent or guardian placing a child for adoption and the adopting parent have each consented to the release of identifying information to the other as permitted by G.S. 48-9-109(2), any unknown, known, or possible parent who has been served notice by publication as provided under G.S. 1A-1, Rule 4(j1) of the Rules of Civil Procedure."

PART VIII. CONSENTING AGENCY/PREPLACEMENT ASSESSMENTS

SECTION 8.1. G.S. 48-3-303(c) is amended by adding a new subdivision to read:

"(c) The preplacement assessment shall, after a reasonable investigation, report on the following about the individual being assessed:

...

(13) The most recent amended or updated preplacement assessment that meets the requirements of this section and G.S. 48-3-301(a), including subsequent amendments or partial updates completed as of the time of delivery, shall constitute the preplacement assessment for the purpose of meeting any requirement of this Chapter that a copy of the preplacement assessment be delivered to a court or a placing parent, guardian, or agency.

When any of the above is not reasonably available, the preplacement assessment shall state why it is unavailable."

PART IX. EFFECTIVE DATE

SECTION 9.1. This act becomes effective October 1, 2017.

HOUSE BILL 776:
Adoption Law Changes.

2017-2018 General Assembly

Committee:	House Judiciary III	**Date:**	April 25, 2017
Introduced by:	Reps. Jordan, Rogers, Stevens, Duane Hall	**Prepared by:**	Tawanda N. Foster
Analysis of:	First Edition		Staff Attorney

OVERVIEW: House Bill 776 amends various provisions under the laws governing adoptions.

CURRENT LAW: Chapter 48 of the General Statutes provides laws governing the process for adoptions and structures services to adopted children, biological parents, and adoptive parents that protect the interests of all parties to an adoption.

BILL ANALYSIS: This bill amends various provisions in Chapter 48 of the General Statutes governing adoptions.

Section 1.1 amends the methods permitted to identify a minor parent who consents to an adoption. This section also adds an additional subsection that allows a minor parent or adoptee to be identified through an affidavit submitted to an individual authorized to administer oaths or take acknowledgements by an adult relative of the minor, a teacher, a social worker employed by an agency or a county department of social services, a health service provider, or, if none of the foregoing persons to whom the minor does not object is available, an adult who has known the minor for more than two years.

Section 2.1 makes a technical correction to provisions regarding married couples who adopt children from other jurisdictions and adds a provision for how to readopt in North Carolina if one person dies before the petition for readoption is filed.

Section 2.2 makes a technical correction and clarifies provisions for who may file a petition when the persons are unmarried and adds a provision for how to readopt in North Carolina if one person dies before the petition for readoption is filed.

Section 3.1 makes a clarifying change to how a newborn baby's name may be recorded in the written consent to the adoption.

Section 3.2 makes a clarifying change to how a newborn baby's name may be recorded in the written relinquishment executed by a parent or guardian.

Section 4.1 adds a new subsection to allow a prospective adoptive parent to apply ex parte to a clerk of superior court for an order that would allow them to obtain a certified copy of the child's birth certificate, a social security number, or federal and State benefits for the minor.

Section 4.2 adds a new subsection to allow an agency or county department of social services to whom a minor was relinquished to apply ex parte to a clerk of superior court for an order that would allow them to obtain a certified copy of the child's birth certificate, a social security number, or federal and State benefits for the minor.

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

Section 5.1 adds provisions related to notice of service by publication/pre-birth determinations when the identity or whereabouts of a biological father are unknown.

Section 6.1 adds a new subsection to provide no summons is required for a parent whose name or identity is unknown and is served by publication.

Section 7.1 makes a technical correction and clarifies the requirements of service by publication if the parent or guardian placing the child for adoption and the adopting parent have each consented to the release of identifying information.

Section 8.1 adds a new subdivision to G.S. 48-3-303(c) to allow the most recent amended or updated preplacement assessment including subsequent amendments or partial updates completed as of the time of delivery to constitute the preplacement assessment for the purposes of this section.

EFFECTIVE DATE: This bill would become effective October 1, 2017.

HOUSE BILL 852

Short Title:	Real Property Technical Corrections.	(Public)
Sponsors:	Representatives Jordan and Zachary (Primary Sponsors). *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	Judiciary III, if favorable, Finance	

April 13, 2017

A BILL TO BE ENTITLED

AN ACT TO MAKE CORRECTIONS AND OTHER AMENDMENTS TO VARIOUS STATUTES IMPACTING REAL PROPERTY OWNERSHIP AND TO MAKE OTHER CONFORMING CHANGES, AS RECOMMENDED BY THE REAL PROPERTY SECTION OF THE NORTH CAROLINA STATE BAR ASSOCIATION.

The General Assembly of North Carolina enacts:

PART I. MORTGAGE AND DEED OF TRUST CHANGES

SECTION 1.1. G.S. 39-13 reads as rewritten:

"**§ 39-13. Spouse need not join in purchase-money mortgage.**

~~The purchaser of real estate who does not pay the whole of the purchase money at the time when he or she takes a deed for title may make a mortgage or deed of trust for securing the payment of such purchase money, or such part thereof as may remain unpaid, which~~ A mortgage or deed of trust given by the purchaser of real property to secure a loan, the proceeds of which were used to pay all or a portion of the purchase price of the encumbered real property, regardless of whether the secured party is the seller of the real property or a third-party lender, shall be good and effectual against ~~his or her~~ the purchaser's spouse as well as the purchaser, without requiring the spouse to join in the execution of ~~such~~ the mortgage or deed of trust."

SECTION 1.2. G.S. 161-10(a) reads as rewritten:

"**§ 161-10. Uniform fees of registers of deeds.**

(a) Except as otherwise provided in this Article, all fees collected under this section shall be deposited into the county general fund. While performing the duties of the office, the register of deeds shall collect the following fees which shall be uniform throughout the State:

...

(1a) Deeds of Trust, Mortgages, and Cancellation of Deeds of Trust and Mortgages. – For registering or filing any deed of trust or mortgage the fee shall be sixty-four dollars ($64.00) for the first 35 pages plus four dollars ($4.00) for each additional page or fraction thereof.

When a deed of trust or mortgage is presented for registration that contains one or more additional instruments, the fee shall be ten dollars ($10.00) for each additional instrument. A deed of trust or mortgage contains one or more additional instruments if such additional instrument or instruments has or have different legal consequences or intent, each of which is separately executed and acknowledged and could be recorded alone.

For recording records of satisfaction, or the cancellation of record by any other means, of deeds of trust or mortgages, there shall be no fee. In all other cases, the fees provided in subdivision (1) of this subsection shall apply to the registration or filing of any subsequent instrument that relates to a previously recorded deed of trust or mortgage. For the purposes of this section, the term "subsequent instrument" has the same meaning as set forth in G.S. 161-14.1(a)(3).

...."

SECTION 1.3. G.S. 161-14.1(a) reads as rewritten:

"**§ 161-14.1. Recording subsequent entries as separate instruments.**

(a) As used in this section, the following terms mean:

(1) Original instrument. – The previously recorded instrument that is modified, amended, restated, supplemented, assigned, satisfied, terminated, revoked, or cancelled by a subsequent instrument.

...

(3) Subsequent instrument. – Any instrument presented for registration that indicates in its title or within the first two pages of its text that it is intended or purports to modify, amend, restate, supplement, assign, satisfy, terminate, revoke, or cancel a previously registered instrument. Examples of subsequent instruments include the following:

...

i. An instrument that amends, modifies, or restates an original instrument, such as an amendment or modification ~~agreement.~~agreement or an amended and restated instrument.

...."

PART II. PROBATE AND REGISTRATION CHANGES

SECTION 2.1. G.S. 47-17.1 reads as rewritten:

"**§ 47-17.1. Documents registered or ordered to be registered in certain counties to designate draftsman; exceptions.**

The register of deeds of any county in North Carolina shall not accept for registration, nor shall any judge order registration pursuant to G.S. 47-14, of any deeds or deeds of trust, executed after January 1, 1980, unless the first page of the deeds or deeds of trust bears an entry showing the name of either the person or law firm who drafted the instrument. This section shall not apply to other instruments presented for registration. For the purposes of this section, the register of deeds shall accept the verbal or written representation of the individual presenting the deed or deed of trust for registration, or any individual reasonably related to the transaction, including, but not limited to, any employee of a title insurance company or agency purporting to be involved with the transaction, that the individual or law firm listed on the first page is a validly licensed attorney or validly existing law firm in this State or another jurisdiction within the United States."

SECTION 2.2. G.S. 47-18.3 reads as rewritten:

"**§ 47-18.3. Execution of corporate instruments; authority and proof.**

(a) Notwithstanding anything to the contrary in the bylaws or articles of ~~incorporation,~~ incorporation or the operating agreement or articles of organization, 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 domestic or foreign corporation or a domestic or foreign limited liability company by its chairman, president, chief executive officer, a vice-president or an assistant vice-president, treasurer, ~~or~~ chief financial officer, chief operations officer, general counsel, deputy or assistant general counsel, manager, member, director, or any similar business titles, such an instrument shall be as valid with respect to the

rights of innocent third parties as if executed pursuant to authorization from the board of directors, unless the instrument reveals on its face a potential breach of fiduciary obligation. The subsection shall not apply to parties who had actual knowledge of lack of authority or of a breach of fiduciary obligation.

(b) Any instrument registered in the office of the register of deeds, appearing on its face to be executed by a ~~corporation,~~ corporation or limited liability company, foreign or domestic, and bearing a seal which purports to be the corporate seal, setting forth the name of the corporation engraved, lithographed, printed, stamped, impressed upon, or otherwise affixed to the instrument, is prima facie evidence that the seal is the duly adopted corporate seal of the corporation, that it has been affixed as such by ~~a person~~ an individual duly authorized so to do, that the instrument was duly executed and signed by ~~persons~~ individuals who were officers or agents of the corporation acting by authority duly given by the board of directors, and that any such instrument is the act of the corporation, and shall be admissible in evidence without further proof of execution.

(c) Nothing in this section shall be deemed to exclude the power of any corporate or limited liability company representatives to bind the corporation or limited liability company pursuant to express, implied, inherent or apparent authority, ratification, estoppel, or otherwise.

(d) Nothing in this section shall relieve corporate or limited liability company officers from liability to the corporation or limited liability company or from any other liability that they may have incurred from any violation of their actual authority.

(e) Any corporation or limited liability company may convey an interest in real property which is transferable by instrument which is duly executed by either an officer, manager, member, or agent of said corporation or limited liability company and has attached thereto a signed and attested resolution of the board of directors of said corporation or the managers or members of the limited liability company authorizing the said officer, manager, member, or agent to execute, sign, seal, and attest deeds, conveyances, or other instruments. This section shall be deemed to have been complied with if an attested resolution is recorded separately in the office of the register of deeds in the county where the land lies, which said resolution shall be applicable to all deeds executed subsequently thereto and pursuant to its authority. Notwithstanding the foregoing, this section shall not require a signed and attested resolution of the board of directors of the corporation or the managers or members of the limited liability company to be attached to an instrument or separately recorded in the case of an instrument duly executed by the corporation's chairman, president, chief executive officer, a vice-president, assistant vice-president, treasurer, ~~or~~ chief financial ~~officer.~~officer, chief operations officer, general counsel, deputy or assistant general counsel, manager, member, director, or any similar business title. All deeds, conveyances, or other instruments which have been heretofore or shall be hereafter so executed shall, if otherwise sufficient, be valid and shall have the effect to pass the title to the real or personal property described therein."

PART III. EFFECTIVE DATES

SECTION 3.1. Part I of this act is effective when this act becomes law and applies to mortgages and deeds of trust entered into before, on, or after that date. Part II of this act is effective when this act becomes law and applies to instruments presented for registration on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 852:
Real Property Technical Corrections.

2017-2018 General Assembly

Committee:	House Judiciary III. If favorable, re-refer to Finance	**Date:**	April 25, 2017
Introduced by:	Reps. Jordan, Zachary	**Prepared by:**	Billy R. Godwin
Analysis of:	First Edition		Staff Attorney

OVERVIEW: House Bill 852 would make changes and amendments to various real property statutes as recommended by the Real Property Section of the North Carolina Bar Association. The bill would become effective when it becomes law.

BILL ANALYSIS:

Part I – Mortgage & Deed of Trust Changes

Section 1.1: Would amend G.S. 39-13 to clarify that in a purchase-money mortgage transaction (*i.e.* where the purchased property serves as collateral to secure financing for some or all of the purchase price), the buyer's spouse is not required to sign the mortgage instrument or deed of trust regardless of whether the secured party is the seller or a third-party lender.

Section 1.2: Would amend G.S. 161-10(a) to provide that recording fees shall be paid when recording any instrument with the register of deeds that modifies, amends, restates, or otherwise relates to any previously recorded mortgage or deed of trust.

Section 1.3: Would amend the definitions of "original instrument" and "subsequent instrument" in G.S. 161-14.1(a) to include documents that "restate" the original document.

Part II – Probate & Registration Changes

Section 2.1: Would amend G.S. 47-17.1 to (i) clarify that requiring the drafter's name on the first page of an instrument as a requirement for recording applies only to a deed or deed of trust and (ii) add language requiring the register of deeds to accept verbal or written representations regarding the licensing status of the attorney who drafted the deed or deed of trust.

Section 2.2: Would amend G.S. 47-18.3 to add additional corporate officials whose signatures, when appearing on the face of instruments recorded in the register of deeds, are deemed as valid as if authorized directly by a board of directors. Would clarify that the statute applies to limited liability companies and would make other technical and conforming changes.

EFFECTIVE DATE:

Part I of the bill is effective when it becomes law and applies to mortgages and deeds of trust entered into before, on, or after that date. **Part II** of the bill is effective when it becomes law and applies to instruments presented for recording on or after that date. The rest of the bill is effective when it becomes law.

Karen Cochrane-Brown
Director

H852-SMBD-39-E1-V-2

Legislative Analysis Division
919-733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

HOUSE BILL 653
Committee Substitute Favorable 4/25/17

Short Title: Report/Car Accident Caused by Seizure or Coma. (Public)

Sponsors:

Referred to:

April 11, 2017

A BILL TO BE ENTITLED

AN ACT TO REQUIRE ACCIDENT REPORTS TO INCLUDE INFORMATION AS TO WHETHER AN ACCIDENT WAS CAUSED BY A DRIVER SUFFERING AN EPILEPTIC SEIZURE OR A HYPOGLYCEMIC INCIDENT AND TO REQUIRE THE DIVISION OF MOTOR VEHICLES TO EVALUATE WHETHER THE DRIVER CAN SAFELY OPERATE A MOTOR VEHICLE AFTER RECEIVING THE REPORT.

The General Assembly of North Carolina enacts:

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

"**§ 20-166.1. Reports and investigations required in event of accident.**

...

(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. If a person submitting a report required under this section knows that a crash was caused as the result of a driver suffering a seizure or a hypoglycemic incident, the person shall specifically set forth this information, including the name of the driver in the report.

(2) The conditions existing at the time of the crash.

(3) The persons and vehicles involved, except that the name and address of a minor child involved in a school bus crash who is a passenger on a school bus may only be disclosed to (i) the local board of education, (ii) the State Board of Education, (iii) the parent or guardian of the child, (iv) an insurance company investigating a claim arising out of the crash, (v) an attorney representing a person involved in the crash, and (vi) law enforcement officials investigating the crash. As used in this subdivision, school bus also includes a school activity bus as defined by G.S. 20-4.01(27).

(4) Whether the vehicle has been seized and is subject to forfeiture under G.S. 20-28.2.

(i) Effect of Report. – A report of an accident made under this section by a person who is not a law enforcement officer is without prejudice, is for the use of the Division, and shall not be used in any manner as evidence, or for any other purpose in any trial, civil or criminal, arising out of the accident. Any other report of an accident made under this section may be used in any manner as evidence, or for any other purpose, in any trial, civil or criminal, as permitted under the rules of evidence. At the demand of a court, the Division must give the court a

properly executed certificate stating that a particular accident report has or has not been filed with the Division solely to prove a compliance with this section.

(i1) Effect of Report Involving Medical Condition. – If a report of an accident under this section includes information in accordance with subdivision (1) of subsection (h) of this section that an accident was the result of a driver suffering a seizure or a hypoglycemic incident, the Division shall evaluate whether the medical condition affects the driver's ability to safely operate a motor vehicle. If the Division determines that the medical condition affects the driver's ability to safely operate a motor vehicle, the Division shall cancel the drivers license of the driver in accordance with G.S. 20-15(a)(4). Upon cancellation, the driver may appeal the decision of the Division or seek issuance of a new restricted or unrestricted drivers license, in accordance with the process set forth in G.S. 20-9(g).

(i2) Public Record. – The reports made under this section by persons who are not law enforcement officers or medical examiners are not public records. The reports made under this section by law enforcement officers and medical examiners are public records and are open to inspection by the general public at all reasonable times. The Division must give a certified copy of one of these reports to a member of the general public who requests a copy and pays the fee set in G.S. 20-42.

...."

SECTION 2. This act becomes effective October 1, 2017, and applies to accidents occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H D

HOUSE BILL 653
Committee Substitute Favorable 4/25/17
PROPOSED COMMITTEE SUBSTITUTE H653-CSTU-17 [v.2]
04/26/2017 9:13:02 AM

Short Title: Report/Car Accident Caused by Seizure or Coma. (Public)

Sponsors: Representatives Dobson, Dollar, and Torbett (Primary Sponsors).

Referred to:

April 11, 2017

A BILL TO BE ENTITLED

AN ACT TO REQUIRE ACCIDENT REPORTS TO INCLUDE INFORMATION AS TO WHETHER AN ACCIDENT WAS CAUSED BY A DRIVER SUFFERING AN EPILEPTIC SEIZURE OR A HYPOGLYCEMIC INCIDENT AND TO REQUIRE THE DIVISION OF MOTOR VEHICLES TO EVALUATE WHETHER THE DRIVER CAN SAFELY OPERATE A MOTOR VEHICLE AFTER RECEIVING THE REPORT.

The General Assembly of North Carolina enacts:

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

"**§ 20-166.1. Reports and investigations required in event of accident.**

...

(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. If a person submitting a report required under this section knows that a crash was caused as the result of a driver suffering a seizure or a hypoglycemic incident, the person shall specifically set forth this information, including the name of the driver in the report.

(2) The conditions existing at the time of the crash.

(3) The persons and vehicles involved, except that the name and address of a minor child involved in a school bus crash who is a passenger on a school bus may only be disclosed to (i) the local board of education, (ii) the State Board of Education, (iii) the parent or guardian of the child, (iv) an insurance company investigating a claim arising out of the crash, (v) an attorney representing a person involved in the crash, and (vi) law enforcement officials investigating the crash. As used in this subdivision, school bus also includes a school activity bus as defined by G.S. 20-4.01(27).

(4) Whether the vehicle has been seized and is subject to forfeiture under G.S. 20-28.2.

(i) Effect of Report. – A report of an accident made under this section by a person who is not a law enforcement officer is without prejudice, is for the use of the Division, and shall not be used in any manner as evidence, or for any other purpose in any trial, civil or criminal, arising out of the accident. Any other report of an accident made under this section may be used in any manner as evidence, or for any other purpose, in any trial, civil or criminal, as permitted

under the rules of evidence. At the demand of a court, the Division must give the court a properly executed certificate stating that a particular accident report has or has not been filed with the Division solely to prove a compliance with this section.

(i1) Effect of Report Involving Medical Condition. – If a report of an accident under this section includes information in accordance with subdivision (1) of subsection (h) of this section that an accident was the result of a driver suffering a seizure or a hypoglycemic incident, the Division shall (i) evaluate whether the medical condition affects the driver's ability to safely operate a motor vehicle and (ii) cancel or restrict the drivers license of the driver upon completion of the evaluation in accordance with G.S. 20-15(a)4. Upon restriction or cancellation, the driver may appeal the decision of the Division or seek issuance of a new restricted or unrestricted drivers license, in accordance with the process set forth in G.S. 20-9(g). During the pendency of such appeal, the restriction or cancellation shall be stayed unless the Division makes a determination that a stay would pose an imminent risk of harm.

(i2) Public Record. – The reports made under this section by persons who are not law enforcement officers or medical examiners are not public records. The reports made under this section by law enforcement officers and medical examiners are public records and are open to inspection by the general public at all reasonable times. The Division must give a certified copy of one of these reports to a member of the general public who requests a copy and pays the fee set in G.S. 20-42.

…."

SECTION 2. This act becomes effective October 1, 2017, and applies to accidents occurring on or after that date.

House Committee on Judiciary III
Wednesday, June 14, 2017 at 1:00 PM
Room 421 of the Legislative Office Building

Sergeant at Arms

1. **Bill Bass**
2. **Mark Cone**
3. **Will Crocker**
4. **David Linthicum**

House Committee on Judiciary III
Wednesday, June 14, 2017 at 1:00 PM
Room 421 of the Legislative Office Building

MINUTES

The House Committee on Judiciary III met at 1:00 PM on Wednesday June 14, 2017 in Room 421 of the Legislative Office Building. Representatives Jordan, Zachary, Reives, Conrad, Horn, Morey, Quick, B. Richardson, Szoka, B. Turner and White attended. Brad Krehely, Kristen Harris and Billy Godwin (Research Staff Counsel), along with Emma Benson (Committee Clerk) were in attendance. A Visitor Registration list is attached and made part of these minutes. (Attachment 1)

Representative Jordan, Chair, presided. The chair called the meeting to order at 1:00 PM. He introduced the Sergeants at Arms (Attachment 2) and house pages. (Attachment 3) The following bills were considered:

House Bill 629 and a bill summary are provided (Attachments 4 and 5).

HOUSE BILL 629: AMEND FUNERAL PROCESSION LAW

Chairman Jordan recognized Rep. Alexander to explain the bill.

House Bill 629 would make various changes to State law regarding funeral processions.

Rep. Jordan recognized Rep. Szoka to make a motion for a favorable report of the bill. The motion carried.

Senate Bill 88 and a bill summary are provided (Attachments 6 and 7).

SENATE BILL 88: LANDLORD/TENANT- ALIAS & PLURIES SUMMARY EJECT.

Chairman Jordan recognized Sen. Randleman to explain the bill.

Senate Bill 88 would 1) allow a plaintiff to request that a claim for summary ejectment be severed from a claim for monetary damages where there is no personal service of process and 2) codify that a party in a small claim action is not required to be represented by an attorney and that a party in an action appealed for a trial de novo in district court is not required to be represented by an attorney.

Chairman Jordan recognized Reps. Zachary Horn, White, Richardson, and Reives to discuss the bill.

Chairman Jordan recognized Will Roundly of the Apartment Association to speak in favor of the bill.

Chairman Jordan recognized Rep. Horn to make a motion for a favorable report of the bill. The motion carried.

Senate Bill 88 has a serial referral to the Rules, Operation, and Calendar of the House.

Senate Bill 292 and a bill summary are provided (Attachments 8 and 9).

SENATE BILL 292: ORD. VIOLATION/NO AUTO MISDEMEANOR

Chairman Jordan recognized Sen. Lee to present the bill.

Senate Bill 292 would provide that violation of a city or county ordinance is not automatically punishable as a misdemeanor or infraction unless expressly stated in the city or county ordinance, with some exceptions that may never be punishable as a misdemeanor or infraction. The act would become effective December 1, 2017, and would apply to the enforcement of any ordinance on or after that date.

Chairman Jordan recognized Reps. Horn, Richardson, Reives, B. Turner, and Quick to discuss the bill.

Chairman Jordan recognized Rep. Zachary to make a motion for a favorable report of the bill. The motion carried.

Senate Bill 292 has a serial referral to the House Committee on State and Local Government II.

House Bill 669, PCS, and a summary are provided. (Attachments 10, 11, and 12)

HOUSE BILL 669: FEES TO CERTIFY AS A COMPANY POLICE AGENCY

Chairman Jordan recognized Rep. Faircloth to explain the bill.

House Bill 669 would raise the fees the Attorney General is authorized to charge to administer the Company Police Act. The PCS to House Bill 669 would also authorize identical fee increases under the Campus Police Act. The bill would become effective on January 1, 2018.

Chairman Jordan recognized Reps. Horn, Morey, and Turner to discuss the bill.

Chairman Jordan recognized Brad Sneeden, liaison for the Department of Justice, and Steven Combs, Director of the CJ Standard Division, to provide information on the bill.

Chairman Jordan recognized Rep. Zachary to make a motion for unfavorable to the original bill, favorable to the PCS. The motion carried.

House Bill 669 has a serial referral to the House Committee on Finance.

With no further business, Chairman Jordan adjourned the meeting at 1:36 PM.

Representative Jordan, Chair
Presiding

Emma Benson, Committee Clerk

Attachments

1. Visitor Registration Sheet
2. Sergeants at Arms
3. House Pages
4. House Bill 629
5. House Bill 629 Bill Summary
6. Senate Bill 88
7. Senate Bill 88 Bill Summary
8. Senate Bill 292
9. Senate Bill 292 Summary
10. House Bill 669
11. House Bill 669 PCS
12. House Bill 669 Bill Summary

VISITOR REGISTRATION SHEET

House Judiciary III — 06-14-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Steven Combs	CJ Standards Division
Bradford Sneeden	DOJ -
Richard Squires	CJ standards Division
Srinivas Kandimalla	DOT - IT
Maggie P. Thomas	DOT - IT
~~Hope~~ Mozingo	NCDMV
Dana Bean	NCDMV
Jacob Rogers	Triangle Apt. Assn.
Angela Scioli	citizen - Wake
Ainsley Duke	Citizen - Wake
Hugh Johnson	NCAOC
Erin Wynia	WCLA

VISITOR REGISTRATION SHEET

House Judiciary III — 06-14-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Finnell	VB
Bruce Muldowney	NCSBA
Leanne Winner	NCSBA
Casey Murphy	Student
Flint Benson	SEANC
Henry M Lancaster III	LCA
[illegible]	AT&T
[illegible]	[illegible]
[illegible]	[illegible]
Chris Brewington	NWC
Seth Foler	FICC

VISITOR REGISTRATION SHEET

House Judiciary III — 06-14-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
ISABEL VILLA-GARCIA	NCR
CATHY THOMAS	FOCUS
Amanda [illegible]	VDA
Jason D Cross	VDA

VISITOR REGISTRATION SHEET

House Judiciary III — 06-14-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Will Brownlee	AANC
Alex Miller	AMGA
Penny Taylor	306

Committee Sergeants at Arms

NAME OF COMMITTEE Judiciary III

DATE: 6-14-2017 Room: 421

House Sgt-At Arms:

1. Name: Bill Bass
2. Name: Mark Cone
3. Name: Will Crocker
4. Name: David Linthicum
5. Name: _____

Senate Sgt-At Arms:

1. Name: _____
2. Name: _____
3. Name: _____
4. Name: _____
5. Name: _____

House Pages
Assignments
Wednesday, June 14, 2017
Session: 2:00 PM

Committee	Room	Time	Staff	Comments	Member
Finance	544	9:00 AM	Daniel Vexler		Rep. Holly Grange
			Ezekiel Goldstein		Rep. Susan Fisher
			Riley McBride		Rep. Donny Lambeth
			Maya Nair		Rep. Gale Adcock
State and Local Government II	1228/1327	10:00 AM	Janae Bell		Rep. Duane Hall
			Elisabeth Iler		Rep. Frank Iler
			Joshua Millspaw		Rep. Dana Bumgardner
			Orlando Molina		Rep. John Szoka
State and Local Government I	544	10:00 AM	Julia Schwanz		Rep. John Bradford
			Ashton Murphy		Rep. Terry Garrison
			James Rodriguez		Rep. Pat McElraft
			Blake Bosley		Rep. John Bradford
Regulatory Reform	1228/1327	11:00 AM	Chandler Dozier		Rep. Allen McNeill
			Margaret Johnston		Rep. Allen McNeill
			Martha Johnston		Rep. Allen McNeill
			Eleanor Williams		Rep. Mary Belk
			Abigale Farina		Rep. David Lewis
Judiciary I	415	1:00 PM	Kimber Blackburn		Rep. Donna White
			Ryan Awtrey		Speaker Tim Moore
			Alex Bradley		Rep. John Torbett
			Jarrod Turner		Speaker Tim Moore

House Pages
Assignments
Wednesday, June 14, 2017

Committee	Room	Time	Staff	Comments	Member
Judiciary III	421	1:00 PM	Cullen Allen		Rep. Speaker Tim Moore
			Grace Raphun		Rep. Grier Martin
			Ella Jones		Rep. Speaker Tim Moore
			Daniel Vexler		Rep. Holly Grange

HOUSE BILL 629

Short Title:	Amend Funeral Procession Law.	(Public)
Sponsors:	Representatives Alexander, Hunter, and Boles (Primary Sponsors). *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	Transportation, if favorable, Judiciary III	

April 10, 2017

A BILL TO BE ENTITLED

AN ACT TO ALLOW FUNERAL PROCESSIONS TO HAVE THE RIGHT-OF-WAY AT INTERSECTIONS REGARDLESS OF TRAFFIC CONTROL SIGNS OR SIGNALS AND TO PROVIDE IMMUNITY TO THE FUNERAL DIRECTOR OR FUNERAL ESTABLISHMENT FOR ANY DEATH, PERSONAL INJURY, OR PROPERTY DAMAGE CAUSED BY THE ACTION OR INACTION OF A PERSON OPERATING A VEHICLE IN A FUNERAL PROCESSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-157.1 reads as rewritten:

"**§ 20-157.1. Funeral processions.**

(a) ~~As used in this section, a~~The following definitions apply in this section:

(1) Funeral director. – Defined in G.S. 90-210.20(g).

(2) Funeral establishment. – Defined in G.S. 90-210.20(h). For purposes of this section, this term includes funeral homes.

(3) ~~"funeral procession"~~Funeral procession. – ~~means two~~Two or more vehicles accompanying the remains of a deceased person, or traveling to the church, chapel, or other location at which the funeral services are to be held, in which the lead vehicle is either a State or local law enforcement vehicle, other vehicle designated by a law enforcement officer or the funeral director, or the lead vehicle displays a flashing amber or purple light, sign, pennant, flag, or other insignia furnished by a funeral ~~home~~establishment indicating a funeral procession.

(b) Each vehicle in the funeral procession shall be operated with its headlights illuminated, if so equipped, and its hazard warning signal lamps illuminated, if so equipped.

(c) ~~The operator of the lead vehicle in a funeral procession shall comply with all traffic control signals, but when~~When the lead vehicle in a funeral procession has lawfully progressed across an ~~intersection in accordance with the traffic control sign or signal, or when directed to do so by a law enforcement officer or a designee of a law enforcement officer or the funeral director, or when the lead vehicle is a law enforcement vehicle which progresses across the intersection while giving appropriate warning by light or siren,~~intersection, all vehicles in the funeral procession may proceed through the intersection without ~~stopping, except that the operator of each vehicle shall exercise reasonable care towards any other vehicle or pedestrian on the highway.~~stopping. The operator of any vehicle in a funeral procession shall exercise reasonable care toward any other vehicle or pedestrian on the highway when participating in a funeral procession. An operator of a vehicle that is not part of the funeral procession shall not

join the funeral procession for the purpose of securing the right-of-way granted by this subsection.

(d) Operators of vehicles in a funeral procession shall drive on the right-hand side of the roadway and shall follow the vehicle ahead as closely as reasonable and prudent having due regard for speed and existing conditions.

(e) ~~Operators of vehicles in a funeral procession shall yield the right-of-way~~A funeral procession shall have the right-of-way at intersections regardless of traffic control signs or signals, except that the operator of any vehicle in a funeral procession shall (i) yield the right-of-way to law enforcement vehicles, fire protection vehicles, rescue vehicles, ambulances, and other emergency vehicles giving appropriate warning signals by light or siren and ~~shall~~(ii) yield the right-of-way when directed to do so by a law enforcement officer.

(f) Operators of vehicles in a funeral procession shall proceed at the posted minimum speed, except that the operator of such vehicle shall exercise reasonable care having due regard for speed and existing conditions.

(g) The operator of a vehicle proceeding in the opposite direction as a funeral procession may yield to the funeral procession. If the operator chooses to yield to the procession, the operator must do so by reducing speed, or by stopping completely off the roadway when meeting the procession or while the procession passes, so that operators of other vehicles proceeding in the opposite direction of the procession can continue to travel without leaving their lane of traffic.

(h) The operator of a vehicle proceeding in the same direction as a funeral procession shall not pass or attempt to pass the funeral procession, except that the operator of such a vehicle may pass a funeral procession when the highway has been marked for two or more lanes of moving traffic in the same direction of the funeral procession.

(i) An operator of a vehicle shall not knowingly drive between vehicles in a funeral procession by crossing their path unless directed to do so by a person authorized to direct traffic. When a funeral procession is proceeding through a steady or strobe-beam stoplight emitting a red light as permitted by ~~subsection (c),~~subsections (c) and (e) of this section, an operator of a vehicle that is not in the funeral procession shall not enter the intersection knowing a funeral procession is in progress, even if facing a steady or strobe-beam stoplight emitting a green light, unless the operator can do so safely without crossing the path of the funeral procession.

(j) Nothing in this section shall be construed to prevent State or local law enforcement officers from escorting funeral processions in law enforcement vehicles.

(j1) A funeral establishment may only use a lead vehicle in a funeral procession that is not a State or local law enforcement vehicle upon registering with the Division and paying a fee to the Division of one hundred dollars ($100.00). The registration required under this subsection shall include a description of each vehicle that will be used by the funeral establishment as a lead vehicle in a funeral procession and any additional information requested by the Division. The registration required under this subsection shall be in a form prescribed and furnished by the Division and may be submitted to the Division electronically. The registration required under this subsection does not expire, but a funeral establishment shall amend its registration prior to using a vehicle not described in its initial registration. The Division shall not charge an additional fee for an amendment provided in accordance with this subsection. A violation of this subsection is an infraction punishable by a fine of two hundred fifty dollars ($250.00). Violation of this subsection shall not constitute negligence per se. Fees collected under this subsection shall be credited to the Highway Fund.

(k) A violation of this section shall not constitute negligence per se.

~~(l) To the extent that a local government unit's ordinance is in direct conflict with any part of this statute, the ordinance shall control and prevail over the conflicting part.~~

(m) A violation of this section shall not be considered a moving violation for purposes of G.S. 58-36-65 or G.S. 58-36-75.

(n) A funeral director, funeral establishment, or any of their employees or agents shall not be liable for any death, personal injury, or property damage resulting from, caused by, or arising from any action or inaction of an operator of a vehicle in a funeral procession if (i) the funeral procession was operating in accordance with the provisions of this section or (ii) the funeral procession would have been operating in accordance with the provisions of this section but for a negligent act or omission in the operation of one or more vehicles in the funeral procession, provided that this limited grant of immunity shall not apply if the death, personal injury, or property damage arose from a negligent act or omission in the operation of a vehicle operated by the funeral director, funeral establishment, or any of their employees or agents. The operator of a vehicle in a funeral procession shall not be deemed to be an agent of the funeral director or funeral establishment unless such operator is either of the following:

(1) An employee of the funeral director or funeral establishment and acting in the course of his or her employment.

(2) An independent contractor retained by the funeral director or funeral establishment and performing services for the funeral director, funeral establishment, or funeral home."

SECTION 2. G.S. 20-157.1(n), as enacted by Section 1 of this act, becomes effective December 1, 2017, and applies to death, personal injury, or property damage occurring on or after that date. G.S. 20-157.1(c), (e), and (i), as amended by Section 1 of this act, become effective December 1, 2017, and apply to offenses committed on or after that date. G.S. 20-157.1(j1), as enacted by Section 1 of this act, becomes effective December 1, 2017, and applies to funeral processions held on or after that date. The remainder of this act becomes effective December 1, 2017.

HOUSE BILL 629:
Amend Funeral Procession Law.

2017-2018 General Assembly

Committee:	House Judiciary III	**Date:**	June 13, 2017
Introduced by:	Reps. Alexander, Hunter, Boles	**Prepared by:**	Billy R. Godwin
Analysis of:	First Edition		Staff Attorney

OVERVIEW: House Bill 629 would makes changes to State law regulating funeral processions.

CURRENT LAW: Current law on funeral processions provides that:

- Vehicles in funeral processions must use headlamps, and hazard lights, if available.
- The operator of the lead vehicle in a funeral procession must comply with traffic control signals, or the direction of the funeral director or a law enforcement officer.
- An entire funeral procession may proceed through an intersection without stopping, if the lead vehicle entered the intersection in compliance with the signal or direction of law enforcement, *except that* operators of vehicles in the procession must still exercise reasonable care towards others on the highway.

BILL ANALYSIS:

House Bill 629 would change the law on funeral processions as follows:

- Applies the definitions of "funeral director" and "funeral establishment" found in G.S. 90-210.20(g) & (h), part of the Board of Funeral Service licensing statutes to the funeral procession statute.
- Provides that a funeral procession has the right-of-way at intersections regardless of traffic control signs or signals, except for emergency or law enforcement vehicles, or unless directed otherwise by law enforcement.
- Provides that a funeral establishment must register with DMV in order to use its own lead vehicle, for a one-time fee of $100.00, credited to the Highway Fund. A violation of this requirement would be an infraction punishable by a fine of $250.00. Violation of this provision would not constitute negligence per se.
- Eliminates prior law allowing local government funeral procession ordinances to supersede State law.
- Protects a funeral director, funeral establishment, or any of its employees or agents from liability for death, personal injury, or property damage related to action or inaction of an operator of a vehicle in a funeral procession if:
    - the funeral procession was operating in accordance with the funeral procession law.
    - the funeral procession would have been operating in accordance with the funeral procession law but for a negligent act or omission by the operator of a vehicle in the funeral procession other than that of the funeral establishment, or any of their employees or agents.

EFFECTIVE DATE: December 1, 2017.

Staff attorney Giles Perry substantially contributed to this bill summary.

Karen Cochrane-Brown
Director

H629-SMBD-53-E1-V-1

Legislative Analysis
Division
919-733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

SENATE BILL 88: Landlord/Tenant-Alias & Pluries Summary Eject.

2017-2018 General Assembly

Committee:	House Judiciary III. If favorable, re-refer to Rules, Calendar, and Operations of the House	**Date:**	June 14, 2017
Introduced by:	Sen. Randleman	**Prepared by:**	Kristen L. Harris Committee Co-Counsel
Analysis of:	Second Edition		

OVERVIEW: Senate Bill 88 would 1) allow a plaintiff to request that a claim for summary ejectment be severed from a claim for monetary damages where there is no personal service of process and 2) codify that a party in a small claim action is not required to be represented by an attorney and that a party in an action appealed for a trial de novo in district court is not required to be represented by an attorney.

CURRENT LAW: Jurisdiction in a small claim summary ejectment case may be obtained in four ways: 1) by delivering a copy of the summons and complaint to the defendant or leaving copies at the defendant's house with a person of suitable age and discretion residing there, 2) by registered or certified mail, signature confirmation, or designated service as provided under the North Carolina Rules of Civil Procedure, 3) by the defendant's written acceptance of service or voluntary appearance, or 4) in summary ejectment cases only, by sheriff as provided in G.S. 42-29.

Summary ejectment cases can be appealed from small claim court by requesting a trial de novo in district court. Currently, business entities are required to be represented by attorneys at the district and superior court level. Small claim court is exempt from this requirement.

BILL ANALYSIS:

Section 1 would do the following:

- Require a magistrate to allow a plaintiff's request to sever a claim for summary ejectment from a claim for monetary damages where 1) service of process was achieved solely by first-class mail and affixing the summons and complaint to the premises at the defendant's last known address and 2) upon a finding that personal service was not achieved on one or more defendants.
- Allow the plaintiff to continue with his or her summary ejectment claim and extend the claim for monetary damages through an alias and pluries summons.

Section 2: would codify that a party in a small claim action is not required to be represented by an attorney and provide that any party in an action appealed for a trial de novo in district court is not required to be represented by an attorney.

Section 3: would allow service of process to be made by a third-party process agent where claims for monetary damages are severed by a magistrate from claims seeking summary ejectment.

EFFECTIVE DATE: This act becomes effective October 1, 2017.

*Staff attorney Amy Darden contributed to this summary.

Karen Cochrane-Brown
Director

S88-SMTU-36 E2 -V-2

Legislative Analysis
Division
919-733-2578

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(c) The Administrative Office of the Courts is directed to develop a form for parties in small claim actions for summary ejectment to inform them of the time line and process in summary ejectment actions. The clerk of superior court shall make the form available to the parties."

SECTION 2.(a) G.S. 7A-222 reads as rewritten:

"**§ 7A-222. General trial practice and procedure.**

...

(c) Notwithstanding G.S. 84-4, a party in a small claim action shall not be required to obtain legal representation."

SECTION 2.(b) G.S. 7A-228 reads as rewritten:

"**§ 7A-228. New trial before magistrate; appeal for trial de novo; how appeal perfected; oral notice; dismissal.**

...

(e) Notwithstanding G.S. 84-4, any party in an action appealed for a trial de novo, as provided for in this section, shall not be required to obtain legal representation."

SECTION 3. G.S. 1A-1, Rule 4(h1), reads as rewritten:

"**Rule 4. Process.**

...

(h1) Summons – When process returned unexecuted. – If a proper officer returns a summons or other process unexecuted, the plaintiff or his agent or attorney may cause service to be made by anyone who is not less than 21 years of age, who is not a party to the action, and who is not related by blood or marriage to a ~~party~~ to the action or to a person upon whom service is to be made. ~~This~~ Except for claims severed by a magistrate pursuant to G.S. 7A-223(b1), this subsection shall not apply to executions pursuant to Article 28 of Chapter 1 or summary ejectment pursuant to Article 3 of Chapter 42 of the General Statutes.

...."

SECTION 4. This act becomes effective October 1, 2017.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

S 2

SENATE BILL 88
Judiciary Committee Substitute Adopted 3/1/17

Short Title: Landlord/Tenant-Alias & Pluries Summary Eject. (Public)

Sponsors:

Referred to:

February 15, 2017

A BILL TO BE ENTITLED

AN ACT TO ALLOW FOR SEVERANCE OF SUMMARY EJECTMENT AND MONETARY CLAIMS IN SMALL CLAIMS ACTIONS WHEN SERVICE OF PROCESS ONLY MEETS SUMMARY EJECTMENT STANDARDS, TO ALLOW FOR THE SEVERED MONETARY CLAIM TO BE CONTINUED WITH ALIAS AND PLURIES SUMMONS, AND TO ALLOW PRO SE REPRESENTATION ON APPEAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-223 is amended by adding a new subsection to read:

"**§ 7A-223. Practice and procedure in small claim actions for summary ejectment.**

(a) In any small claim action demanding summary ejectment or past due rent, or both, the complaint may be signed by an agent acting for the plaintiff who has actual knowledge of the facts alleged in the complaint. If a small claim action demanding summary ejectment is assigned to a magistrate, the practice and procedure prescribed for commencement, form and service of process, assignment, pleadings, and trial in small claim actions generally are observed, except that if the defendant by written answer denies the title of the plaintiff, the action is placed on the civil issue docket of the district court division for trial before a district judge. In such event, the clerk withdraws assignment of the action from the magistrate and immediately gives written notice of withdrawal, by any convenient means, to the plaintiff and the magistrate to whom the action has been assigned. The plaintiff, within five days after receipt of the notice, and the defendant, in his answer, may request trial by jury. Failure to request jury trial within the time limited is a waiver of the right to trial by jury.

(b) If either party in a small claim action for summary ejectment moves for a continuance, the magistrate shall render a decision on the motion in accordance with Rule 40(b) of the Rules of Civil Procedure. The magistrate shall not continue a matter for more than five days or until the next session of small claims court, whichever is longer, without the consent of both parties.

(b1) In any small claim action demanding summary ejectment and monetary damages, and where service of process has been achieved solely by first-class mail and affixing the summons and complaint to the premises pursuant to G.S. 42-29, the plaintiff, or an agent pursuant to subsection (a) of this section, may request that the claim for summary ejectment be severed from the claim for monetary damages. Upon a finding that personal service was not achieved for one or more defendants, the magistrate shall sever the claim for monetary damages and proceed with the claim for summary ejectment. If the magistrate severs the claim for monetary damages, the plaintiff may extend the action in accordance with G.S. 1A-1, Rule 4(d). The judgment of the magistrate in the severed claim for summary ejectment shall not prejudice the claims or defenses of any party in the severed claim for monetary damages.

SENATE BILL 292:
Ord. Violation/No Auto Misdemeanor.

2017-2018 General Assembly

Committee:	House Judiciary III. If favorable, re-refer to State and Local Government II	**Date:**	June 13, 2017
Introduced by:	Sens. Lee, J. Jackson, Britt	**Prepared by:**	Brad Krehely
Analysis of:	Second Edition		Committee Co-Counsel

OVERVIEW: ***Senate Bill 292 would provide that violation of a city or county ordinance is not automatically punishable as a misdemeanor or infraction unless expressly stated in the city or county ordinance, with some exceptions that may never be punishable as a misdemeanor or infraction. The act would become effective December 1, 2017, and would apply to the enforcement of any ordinance on or after that date.***

CURRENT LAW: Unless other punishment is otherwise provided by the county or city, any person who violates an ordinance of a county, city, or metropolitan sewerage district, is guilty of a Class 3 misdemeanor and subject to a fine of not more than $500.00. However, no fine may exceed $50.00 unless the ordinance expressly states that the maximum fine is greater than $50.00. If any person violates an ordinance of a county or city regulating the operation or parking of vehicles, the person is responsible for an infraction and is be required to pay a penalty of not more than $50.00. G.S. 14-4. G.S. 153A-123(b), G.S. 160A-175(b).

A county or city may provide for fines and penalties for violation of its ordinances and may secure injunctions and abatement orders to further insure compliance with its ordinances. An ordinance may provide by express statement that the maximum fine, term of imprisonment, or infraction penalty to be imposed for a violation is equal to, or less than that stated in the criminal law. An ordinance may provide for one or more enforcement mechanisms, including criminal penalties. G.S. 153A-123, G.S. 160A-175.

BILL ANALYSIS: The bill would eliminate the default enforcement by criminal law for county and city ordinances. Instead, a county or city could 'opt in' to criminal penalties for any ordinance, except those ordinances specifically enumerated. If the county or city opted for criminal penalties to enforce an ordinance, that ordinance could not be enacted at the meeting in which it was first introduced.

The list of county and city ordinances for which there could be no criminal penalties would be:

- Planning and Regulation of Development, except for those ordinances related to unsafe buildings.
- Stream clearing programs.
- Regulating and licensing businesses, trades, etc.

Karen Cochrane-Brown
Director

Legislative Analysis Division
919-733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

- Regulation of outdoor advertising.
- Limitations on regulating solar collectors.
- Limitations on regulating cisterns and rain barrels.
- Building setback lines.
- Regulating trees.

No county ordinance providing for the annual registration of mobile homes or house trailers may be enforceable as a crime. Cities only have the authority to regulate taxis and curb cuts by ordinance; neither would be enforceable as a crime.

EFFECTIVE DATE: December 1, 2017, and applies to the enforcement of any county or city ordinance on or after that date.

R. Erika Churchill, Staff Attorney for the Legislative Analysis Division, contributed substantially to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

S 2

SENATE BILL 292
State and Local Government Committee Substitute Adopted 4/25/17

Short Title: Ord. Violation/No Auto Misdemeanor. (Public)

Sponsors:

Referred to:

March 16, 2017

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT VIOLATION OF A CITY OR COUNTY ORDINANCE IS NOT AUTOMATICALLY PUNISHABLE AS A MISDEMEANOR OR INFRACTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-123 reads as rewritten:

"**§ 153A-123. Enforcement of ordinances.**

...

(b) ~~Unless the board of commissioners has provided otherwise,~~ Except for the types of ordinances listed in subsection (b1) of this section, violation of a county ordinance ~~is~~ may be a misdemeanor or infraction as provided by ~~G.S. 14-4.~~G.S. 14-4 only if the county specifies such in the ordinance. An ordinance may provide by express statement that the maximum fine, term of imprisonment, or infraction penalty to be imposed for a violation is some amount of money or number of days less than the maximum imposed by G.S. 14-4. Notwithstanding G.S. 153A-45, no ordinance specifying a criminal penalty may be enacted at the meeting in which it is first introduced.

(b1) No ordinance of the following types may impose a criminal penalty:

(1) Any ordinance adopted under Article 18 of this Chapter, Planning and Regulation of Development, except for those ordinances related to unsafe buildings.

(2) Any ordinance adopted pursuant to G.S. 153A-134, Regulating and licensing businesses, trades, etc.

(3) Any ordinance adopted pursuant to G.S. 153A-138, Registration of mobile homes, house trailers, etc.

(4) Any ordinance adopted pursuant to G.S. 153A-140.1, Stream-clearing programs.

(5) Any ordinance adopted pursuant to G.S. 153A-143, Regulation of outdoor advertising.

(6) Any ordinance adopted pursuant to G.S. 153A-144, Limitations on regulating solar collectors.

(7) Any ordinance adopted pursuant to G.S. 153A-145, Limitations on regulating cisterns and rain barrels.

(8) Any ordinance regulating trees.

...."

SECTION 2. G.S. 160A-175 reads as rewritten:

"**§ 160A-175. Enforcement of ordinances.**

...

(b) ~~Unless the Council shall otherwise provide,~~ Except for the types of ordinances listed in subsection (b1) of this section, violation of a city ordinance ~~is~~ may be a misdemeanor or infraction as provided by ~~G.S. 14-4.~~G.S. 14-4 only if the city specifies such in the ordinance. An ordinance may provide by express statement that the maximum fine, term of imprisonment, or infraction penalty to be imposed for a violation is some amount of money or number of days less than the maximum imposed by G.S. 14[redacted] Notwithstanding G.S. 160A-75, no ordinance specifying a criminal penalty may be enacted at the meeting in which it is first introduced.

(b1) No ordinance of the following types may impose a criminal penalty:

(1) Any ordinance adopted under Article 19 of this Chapter, Planning and Regulation of Development, except for those ordinances related to unsafe buildings.

(2) Any ordinance adopted pursuant to G.S. 160A-193.1, Stream-clearing programs.

(3) Any ordinance adopted pursuant to G.S. 160A-194, Regulating and licensing businesses, trades, etc.

(4) Any ordinance adopted pursuant to G.S. 160A-199, Regulation of outdoor advertising.

(5) Any ordinance adopted pursuant to G.S. 160A-201, Limitations on regulating solar collectors.

(6) Any ordinance adopted pursuant to G.S. 160A-202, Limitations on regulating cisterns and rain barrels.

(7) Any ordinance adopted pursuant to G.S. 160A-304, Regulation of taxis.

(8) Any ordinance adopted pursuant to G.S. 160A-306, Building setback lines.

(9) Any ordinance adopted pursuant to G.S. 160A-307, Curb cut regulations.

(10) Any ordinance regulating trees.

...."

SECTION 3. This act becomes effective December 1, 2017, and applies to enforcement of any ordinance by a county or city on or after that date.

HOUSE BILL 669

Short Title:	Fees to Certify as a Company Police Agency.	(Public)
Sponsors:	Representative Faircloth. *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	Judiciary III, if favorable, Finance	

April 11, 2017

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE MAXIMUM FEE FOR APPLICATION FOR CERTIFICATION AS A COMPANY POLICE AGENCY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 74E-12 reads as rewritten:

"**§ 74E-12. Fees.**

The Attorney General may charge fees for the items listed in the following table, not to exceed the amounts listed in the table:

Item	Maximum Fee
Application for certification as a company police agency	~~$250~~$378
Annual renewal of certification as a company police agency	$200
Application for reinstatement of certification as a company police agency	$1,000
Application for commission as a company police officer	$100
Annual renewal of commission as a company police officer	$50
Application for reinstatement of commission as a company police officer	$150

The fees imposed under this section are not refundable. Fees collected under this section shall be applied to the cost of administering this Chapter."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 669
PROPOSED COMMITTEE SUBSTITUTE H669-CSBDf-27 [v.2]
06/12/2017 10:46:27 AM

Short Title: Fees to Certify as a Company Police Agency. (Public)

Sponsors:

Referred to:

April 11, 2017

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE MAXIMUM FEE FOR APPLICATION FOR CERTIFICATION OF AND FOR RENEWAL OF A COMPANY POLICE AGENCY AND A COMPANY POLICE OFFICER AND FOR APPLICATION FOR CERTIFICATION OF AND FOR RENEWAL OF A CAMPUS POLICE AGENCY AND A CAMPUS POLICE OFFICER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 74E-12 reads as rewritten:

"**§ 74E-12. Fees.**

The Attorney General may charge fees for the items listed in the following table, not to exceed the amounts listed in the table:

Item	Maximum Fee
Application for certification as a company police agency	~~$250~~$500.00
Annual renewal of certification as a company police agency	~~$200~~$250.00
Application for reinstatement of certification as a company police agency	~~$1,000~~$1,000.00
Application for commission as a company police officer	~~$100~~$300.00
Annual renewal of commission as a company police officer	~~$50~~$150.00
Application for reinstatement of commission as a company police officer	~~$150~~$150.00

The fees imposed under this section are not refundable. Fees collected under this section shall be applied to the cost of administering this Chapter."

SECTION 2. G.S. 74G-12 reads as rewritten:

"**§ 74G-12. Fees.**

The Attorney General may charge fees for the items listed in the following table, not to exceed the amounts listed in the table:

Item	Maximum Fee
Application for certification as a campus police agency	~~$250.00~~$500.00
Annual renewal of certification	~~$200.00~~$250.00

as a campus police agency ..... ~~$1,000~~$1,000.00
Application for reinstatement of certification as a campus police agency ..... ~~$100.00~~$300.00
Application for commission as a campus police officer ..... ~~$50.00~~$150.00
Annual renewal of commission as a campus police officer $150.00
Application for reinstatement of commission as a campus police officer

The fees imposed under this section are not refundable. Fees collected under this section shall be applied to the cost of administering this Chapter."

SECTION 3. This act becomes effective on January 1, 2018.

HOUSE BILL 669:
Fees to Certify as a Company Police Agency.

2017-2018 General Assembly

Committee:	House Judiciary III. If favorable, re-refer to Finance	**Date:**	June 13, 2017
Introduced by:	Rep. Faircloth	**Prepared by:**	Billy R. Godwin
Analysis of:	PCS to First Edition H669-CSBDf-27		Staff Attorney

OVERVIEW: ***House Bill 669 would raise the fees the Attorney General is authorized to charge to administer the Company Police Act. The proposed committee substitute (PCS) to House Bill 669 would also authorize identical fee increases under the Campus Police Act. The bill would become effective on January 1, 2018.***

CURRENT LAW: Company police agencies are licensed and regulated by the Attorney General under the *Company Police Act* of Chapter 74E of the General Statutes. Company police agencies must maintain liability insurance. Company police officers are sworn law enforcement officers who must meet and maintain the same minimal standards required of State law enforcement officers as established by the Criminal Justice Education and Training Standards Commission. Company police officers fall into three categories namely Campus Police, Railroad Police, or Special Police.[1] During the performance of their duties of employment, they have the same powers as municipal and county police officers to make arrests for both felonies and misdemeanors and may charge for infractions occurring in the following locations:

- Real property owned or in the possession and control of their employer;
- Real property owned or in the possession and control of a person who has contracted with their employer for on-site company police security personnel services; and
- Any other real property while in continuous and immediate pursuit of a person for an offense committed on the property described above.

If authorized by a superior officer, company police officers may carry concealed weapons. A violation of any of the provisions of Chapter 74E by any person, firm, association, or corporation, or their agents and employees is a Class 1 misdemeanor.

The *Campus Police Act,* Chapter 74G of the General Statutes, authorizes public institutions operating under the Board of Governors of the University of North Carolina or the State Board of Community Colleges, and private educational institutions licensed, or exempt from licensure by, the Board of Governors, to apply to the Attorney General to be certified as a campus police agency. The provisions of Chapter 74G regarding certification, insurance, training and standards, jurisdiction and arrest authority, and the carrying of concealed weapons, parallel that of company police agencies under Chapter 74E.

[1] The Campus Police Act, S.L. 2005-231, enacted Chapter 74G and placed statutory provisions pertaining to campus police within its own chapter of the General Statutes.

Karen Cochrane-Brown
Director

H669-SMBD-54 CSBDF-27 -V-4

Legislative Analysis
Division
919-733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

The Attorney General is authorized to charge fees for the administration of both Chapter 74E and Chapter 74G, including annual renewal fees for the certification of company and campus police agencies and individual company and campus police officers.

BILL ANALYSIS: The PCS to House Bill 669 would enable the Attorney General to raise the following administrative fees under G.S. 74E-12 (Company Police Act) and G.S. 74G-12 (Campus Police Act):

- Application for police agency certification from $250.00 to $500.00.
- Annual renewal fee for police agency certification from $200.00 to $250.00.
- Application for police officer commission from $100.00 to $300.00.
- Annual renewal fee for police officer commission from $50.00 to $150.00.

EFFECTIVE DATE: The bill would become effective on January 1, 2018.

House Committee on Judiciary III
Wednesday, June 28, 2017 at 1:00 PM
Room 421 of the Legislative Office Building

Sergeant at Arms

1. **Bill Bass**
2. **Mark Cone**
3. **Will Crocker**

House Committee on Judiciary III
Wednesday, June 28, 2017 at 1:00 PM
Room 421 of the Legislative Office Building

MINUTES

The House Committee on Judiciary III met at 1:00 PM on Wednesday June 28, 2017 in Room 421 of the Legislative Office Building. Representatives Jordan, Zachary, Conrad, Horn, Morey, Quick, B. Richardson, B. Turner and White attended. Brad Krehely and Billy Godwin (Research Staff Counsel), along with Emma Benson (Committee Clerk) were in attendance. A Visitor Registration list is attached and made part of these minutes. (Attachment 1)

Representative Jordan, Chair, presided. The chair called the meeting to order at 1:04 PM. He introduced the Sergeants at Arms (Attachment 2) and house pages. (Attachment 3) The following bill was considered:

Senate Bill 407, Proposed Committee Substitute (PCS), and a bill summary are provided (Attachments 4, 5, and 6).

SENATE BILL 407: EMPLOYEE MISCLASSIFICATION REFORM

Chairman Jordan recognized Rep. Quick to make the motion to have the PCS before the committee.

Chairman Jordan recognized Sen. Wells to explain the bill.

Senate Bill 407 would enact the Employee Fair Classification Act that formally creates the Employee Classification Section within the Industrial Commission. The Section is authorized to receive complaints of employee misclassification, investigate complaints, coordinate investigations by other State agencies, exchange information among State agencies, and report the results of these investigations. The PCS would also require State occupational licensing boards to include on every application for a license : (1) a certification that the applicant has read a notice statement on employee misclassification and (2) disclosure of any investigations for employee misclassification.

Chairman Jordan recognized Rep. Horn to present an amendment to the bill (Attachment 7). With no objection the amendment was adopted.

Chairman Jordan recognized Reps. Zachary, Morey, Quick, B. Turner, B. Richardson, and Conrad to discuss the bill.

Chairman Jordan recognized Kendall Bourdon of the Industrial Commission to answer any questions and speak in favor of the bill.

Chairman Jordan recognized Rep. Zachary to present an amendment to the bill (Attachment 8). With no objection the amendment was adopted.

Chairman Jordan recognized Rep. Horn to make a motion for the amendments to be rolled into a new PCS, favorable to the PCS and unfavorable to the original bill. The motion carried.

With no further business, Chairman Jordan adjourned the meeting at 1:28 PM.

Representative Jordan, Chair
Presiding

Emma Benson, Committee Clerk

Attachments

1. Visitor Registration Sheet
2. Sergeants at Arms
3. House Pages
4. Senate Bill 407
5. Senate Bill 407 PCS
6. Senate Bill 407 Bill Summary
7. Horn Amendment to Senate Bill 407
8. Zachary Amendment 2 to Senate Bill 407

Attachment 1

VISITOR REGISTRATION SHEET

House Judiciary III — **Name of Committee**

06-28-2017 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLER

NAME	FIRM OR AGENCY AND ADDRESS
Chris Brewton	NWC
Ken Burke	NWC
Jill Cramer	NC Dept of Labor
Jennifer Haywood	" " "
Sarah Komce	" " "
Betsy Bailey	CHCC
David Crawford	AIANC
Leigh Lawrence	Rep. Billy Richardson (LA)

VISITOR REGISTRATION SHEET

House Judiciary III — 06-28-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cindy Thomas	Focus Carolina
Bryan D. Kelleway	Kelleway Group, Inc.
Adam Pridemore	NCBA
Meaghan Cuniff	NC Chamber
Lexi Arthur	NCRMA
Tommy Cullipher	Publix
Chris McClure	BP
Harold Brubaker	Brubaker
Kendall Bourdon	NC IC
Jonathan Brubaker	Brubaker + Assoc
Susanna Davis	OSHR

VISITOR REGISTRATION SHEET

House Judiciary III — 06-28-2017

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Stephen Rowan	KMA
Neal Imm	NLC

Attachment 2

Committee Sergeants at Arms

NAME OF COMMITTEE House Judiciary 3

DATE: 06-28-2017 Room: 421

House Sgt-At Arms:

1. Name: Bill Bass
2. Name: Mark Cone
3. Name: Will Crocker
4. Name: _____
5. Name: _____

Senate Sgt-At Arms:

1. Name: _____
2. Name: _____
3. Name: _____
4. Name: _____
5. Name: _____

House Pages
Assignments
Wednesday, June 28, 2017

Committee	Room	Time	Staff	Comments	Member
Judiciary III	421	1:00 PM	Lucas Boyd		Rep. John Szoka
			Andrew Lavine		Rep. Greg Murphy
			Amelia Todd		Rep. Deb Butler
			Matthew Tripp		Rep. Jay Adams
Regulatory Reform	1228/1327	1:00 PM	Leah Campbell		Rep. John R. Bell, IV
			Josie Clary		Speaker Tim Moore
			Susanna Martin		Speaker Tim Moore
			Dylan Skinner		Rep. Susan Martin
Rules, Calendar, and Operations of the House	1228/1327	During First Recess of House	Josie Clary		Speaker Tim Moore
			Abigail Smith		Rep. James Boles
			David Washburn		Speaker Tim Moore
			John Washburn		Rep. George W. Graham, Jr.

Attachment 3

Attachment 4

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

S

SENATE BILL 407

Short Title:	Employee Misclassification Reform.	(Publi
Sponsors:	Senators Wells (Primary Sponsor); and Horner.	
Referred to:	Rules and Operations of the Senate	

March 29, 2017

A BILL TO BE ENTITLED

AN ACT TO ENACT THE EMPLOYEE FAIR CLASSIFICATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 143 of the General Statutes is amended by adding a new Article to read:

"Article 82.

"Employee Fair Classification Act.

"**§ 143-761. Title.**

This Article shall be known and may be cited as the "Employee Fair Classification Act."

"**§ 143-762. Definitions; scope.**

(a) The following definitions apply in this Article:

(1) Chairman. – The Chairman of the Industrial Commission.

(2) Employ. – As defined by G.S. 95-25.2(3). For the purposes of this Article, an entity or individual shall not be deemed to be an employer of an individual hired or otherwise engaged by or through the entity or individual's independent contractor.

(3) Employee. – Any individual that is defined as an employee by either G.S. 95-25.2(4), 96-1(10), 97-2(2), or 105-163.1(4). The term does not mean an individual who is an independent contractor.

(4) Employee Classification Section or Section. – The Employee Classification Section within the Industrial Commission.

(5) Employee misclassification. – Avoiding tax liabilities and other obligations imposed by Chapter 95, 96, 97, 105, or 143 of the General Statutes by misclassifying an employee as an independent contractor.

(6) Employer. – Any individual or entity that employs one or more employees as defined by G.S. 97-2(3).

(7) Public notice statement. – Notice as set forth in G.S. 143-764(a)(5).

(b) Nothing in this Article shall be construed or is intended to change the definition of "employer" or "employee" under any other provision of law.

"**§ 143-763. Establishment of Employee Classification Section.**

(a) The Employee Classification Section is established within the Industrial Commission.

(b) The Chairman shall appoint a director of the Section to serve at the Chairman's pleasure with such authority as the Chairman deems necessary to direct and oversee the Section in carrying out the purposes of this Article.

(c) The Chairman may employ clerical staff, investigators, and other staff within the Section as is necessary for the Section to perform its duties under this Article.

(d) The Office of the State Chief Information Officer shall ensure that the Section is provided with all necessary access to the Government Data Analytics Center and all other information technology services.

(e) The Secretary of Revenue, the Commissioner of Labor, the Chairman, and the Assistant Secretary of Commerce for the Division of Employment Security shall each designate an employee of their respective agencies to serve as liaisons to the Section.

"**§ 143-764. Section powers and duties.**

(a) The Section shall have the following duties:

(1) Be available during business hours to receive reports of employee misclassification by telephonic, written, or electronic communication.

(2) Investigate reports of employee misclassification and coordinate with and assist all relevant State agencies in recovering any back taxes, wages, benefits, penalties, or other monies owed as a result of an employer engaging in employee misclassification.

(3) Coordinate with relevant State agencies and District Attorneys' offices in the prosecution of employers and individuals who fail to pay civil assessments or penalties assessed as a result of the employer's or individual's involvement in employee misclassification.

(4) Provide all relevant information pertaining to each instance of reported employee misclassification to the North Carolina Department of Labor, the Division of Employment Security within the North Carolina Department of Commerce, the North Carolina Department of Revenue, and the North Carolina Industrial Commission to facilitate investigation of potential violations of Chapter 95, 96, 97, 105, or 143 of the General Statutes.

(5) Create a publicly available notice that includes the definition of employee misclassification.

(6) Develop methods and strategies for information sharing between State agencies in order to proactively identify possible instances of employee misclassification.

(7) Develop methods and strategies to educate employers, employees, and the public about proper classification of employees and the prevention of employee misclassification.

(b) No later than October 1 of each year, the Section shall publish annually to the Office of the Governor and to the Joint Legislative Commission on Governmental Operations a report of the administration of this Article, together with any recommendations as the Section deems advisable. This report shall include, at a minimum, the number of reports of employee misclassification received, the number and amount of back taxes, wages, benefits, penalties, or other monies assessed, the amount of back taxes, wages, benefits, penalties, or other monies collected, and the number of cases referred to each State agency.

(c) The Section may adopt rules in accordance with Article 2A of Chapter 150B of the General Statutes for the purpose of carrying out the provisions of this Article and establishing the processes and procedures to be used under this Article.

"**§ 143-765. Occupational licensing boards and commissions; notice requirement; applicant certification and disclosure.**

(a) Every State occupational licensing board or commission that is authorized to issue any license, permit, or certification shall include on every application for licensure, permit, or certification, or application for renewal of the same, the following:

(1) Certification by the applicant that the applicant has read and understands the public notice statement.

(2) Disclosure by the applicant of any investigations for employee misclassification and the result of the investigations for a time period determined by the occupational licensing board or commission.

(b) An occupational licensing board or commission shall deny the license, permit, or certification application of any applicant who fails to comply with the certification and disclosure requirements of this section.

"**§ 143-766. Confidentiality; access to records.**

(a) The records of the Section are not public records under G.S. 132-1.

(b) The Section shall exchange information as required by this Article.

(c) The Section may share information with other State and federal agencies as permitted or required by law.

"**§ 143-767. Exchange of information among coordinating agencies.**

The North Carolina Department of Revenue, the North Carolina Department of Labor, the Division of Employment Security within the North Carolina Department of Commerce, and the North Carolina Industrial Commission shall disclose all reports and investigations of employee misclassification to the Section. The Section shall distribute the information to the other agencies to allow each agency to conduct an investigation."

SECTION 2. G.S. 105-259(b) is amended by adding a new subdivision to read:

"(53) To furnish to the North Carolina Department of Labor, the Division of Employment Security within the North Carolina Department of Commerce, the North Carolina Industrial Commission, and the Employee Classification Section within the Industrial Commission employee misclassification information pursuant to Article 82 of Chapter 143 of the General Statutes."

SECTION 3. G.S. 95-25.15(c) reads as rewritten:

"(c) A poster summarizing the major provisions of this Article shall be displayed in every establishment subject to this Article. This poster shall also include notice indicating the following in plain language:

(1) Any worker who is defined as an employee by either G.S. 95-25.2(4), 143-761(2), 96-1(10), 97-2(2), or 105-163.1(4) shall be treated as an employee unless the individual is an independent contractor.

(2) Any employee who believes that the employee has been misclassified as an independent contractor by the employee's employer may report the suspected misclassification to the Employee Classification Section within the Industrial Commission.

(3) The physical location, mailing address, telephone number, and e-mail address where alleged incidents of employee misclassification may be reported to the Employee Classification Section within the Industrial Commission."

SECTION 4. This act becomes effective October 1, 2017.

Attachment 5

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

S

SENATE BILL 407
PROPOSED HOUSE COMMITTEE SUBSTITUTE S407-CSRN-24 [v.3]
06/27/2017 4:51:11 PM

Short Title: Employee Misclassification/IC Changes. (Pub

Sponsors:

Referred to:

March 29, 2017

A BILL TO BE ENTITLED

AN ACT TO ENACT THE EMPLOYEE FAIR CLASSIFICATION ACT, TO REQUIRE THE INDUSTRIAL COMMISSION TO IMPLEMENT RULES RELATED TO OPIOIDS AND PAIN MANAGEMENT, TO REMOVE THE REQUIREMENT THAT THE INDUSTRIAL COMMISSION STUDY CAUSES OF INJURY AND RECOMMEND WAYS TO PREVENT INJURIES, AND TO PROVIDE THAT WHEN AN INJURY IS CAUSED BY THE BREACH OF A RULE ADOPTED BY THE EMPLOYER, THAT RULE DOES NOT HAVE TO BE APPROVED BY THE INDUSTRIAL COMMISSION FOR THE PURPOSE OF DETERMINING WHETHER COMPENSATION FOR THE INJURY IS TO BE REDUCED UNDER G.S. 97-12.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 143 of the General Statutes is amended by adding a new Article to read:

"Article 82.
"Employee Fair Classification Act.

"**§ 143-761. Title.**

This Article shall be known and may be cited as the "Employee Fair Classification Act."

"**§ 143-762. Definitions; scope.**

(a) The following definitions apply in this Article:

(1) Chairman. – The Chairman of the Industrial Commission.

(2) Employ. – As defined by G.S. 95-25.2(3). For the purposes of this Article, an entity or individual shall not be deemed to be an employer of an individual hired or otherwise engaged by or through the entity or individual's independent contractor.

(3) Employee. – Any individual that is defined as an employee by either G.S. 95-25.2(4), 96-1(b)(10), 97-2(2), or 105-163.1(4). The term does not mean an individual who is an independent contractor.

(4) Employee Classification Section or Section. – The Employee Classification Section within the Industrial Commission.

(5) Employee misclassification. – Avoiding tax liabilities and other obligations imposed by Chapter 95, 96, 97, 105, or 143 of the General Statutes by misclassifying an employee as an independent contractor.

(6) Employer. – Any individual or entity that employs one or more employees as defined by G.S. 97-2(3).

(7) Public notice statement. – Notice as set forth in G.S. 143-764(a)(5).

(b) Nothing in this Article shall be construed or is intended to change the definition of "employer" or "employee" under any other provision of law.

"**§ 143-763. Establishment of Employee Classification Section.**

(a) The Employee Classification Section is established within the Industrial Commission.

(b) The Chairman shall appoint a director of the Section to serve at the Chairman's pleasure with such authority as the Chairman deems necessary to direct and oversee the Section in carrying out the purposes of this Article.

(c) The Chairman may employ clerical staff, investigators, and other staff within the Section as is necessary for the Section to perform its duties under this Article.

(d) The Office of the State Chief Information Officer shall ensure that the Section is provided with all necessary access to the Government Data Analytics Center and all other information technology services.

(e) The Secretary of Revenue, the Commissioner of Labor, the Chairman, and the Assistant Secretary of Commerce for the Division of Employment Security shall each designate an employee of their respective agencies to serve as liaisons to the Section.

"**§ 143-764. Section powers and duties.**

(a) The Section shall have the following duties:

(1) Be available during business hours to receive reports of employee misclassification by telephonic, written, or electronic communication.

(2) Investigate reports of employee misclassification and coordinate with and assist all relevant State agencies in recovering any back taxes, wages, benefits, penalties, or other monies owed as a result of an employer engaging in employee misclassification.

(3) Coordinate with relevant State agencies and District Attorneys' offices in the prosecution of employers and individuals who fail to pay civil assessments or penalties assessed as a result of the employer's or individual's involvement in employee misclassification.

(4) Provide all relevant information pertaining to each instance of reported employee misclassification to the North Carolina Department of Labor, the Division of Employment Security within the North Carolina Department of Commerce, the North Carolina Department of Revenue, and the North Carolina Industrial Commission to facilitate investigation of potential violations of Chapter 95, 96, 97, 105, or 143 of the General Statutes.

(5) Create a publicly available notice that includes the definition of employee misclassification.

(6) Develop methods and strategies for information sharing between State agencies in order to proactively identify possible instances of employee misclassification.

(7) Develop methods and strategies to educate employers, employees, and the public about proper classification of employees and the prevention of employee misclassification.

(b) No later than October 1 of each year, the Section shall publish annually to the Office of the Governor and to the Joint Legislative Commission on Governmental Operations a report of the administration of this Article, together with any recommendations as the Section deems advisable. This report shall include, at a minimum, the number of reports of employee misclassification received, the number and amount of back taxes, wages, benefits, penalties, or other monies assessed, the amount of back taxes, wages, benefits, penalties, or other monies collected, and the number of cases referred to each State agency.

(c) The Section may adopt rules in accordance with Article 2A of Chapter 150B of the General Statutes for the purpose of carrying out the provisions of this Article and establishing the processes and procedures to be used under this Article.

"**§ 143-765. Occupational licensing boards and commissions; notice requirement; applicant certification and disclosure.**

(a) Every State occupational licensing board or commission that is authorized to issue any license, permit, or certification shall include on every application for licensure, permit, or certification, or application for renewal of the same, the following:

(1) Certification by the applicant that the applicant has read and understands the public notice statement.

(2) Disclosure by the applicant of any investigations for employee misclassification and the result of the investigations for a time period determined by the occupational licensing board or commission.

(b) An occupational licensing board or commission shall deny the license, permit, or certification application of any applicant who fails to comply with the certification and disclosure requirements of this section.

"**§ 143-766. Confidentiality; access to records.**

(a) The records of the Section are not public records under G.S. 132-1.

(b) The Section shall exchange information as required by this Article.

(c) The Section may share information with other State and federal agencies as permitted or required by law.

"**§ 143-767. Exchange of information among coordinating agencies.**

The North Carolina Department of Revenue, the North Carolina Department of Labor, the Division of Employment Security within the North Carolina Department of Commerce, and the North Carolina Industrial Commission shall disclose all reports and investigations of employee misclassification to the Section. The Section shall distribute the information to the other agencies to allow each agency to conduct an investigation."

SECTION 2. G.S. 105-259(b) is amended by adding a new subdivision to read:

"(53) To furnish to the North Carolina Department of Labor, the Division of Employment Security within the North Carolina Department of Commerce, the North Carolina Industrial Commission, and the Employee Classification Section within the Industrial Commission employee misclassification information pursuant to Article 82 of Chapter 143 of the General Statutes."

SECTION 3. G.S. 95-25.15(c) reads as rewritten:

"(c) A poster summarizing the major provisions of this Article shall be displayed in every establishment subject to this Article. This poster shall also include notice indicating the following in plain language:

(1) Any worker who is defined as an employee by either G.S. 95-25.2(4), 143-762(a)(3), 96-1(b)(10), 97-2(2), or 105-163.1(4) shall be treated as an employee unless the individual is an independent contractor.

(2) Any employee who believes that the employee has been misclassified as an independent contractor by the employee's employer may report the suspected misclassification to the Employee Classification Section within the Industrial Commission.

(3) The physical location, mailing address, telephone number, and e-mail address where alleged incidents of employee misclassification occurred may be reported to the Employee Classification Section within the Industrial Commission."

SECTION 4.(a) The Industrial Commission shall adopt rules and guidelines, consistent with G.S. 97-25.4, for the utilization of opioids, related prescriptions, and pain management treatment.

SECTION 4.(b) The Industrial Commission is exempt from the fiscal note requirement of G.S. 150B-21.4 in developing and implementing the rules and guidelines for opioids, related prescriptions, and pain management treatment.

SECTION 5. G.S. 97-81(c) is repealed.

SECTION 6. G.S. 97-12 reads as rewritten:

"§ 97-12. Use of intoxicant or controlled substance; willful neglect; willful disobedience of statutory duty, safety regulation or rule.

No compensation shall be payable if the injury or death to the employee was proximately caused by:

(1) His intoxication, provided the intoxicant was not supplied by the employer or his agent in a supervisory capacity to the employee; or

(2) His being under the influence of any controlled substance listed in the North Carolina Controlled Substances Act, G.S. 90-86, et seq., where such controlled substance was not by prescription by a practitioner; or

(3) His willful intention to injure or kill himself or another.

When the injury or death is caused by the willful failure of the employer to comply with any statutory requirement or any lawful order of the Commission, compensation shall be increased ten percent (10%). When the injury or death is caused by the willful failure of the employee to use a safety appliance or perform a statutory duty or by the willful breach of any rule or regulation adopted by the employer ~~and approved by the Commission~~ and brought to the knowledge of the employee prior to the injury compensation shall be reduced ten percent (10%). The burden of proof shall be upon him who claims an exemption or forfeiture under this section.

"Intoxication" and "under the influence" shall mean that the employee shall have consumed a sufficient quantity of intoxicating beverage or controlled substance to cause the employee to lose the normal control of his or her bodily or mental faculties, or both, to such an extent that there was an appreciable impairment of either or both of these faculties at the time of the injury.

A result consistent with "intoxication" or being "under the influence" from a blood or other medical test conducted in a manner generally acceptable to the scientific community and consistent with applicable State and federal law, if any, shall create a rebuttable presumption of impairment from the use of alcohol or a controlled substance."

SECTION 7. Sections 1, 2, and 3 of this act become effective October 1, 2017. The remainder of this act is effective when it becomes law.

SENATE BILL 407:
Employee Misclassification/IC Changes.

2017-2018 General Assembly

Committee:	House Judiciary III	**Date:**	June 27, 2017
Introduced by:	Sen. Wells	**Prepared by:**	Brad Krehely
Analysis of:	PCS to First Edition S407-CSRN-24		Committee Co-Counsel

OVERVIEW: ***The Proposed Committee Substitute (PCS) for Senate Bill 407 would enact the Employee Fair Classification Act that formally creates the Employee Classification Section (Section) within the Industrial Commission. The Section is authorized to receive complaints of employee misclassification, investigate complaints, coordinate investigations by other State agencies, exchange information among State agencies, and report the results of these investigations. The PCS would also require State occupational licensing boards to include on every application for a license: (1) a certification that the applicant has read a notice statement on employee misclassification and (2) disclosure of any investigations for employee misclassification.*** ***The PCS adds Sections 4-6 and makes technical changes.***

CURRENT LAW: Employee misclassification occurs when a business hires an individual to work under the business's control as an employee, but classifies the individual as an independent contractor. The misclassification allows the business to avoid income tax withholding, federal payroll taxes, State unemployment insurance (UI) taxes, State workers' compensation insurance coverage, minimum wage and overtime pay, and responsibility for the protection and conduct of employees.

Four State agencies independently investigate employee misclassification:

- Department of Labor (Chapter 95 – Wage and Hour Act)
- Department of Commerce's Division of Employment Security (Chapter 96 – UI taxes)
- Industrial Commission (Chapter 97 – workers' compensation insurance)
- Department of Revenue (Chapter 105 – withholding and payroll taxes)

On December 18, 2015, former Governor McCrory issued Executive Order No. 83 establishing the Employee Classification Section within the Industrial Commission. The Section currently operates.

BILL ANALYSIS:

Sections 1-3 would enact the Employee Fair Classification Act that formally creates the Employee Classification Section (Section) within the Industrial Commission. The Section would coordinate the investigation of employee misclassification.

The Section is specifically authorized to:

- Receive complaints of employee misclassification
- Investigate reports of employee misclassification and coordinate with other State agencies

- Coordinate with relevant State agencies and District Attorneys' offices in the prosecution of employers and individuals who fail to pay civil assessments or penalties
- Provide information about each report of employee misclassification to the Department of Labor, the Division of Employment Security within the Department of Commerce, the Department of Revenue, and the Industrial Commission to facilitate investigation of potential statutory violations.
- Create a publicly available notice that includes the definition of employee misclassification as part of the poster summarizing the major provisions of North Carolina's labor laws.
- Develop methods to share information between State agencies to identify possible employee misclassification
- Educate employers, employees, and the public about employee misclassification
- Report annually to the Governor and to the Joint Legislative Commission on Governmental Operations
- Adopt rules

All State occupational licensing boards that are authorized to issue any license, permit, or certification must include on every application for licensure, permit, or certification, or application for renewal the following: (1) certification by the applicant that the applicant has read and understands the public notice statement on employee misclassification and (2) disclosure by the applicant of any investigations for employee misclassification and the result of the investigations for a time period determined by the occupational licensing board. The penalty for failure to supply the certification and disclosure is denial of the license, permit, or certification.

Section 4 would require the Industrial Commission to adopt rules for the utilization of opioids and pain management treatment and would exempt the Industrial Commission from a fiscal note requirement to allow rules to be implemented more quickly.

Section 5 would delete the requirement that the Industrial Commission study causes of injury in employment and recommend ways to prevent such injuries.

Section 6- Under current law, when an injury or death is caused by the willful failure of the employee to use a safety appliance or perform a statutory duty or by the willful breach of any rule or regulation adopted by the employer *and approved by the Commission* and brought to the knowledge of the employee prior to the injury, compensation is be reduced by 10%.

Section 6 would remove the requirement that the rule or regulation must be approved by the Commission for purposes of reducing compensation.

EFFECTIVE DATE: The provisions dealing with employee misclassification would become effective October 1, 2017. The remainder of this act would be effective when it becomes law.

*Greg Roney, Staff Attorney for the Legislative Analysis Division, contributed substantially to the drafting of this summary.

Attachment 7

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 407

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

S407-ARN-30 [v.2]

Amends Title [NO]
S407-CSRN-24 [v.3]

Date _____,2017

Representative Horn

moves to amend the bill on page 4, lines 32-33, by rewriting those lines to read:

"**SECTION 7.** Sections 1, 2, and 3 of this act become effective October 1, 2017. Section 6 of this act becomes effective October 1, 2017, and applies to injuries or deaths occurring on or after that date. The remainder of this act is effective when it becomes law.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Attachment 8

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 6-28-17

S. B. No. 407 Amendment No. 2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE CSRN-24[v.3]

(Rep.) Sen.) Zachary

moves to amend the bill on page 4, line 19-20

( ) WHICH CHANGES THE TITLE

by deleting "any rule or regulation" and substituting "any reasonable rule or reasonable regulation".

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

House Committee on Judiciary III
Wednesday, June 6, 2018 at 1:35 PM
Room 421 of the Legislative Office Building

Sergeant at Arms

1. **Bill Bass**
2. **Will Crocker**
3. **Rey Cook**
4. **Joe Crook**

House Committee on Judiciary III
Wednesday, June 6, 2018 at 1:35 PM
Room 421 of the Legislative Office Building

MINUTES

The House Committee on Judiciary III met at 1:00 PM on Wednesday June 6, 2018 in Room 421 of the Legislative Office Building. Representatives Jordan, Zachary, Reives, Conrad, Hastings, Horn, Morey, Quick, B. Richardson, Szoka, B. Turner and White attended. Kristen Harris and Billy Godwin (Research Staff Counsel), along with Emma King (Committee Clerk) were in attendance. A Visitor Registration list is attached and made part of these minutes. (Attachment 1)

Representative Jordan, Chair, presided. The chair called the meeting to order at 1:45 PM. He introduced the Sergeants at Arms (Attachment 2) and house pages. (Attachment 3) The following bills were considered:

House Bill 963 and a bill summary are provided (Attachments 4 and 5).

HOUSE BILL 963: CLARIFY PREVENTION/EMERGENCY MANAGEMENT ACT

Chairman Jordan recognized Rep. Jones to explain the bill.

House Bill 963 would amend sections of the North Carolina Emergency Management Act to clarify that "prevention" like mitigation, preparedness, response, and other actions are within the scope of the Act.

Chairman Jordan recognized Rep. Morey to discuss the bill.

Chairman Jordan recognized Rep. Zachary to make a motion for a favorable report of House Bill 963. With no objection the motion carried.

House Bill 1040 and a bill summary are provided (Attachments 6 and 7)

HOUSE BILL 1040: AMEND SUM EJECT SERVICE/ALLOW PROCESS SERVER.

Chairman Jordan recognized Rep. Szoka to chair the meeting.

Chairman Szoka recognized Rep. Jordan to explain the bill.

House Bill 1040 would 1) allow all summary ejectment cases to be served under Rule 4(h1); 2) allow plantiffs in counties with 900,000 or more residents to obtain service for summary

ejectment on a defendant by posting with a private process server without first attempting service by a sheriff in-person; and 3) clarify the method of computation for the five-day service of summons requirement in summary ejectment cases.

Chairman Szoka recognized Reps. Morey, Quick, Hastings, Richardson, and Zachary to discuss the bill.

Chairman Szoka recognized Rep. Jordan to make a motion for a favorable report of House Bill 1040. The motion carried.

With no further business, Chairman Szoka adjourned the meeting at 2:05 PM.

Representative Jordan, Chair
Presiding

Emma King, Committee Clerk

Attachments

1. Visitor Registration Sheet
2. Sergeant at Arms
3. House Pages
4. HB963
5. HB963 bill summary
6. HB1040
7. HB1040 bill summary

VISITOR REGISTRATION SHEET

Attachment 1

House Judiciary III — **Name of Committee**

06-06-18 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLEI

NAME	FIRM OR AGENCY AND ADDRESS
Dibrina BRAUN	Raleigh Regional Association of REACTORS
Scottie Hundley	Raleigh Regional Association of Realtors
Nathan Zaloft	Raleigh Regional Association of Realtors
Nick Billman	WM
LAURA PURYEAR	MWC
Hope Harvey	High Country Assc. of Realtors
Pam J Vines	High Country Assoc of Realtors
Bill Aceto	High Country Assoc of Realtors

VISITOR REGISTRATION SHEET

House Judiciary III — 06-06-18

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Adam Pridemore	NCACC
Matt Kemnitz	NCEM
Miguel Cardenas	HPRAR - NC Realtors®
Bill Rowe	NC Justice Center
Alan Miller	AMGA
Susan Vick	Duke Energy
Anna Reavis	Rep. Zachary Intern
Kelly Gray	Upstate
Jamie Lassiter	CCSC
Susan Frye	CSC Forsyth
Andy Chase	KMA
Brendan Bailey	RRAR
Andrew Blackburn	RRAR

VISITOR REGISTRATION SHEET

House Judiciary III — 06-06-18

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Seth Palmer	NCR
John Head	NCR
John Register	NCR
Cady Thomas	Focus C
Kim Setliff	HPAR
Amy Hedgecock	NC Realtors
Bob Bates	NC Realtors®
Wendy Harris	NC REALTORS®
Rosemary Buerger	NC REALTORS®
Randall Blankenship	NC REALTORS®
Andrea Bushnell	NC REALTORS®

VISITOR REGISTRATION SHEET

House Judiciary III — 06-06-18

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kim Dawson	NC REALTORS® / DRAR
JIM DAWSON	NC REALTORS®
Wendell Bullard	NC Realtors® / DRAR
Pierce Shipway	JDA
Amanda Allen	JDA
PHYLLIS MENTO	NC REALTORS / PAID
Kristine H Farrell	NC Realtors
Hugh Moore	NC REALTORS
Stephen McPherson	NC Realtors
Laurie Edwards	NCR
Soraya Pitts	NCR
Deborah DAVIS	NCR

Attachment 2

House Committee on Judiciary III
Wednesday, June 6, 2018 at 1:00 PM
Room 421 of the Legislative Office Building

Sergeant of Arms

1. **Bill Bass**
2. **Will Crocker**
3. **Rey Cook**
4. **Joe Crook**

House Pages
Assignments
Wednesday, June 06, 2018

Committee	Room	Time	Staff	Comments	Member
Judiciary III	421	1:00 PM	Miller Andrews		.Speaker Tim Moore
			Anne Asbill		Rep. Cynthia Ball
			Alexa Gomez		Speaker Tim Moore
			Amber Ward		Rep. James L. Boles, Jr.
State and Local Government	544	1:00 PM	John Bradford		Rep. John R. Bradford, III
			Anthony Burnette		Speaker Tim Moore
			Bray Woodard		Rep. Ken Goodman
Pensions and Retirement	415	3:00 PM	Anne Asbill		Rep. Cynthia Ball
			Richard Asbill		Rep. John Autry
			Payton Martin		Rep. Julia C. Howard
			Mitchell Messenger		Rep. George G. Cleveland

Attachment 3

House Pages
Assignments
Wednesday, June 06, 2018
Session: 11:00 AM

Committee	Room	Time	Staff	Comments	Member
Health	643	10:00 AM	Zoe Nichols		Rep. Darren G. Jackson
			Leila Samiy		Speaker Tim Moore
			Amber Ward		Rep. James L. Boles, Jr.
			Bray Woodard		Rep. Ken Goodman
State and Local Government	544	10:00 AM	Miller Andrews		Speaker Tim Moore
			Anne Asbill		Rep. Cynthia Ball
			Emily Davis		Speaker Tim Moore
			Imari Simmons		Rep. Michael Speciale
Energy Policy Commission, Jt. Leg.	643	1:00 PM	Richard Asbill		Rep. John Autry
			Martin Kinney		Rep. George G. Cleveland
			Payton Martin		Rep. Julia C. Howard
			Leila Samiy		Speaker Tim Moore
Judiciary I	415	1:00 PM	Mitchell Messenger		Rep. George G. Cleveland
			Zoe Nichols		Rep. Darren G. Jackson
			Emerson Replogle		Rep. Grier Martin
			Christian Terrell		Rep. Rosa U. Gill
Judiciary II	1425	1:00 PM	Rebecca Burkhart		Speaker Tim Moore
			Emily Davis		Speaker Tim Moore

Attachment 4

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

HOUSE BILL 963*

Short Title:	Clarify Prevention/Emergency Management Act.	(Publi
Sponsors:	Representatives Faircloth, Speciale, Boles, and Brenden Jones (Primary Sponsors). *For a complete list of sponsors, refer to the North Carolina General Assembly web site.*	
Referred to:	Judiciary III	

May 21, 2018

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA EMERGENCY MANAGEMENT ACT TO CLARIFY THAT PREVENTION IS WITHIN THE SCOPE OF THE ACT, AS RECOMMENDED BY THE JOINT LEGISLATIVE EMERGENCY MANAGEMENT OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 166A-19.1 reads as rewritten:

"**§ 166A-19.1. Purposes.**

The purposes of this Article are to set forth the authority and responsibility of the Governor, State agencies, and local governments in prevention of, preparation for, response to, and recovery from natural or man-made emergencies or hostile military or paramilitary action and to do the following:

(1) Reduce vulnerability of people and property of this State to damage, injury, and loss of life and property.

(2) Prepare for prompt and efficient rescue, care, and treatment of threatened or affected persons.

(3) Provide for the rapid and orderly rehabilitation of persons and restoration of property.

(4) Provide for cooperation and coordination of activities relating to emergency mitigation, prevention, preparedness, response, and recovery among agencies and officials of this State and with similar agencies and officials of other states, with local and federal governments, with interstate organizations, and with other private and quasi-official organizations."

SECTION 2. G.S. 166A-19.10 reads as rewritten:

"**§ 166A-19.10. Powers of the Governor.**

(a) State Emergency Management Program. – The State Emergency Management Program includes all aspects of the prevention of, preparations for, response to, recovery from, and mitigation against war or peacetime emergencies.

...."

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

HOUSE BILL 963:
Clarify Prevention/Emergency Management Act.

2017-2018 General Assembly

Committee:	House Judiciary III	**Date:**	June 6, 2018
Introduced by:	Reps. Faircloth, Speciale, Boles, Brenden Jones	**Prepared by:**	Kristen L. Harris Committee Co-Counsel
Analysis of:	First Edition		

OVERVIEW: House Bill 963 would amend sections of the North Carolina Emergency Management Act to clarify that "prevention" like mitigation, preparedness, response, and other actions are within the scope of the Act.

[As introduced, this bill was identical to S723, as introduced by Sens. Rabin, Alexander, Sanderson, which is currently in Senate Rules and Operations of the Senate.]

BILL ANALYSIS:

Section 1 would clarify that under the North Carolina Emergency Management Act the Governor, State agencies, and local governments should assist in the cooperation and coordination of emergency prevention among different in-state and out-of-state entities.

Section 2 would clarify that prevention of war and peacetime emergencies is included in the State Emergency Management Program

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

BACKGROUND: The Joint Legislative Emergency Management Oversight Committee submitted a report to the members of the 2018 Regular Session of the 2017 General Assembly. The report included legislative proposals including the above-described legislation. A copy of the Committee's report can be found in the Legislative Library.

Karen Cochrane-Brown
Director

H963-SMTU-58 E1 -V-2

Legislative Analysis
Division
919-733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

Attachment 6

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

HOUSE BILL 1040

Short Title: Amend Sum Eject Service/Allow Process Server. (Publi

Sponsors: Representatives Jordan, Bradford, Earle, and Szoka (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary III

May 31, 2018

A BILL TO BE ENTITLED

AN ACT TO ALLOW SUMMARY EJECTMENT CLAIMS TO BE SERVED BY A PRIVATE PROCESS SERVER WHEN RETURNED UNEXECUTED, TO CLARIFY THE CALCULATION OF TIME LINES WHEN SERVING A SUMMONS IN SUMMARY EJECTMENT CASES, AND TO ALLOW THE PLAINTIFF IN A SUMMARY EJECTMENT ONLY CLAIM TO UTILIZE A PRIVATE PROCESS SERVER IN COUNTIES WITH POPULATIONS OF NINE HUNDRED THOUSAND OR GREATER, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION COMMITTEE ON PRIVATE PROCESS SERVERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1A-1, Rule 4(h1), reads as rewritten:

"**Rule 4. Process.**

...

(h1) Summons – When process returned unexecuted. – If a proper officer returns a summons or other process unexecuted, the plaintiff or his agent or attorney may cause service to be made by anyone who is not less than 21 years of age, who is not a party to the action, and who is not related by blood or marriage to a party to the action or to a person upon whom service is to be made. ~~Except for claims severed by a magistrate pursuant to G.S. 7A-223(b1), this~~ This subsection shall not apply to executions pursuant to Article 28 of Chapter 1 ~~or summary ejectment pursuant to Article 3 of Chapter 42~~ of the General Statutes."

SECTION 2. G.S. 42-28 reads as rewritten:

"**§ 42-28. Summons issued by clerk.**

(a) When the lessor or his assignee files a complaint pursuant to G.S. 42-26 or 42-27, and asks 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. The plaintiff may claim rent in arrears, and damages for the occupation of the premises since the cessation of the estate of the lessee, not to exceed the jurisdictional amount established by G.S. 7A-210(1), but if he omits to make such claim, he shall not be prejudiced thereby in any other action for their recovery.

(b) In counties with 900,000 or more residents as of the most recent decennial federal census, after the summons is issued, at the election of the plaintiff, the clerk shall do either of the following:

(1) Return the summons to the plaintiff for service by a process server pursuant to G.S. 42-29(b).

(2) Forward the summons to the sheriff for service.

(c) If the magistrate severs the claim for monetary damages pursuant to G.S. 7A-223(b1), the plaintiff may extend the action in accordance with G.S. 1A-1, Rule 4(d)."

SECTION 3. G.S. 42-29 reads as rewritten:

"**§ 42-29. Service of summons.**

(a) Service by Officer. – 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, but at least two days prior to the day the defendant is required to appear to answer the ~~complaint, excluding legal holidays,~~ complaint. The officer shall visit the place of abode of the defendant at a time reasonably calculated to find the defendant at the place of abode to attempt personal delivery of service. He or she 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.~~subsection.

(b) Service by Process Server. – Only with respect to service for summary ejectment proceedings in counties with 900,000 or more residents as of the most recent decennial federal census, a process server, who receives a copy of the summons and complaint from the plaintiff pursuant to G.S. 42-28(b)(1), may effectuate proper service upon a defendant solely for purposes of summary ejectment by mailing 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 process server shall then deliver a copy of the summons together with a copy of the complaint to the defendant by affixing copies of same to some conspicuous part of the premises claimed and make due return showing compliance with this subsection in the form of an affidavit of service. Said affidavit of service shall set forth the time, place, and manner by which the requirements set forth herein were completed.

(c) Definition. – As used in this section, a "process server" shall be any person who a plaintiff or a plaintiff's agent or attorney may cause service to be made for the purpose of serving the summons and complaint for summary ejectment and who meets the requirements listed in G.S. 1A-1, Rule 4(h1).

(d) Computation of Time. – Notwithstanding G.S. 1A-1, Rule 6, and except for periods of time involving the mailing of a copy of a summons and a complaint to the defendant by an officer, when computing any period of time prescribed in subsection (a) of this section, the time shall be computed by excluding only legal holidays when the courthouse is closed for transactions."

SECTION 4. This act becomes effective October 1, 2018, and applies to actions for summary ejectment in which the summons is issued by the clerk of superior court on or after that date.

HOUSE BILL 1040:
Amend Sum Eject Service/Allow Process Server.

2017-2018 General Assembly

Committee:	House Judiciary III	**Date:**	June 6, 2018
Introduced by:	Reps. Jordan, Bradford, Earle, Szoka	**Prepared by:**	Kristen L. Harris Committee Co-Counsel
Analysis of:	Filed Edition		

OVERVIEW: House Bill 1040 would 1) allow all summary ejectment cases to be served under Rule 4(h1); 2) allow plaintiffs in counties with 900,000 or more residents to obtain service for summary ejectment on a defendant by posting with a private process server without first attempting service by a sheriff in-person; and 3) clarify the method of computation for the five-day service of summons requirement in summary ejectment cases.

CURRENT LAW: Under G.S. 42-29, a plaintiff must first attempt to serve a summary ejectment summons on a defendant by sheriff and in-person. If the attempt is not successful and the service is only achieved by posting and not on all the defendants, pursuant to G.S. 7A-223(b1), the plaintiff may ask the magistrate to sever the summary ejectment and money damages claims and seek judgment for the summary ejectment portion. When the claims are severed, the plaintiff may obtain an Alias & Pluries Summons under Rule 4(d) on the money damages claim and attempt service under Rule 4(h1) (Summons – When process returned unexecuted) with a person other than an officer.

BILL ANALYSIS:

Section 1 would allow all summary ejectment actions to be served by someone other than an officer when the summons has been returned unexecuted by an officer.

Section 2 would allow magistrates in counties with 900,000 or more residents (currently Mecklenburg and Wake counties), in summary ejectment cases after the summons has been issued, to either: 1) return the summons to the plaintiff for service of process by a private process server or 2) forward it to the sheriff for service.

Section 3 would do the following:

- In counties with 900,000 or more residents, allow a plaintiff to obtain service for summary ejectment only by using a private process server who would post the summons on the defendant's premises.
- Define the term "process server".
- Clarify the method of computation for the five-day service of summons requirement in summary ejectment proceedings by specifying that the time should be computed by excluding only legal holidays and not weekends.

EFFECTIVE DATE: This act becomes effective October 1, 2018, and applies to actions for summary ejectment in which the summons is issued by the clerk of superior court on or after that date.

BACKGROUND: According to the most recent decennial federal census, Mecklenburg County had a population of 919,628 and Wake County had a population of 900,993.

Karen Cochrane-Brown
Director

Legislative Analysis
Division
919-733-2578

This bill analysis was prepared by the nonpartisan legislative staff for the use of legislators in their deliberations and does not constitute an official statement of legislative intent.

The Legislative Research Commission's Committee on Private Process Servers submitted a report to the members of the 2018 Regular Session of the 2017 General Assembly. The report included findings on the service of summons in summary ejectment cases. A copy of the Committee's report can be found in the Legislative Library.