2006

North Carolina Legislation

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2006

North Carolina Legislation

A summary

of legislation

in the 2006

General Assembly

of interest to

North Carolina

public officials

Edited by Martha H. Harris

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SCHOOL OF GOVERNMENT

School of Government
University of North Carolina

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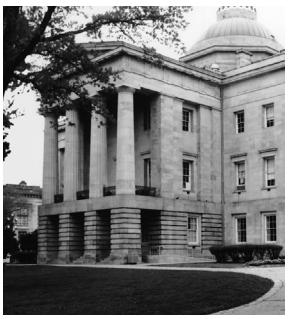

On the cover: The front cover photograph shows the second Capitol building, built in 1840 to replace the first Capitol, which was destroyed by fire in 1831. The photograph on the title page shows the current State Legislative Building, designed by Edward Durrell Stone and completed in 1963. Both photographs courtesy of the North Carolina Department of Cultural Resources, Division of Archives and History.

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Editor's Preface

Since 1933 the UNC Chapel Hill School of Government's Institute of Government has published post-session summaries of legislation enacted by the North Carolina General Assembly. Initially these summaries appeared in special issues of *Popular Government* and, from 1951 through 1967, were supplemented by a handbook listing the legislative changes in order of statute number. The *Popular Government* format was replaced in 1974 by the current *North Carolina Legislation* book, published annually.

North Carolina Legislation 2006 is the forty-third of these summaries and deals with newly enacted legislation of interest and importance to state and local government officials. It is organized by subject matter and divided into twenty-six chapters. In some instances, to provide different emphases or points of view, the same legislation is discussed in more than one chapter. Each chapter was written by a School of Government professional staff or faculty member with expertise in the particular field addressed.

The text of all bills discussed in this book may be viewed on the Internet at the General Assembly's website: www.ncleg.net. This site also includes a detailed legislative history of all action taken on each bill and, for some bills, a summary of the bill's fiscal impact. Subscribers to the Daily Bulletin have Web access to complete digests for every version of each bill from 1987 through the current session, at www.dailybulletin.unc.edu/.

Albeit comprehensive, this book does not summarize every enactment of the 2006 legislative session. For example, some important legislation that does not have a substantial impact on state or local governments is not discussed at all. Local legislation, if addressed, often is treated only briefly. Readers who need information on public bills not covered in this book may wish to consult *Summaries of Substantive Ratified Legislation for 2006*, which contains brief summaries of all public laws enacted during the session. This compilation is published by the General Assembly's Research Division and posted on the Internet at the General Assembly's website at www.ncleg.net/LegislativePublications/researchdivisio_/summariesofsubs_/. A list of General Statutes and Session Laws affected by 2006 legislation, prepared by the General Assembly's Bill Drafting Division, is online at the same site, at www.ncleg.net/LegislativePublications/billdraftingdiv_/billsslsandncgs_/.

The Institute of Government also publishes a separate report, the *Index of Legislation*, that provides additional information with respect to public and private bills considered in 2006, including (1) status reports for all public bills and resolutions; (2) status reports for all ratified public bills and resolutions, which are arranged by General Statutes chapter or special category; (3) an index of public bills, arranged by number; (4) status reports for local bills, arranged by counties affected; (5) an index of local bills, arranged by bill number; and (6) a chronological listing of all bills (public and local) and

resolutions ratified in 2006. This publication can be purchased through the School of Government Publications Sales Office (telephone: 919.966.4119; e-mail: sales@sog.unc.edu; website: www.sogpubs.unc.edu/books.php?cat=14).

Each day the General Assembly is in session, the Institute's Legislative Reporting Service publishes the *Daily Bulletin*. The *Daily Bulletin* includes summaries written by School of Government professional staff and faculty members of every bill and resolution filed in the state House of Representatives and Senate; summaries of all amendments, committee substitutes, and conference reports adopted by the House or Senate; and a daily report of all legislative action taken on the floor of both chambers. The *Daily Bulletin* is available by paid subscription, with delivery via fax or e-mail and on the Web. For information about subscriptions, contact the School of Government Publications Sales Office (telephone: 919.966.4119; e-mail: sales@sog.unc.edu; website: www.sogpubs.unc.edu/books.php?cat=14).

Throughout the book, references to legislation enacted during the 2006 session are cited by the Session Law number of the act (for example, S.L. 2006-245), followed by a parenthetical reference to the number of the Senate or House bill that was enacted (for example, H 1231). Generally the effective date of new legislation is not noted if it is before the production date of this book. References to the General Statutes of North Carolina are abbreviated as G.S. (for example, G.S. 105-374).

Martha H. Harris

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The General Assembly

The 2006 General Assembly was notable for the major substantive legislation enacted during a session normally focused on budget adjustments, noncontroversial local matters, and issues pending from the previous year. The major legislation included rewrites of the ethics and lobbying laws, an increase in the minimum wage, and substantial revisions relating to driving while impaired and registered sex offenders. The session also saw a dramatic increase in the number of bills introduced and a significant increase in the number of session laws enacted.

Overview of the 2006 Regular Session

Article II, Section 11, of the North Carolina Constitution provides for a biennial session of the General Assembly that convenes in every odd-numbered year. Until 1973 the General Assembly held a single regular session, convening in each odd-numbered year, meeting several months, and then adjourning *sine die.* Prior to 1974, legislative sessions in even-numbered years of the biennium were extra sessions (the North Carolina Constitution authorizes the Governor or a three-fifths majority of both houses to call such a session), and they were rare and of short duration.

Beginning with the 1973–74 biennium, the General Assembly began holding annual sessions. The General Assembly convenes in January of odd-numbered years. In these "long sessions," which generally run through midsummer, a biennial budget is adopted and any legislative business may be considered. In even-numbered years the General Assembly convenes for a "short session," which generally runs from May through July or August. In the short session, the General Assembly considers budget adjustments for the second year of the biennium and generally deals with bills that have passed one house and a limited number of additional noncontroversial matters. Legally the short session is a continuation of the long session.

The 2006 session convened May 9 and adjourned July 28. The length of the session as compared to other recent short sessions is shown in Table 1-1.

Table 1-1. Length of Legislative Sessions

Year	1996	1998	2000	2002	2004	2006
Date Convened	May 13	May 11	May 8	May 28	May 10	May 9
Date Adjourned	June 21	Oct. 29	July 13	Oct. 4	July 18	July 28
Senate Legislative Days	25	101	40	69	44	48
House Legislative Days	27	100	40	77	44	47

The 2005 adjournment resolution provided that only the following could be considered in the 2006 session:

- Bills directly and primarily affecting the budget for the 2006–07 fiscal year, if they were introduced by May 25, 2006
- Bills introduced in 2005 that passed third reading in the house of introduction by specified deadlines in 2005 and were not unfavorably disposed of in the other house
- Bills implementing recommendations of study commissions, commissions directed to report to the General Assembly, select committees, the House Ethics Committee, or the Joint Legislative Ethics Committee or its subcommittee, if they were introduced by May 17, 2006
- Noncontroversial local bills, if they were introduced by May 24, 2006
- Bills making appointments
- Bills authorized for introduction by a two-thirds vote of both houses
- Bills primarily affecting state or local pension or retirement programs, if they were introduced by May 24, 2006
- Bills proposing constitutional amendments
- Bills disapproving administrative rules
- Resolutions regarding state government reorganization, memorial resolutions, and adjournment resolutions

In the 2006 regular session, 1,974 bills were introduced, more than twice as many as in the 2004 session. An unusually high proportion of these bills proposed appropriations of state funds for specific, often local, projects. The General Assembly enacted 264 session laws, 24 joint resolutions, and 7 simple resolutions in 2006. One bill was vetoed. Table 1-2 compares the number of introductions and enactments in 2006 with those of the previous five short sessions.

Table 1-2. Statistical Analysis of Legislative Short Sessions

Year	1996	1998	2000	2002	2004	2006
Bills & Resolutions Introduced	911	1,036	760	706	881	1,974
Senate	442	516	383	368	415	881
House	469	520	377	336	466	1,093
Session Laws Enacted	222	229	191	190	203	264
Public Laws	113	135	118	80	116	172
Local Laws	109	94	73	110	87	92
Bills Vetoed	NA	0	0	1	1	1

Major Legislation Enacted in 2006

Among the major items of legislation enacted in the 2006 regular session are the following, each of which is discussed in detail in the chapter indicated.

Budget Modifications

S.L. 2006-52 (H 2351—Continuing Appropriations) and S.L. 2006-66 (S 1741—Modify Appropriations Act of 2005) modify the 2006–07 state budget, substantially increasing spending, borrowing for capital improvements, and reducing taxes (Chapter 2). S.L. 2006-203 (H 914) reorganizes, updates, and revises the Executive Budget Act.

Video Poker Machines

S.L. 2006-6 (S 912) bans video poker machines effective July 1, 2007. Machines located on tribal lands and operated under a Tribal-State Gaming Compact are exempt from the ban (Chapter 5).

North Carolina Innocence Inquiry Commission

S.L. 2006-184 (H 1323) creates an independent commission to investigate factual claims of innocence made by convicted felons. The act sunsets in 2010 (Chapter 7).

Sex Offender Law Changes

S.L. 2006-247 (H 1896) makes extensive changes in the sex offender registration laws, including the imposition of certain residential, employment, and volunteering restrictions on persons required to register; establishment of a satellite-based sex offender monitoring program; and creation of the criminal offenses of involuntary servitude, sexual servitude, and human trafficking (Chapter 7).

Economic Development

S.L. 2006-224 (H 1965) restricts the use of eminent domain for economic development purposes. S.L. 2006-252 (H 2170) enacts a package of state economic development tax incentives that will replace the Bill Lee Act for most affected taxpayers. S.L. 2006-168 (H 2744) extends the expiration date of the Job Development Investment Grant program from January 1, 2008, to January 1, 2010, and increases from $15 million to $30 million the maximum amount of grant liability the state may incur for the program in 2006 (Chapter 8).

Electoral Fairness Act

S.L. 2006-234 (H 88) reduces the number of signatures required for a statewide unaffiliated (third party) candidate to be placed on the ballot (Chapter 9).

Students with Disabilities

S.L. 2006-69 (H 1908) renames the state's special education statutes as Education of Children with Disabilities and rewrites the law to conform it to the federal Individuals with Disabilities Education Act (Chapter 10).

Flags/Pledge of Allegiance in Schools

S.L. 2006-137 (S 700) directs local boards of education, charter schools, the North Carolina School of the Arts, and the North Carolina School of Science and Math to require the display of the United States and North Carolina flags in every classroom and to require the recitation of the Pledge of Allegiance on a daily basis (Chapter 10).

Energy

S.L. 2006-206 (S 2051) directs the Department of Administration to plan for the conversion of state fuel distribution facilities to facilitate the use of ethanol, biofuels, and other gasoline alternatives. S.L. 2006-90 (S 402) lengthens the permissible term of guaranteed energy savings contracts from twelve to twenty years and raises the state's aggregate limit on these contracts from $50 million to $100 million (Chapter 12).

Solid Waste

S.L. 2006-244 (S 353) enacts a one-year moratorium on permits for most new landfills and directs the Environmental Review Commission to study various issues relating to solid waste (Chapter 12).

Video Service Competition Act

S.L. 2006-151 (H 2047) replaces the local cable television franchising system with a statewide video service franchising scheme and eliminates the authority of local governments to assess and collect cable franchise taxes. The act provides for equal taxation of video programming services regardless of how the services are delivered and replaces local revenues from the repealed cable franchise taxes with a new distribution of state sales taxes. Finally, the act sets minimum requirements for public access channels and provides funding to local governments to support these channels (Chapters 15 and 26).

Minimum Wage

Effective January 1, 2007, S.L. 2006-114 (H 2174) increases the minimum wage in North Carolina to equal the federal minimum wage or to $6.15 per hour, whichever is higher (Chapter 15).

Cell Phone Use by Drivers under Eighteen

S.L. 2006-177 (S 1289) prohibits a person under eighteen from using a mobile telephone while operating a motor vehicle in motion on a highway or in a public vehicular area (Chapter 19).

Governor's DWI Task Force Recommendations

S.L. 2006-253 (H 1048) makes extensive changes in the laws governing driving while impaired. Effective December 1, 2006, the changes affect impaired driving cases from the point of sale of alcohol (by regulating the sale of kegs of beer) to the restoration of a person's license and the person's parole from prison (Chapter 19).

Seat Belt Use Enhancements

S.L. 2006-140 (S 774) requires seat belts to be used by the driver and every passenger of a motor vehicle, including commercial motor vehicles (Chapter 19).

State Government Ethics Act

S.L. 2006-201 (H 1843) is a comprehensive rewrite and reorganization of the laws relating to state government ethics and lobbying (Chapter 25).

Tax Reductions

S.L. 2006-66 provides for an earlier reduction of the state sales tax rate from 4.5 percent to 4.25 percent, effective December 1, 2006, and an earlier reduction in the upper-income individual tax bracket rate from 8.25 percent to 8 percent, effective beginning with the 2007 tax year (Chapter 26).

Governor's Veto

Governor Easley, as in past sessions, used his veto sparingly. He vetoed only one bill, Senate Bill 542, Access to State Facilities. This bill would have required state agencies to allow reasonable access to state facilities and employees for a domiciled employee association having 40,000 members, a majority of which are current state employees. The purposes for which access would have been allowed were membership recruitment, membership consultation, and to offer member benefits, including insurance products. The State Employees Association of North Carolina was a supporter of the legislation.

The bill was ratified on July 27, 2006. The Governor vetoed it on August 19, 2006, stating in his veto message that only a single employee association fit the bill's description and thus the bill was unfair to other associations and to public employees' rights of free association. In addition, the Governor stated that the bill would give an unfair competitive advantage to insurance companies associated with the sole qualifying employee association.

The Governor signed executive order 105 on August 18, 2006, allowing access for any domiciled employee association having at least 2,000 members, at least 500 of which are state or local government employees. The purposes for which access is allowed are limited to membership recruitment and consultation. The General Assembly did not attempt to override the veto.

The Legislative Institution

Legislative Ethics

As discussed in Chapter 25, "State Government Ethics and Lobbying," S.L. 2006-201 makes numerous significant changes relating to legislative ethics. It enacts the State Government Ethics Act (G.S. Chapter 138A), creating ethical standards relating to using a public position for private gain, accepting gifts, misuse of confidential information, conflicts of interest in official actions, and nepotism. The act also provides for disclosure statements of economic interest, investigation of ethics complaints, advisory opinions, and ethics education. S.L. 2006-201 also makes conforming changes to the Legislative Ethics Act. Finally, it combines the 2005 laws on legislative lobbying (Article 9A of G.S. Chapter 120) and executive branch lobbying (Article 4C of G.S. Chapter 147) into a new G.S. Chapter 120C.

Smoking

The General Assembly banned smoking at the legislature. S.L. 2006-76 (H 1133) amends G.S. 143-597 to designate all areas of any building occupied by the General Assembly as nonsmoking areas.

Executive Budget Act

Articles 1 (Executive Budget Act) and 1B (Capital Improvement Planning Act) of G.S. Chapter 143 govern procedures for preparing the recommended state budget, enacting the budget, and administering the budget. Effective July 1, 2007, S.L. 2006-203 combines those articles and recodifies them into a new G.S. Chapter 143C (State Budget Act) to simplify, reorganize, and update the budget

statutes, conform the statutes to constitutional provisions governing appropriations, and make other changes.

The 2007 Session

The next regular session of the General Assembly will convene at noon on January 24, 2007. Members of that General Assembly were elected in the November 7, 2006, elections.

Martha H. Harris

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The State Budget

As is the case during short sessions of the General Assembly, the major focus of lawmakers during the 2006 short session was making adjustments to the second fiscal year (fiscal year 2006–07) of the biennial state budget adopted during the 2005 session (S.L. 2005-276). With healthy growth in state revenues for the second year in a row, this year's budget process presented legislators with a revenue surplus of over $1 billion, reversing the trend of declining revenues and budget deficits experienced in the 2001 and 2003 sessions. The surplus allowed lawmakers to fund, among other things, the highest level of salary increases for teachers and state employees in at least a decade. Additional major appropriations and other budgetary actions are summarized in this chapter.

The Budget Process

The 2006 session of the 2005 General Assembly reconvened on May 9, 2006. The next day, Governor Easley formally presented his recommended adjustments to the fiscal year 2006–07 budget, and House and Senate appropriations committees began conducting budget hearings. Keeping with the tradition that the Senate and the House of Representatives exchange responsibility for initiating the formal budget process each biennium, the Senate filed the bill that would become the legislation modifying the fiscal year 2006–07 state budget (the House of Representatives will initiate the budget process in the 2007 biennial session). Senate Bill 1741 (Modify Appropriations Act of 2005) was filed in the Senate on May 22, 2006. The majority of the Senate's work on its version of the legislation was virtually complete by that time, and Senate Bill 1741 passed the Senate three days later on May 25, a record seventeen days after the session's convening. The House passed its version of the budget bill on June 15, and each chamber appointed its members to the conference committee that would negotiate a compromise between the two versions of the bill. Just meeting the June 30 fiscal-year-end deadline,[1] the conference report, which embodied the final product of the budget negotiations, was reported in to

1. Because the budget bill had not yet become law on June 30, the General Assembly passed House Bill 2351 (S.L. 2006-52) to extend certain budget authorizations beyond the end of the fiscal year. S.L. 2006-52 also contained a provision setting its own expiration date at 11:30 p.m. on July 7. S.L. 2006-52 was signed by the Governor and chaptered on June 30.

both chambers on June 30 and given final approval by both chambers on July 6. Governor Easley signed the ratified bill into law on July 10 and it was chaptered as S.L. 2006-66.[2]

Budget Highlights

A significant portion of the 2006–07 state budget surplus was appropriated for teacher and state employee salary and retirement increases, totaling $688 million in additional funding.

- Public school teachers and instructional support staff received a total average salary increase of 8 percent.
- Public school principals and assistant principals received a total average salary increase of 7 percent.
- Community college faculty and professional staff received a 6 percent salary increase and a 2 percent one-time bonus.
- University faculty and EPA non-faculty employees received a 6 percent salary increase.
- All other state, university, community college, and public school employees received a 5.5 percent salary increase.
- Teacher and state employee retirees received a 3 percent cost-of-living increase.

Other budget highlights include the following:

- For the first time, proceeds from the new North Carolina Education Lottery were part of the budget deliberations. The projected $425 million in lottery proceeds was allocated as follows:
  - $127.8 million for reducing class size
  - $84.6 million for prekindergarten programs (More at Four)
  - $170 million for the Public School Building Capital Fund
  - $42.5 million for need-based college scholarships
- $41.9 million to fully fund the Low Wealth Supplemental Funding formula to assist low-wealth counties with their public school needs
- $27 million in new Disadvantaged Student Supplemental Funding (DSSF) to help local school systems serve students who are most at risk of academic failure
- $162.4 million to fully fund projected enrollment growth of new students in public schools, community colleges, and UNC System campuses
- $21.5 million in increased funding for college need-based financial aid
- $90.3 million for mental health related needs, including community-based mental health, substance abuse and crisis services, housing, and the Mental Health Trust Fund
- $27 million of additional funds for the judicial system budget, funding such items as ninety new assistant district attorney positions, seventy-five deputy clerk positions, seventeen district court judge positions, and several other categories of positions intended to improve the effectiveness of the court system, along with technology and infrastructure upgrades
- $15 million to the One North Carolina Fund for economic development and business recruitment initiatives along with an additional $10 million reserve in the Department of Commerce for economic development projects
- $100 million to fully fund the Clean Water Management Trust Fund
- $20 million for a newly created State Emergency Response Account to fund state disaster preparation and response programs

This year's budget act is also characterized by what it does not contain. Unlike the budget acts of many prior sessions, this session's act contains relatively few substantive law changes not directly related to a fiscal item (either an appropriation or a finance item). Only 156 pages in length, the document's slimness (as compared to many previous budget acts) attests to its lack of non–budget-related substantive law changes.[3]

2. In North Carolina the Governor does not have line-item veto authority, so the Governor must either accept or reject the state budget as enacted by the General Assembly in its entirety.

3. Following enactment of the budget bill, the General Assembly adopted Senate Bill 198 (S.L. 2006-221), which made a number of technical corrections to the budget bill. Several substantive law changes were included in this legislation.

The 2006-07 State Budget

With a few limited exceptions (such as highway maintenance and construction), virtually all functions of state government are funded through the General Fund. This is the fund from which monies are appropriated by the General Assembly through the budget process to support most areas of state government ranging from education to economic development initiatives to health and human services to public safety. Funding comes to the General Fund from three main sources: (1) tax revenues, (2) federal funds (such as block grants and matching funds for certain programs), and (3) receipts (such as tuition, fees paid for certain government services, and investment income). Section 5(3) of Article III of the North Carolina Constitution requires that the state budget be balanced, so the budget as enacted by the General Assembly cannot appropriate more funds than are projected to be received during the fiscal year.

General Fund Availability

S.L. 2006-66 appropriates a net total of almost $1.3 billion dollars in new revenue available to the General Fund for fiscal year 2006–07. The vast majority of this new revenue was realized from tax revenues collected above the previous year's projections ("overcollections") ($1.072 billion) and an increase in projections of the next fiscal year's revenue collections ($699 million), with the remainder coming from unappropriated funds carried forward from the previous fiscal year ($117.2 million), and funds unexpended ("reversions") in the previous fiscal year ($125 million). The budget also projected collections in non-tax revenue of $854 million.

Subtracted from the budget's total availability were a $378.8 million combination of tax reductions and a reduction in the transfer from the Highway Trust Fund to the General Fund. The two largest tax cuts enacted were a reduction in the state sales tax rate from 4.5 percent to 4.25 percent and a reduction in the top personal income tax rate from 8.25 percent to 8.0 percent. Also deducted from the budget's total availability were the statutory transfers to the state's Savings Reserve Account ($323.8 million) and the Repairs and Renovations Reserve Account ($222.2 million).

This combination of surplus revenues, tax cuts, and statutory earmarkings left a total revised General Fund availability for the upcoming fiscal year of $18.8 billion dollars, as is shown below in Table 2-1.

Table 2-1. 2006–07 General Fund Availability

		FY 2006–07
Unappropriated balance from FY 2005–06 (S.L. 2005-276)	$	117,227,875
Net adjustments (S.L. 2005-345)		(4,148,833)
Net adjustments (S.L. 2005-435, S.L. 2005-406, S.L. 2005-376, S.L. 2005-391)		(5,826,000)
Adjustment from estimated to actual 2005–06 beginning unreserved balance		6,133,946
Revised unappropriated balance remaining 2005–06		**113,386,988**
Emergency appropriation for Department of Correction (S.L. 2006-2)		(15,000,000)
Projected reversions from FY 2005–06		125,000,000
Projected overcollections from FY 2005–06		1,072,100,000
Year-end unreserved credit balance before earmarkings		**1,295,486,988**
Less: projected credit to Savings Reserve		(323,871,747)
Less: projected credit to Repairs and Renovation Reserve Account		(222,229,189)
Revised year-end unreserved credit balance		**749,386,052**
Revenues based on existing tax structure		**16,951,416,000**

Table 2-1. 2006-07 General Fund Availability *(continued)*

Nontax revenues	
Investment income	78,700,000
Judicial fees	168,605,271
Disproportionate share	100,000,000
Insurance	51,543,813
Other nontax revenues	202,719,921
Highway Trust Fund transfer	252,663,009
Highway Fund transfer	—
Subtotal nontax revenues	**854,232,014**
Total General Fund availability	**18,555,034,066**
Adjustments to availability: 2006 Session	
Adjustment to baseline revenue forecast	698,864,995
Reduce sales tax from 4.5% to 4.25% (December 1, 2006)	(140,100,000)
Reduce top personal income tax rate from 8.25% to 8.0% (January 1, 2007)	(28,600,000)
Mill rehabilitation income tax credit	(2,800,000)
529 Savings Plan income tax deduction	(1,000,000)
Logging machinery sales tax exemption	(2,870,000)
IRC update	(5,100,000)
Joint filing options under personal income tax	(1,000,000)
Railroad cars tax exemption	(400,000)
Bill Lee Act wage standard—certain manufacturers	(800,000)
Bill Lee Act adjustment—Clayton project	(800,000)
Extend aviation fuel tax credit	(90,000)
Extend real property donation tax credit	(100,000)
Small business health insurance credit of $250 (January 1, 2007)	(7,200,000)
Internet facility sales tax exemption	(2,250,000)
Oyster tax credit	(23,000)
Gas cap reserve	(367,000)
Reduce transfer to Highway Trust Fund	(195,176,407)
Adjust transfer from Insurance Regulatory Fund	455,846
Adjust transfer from Treasurer's office	281,784
Subtotal adjustments to availability: 2006 Session	**310,926,218**
Revised General Fund availability for 2006–07 Fiscal Year	**18,865,960,284**
Less: total General Fund appropriations for 2006–07 Fiscal Year	**(18,865,960,284)**
Unappropriated balance remaining	**0**

For purposes of documenting General Fund appropriations, the budget bill and the budget report[4] group functions and agencies within state government into seven main categories:[5]

- Education
- Health and Human Services
- Justice and Public Safety
- Natural and Economic Resources
- General Government
- Statewide Reserves and Debt Service
- Capital Improvements

During the short session budget process, adjustments are made to the fiscal year 2006–07 budget as enacted the previous year, so budget figures in S.L. 2006-66 reflect adjustments (either increases or decreases in funding) to the previously adopted budget. Table 2-2 details these adjustments and includes the revised total appropriations for each agency or program listed.

4. The budget report accompanies the budget bill. It outlines line item appropriations within state agencies and is incorporated into the budget bill by reference.

5. Because the transportation budget is funded from the Highway Fund and the Highway Trust Fund, which are separate from the General Fund, transportation is not one of the General Fund appropriations categories.

Table 2-2. 2006–07 General Fund Appropriations Adjustments

General Fund Appropriations
Fiscal Year 2006–07
2006 Session

	2006–07 Certified appropriation	Recurring adjustments	Nonrecurring adjustments	Net changes	Position changes	2006–07 Revised appropriation
Education:						
Community colleges	$ 767,295,886	$ 29,342,577	$ 34,817,450	$ 64,160,027	$ 5.00	$ 831,455,913
Public education	6,579,807,097	34,783,999	105,160,022	139,944,021	5.00	6,719,751,118
University system	2,120,397,081	126,039,967	2,617,930	128,657,897	511.95	2,249,054,978
Total education	**9,467,500,064**	**190,166,543**	**142,595,402**	**332,761,945**	**521.95**	**9,800,262,009**
Health and Human Services:						
Office of the Secretary	118,880,919	(63,346,653)	8,183,417	(55,163,236)	3.00	63,717,683
Aging Division	29,495,139	5,535,886	0	5,535,886	8.00	35,031,025
Blind and Deaf/Hard of Hearing Services	9,681,220	0	75,000	75,000	0.00	9,756,220
Child Development	267,356,799	28,049,617	1,012,291	29,061,908	10.00	296,418,707
Education Services	34,281,895	778,548	218,235	996,783	23.00	35,278,678
Facility Services	15,959,466	0	200,000	200,000	0.00	16,159,466
Medical Assistance	2,751,209,159	(132,150,000)	24,600,000	(107,550,000)	0.00	2,643,659,159
MH/DD/SAS	602,556,655	53,733,357	6,505,000	60,238,357	93.00	662,795,012
NC Health Choice	51,882,902					51,882,902
Public Health	150,814,496	16,859,242	1,276,000	18,135,242	144.00	168,949,738
Social Services	190,679,285	15,219,957	462,607	15,682,564	0.00	206,361,849
Vocational Rehabilitation	42,142,193			0		42,142,193
Total Health and Human Services	**4,264,940,128**	**(75,320,046)**	**42,532,550**	**(32,787,496)**	**281.00**	**4,232,152,632**

Justice and Public Safety:						
Correction	1,048,492,502	17,657,493	17,254,211	34,911,704	153.00	1,083,404,206
Crime Control and Public Safety	35,153,488	2,024,324	3,929,956	5,954,280	16.00	41,107,768
Judicial Department	345,760,410	16,174,876	10,916,836	27,091,712	271.75	372,852,122
Judicial—Indigent Defense	88,648,414	1,657,191	5,025,938	6,683,129	1.00	95,331,543
Justice	78,697,271	1,435,897	3,270,941	4,706,838	16.00	83,404,109
Juvenile Justice and Delinquency Prevention	138,873,166	2,961,819	492,701	3,454,520	58.00	142,327,686
Total Justice and Public Safety	**1,735,625,251**	**41,911,600**	**40,890,583**	**82,802,183**	**515.75**	**1,818,427,434**
Natural and economic resources:						
Agriculture and Consumer Services	51,032,884	2,224,113	1,359,449	3,583,562	31.00	54,616,446
Commerce	36,728,265	2,550,483	33,817,000	36,367,483	9.00	73,095,748
Commerce—state aid	11,722,085	546,000	6,657,138	7,203,138	0.00	18,925,223
Environment and Natural Resources	168,451,089	2,364,324	12,487,638	14,851,962	25.00	183,303,051
DENR—Clean Water Mgmt. Trust Fund	100,000,000	0	0	0	0.00	100,000,000
Labor	14,434,925	413,894	200,000	613,894	3.50	15,048,819
NC Biotechnology Center	10,583,395	2,000,000	500,000	2,500,000	0.00	13,083,395
Rural Economic Development Center	25,052,607	(500,000)	0	(500,000)	0.00	24,552,607
Total natural and economic resources	**418,005,250**	**9,598,814**	**55,021,225**	**64,620,039**	**68.50**	**482,625,289**
General government:						
Administration	58,818,473	1,875,856	1,498,683	3,374,539	22.00	62,193,012
Auditor	10,840,918	57,564	0	57,564	0.00	10,898,482
Cultural Resources	62,917,147	1,374,034	4,046,982	5,421,016	31.00	68,338,163
Cultural Resources—Roanoke Island	1,783,374	0	0	0	0.00	1,783,374
General Assembly	46,965,432	0	38,284	38,284	0.00	47,003,716
Governor	5,344,528	100,000	0	100,000	0.00	5,444,528
NC Housing Finance Agency	4,750,945	0	17,437,500	17,437,500	0.00	22,188,445
Insurance	28,110,582	425,846	30,000	455,846	5.00	28,566,428

Table 2-2. 2006–07 General Fund Appropriations Adjustments *(continued)*

Insurance—Worker's Compensation Fund	4,500,000	0	0	0	0.00	4,500,000
Lieutenant Governor	753,037	88,433	0	88,433	1.00	841,470
Office of Administrative Hearings	2,969,712	269,578	11,789	281,367	2.00	3,251,079
Revenue	80,673,250	513,294	766,488	1,279,782	1.00	81,953,032
Secretary of State	9,369,633	441,217	26,850	468,067	5.25	9,837,700
State Board of Elections	5,069,307	585,044	201,576	786,620	31.00	5,855,927
State Budget and Management	6,021,795	240,438	169,500	409,938	3.00	6,431,733
State Budget and Management—Special	5,111,429	755,232	598,021	1,353,253	0.00	6,464,682
State Controller	10,044,511	0	0	0	0.00	10,044,511
Treasurer—operations	8,295,843	281,784	0	281,784	0.00	8,577,627
Treasurer—retirement/benefits	8,651,457	514,000	0	514,000	0.00	9,165,457
Total general government	**360,991,373**	**7,522,320**	**24,825,673**	**32,347,993**	**101.25**	**393,339,366**
Transportation	**0**	**0**	**0**	**0**		**0**
Statewide reserves and debt service:						
Debt service:						
Interest/redemption	619,291,140	0	(50,000,000)	(50,000,000)		569,291,140
Federal reimbursement	1,616,380	0	0	0		1,616,380
Subtotal debt service	**620,907,520**	**0**	**(50,000,000)**	**(50,000,000)**	**0.00**	**570,907,520**
Statewide reserves:						
Compensation increases	235,185,705	673,523,862	14,970,657	688,494,519		923,680,224
Reserve for contingent appropriations	85,000,000			0		85,000,000
Salary Adjustment Fund: 2005–07 biennium	4,500,000			0		4,500,000
Salary Adjustment Fund: 2004–05 fiscal year	4,500,000			0		4,500,000

Teachers' and state employees' retirement contribution	13,810,800	27,107,200	0	27,107,200		40,918,000
Retirement system payback	0	0	30,000,000	30,000,000		30,000,000
Death Benefit Trust	12,899,200			0		12,899,200
Disability Income Plan	6,586,500			0		6,586,500
State Health Plan	142,728,000			0		142,728,000
Contingency and emergency	5,000,000			0		5,000,000
Information technology rate adjustments	(2,300,000)			0		(2,300,000)
Information Technology Fund	8,025,000	7,559,349	34,527,880	42,087,229	52.75	50,112,229
Job Development Incentive Grants Reserve	12,400,000			0		12,400,000
Reserve for Heating and Cooling Assistance		0	10,000,000	10,000,000		10,000,000
Reserve for Legal Expenses			1,065,710	1,065,710		1,065,710
Trust Fund for MH/DD/SAS			14,390,000	14,390,000		14,390,000
State Emergency Response Account		0	20,000,000	20,000,000		20,000,000
Pending ethics legislation		401,871	21,000	422,871	4.00	422,871
Subtotal statewide reserves	**528,335,205**	**708,592,282**	**124,975,247**	**833,567,529**	**56.75**	**1,361,902,734**
Total reserves and debt service	**1,149,242,725**	**708,592,282**	**74,975,247**	**783,567,529**	**56.75**	**1,932,810,254**
Total General Fund for Operations	**17,396,304,791**	**882,471,513**	**380,840,680**	**1,263,312,193**	**1,545.20**	**18,659,616,984**
Other General Fund expenditures:						
Capital improvements	0	0	206,343,300	206,343,300		206,343,300
Repairs and renovations	0			0		0
Total other General Fund expenditures	**0**	**0**	**206,343,300**	**206,343,300**	**0.00**	**206,343,300**
Total General Fund budget	**17,396,304,791**	**882,471,513**	**587,183,980**	**1,469,655,493**	**1,545.20**	**18,865,960,284**

The Highway Fund and Highway Trust Fund

S.L. 2006-66 also makes adjustments to funding for roadway construction and maintenance and other Department of Transportation functions from the two primary sources dedicated to these programs: the Highway Fund and the Highway Trust Fund. As with General Fund appropriations, the budget act shows adjustments to these funds for the coming fiscal year as enacted the previous year.

The approved budget for the Highway Fund for fiscal year 2006–07 is $1.79 billion, a $254 million increase in funding over what was previously enacted for this fiscal year. The approved budget for the Highway Trust Fund for fiscal year 2006–07 is $1.1 billion, a $35 million reduction in funding from what was previously enacted. In recognition of concerns about transfers of funds from the Highway Trust Fund to the General Fund, this transfer was reduced by $195 million, allowing for increased expenditures in the transportation area.

Capital Improvements

The General Assembly approved $206.3 million in capital projects to be funded from the General fund (additional capital projects were authorized through special indebtedness, which is discussed below). These appropriations include the following:

- $8.77 million for two new Veterans Affairs nursing home facilities
- $1.25 million to the Department of Agriculture for laboratory upgrades
- $7.5 million to the North Carolina Ports Authority for container cranes at the Wilmington port
- $8.5 million for a new state Emergency Operations Center
- $1.5 million to the Department of Cultural Resources for a new visitor center at Tryon Palace
- $17.5 million to the Department of Environment and Natural Resources to expand the Hickory Nut Gorge State Park by roughly 1,000 acres and to build a new storage shed for the North Carolina Zoo and a new headquarters for Division of Forest Resources District 9
- $20 million to match federal funds for various navigation, beach protection, stream restoration, and water recreation projects throughout the state
- $139.9 million to the University of North Carolina for various projects and capital planning throughout the UNC System

Additional capital projects were authorized for funding from the Repairs and Renovations Reserve Account:

- $11.8 million for a new hospital and mental health facility at Central Prison
- $2.8 million for the Palmer Memorial Institute State Historic Site
- $1.9 million for road and parking lot improvements on the Elizabeth City State University campus
- $6.4 million to repair steam lines and steam tunnels on the North Carolina Central University campus
- $416,000 for improvements to Rhodes Hall at the University of North Carolina at Asheville

Special Indebtedness

Continuing a recent trend of financing capital construction with special indebtedness under Article 9 of G.S. Chapter 142, in 2006 the General Assembly authorized the issuance of $719 million in new debt. Commonly referred to as "certificates of participation," special indebtedness is nonvoted debt that may be secured only by an interest in state property being acquired or improved. There is no pledge of the state's faith and credit or taxing power to secure the debt. Thus, voter approval is not necessary for the borrowing. Special indebtedness may take one or more of the following forms: installment purchase contracts (with or without certificates of participation), lease-purchase contracts (with or without certificates of participation), or bonds.

S.L. 2006-231 (S 1621) authorizes $20 million of special indebtedness to purchase land to be used as state game land and to be administered by the Wildlife Resources Commission. The act authorizes

another $20 million in special indebtedness for a new parking deck to be constructed in downtown Raleigh. Effective January 1, 2007, S.L. 2006-231 also increases from $35 million to $42 million the amount of special indebtedness authorized in 2004 for the construction of five youth development centers.

The 2006 appropriations act (S.L. 2006-66) authorizes the following new special indebtedness:

- $40 million for capital projects at the North Carolina Museum of Art
- $20 million to complete the Central Regional Psychiatric Hospital for the Department of Health and Human Services (DHHS)
- $24,841,300 for a new Secondary State Data Center
- $45,827,400 for a new center city classroom building at the University of North Carolina at Charlotte
- $101 million for a DHHS Public Health Laboratory and Office of Chief Medical Examiner
- $145.5 million for the DHHS Eastern Regional Psychiatric Hospital
- $132.2 million for the Department of Correction Regional Medical Center and Mental Health Center
- $162.8 million for the DHHS Western Regional Psychiatric Hospital

The General Assembly also authorized additional borrowing through guaranteed energy savings contracts, performance contracts under which a contractor guarantees energy savings in an amount equal to the financed cost of energy saving improvements. (*See* G.S. Chapter 143, Article 3B, Part 2.) S.L. 2006-90 (S 402) amends G.S. 143-64.17 to provide that guaranteed energy savings contracts can include savings from water and other utilities, not just electric utilities. The act also increases the maximum term for a contract from twelve to twenty years and increases from $50 million to $100 million the maximum aggregate principal amount payable by the state under guaranteed energy savings contracts (G.S. 142-63).

Norma Houston

Martha H. Harris

3

Alcoholic Beverage Control

In 2006 there were relatively few new laws affecting alcoholic beverage control (ABC). The impaired driving legislation, discussed in detail in Chapter 19, "Motor Vehicles," made some significant amendments to the ABC laws, and a few other minor changes were enacted, as discussed below.

Keg Regulation

S.L. 2006-253 (H 1048) includes a wide-ranging set of amendments to the impaired driving statutes. It also contains three provisions amending G.S. Chapter 18B, the ABC laws. The most widely discussed of these is the new keg regulation, which defines a *keg* as a portable container designed to hold at least 7.75 gallons of beer or other malt beverage. The act requires a purchaser of a keg to obtain a purchase-transportation permit from the seller of the keg. The seller is authorized to issue the permit on behalf of the ABC system. The seller must retain a copy of the permit for at least ninety days or for as long as any person asks that it be retained as long as the request is made in the ninety-day period. Failure to obtain a permit is a violation of the unlawful purchase statute in G.S. 18B-303. Failure of the seller to comply with the statute is punishable by a warning for the first offense.

The original provisions recommended by various advocacy groups would have regulated kegs much more extensively. Those provisions would have required purchasers to register with a government agency before purchase, and that registration would have been retained permanently. The purpose of keg regulation is to deter abuses by people who purchase kegs and do not monitor their use and to provide accountability for those who use them. The provision requiring retention of the permit upon request of any person is presumably intended to prevent destruction of the record when there is potential litigation involved.

Rehiring of Former Permittees

In some instances a person who holds an ABC permit may have the permit revoked and later be hired to manage the same property involved in the revocation. S.L. 2006-253 makes that practice unlawful if the permit holder for the location had his or her permit to sell alcoholic beverages revoked in the preceding eighteen months.

Underage Consumption

G.S. 18B-302 makes it a misdemeanor for a person under twenty-one to purchase or possess alcoholic beverages. S.L. 2006-253 makes it a similar offense for an underage person to consume alcohol. A law enforcement officer with probable cause to believe a person has committed a violation may require the person to submit to alcohol screening by devices approved by the Department of Health and Human Services. Refusal to submit may be introduced as evidence, as may the screening results. The law exempts consumption for medical or sacramental purposes or for culinary school activities.

Permit Amendments

S.L. 2006-227 (H 1025) creates two new categories of wine permits, the Winemaking on Premises Permit and the Wine Shipper Packager Permit. The first permit allows businesses authorized to sell wine to allow customers to make wine on the premises for home consumption. The application fee is $400. (A separate bill, S.L. 2006-222, S 2010, makes identical changes to the ABC statutes.) The second permit allows the holder to provide services for warehousing, packaging, and shipping for a winery holding a wine shipper permit. The application fee is $100.

S.L. 2006-227 also

- specifies that the holder of a wine importer permit may sell wine only to wholesalers for which the wine importer is a primary American source of supply. The importer must establish that it lawfully purchases wine from a winery or its agents.
- allows sales of wine and malt beverages by wholesalers or retailers to any rail line that carries at least 60,000 passengers annually.
- allows golf courses on UNC campuses to obtain beer or wine permits.
- specifies where wine wholesalers must obtain the wine they resell. Generally they must obtain the wine from a primary American source of supply or from a North Carolina wholesaler having a contractual arrangement with a primary American source.
- exempts wine-tasting permit holders from the sanitation inspection requirements of G.S. Chapter 130A.

S.L. 2006-264 (S 602) amends G.S. 18B-1006 to allow mixed beverage permittees in major league professional sports arenas to obtain special occasion permits. These permits would allow patrons owning or leasing a suite in the facility to make alcohol available in the suite as if they were hosting a party or reception. A mixed beverage permittee with this permit may also provide mixed beverage tax paid spirituous liquor to the patron for purposes of resale.

James C. Drennan

4

Children and Juvenile Law

The General Assembly appropriated additional funds for a variety of programs and services important for children and families. These funds include $13.5 million for the North Carolina Partnership for Children for subsidized day care and other local initiatives. The Division of Child Development received over $14 million to implement a rate increase and to decrease the number of children on waiting lists, and the Division of Social Services received an additional $12 million to address the increased cost of Foster Care and Adoption Assistance payments and the growth in foster care maintenance payments to relatives. The court system was given authority, but no specific funding, to provide mediation services in juvenile court cases involving abuse, neglect, dependency, or termination of parental rights. Numerous studies that may result in recommendations for consideration by the 2007 General Assembly include topics such as post-adoption contact between an adopted child and the child's biological family, increasing the compulsory school attendance age, and the treatment of youthful offenders in the juvenile and adult justice systems.

Child Protective Services

Confidential Information

G.S. 7B–302(a) requires county departments of social services to hold "in strictest confidence" all information they receive in relation to reports and assessments of possible child abuse, neglect, or dependency. S.L. 2006-205 (S 1216) rewrites the subsection to add a requirement that a social services department disclose confidential information to any federal, state, or local government entity (or its agent) that needs the information to protect a child from abuse or neglect. It also specifies that the governmental entity to which social services discloses the confidential information may redisclose it only for purposes directly connected with that entity's mandated responsibilities.

County social services departments and many other state and local agencies in North Carolina are already required to share confidential information about possibly abused, neglected, or dependent

children in circumstances described in G.S. 7B-3100 and in rules issued by the Department of Juvenile Justice and Delinquency Prevention pursuant to that section. (*See* 28 N.C. Admin. Code 01A .0301 and .0302.) S.L. 2006-205 rewrites G.S. 7B-3100(a) to expand the time frame within which the sharing must occur. Instead of applying only between the time a juvenile petition is filed and the time the court's jurisdiction ends, the duty now arises when a social services department is responding to a report of abuse, neglect, or dependency (by conducting an assessment or providing or arranging for protective services) and extends until the court's jurisdiction ends or the department of social services closes its protective services case.

These changes became effective August 8, 2006.

Permanency Mediation

Three district court districts in the state—District 26 (Mecklenburg County), District 27A (Gaston County), and District 28 (Buncombe County)—have established local programs to provide mediation services in juvenile cases involving abuse, neglect, dependency, or termination of parental rights. The positive experiences of those districts almost certainly influenced the General Assembly's decision to mandate the creation of a statewide Permanency Mediation Program. Section 4 of S.L. 2006-187 (H 1848) requires the Administrative Office of the Courts (AOC) to establish in phases local district programs to provide uniform permanency mediation services statewide. The AOC will administer any funds the legislature appropriates for the program. The act authorizes the director of the AOC to approve contractual agreements for mediation services, as executed by order of the chief district court judge in a district. The contracts are exempt from competitive bidding requirements.

The act requires the AOC to promulgate policies and regulations for administration of the program but also sets out a number of specific program requirements. Participants in the mediation must include the parties and their attorneys, including the child's guardian ad litem and attorney advocate. However, the court may allow mediation to proceed without a party in specified circumstances, and others may participate by agreement of the parties, their attorneys, and the mediator, or by order of the court.

Mediation sessions must be held in private and are confidential. All communications by a participant to the mediator or between the participants in the presence of the mediator are absolutely privileged and inadmissible in court. In addition, no person involved in the mediation sessions is competent to testify about communications made during or in furtherance of the mediation sessions. The only specified exceptions are communications made in furtherance of a crime or fraud and reports required by the child abuse and neglect reporting law or by the adult protective services law.

Any agreement reached through the mediation, regardless of what the agreement is called, must be reduced to writing, signed by each party, and submitted to the court as soon as practicable. The court must incorporate the agreement into a court order and it becomes enforceable as a court order, unless the court finds good reason not to incorporate the agreement. If any or all of the issues referred to mediation are not resolved by mediation, the mediator must report that fact to the court.

The act does not specify any particular stages at which a case may be referred to mediation, make referral to mediation mandatory, exclude particular types of cases from mediation, establish mediator qualifications, or establish a timetable for the creation of local programs. These and other matters will be determined by the AOC or delegated by the AOC to the chief district court judges.

These provisions became effective July 1, 2006, and the AOC is authorized to use funds available during the 2006–07 fiscal year to begin implementation of the act.

School Admissions

When the court places a child in foster care, with a relative, or in a group home or other facility, special rules apply regarding the assignment of the child to a particular public school. S.L. 2006-65 (H 1074) rewrites G.S. 115C-366 and repeals G.S. 115C-366.2 to consolidate and clarify those rules. With respect to homeless children and youth, the rewritten section: (1) requires the state and local boards of education to ensure compliance with the federal McKinney-Vento Homeless Education Assistance Improvements Act of 2001, (2) substitutes "legal custodian" for "person standing in loco parentis" in describing those who may apply to the State Board of Education for a determination of

whether a particular local board must enroll a homeless child or youth, and (3) allows an "unaccompanied youth" (defined in the act) to make that type of request him- or herself.

Sometimes parents voluntarily place their children with relatives, without any court involvement, as part of a protection plan developed with the county social services department. A new provision allows a child who is not a domiciliary of a local school administrative unit to attend school in that location without paying tuition if the student is living with an adult domiciled there. The student must be living with that adult because the student's parent or legal guardian relinquished physical custody and control of the student based on the recommendation of a county department of social services or the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services. The adult with whom the child lives must assume responsibility for making educational decisions on the child's behalf.

A student placed in a licensed group home or foster home may attend school without paying tuition in the local administrative unit in which the facility is located. If an agency or person other than the child's parent or guardian has legal custody of the child and placed the child in the home or facility, that agency or person must give the school information in writing about the individual who has authority and responsibility regarding educational decisions for the student. That individual must reside or be employed in the local school administrative unit and must give the school a written statement that the individual understands and accepts this authority and responsibility.

These changes apply beginning with the 2006–07 school year. S.L. 2006-65 is discussed in more detail in Chapter 10, "Elementary and Secondary Education."

Education of Children with Disabilities

S.L. 2006-69 (H 1908), which replaces or rewrites numerous sections of G.S. Chapter 115C relating to children with disabilities, is discussed in Chapter 10, "Elementary and Secondary Education."

Criminal Law Changes

S.L. 2006-247 (H 1896), An Act to Protect North Carolina's Children/Sex Offender Law Changes, makes extensive modifications to the sex offender registration laws. These include the imposition of certain residential, employment, and volunteering restrictions on persons required to register; establishment of a satellite-based sex offender monitoring program; and creation of the criminal offenses of involuntary servitude, sexual servitude, and human trafficking. The act is discussed in Chapter 7, "Criminal Law and Procedure."

Juvenile Court

Court System Employees and Volunteers

Effective October 1, 2006, the Judicial Department may deny employment, a contract, or a volunteer opportunity to anyone who refuses to consent to a criminal history record check. In addition, the department may, as of that date, dismiss someone who is already employed or terminate a contractor or volunteer relationship if the employee, contractor, or volunteer refuses to consent to a criminal history record check. Section 3 of S.L. 2006-187 establishes this authority in new G.S. 7A-349 and also enacts new G.S. 114-19.16, which authorizes the State Bureau of Investigation to conduct the record checks and provide the information to the Judicial Department. Guardian ad litem staff and volunteers, attorney advocates in the guardian ad litem program, court interpreters, and juvenile and family drug treatment court staff are just a few of the court system employees, contractors, and volunteers who could be affected by these new provisions.

Foreign Language Interpreters

Section 5 of S.L. 2006-187 rewrites G.S. 7A-314(f) to provide that when the Judicial Department is paying for representation for a party and the party or a witness for the party does not speak or understand English, payment of any court-appointed foreign language interpreter for the party or witness in juvenile and other civil cases as well as criminal cases must be made from funds appropriated to the AOC. The act also adds new G.S. 7A-343(9b) authorizing the director of the AOC to prescribe uniform policies and procedures for the appointment and payment of foreign language interpreters in these cases. If, after consulting with the Joint Legislative Commission on Governmental Operations, the director determines that it will be more cost effective to convert contractual interpreter positions to permanent state positions, he or she is authorized to do so.

Delinquent Juveniles

Effect of Certain Delinquency Adjudications

Article 3 of G.S. Chapter 31A, sometimes referred to as the "slayer statute," defines circumstances in which a person may not inherit or otherwise benefit from the death of a person he or she willfully and unlawfully killed. S.L. 2006-107 (S 1378) rewrites G.S. 31A-3 to include in the definition of "slayer," for purposes of these statutes, a juvenile who is adjudicated delinquent for committing an act that, if committed by an adult, would make the adult a principal or accessory before the fact of the willful and unlawful killing of another person.

Youth Development Centers

Section 16.6 of S.L. 2006-66 (S 1741) requires the Department of Juvenile Justice and Delinquency Prevention to report by November 10, 2006, on the final recommended staffing plan for youth development centers for fiscal year 2007–08. The report must go to the chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Corrections, Crime Control, and Juvenile Justice Oversight Committee. The section specifies the subjects the report must address and expresses the intent of the General Assembly to consider appropriating funds for new treatment positions at youth development centers only after the report is received by the two chairs.

Joint Use of Youth Development Center Property

Section 16.8 of S.L. 2006-66 directs the Department of Juvenile Justice and Delinquency Prevention and the Department of Correction to prepare a joint report on the proposed use by both departments of the property now used to operate the Swannanoa Valley Youth Development Center. The report must evaluate the feasibility of using the property to establish an adult female correctional center while continuing to operate a juvenile youth development center there. The section specifies subjects the report must address and requires that it be submitted by November 10, 2006, to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee.

Gang Prevention Grants

Section 16A of S.L. 2006-66 directs the Governor's Crime Commission in the Department of Crime Control and Public Safety to use $1.5 million of the funds appropriated to the department for fiscal year 2006–07 to provide two-year grants for community street gang violence prevention and intervention programs. A 25-percent match (a quarter of which may be in-kind contributions) is required, and no grant may exceed $100,000. The Governor's Crime Commission must report by April 1, 2007, to the chairs of the House of Representatives and Senate Appropriations Committees and the

chairs of the Appropriations Subcommittees on Justice and Public Safety of the House of Representatives and the Senate on the number of grants awarded, the amount of each grant, and each grantee's program.

Child Care

Allocation Formula

Section 10.34 of S.L. 2006-66 requires the Department of Health and Human Services (DHHS), by October 1, 2006, to implement child care market rate adjustments, by region, based on the 2005 Child Care Market Rate Study. The section also amends section 10.61.(c) of the 2005 appropriations act (S.L. 2005-276) to authorize DHHS to allocate funds appropriated for specific purposes, including market rate adjustment, separately from the allocation formula.

Subsidy Rates

Section 10.35 of S.L. 2006-66 rewrites section 10.62.(e) of the 2005 appropriations act to require that the market rates calculated for child care centers and homes be representative of fees charged to parents for each age group of enrollees within a county. Previously the requirement was that these rates be representative of fees charged to unsubsidized privately paying parents for each age group in the county.

Child Care Funds Matching Requirement

Section 10.36 of S.L. 2006-66 rewrites section 10.60 of the 2005 appropriations act to require local purchasing agencies to provide a 15 percent local match to receive reallocated funds made after initial allocations. The match requirement applies only when DHHS reallocates additional funds over $25,000, and it does not apply when funds are allocated because of a disaster, as defined in G.S. 166A-4(1). DHHS must evaluate (1) the effect of the matching requirement on local purchasing agencies and (2) whether the requirement should be adjusted. The department must report its findings and recommendations by April 1, 2007.

Use of Smart Start Funds for Child Care Subsidies

The General Assembly appropriated $13.5 million to the North Carolina Partnership for Children, Inc., for fiscal year 2006–07 for local partnership initiatives. Section 10.37 of S.L. 2006-66 requires that at least 30 percent of the allocation from those funds to each local partnership be used for child care subsidies.

Studies

Post-adoption Contact (Legislative Research Commission)

Section 2 of S.L. 2006-248 (H 1723) authorizes the Legislative Research Commission to study whether there is a need to establish laws providing for post-adoption contacts or communication between an adopted child and a birth relative. (Senate Bill 209, which would have made specific statutory changes relating to post-adoption contacts, did not pass.) The commission may report its findings and recommendations to the 2007 session of the General Assembly.

Erroneous Paternity Judgments (Legislative Research Commission)

Section 2 of S.L. 2006-248 authorizes the Legislative Research Commission to study whether the grounds for challenging a paternity judgment and the time allowed to do so should be expanded. Specifically, the commission may evaluate whether Rule 60 of the North Carolina Rules of Civil Procedure should be amended to give courts greater authority and a longer period of time to set aside a paternity judgment when a party discovers that the judgment was erroneous because of mistake, fraud, misrepresentation, or other misconduct of the adverse party; newly discovered evidence; or another reason for which it would not be equitable that the judgment have prospective application. The commission may report its findings and recommendations to the 2007 session of the General Assembly.

Drug Treatment Courts (Legislative Research Commission)

Section 4 of S.L. 2006-32 (H 2120), as amended by Section 8 of S.L. 2006-187 and Section 44 of S.L. 2006-259 (S 1523), requires the Legislative Research Commission to study the state's drug treatment courts. Issues the study must address include funding mechanisms, target populations, and interagency collaboration. The study's findings and recommendations may be reported to the 2007 session of the General Assembly.

Youthful Offenders (N.C. Sentencing and Policy Advisory Commission)

Section 34 of S.L. 2006-248 authorizes the North Carolina Sentencing and Policy Advisory Commission to study whether the state should amend its laws to ensure that they provide appropriate sanctions, services, and treatment for youthful offenders aged sixteen to twenty-one. The commission may review other states' and federal laws as well as relevant North Carolina laws and programs. The act requires the commission to consult with the Department of Correction, the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, and the Department of Public Instruction. The commission must submit a final report and any recommended legislation by March 1, 2007, to the 2007 General Assembly.

School Issues (Joint Legislative Education Oversight Committee)

Section 5 of S.L. 2006-248 authorizes the Joint Legislative Education Oversight Committee to study topics including the following:

- Raising the compulsory school attendance age. Specific factors the committee might consider are set out in House Bill 1079, which originally proposed the study.
- Appropriate education for suspended students. House Bill 1747, which did not pass, would have made specific statutory changes relating to the education of suspended students.
- Corporal punishment policies. As originally proposed by House Bill 1462, this study would have been assigned to the State Board of Education.
- Creation of a Joint Education Leadership Team for Disadvantaged Students.

The committee may report its findings and recommendations to the 2007 session of the General Assembly.

Sex Offender Registration and Internet Crimes against Children

Section 53 of S.L. 2006-248 establishes a Joint Legislative Study Committee on Sex Offender Registration and Internet Crimes against Children. The committee will include eighteen members—nine appointed by the Speaker of the House of Representatives and nine by the President Pro Tempore of the Senate. The act directs the committee to consider a number of specific subjects, including the following:

- Any changes that should be made to the list of offenses for which registration is required or the length of time a person must remain on the registry

- Procedures for terminating the registration requirement for a particular individual
- Whether law enforcement should have an affirmative duty to notify residents, schools, or other interested parties that a sex offender lives in the neighborhood
- Methods of tracking the location of sex offenders
- Whether sex offenders should be prohibited from working in jobs that involve direct contact with children
- Proposals that would require sex offenders to stay a certain distance from schools and day care facilities
- Ways to strengthen and improve state statutes and sentencing guidelines relating to child pornography and enticement of children through the use of computers or the Internet
- Law enforcement practices, capacity, and training for combating child pornography and other Internet crimes against children
- Ways to increase the use of asset forfeiture in child pornography cases
- Best practices federally and in other states as regards combating Internet crimes against children

The committee is required to make a final report to the 2007 General Assembly and will terminate on the earlier of the date its final report is filed or the convening of the 2007 General Assembly.

Legislative Study Commission on Day Care and Related Programs

Section 56 of S.L. 2006-248 creates the Legislative Study Commission on Day Care and Related Programs. The commission consists of twelve members—four members of the Senate appointed by the President Pro Tempore of the Senate, four members of the House of Representatives appointed by the Speaker of the House of Representatives, two members of the general public appointed by the President Pro Tempore of the Senate, and two members of the general public appointed by the Speaker of the House of Representatives. The act directs the commission to assess or consider the following:

1. Shortfalls and benefits of various day care and related programs
2. Needed adjustments, possible program consolidations, and reprioritization of funds
3. The effect of day care and related programs on economic development today and in the future
4. Any other matters relevant to the commission's charge

The act gives the commission power to request all state officers, agents, agencies, and departments to provide information, data, or documents in their possession, ascertainable from their records, or otherwise available to them, as well as the power to subpoena witnesses. The commission must make a final report to the 2007 General Assembly by December 31, 2006, and will terminate upon filing the report.

Smart Start and Child Care Funding Study Commission

Section 26 of S.L. 2006-248 establishes a fifteen-member Smart Start and Child Care Funding Study Commission to study the funding of the North Carolina Partnership for Children. The study will look at the current funding system, strategies for achieving full funding and full service, funding equity among counties and local partnerships, and other information relevant to providing services, including child care services, to young children and families. The commission will expire on the earlier of the date it submits its final report or the convening of the 2007 General Assembly.

The President Pro Tempore of the Senate will appoint the following commission members:

- Four members of the Senate
- A representative of the North Carolina Partnership for Children
- The county director of a department of public health
- A representative from a private for-profit day care

The Speaker of the House of Representatives will appoint the following commission members:

- Four members of the House of Representatives
- The director of a county department of social services

- A representative of a local partnership for children
- A representative from a private not-for-profit day care

The Secretary of DHHS or the Secretary's designee also is a member of the commission.

Janet Mason

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Community Planning, Land Development, and Related Topics

Compared to 2005 (when major planning and land use legislation was adopted) and 2004 (when important outdoor advertising legislation was adopted), 2006 was a quiet legislative year for land use law. Several new laws passed this year, however, are of interest. A follow-up amendment to the municipal zoning statute concerning plan consistency statements was adopted. Additional state income tax credits were created to encourage rehabilitation of historic mill sites. North Carolina moved closer to establishing a system of toll roads and highways when the legislature named six specific road segments in the state for which tolls will be charged. In addition, the General Assembly prohibited local governments from condemning parcels of land in redevelopment areas that are not blighted. Major revisions were made to the statutory classification of North Carolina counties into tiers for purposes of offering state tax incentives and other economic development program benefits. Other important statutory changes will provide clarification and guidance to local governments expected to adopt local stormwater control programs in order to comply with federal Phase II stormwater requirements under the Clean Water Act.

Zoning

In 2005 the General Assembly made the most substantial revisions to the zoning enabling statutes since their original enactment. By contrast 2006 was a very quiet session for zoning issues. Only two technical corrections were made in the zoning statutes and only a few local bills were enacted.

One change in the zoning law enacted in 2005 requires local governing boards to adopt a statement of their rationale when adopting or rejecting a zoning ordinance amendment. This statement must address whether the proposed amendment is consistent with adopted plans and why the decision

is considered to be reasonable and in the public interest. Prior to governing board action, the planning board must also send the governing board a written recommendation that addresses plan consistency. A standard practice that quickly developed around the state was for the staff to prepare a draft statement on these matters for consideration by both the planning board and the governing board, with each board making any amendments considered appropriate prior to adoption of the statement. However, in several cities the question arose as to whether a separate motion adopting the statement was required prior to action on the zoning amendment. While most local governments did not consider this two-step process necessary, Section 28 of the 2006 Technical Corrections Act, S.L. 2006-259 (S 1523), amends G.S. 160A-383 to clarify that the statement must be "approved when" adopting or rejecting the amendment (the prior language was that the statement must be "adopted prior to" action). A similar clarification has not yet been made for the comparable county statute.

The second clarification made to the statutes addresses the scope of the agricultural exemption from county zoning. An exemption for bona fide farming was included in the original authorization for county zoning in 1959. Over the years the breadth of the farm exemption has been the subject of much controversy and litigation. S.L. 2005-390 modestly expanded the bona fide farm exemption to allow sale of a limited amount of nonfarm products from farms subject to a conservation agreement. In Section 26 of the Technical Corrections Act, the General Assembly clarified that the expanded definition of *agricultural products* adopted in 2005 in G.S. 106-581.1 applies to the county zoning exemption. This definition includes not only production and harvesting of crops and livestock, but also horticulture, aquaculture, and the planting and production of timber. The definition also includes the following incidental activities when performed on the farm: agritourism; marketing of agricultural products; storage of agricultural materials; and packing, treating, processing, sorting, and similar activities that add value to agricultural items produced on the farm.

Another statewide act may affect some zoning and development regulations. Legislation enacted in 2000 allowed cities and counties to regulate the location of video poker machines and, as a result, a number of zoning ordinances set locational requirements for these machines. After several years of legislative controversy regarding these machines, the decision was made to phase most of them out. Prior to October 1, 2006, an establishment could have up to three video gaming machines. S.L. 2006-6 (S 912) amends G.S. 14-306.1 to reduce the number of permissible machines to two on October 1, 2006; to reduce the number to one on March 1, 2007; and to ban them altogether effective July 1, 2007. Machines located on tribal lands and operated under a Tribal-State Gaming Compact (such as the compact allowing the machines in the Cherokee reservation casino) are exempt from this ban.

In 2005 two of the bills making revisions to the zoning statutes were approved by the Senate but held over for consideration in 2006. Senate Bill 970 proposed a codification and revision of the procedures for judicial review of quasi-judicial land use decisions. Senate Bill 835 would have allowed creation of jet noise zones adjacent to certain airports, allowed mandatory notice to purchasers of property within these zones, and directed the Building Code Council to study additional noise insulation issues. The 2006 General Assembly did not take up either of these bills.

Several local acts addressed height limits for new buildings. S.L. 2006-126 (H 2688) sets a 35-foot height limit for buildings in the town of Kure Beach. The law exempts noninhabitable structures such as spires, cupolas, and antennas and provides that the town may not grant height variances. This same act creates a similar 64-foot height limit for the city of Hendersonville, with one difference. The Hendersonville height limit was subject to a city referendum on November 7, 2006. The voters approved the height limit by a wide margin, but the constitutionality of the limit has been challenged in court. In addition the Technical Corrections Act of 2006 amended the Hendersonville height limit to exclude hospitals, churches, cultural performing arts centers, and government buildings. S.L. 2006-60 (H 1069) clarifies the height limits for the town of Oak Island. Height limits had previously been adopted for Yaupon Beach and Long Beach, the two towns that merged to form Oak Island, but amendments to those limits were slightly different. This law establishes a single height limit of 35 feet for buildings south of the Atlantic Intracoastal Waterway, with an exception allowing buildings up to 41 feet in height in areas designated as velocity zones under the National Flood Insurance Program.

Several studies authorized by the 2006 Studies Act, S.L. 2006-248 (H 1723), could affect zoning in certain areas. Section 9.2 of the act also extends the life of the Joint Legislative Growth Strategies Oversight Committee until January 2007, with a report from the committee to be made to the 2007

General Assembly. Other studies authorized in 2006 affecting land use and development address the following issues:

1. Waterfront access, focusing on the loss and potential loss of the diversity of uses along coastal shorelines and how these losses affect access to the public trust waters (Section 45.3)
2. Abandoned mobile homes, including impacts on public health and safety, the environment, and scenic resources; removal and transportation issues; solid waste disposal issues; design of local government programs and regional approaches for proper disposal; and the feasibility and advisability of imposing an advance disposal tax on the sale of new and used manufactured homes to fund deconstruction [Section 8.3(a)]
3. Utility provision in extraterritorial areas (Section 9.1)
4. The impact of regulations on housing costs, including ways to reduce or eliminate conflicting, duplicative, outdated, or unnecessary regulations, such as the consolidation or elimination of governmental agencies and programs [Section 2.1(b)]

Planning Jurisdiction and Annexation

As in past years, several local bills were enacted affecting the extraterritorial planning jurisdiction of individual local governments. S.L. 2006-171 (S 350) allows the towns of Marshville and Wingate to extend municipal extraterritorial jurisdiction without county approval to areas already subject to county zoning and subdivision regulation if the towns give Union County 180 days' notice of their intent to do so. S.L. 2006-51 (H 2524) gives the town of Chocowinity authority to extend its extraterritorial planning jurisdiction to a 278-acre area specifically described in the legislation. S.L. 2006-58 (H 2549) annexes a specified area into the town of Landis effective September 30, 2007, and allows the town to extend its extraterritorial jurisdiction to that area in the interim.

One new town was incorporated in 2006. S.L. 2006-37 (S 1852) creates the Town of Midway in Davidson County. The new town is prohibited from annexing additional territory into Forsyth County, and annexations in a specified area of Davidson County may be made only pursuant to an annexation agreement with Winston-Salem.

Four different categories of local bills affecting corporate limits were enacted in 2006. The first category allows additional satellite annexations. The second annexes specific areas. The third category deannexes specified areas. The fourth limits future annexations.

Ten municipalities received exemptions from the rule of G.S. 160A-58.1(b)(5) that the noncontiguous area of a city cannot exceed 10 percent of the land area within its primary corporate limits (sixty-three municipalities had been exempted from the 10 percent limit before 2006). S.L. 2006-62 (H 1989) adds Princeton and Smithfield to the municipalities authorized to exceed the 10 percent limit. S.L. 2006-130 (H 1820) does the same for Grimesland, Stem, and Stovall, and S.L. 2006-122 (S 1428) does the same for Benson, Burgaw, Clayton, Dobson, and Yadkinville.

Specific annexations were approved for six municipalities. S.L. 2006-36 (S 1905) annexes a specified area into the city of Asheville and provides that vested rights to development set forth in site-specific development plans previously approved by the county are to remain effective until 2010. S.L. 2006-47 (H 1992) adds two specified areas to Shallotte. S.L. 2006-53 (H 2725) adds a specified area to Chapel Hill. S.L. 2006-55 (H 2491) adds three tracts to Candor, effective January 1, 2007. S.L. 2006-57 (H 2604) adds a specified area to Clayton. S.L. 2006-58 adds nine specified tracts to Landis.

Specific areas were removed from the corporate limits of six municipalities. S.L. 2006-35 (S 1526) deletes a tract from Reidsville. S.L. 2006-44 (H 1881) deletes a tract from Pink Hill. S.L. 2006-46 (H 1913) deletes two tracts from Red Cross and provides that one of the tracts reverts to county zoning jurisdiction and the county zoning designation it had prior to annexation. S.L. 2006-56 (H 2656) removes tracts from Dortches and Morganton. It further provides that the tract removed from the Morganton corporate limits reverts to the Residential Transition zoning classification under city zoning. S.L. 2006-84 (S 1734) removes a tract from Harrisburg.

Two local bills limit future municipal annexations. S.L. 2006-4 (H 1819) prohibits any annexation of the area within the Lyons Station Sanitary District (adjacent to Camp Butner) until June 30, 2008. S.L. 2006-22 prohibits any municipality outside of Lincoln County from annexing or extending extraterritorial jurisdiction into Lincoln County. Senate Bill 386, which would have similarly limited annexation and extraterritorial jurisdiction extensions into Cabarrus County by municipalities located outside the county was approved by the Senate but not the House of Representatives. House Bill 2005, which proposed the same limits for Davidson County, was not adopted by either chamber.

Community Appearance

Tree Protection

In 2005 the General Assembly adopted statewide legislation that generally prohibits the application of local regulatory ordinances to forestry operations but allows local governments to enforce tree protection regulations that apply when land is converted from forest use to nonforest use. However, local acts governing the removal of trees were generally exempted, regardless of whether the local legislation was adopted prior to the effective date of the 2005 legislation. Several local acts were adopted in 2006 to take advantage of this legislative opportunity. S.L. 2006-115 (S 1928) authorizes the municipalities of Clayton and Reidsville to limit the clear-cutting of trees in perimeter buffer zones prior to development. These buffer zones may not exceed 20 percent of the area of the tract subject to the regulation. S.L. 2006-102 (H 2570) extends essentially identical authority to the City of Greenville. Section 94 of S.L. 2006-264 (S 602) allows the Town of Matthews to regulate the removal of trees from public and private property and repeals a more limited grant of power to Matthews included in a 2005 local act.

Junked and Abandoned Vehicles

In two statutes affecting municipalities that authorize the regulation of abandoned or junked motor vehicles (G.S. 160A-303 and G.S. 160A-303.2), the definitions of *junked motor vehicle* require the vehicle to be more than five years old and worth less than $100. In 2005 a local act affecting the cities of Henderson and Louisburg raised this ceiling to $500. This year a number of municipalities jumped on the legislative bandwagon to obtain essentially identical authority. S.L. 2006-15 (H 2001) makes this change for the towns of Matthews and Mint Hill. S.L. 2006-166 (S 1199) makes this change for the cities of Belmont, Bessemer City, Cherryville, Gastonia, Mount Holly, Dallas, and Stanley. S.L. 2006-171 makes this change for the cities of Ahoskie, Cramerton, Farmville, and LaGrange. (Each of these last two acts purported to amend the same local act on the same day at the end of the legislative session without acknowledging the other. A technical correction may be needed to address this oversight.)

Public Nuisances

Since 1999 at least one-half dozen local acts have concerned remedies that may be pursued by local governments in enforcing public nuisance ordinances (typically overgrown-vegetation ordinances). Most include variations on the themes of providing notice to chronic ordinance violators, abating the nuisance, and establishing a lien against the property for unpaid costs. These local acts, however, may run afoul of Article II, Section 24, of the North Carolina Constitution, which prohibits the General Assembly from enacting "any local, private, or special act . . . relating to health, sanitation, and the abatement of nuisances." A person charged with violating an ordinance adopted pursuant to one of these local acts may be able to block enforcement by asserting the unconstitutionality of the act authorizing the ordinance.

In any event S.L. 2006-14 (H 2000) concerns actions that the Town of Mint Hill may take against chronic violators (those with at least three violations in the previous calendar year) to enforce its public

nuisance ordinance. The act authorizes the town to provide one final annual notice that allows the town to take action to remedy the violation and makes the town's expenses the subject of a lien that may be collected on the property like unpaid taxes.

Adequate Public Facilities, Dedication, and Land Subdivision Control

Adequate Public Facilities Ordinances

Section 2.1.(k) of the studies act authorizes the Legislative Research Commission to study issues related to the use by local governments of adequate public facility ordinances. These ordinances condition development approval on the availability or adequacy of public facilities and services. The commission is to study "the extent to which such ordinances increase the cost of housing and affect State and local tax revenues, employment, and economic development."

Easements within Certain Public Rights-of-Way

G.S. 62-182.1 was enacted in 2005 to provide for how various utility services are accommodated within certain public road rights-of-way. The statute provides that the recordation of a subdivision plat for an unincorporated area that reflects the dedication of a new public street or highway automatically serves to make that public right-of-way available for use by a public utility or cable television provider for the installation of lines, cables, and other facilities to provide service. Section 15 of S.L. 2006-259 amends the statute to make these public road rights-of-way available to telephone membership corporations as well.

Local Legislation

Several local acts affect land subdivision control and required public improvements. S.L. 2006-189 (S 1442) repeals the definition of *subdivision* that has applied to Rutherford County (which provided for certain exemptions not otherwise applicable throughout the state) and aligns the scope of that county's land subdivision control with G.S. 153A-335. S.L. 2006-103 (H 2724) allows the Town of Chapel Hill to adopt ordinance provisions allowing applicants for development permission to pay fees in support of the public transit system in lieu of providing transportation infrastructure improvements. The act authorizes the town to use the payments collected either for roads serving the new development or for transit capital improvements, including buses and bus shelters. S.L. 2006-10 (H 1863) permits the Town of Mebane to maintain sidewalks in its extraterritorial planning jurisdiction.

Historic Preservation

The decline and abandonment of textile, tobacco, and furniture plants throughout North Carolina have prompted renewed interest in the rehabilitation of many of these historic mill facilities. North Carolina income tax law already encourages historic rehabilitation by providing a 20 percent tax credit for eligible rehabilitation expenses incurred for income-producing properties and a 30 percent credit for properties that are not income-producing. Federal tax law provides a 20 percent credit for income-producing properties as well.

Effective beginning with the 2006 tax year, S.L. 2006-40 (H 474), as amended by S.L. 2006-252, adds a new G.S. 105, Article 3H (mill rehabilitation tax credit), to build on this existing tax-credit system by providing more generous tax credits for certain mill facilities. In order to qualify, the site must have been used for manufacturing, as an agricultural warehouse, or as a utility site. It must be certified by either the state or federal historic preservation office. It must have stood at least 80 percent

vacant for at least two years immediately preceding the eligibility certification. Finally, the eligible rehabilitation expenses for the project must exceed $3 million.

If the property is income-producing (and also qualifies for a federal tax credit), the amount of the state tax credit is equal to 40 percent (rather than 20 percent) of eligible expenses if the site is located in a development tier one or two county. If the site is in a development tier three county, the amount of the credit is 30 percent (rather than 20 percent) of qualifying expenditures.

If the property does not produce income (and thus is ineligible for a federal tax credit), the amount of the state tax credit is equal to 40 percent (rather than 30 percent), but only if the site is in a development tier one or two area. If the site is in tier three, no credit is allowed.[1]

S.L. 2006-40 (H 474), as amended by S.L. 2006-252 (H 2170), also makes 40-percent rehabilitation tax credits available for any certified historic structure that at one time served as a state training school for juvenile offenders, without regard to the development tier in which the structure is located.

Building and Housing Code Enforcement

General Contractor Licensing

A building inspection department may not issue a building permit unless the applicant has furnished satisfactory proof that the applicant is a licensed general contractor, if the work requires the contractor to be so licensed. A firm or corporation may hold a license if one of its employees has passed the licensing exam. In the past, if that employee ceased to be associated with the employer, the license of the firm nevertheless continued to be valid for thirty days after the parting. S.L. 2006-241 (H 2882) amends G.S. 87-10(c) to extend the period during which the firm's license remains valid from thirty to ninety days.

Subcontractor Bids

Legislation adopted in 2003 authorized the North Carolina General Contractors Licensing Board to adopt rules allowing a licensed HVAC or electrical contractor to bid on public projects that include general contracting work as long as the cost of the general contracting work does not exceed a percentage of the total bid price as established by board rules. S.L. 2006-241 amends G.S. 87-1.1 to extend this authorization to permit licensed HVAC contractors to bid on public projects that include electrical work and to permit licensed electrical contractors to bid on public projects that include HVAC work, to the extent permitted by General Contractors Licensing Board rules. As before, all work must be performed by an appropriately licensed general contractor or subcontractor.

Studies by Legislative Commissions and Committees

Part XV of the studies act establishes the Study Commission on State Construction Inspections. Its fourteen members will include five members appointed by the House Speaker, five appointed by the President Pro Tempore of the Senate, and four nonvoting ex-officio members: the Commissioner of Labor, the Commissioner of Insurance, the Secretary of Administration, and the Secretary of Health and Human Services. The commission will study (1) the scope and nature of each type of inspection of private and public construction projects performed or required by state agencies, (2) the extent to which state inspections overlap with those performed by local governments, (3) the cost of state inspection of public and private construction projects and what efficiencies can be realized by combining inspections, and (4) what level of training is satisfactory for the types of inspections

1. For the 2006 tax year, the amount of the tax credit will depend on the enterprise tier of the county rather than its development tier. S.L. 2006-252 replaced the enterprise tier system with the development tier system, effective January 1, 2007.

performed. The commission must submit its findings and recommendations to the 2007 General Assembly when it convenes.

The studies act also authorizes, but does not compel, the Legislative Research Commission to study other topics relating to code enforcement. Section 2.1.(9)s. of the act allows the study of the construction cost threshold above which a general contractor's license is required for someone that undertakes or manages a construction project. The current threshold is $30,000. The threshold proposed by House Bill 2612, the bill upon which the study may be based, is $5,000. Section 2.1.(9)d. of the act authorizes the study of unfit dwellings. Senate Bill 982, upon which the study may be based, concerns the waiting period before which cities may order unfit dwellings to be repaired or demolished under G.S. 160A-443(5) and proposes reducing it from one year to six months. The act also authorizes a study of the building permit requirements that should apply for on-site installation or repair of electrical equipment on a business premises. Section 2.1.(p) proposes a study of whether permits should be waived if the installation or repair is conducted by businesses on their own property, the property is not intended for sale or lease, and the business employs electricians or mechanics to install or repair its own equipment.

Local Legislation

S.L. 2006-116 (H 845) amends existing local legislation amending G.S. 160A-426 and G.S. 160A-432 as they apply to the City of Whiteville. The act allows Whiteville to declare residential buildings in community development target areas unsafe and to demolish those buildings using the same process the statutes authorize for the demolition of unsafe nonresidential buildings.

Transportation

Toll Roads and the Turnpike Authority

The North Carolina Turnpike Authority was established by the General Assembly in 2002 to assume responsibility for designing, financing, constructing, and operating certain turnpike (toll road) projects. The 2006 legislative changes focus on the specific toll road projects that are to be undertaken, as the General Assembly retracted some of the authority it had earlier delegated to the Turnpike Authority to select the location of toll roads. S.L. 2006-228 (S 1381) amends G.S. 136-89.183(a)(2) to delete the authorization for the authority to develop "nine Turnpike Projects" and then names six projects that the authority will develop. It then provides that any other project must be approved by the General Assembly prior to construction. The six projects include (1) the Triangle Parkway, (2) the Gaston East-West Connector, (3) the Monroe Connector, (4) the Cape Fear Skyway, (5) "a bridge of more than two miles in length going from the mainland to a peninsula bordering the State of Virginia" (the long-discussed bridge connecting the Outer Banks with the mainland near Corolla), and (6) Interstate 540 in Wake and Durham counties. The Interstate 540 project (which extends from the intersection with Interstate 40 to N.C. 55) was expressly exempted from G.S. 136-89.187, which prohibits the conversion of any segment of the State Highway System to a toll facility. In addition, new G.S. 136-89.188(d) provides that toll revenues from a conversion project like the I-540 project may be used only for costs associated with that particular project. Finally, the act repeals the authorization of the North Carolina Department of Transportation (NCDOT) to issue a pilot toll project license to a private party, as originally recommended by the Joint Legislative Transportation Oversight Committee.

A closely related act, S.L. 2006-230 (H 749), authorizes NCDOT, with the approval of the North Carolina Board of Transportation, to enter into agreements with the Turnpike Authority, private contractors, and other governmental units to finance, construct, and operate roads, bridges, and the like.

Highway Projects

S.L. 2006-135 (H 1399) illustrates the growing trend of allowing local governments to play a larger role in financing and building highway projects that are part of the state's highway system. This act adds new G.S. 136-66.8 to provide that NCDOT may enter into agreements with local governments to expedite projects that are already a part of the state's Transportation Improvement Plan (TIP) if those projects are scheduled for construction more than two years after the date of such an agreement. The agreement would allow a local government to pay for the entire project at current prices and then be reimbursed the programmed cost once federal and state funding becomes available as scheduled. The act directs NCDOT to report to the Joint Legislative Transportation Oversight Committee by December 1, 2006, concerning any such agreements that have been executed.

The State Secondary Road System

In the late 1980s, the state committed to a goal of paving all state secondary roads by fiscal 2009–10. As those target years draw nigh, efforts to attain the goal are being accelerated. S.L. 2006-258 (H 1825) delays for one year the implementation of a revised formula for allocating some $68.677 million in aid for construction and improvement of secondary roads. In so doing it corrects the formula so that funds will be allocated according to a county's relative share of state secondary road mileage, whether the roads are paved or not. However, the act directs NCDOT to set aside $5 million each year until 2009–10 for the paving of any unpaved secondary road previously determined to be ineligible for paving because of inadequate right-of-way or environmental problems. Although NCDOT is exhorted in the legislation to make every effort to acquire the needed rights-of-way for unpaved secondary roads, the act also amends G.S. 136-182 to allow a division engineer to reduce the required width of a right-of-way to less than 60 feet in order to pave an unpaved road with allocated funds, as long as safety is not compromised. The act also directs the Joint Legislative Transportation Oversight Committee to complete by March 1, 2007, a study of the cost of paving and maintaining both paved and unpaved secondary roads in different geographic areas of the state.

Transportation Corridor Official Maps

In 2005 the North Carolina Turnpike Authority joined a growing number of transportation-related entities that were authorized to adopt transportation corridor official maps to protect from development the rights-of-way for new transportation projects. S.L. 2006-237 (H 859) adds to the list by allowing the Wilmington Urban Area Metropolitan (Transportation) Planning Organization to adopt such a map for any segment of a project located within its urbanized boundaries if the project is included in the state TIP.

Highway Project Contractors

Based on a recommendation made by the Joint Legislative Transportation Oversight Committee, S.L. 2006-261 (H 1827) amends G.S. 87-1.2 and G.S. 136-28.14 to exempt from general contractor licensing requirements the work done on certain highway projects. No such license is required for "routine maintenance and minor repair" of pavements, bridges, drainage facilities, curbs and sidewalks, plantings, and rest areas. Also exempt are the installation and maintenance of pavement markings and markers, signs, guardrails, fencing, and landscaping.

Transportation Projects for Economic Development

Section 21.6 of the appropriations act, S.L. 2006-66 (S 1741), allocates $2 million of NCDOT funds for economic development projects in each of the fourteen highway divisions. The projects are to be recommended by the board of transportation member representing the division in which the project is to be constructed in consultation with the division engineer and must be approved by the full board of transportation.

Studies by Legislative Committees and Commissions

Part IV of the studies act allows the Joint Legislative Transportation Oversight Committee to study several different transportation topics and report its findings and recommendations to the 2007 General Assembly. These topics include (1) the use of incentives and other arrangements that NCDOT may use in relocating public utilities for highway construction projects, (2) nonbetterment issues, and (3) the feasibility of a dedicated source of funding for public transit and alternative forms of transportation.

Section 2.1 of the studies act illustrates continuing legislative frustration with the pace of highway construction by authorizing the Legislative Research Commission to study the environmental review, permitting, and mitigation process used in the construction and expansion of state highways.

Section 7.10 of the act authorizes the Revenue Laws Study Committee to study the creation of an intermodal rail facility in North Carolina. If the committee undertakes the study, it must complete the study, propose a project "funding solution," and report its findings to the General Assembly by January 1, 2007.

Section 29 of the studies act directs the Western North Carolina Regional Economic Development Commission, known as Advantage Western, to study the feasibility of establishing an inland port within the twenty-three-county region that makes up the commission's jurisdiction. The study is to be conducted by the Institute for the Economy and the Future at Western Carolina University and must be submitted to the General Assembly by May 1, 2007.

Section 49 of the studies act establishes the Joint Legislative Commission on Expanding Rail Service. The commission must undertake a study of a variety of topics, including (1) the costs and benefits of expanding passenger rail service to the western and eastern areas of the state, (2) ways to preserve unused or abandoned rail corridors for future rail needs, and (3) the connection between rail service and economic development and tourism. The commission's report and recommendations are due to the 2007 General Assembly.

Finally, Section 2.1(j) of the studies act permits the Legislative Research Commission to study the disposition of fines and penalties collected in connection with the operation of traffic control photographic systems used by some municipalities.

Airspace

S.L. 2006-157 (H 2868) allows NCDOT to lease a portion of the airspace under and adjacent to the mainland side of the Holden Beach Bridge in Brunswick County to a certain private firm so that the area may be used for a marina. The terms of the lease may be negotiated by the parties. In addition, S.L. 2006-236 (H 643) authorizes NCDOT to permit encroachment of airspace above State Road 1250 near Rocky Mount for the construction of a material conveyance system. NCDOT, however, must determine that the conveyance system will not unreasonably interfere with or impair the property rights of abutting owners or with the public use of the road. The encroachment is subject to all NCDOT regulations and conditions concerning encroachments.

Eminent Domain

S.L. 2006-224 (H 1965) is North Carolina's response to the United States Supreme Court's decision in *Kelo v. City of New London*. In *Kelo* the Court held that a city's use of eminent domain strictly for economic development purposes and in the absence of blight was constitutional.

The North Carolina statutes generally do not authorize a *Kelo*-type use of eminent domain by local governments. To foreclose this possibility, however, the act amends G.S. 40A-1 to nullify the provisions of any local act authorizing eminent domain for any public use or purpose other than those listed in G.S. Chapter 40A. (That chapter authorizes the use of eminent domain by local government and private condemnors.) The act also amends G.S. 159-83(a)(1) to eliminate an obscure provision that might have been interpreted to allow the use of eminent domain for certain economic development projects involving the issuance of revenue bonds. More importantly, the act includes an amendment

offered on the floor of the Senate that amends the urban redevelopment act to prevent the use of eminent domain to condemn a parcel unless the particular parcel is blighted. In the past it was possible to condemn any land located within a qualifying redevelopment area even though not all parcels in the area were blighted.

The act was effective July 1, 2006, but does not affect condemnations commenced under local acts prior to that date.

Economic Development

Enterprise Tier Changes

For over a decade, the so-called Bill Lee Act has provided a system of income tax credits designed to foster business relocation and expansion. The tax system has divided North Carolina counties into five enterprise tiers so that more favorable tax treatment is available to businesses investing in the more disadvantaged counties. S.L. 2006-252 (H 2170) reorganizes the program by changing the enterprise tier system to a development tier system and by changing some of the criteria for classifying counties into the tiers. Various job creation, machinery and equipment investment, historic preservation, and worker training programs also refer to the tier system of this legislation and are thus affected by the following changes.

The old five-tier system is replaced with three tiers. The criteria for ranking counties now include the assessed property value per capita. The other factors are the unemployment rate, the median household income, and the rate of population growth. Initially some forty counties are eligible for tier one, forty for tier two, and twenty for tier three designations. Tier one counties (the most disadvantaged counties) include all counties with a population of less than 12,000. All counties with populations less than 50,000 are in either tier one or two. In addition, any county with less than 50,000 population and more than 19 percent of its population below the federal poverty level is in tier one. The classification of a county originally designated as tier one cannot be changed for two years.

The act also authorizes the creation of urban progress zones in cities with a population of more than 10,000. These zones are made up of census blocks or tracts with relatively high poverty or nonresidential blocks or tracts adjoining residential areas with high poverty. No more than 15 percent of a city may be included within urban progress zones. Both S.L. 2006-252 and Section 24.16 of the appropriations act authorize the creation of similar zones known as agrarian growth zones that may be established in counties having no city with a population of more than 10,000. No more than one agrarian growth zone may be created in any one county. Businesses that develop in the urban progress and agrarian growth zones are generally eligible for more substantial tax credits than would otherwise be available.

The tier and tax changes apply to tax years beginning on or after January 1, 2007. The act expires January 1, 2011.

Job Development Investment Grant Program

S.L. 2006-168 (H 2744) makes several changes to the Job Development Investment Grant (JDIG) program, administered by the Economic Investment Committee (EIC). It extends the expiration date of the program from January 1, 2008, to January 1, 2010, and increases from $15 to $30 million the maximum amount of grant liability the state may incur for the program in 2006. Under the JDIG program, agreements entered into in one calendar year may result in annual grant payments for the succeeding twelve years. Therefore, this increase of $15 million for 2006 could have a fiscal impact of up to $180 million over a twelve-year period. The act further expands the JDIG program by making professional motor sports racing teams eligible to receive grants.

S.L. 2006-168 also relaxes the consequences for business that fail to comply with their JDIG agreements. The act amends G.S. 143B-437.51 to provide that the EIC is no longer required to terminate the incentives agreement of a business that fails to comply with the requirements for two

consecutive years. Instead, if the business is still within its "base period," during which new employees are to be hired for positions upon which the grant is based, the EIC may extend the base period for up to twenty-four months to give the business more time to come into compliance. Grants would be withheld during the base period if the business remains out of compliance and the agreement would be terminated if the business was not back in compliance by the end of the extended base period.

The act directs the Department of Commerce to conduct a comprehensive study of the costs of the JDIG program in relation to other state incentive programs and to provide information on the use of the program in urban, suburban, and rural areas throughout the various geographic regions of the state. The study must be submitted to the chairs of the House and Senate Finance and Appropriations committees by February 1, 2007.

Standards for Regional Economic Development Commissions

S.L. 2006-263 (H 1417) illustrates the General Assembly's interest in improving and standardizing the activities and procedures of regional economic development commissions. The act requires each commission to provide an annual comprehensive evaluation report to various state agencies and legislative committees. It directs the Department of Commerce to develop uniform financial standards, personnel practices, and purchasing procedures. It provides that regional entities must share the costs of developing these standards equally up to a maximum aggregate amount of $50,000. Further, it directs each commission to hold an orientation session for newly appointed commission members concerning the duties and responsibilities of commission members and addressing policies and laws governing conflicts of interest, financial disclosure, and ethical behavior.

Studies by Legislative Commissions and Committees

Part XXVII of the studies act establishes a thirty-two-member Study Commission on Economic Development with half of the members to be appointed by the President Pro Tempore of the Senate and half by the House Speaker. The act directs the commission to restructure and consolidate the organizational "infrastructure" of economic development efforts with an eye to improving their effectiveness. The commission is specifically directed to examine the roles of the Department of Commerce, the regional councils of government, the Economic Development Board, and regional planning and economic development commissions. It is also authorized to examine the feasibility of establishing a North Carolina Economic Disaster Task Force. The commission's final report, including any legislative recommendations, is to be submitted to the 2007 General Assembly when it convenes.

Environment

Legislative actions concerning the environment and natural resources are discussed in detail in Chapter 12. Several that affect land use and development regulation in particular are briefly noted here.

The federal government increasingly requires states to address the water quality impacts of stormwater runoff through local government land use and development regulations. The state standards for the next major phase of this program have been the subject of rule making, litigation, and considerable controversy for several years. S.L. 2006-246 (S 1566) resolves many of these issues by establishing the framework for North Carolina's implementation of these requirements. It defines the cities and counties that must enact stormwater management programs, defines the options for development regulation, and incorporates the general state law on vested rights into these rules. This program, generally referred to as the Phase II Stormwater Program, extends management requirements to cities and counties in "urbanized areas." It sets limits on the amount of impervious surface that may be included in a development near sensitive waters (for example, no more than 12 percent built-upon area is allowed within a half-mile of shellfish resource waters and no more than 24 percent built-upon area or two dwelling units per acre is allowed for other low-density projects), requires a 30-foot

unbuilt buffer adjacent to water bodies, and requires retaining on-site stormwater from a one-year, 24-hour storm in many situations.

S.L. 2006-229 increases the maximum civil penalties that may be assessed for violations of the Coastal Area Management Act to $1,000 for minor development permit violations and to $10,000 for major development permit violations. This law also allows recovery of investigative costs.

S.L. 2006-250 (H 1413) seeks to encourage more cities and counties to undertake erosion and sedimentation control inspections. The act allows the state to delegate inspection and permitting authority to local governments but leaves enforcement responsibilities with the state.

Other legislative actions discussed in Chapter 12 involve creation of a new inspection and permitting program for private drinking water wells, a new licensing board for on-site wastewater contractors, and extension of the Commission on Global Climate Change.

Housing

No statewide bills affecting housing were adopted in 2006. Two local bills authorized individual counties to undertake affordable housing projects for school teachers. S.L. 2006-61 (S 1896) allows the Bertie County Board of Education to provide affordable rental housing for teachers. S.L. 2006-86 (S 1903) allows the Hertford County Board of Education to do the same. See Chapter 8 for discussion of other action on community development issues.

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Courts and Civil Procedure

The state court system has for many years been seeking substantial increases in its budget. In 2006 the system received its largest increase in several years. The 2006–07 budget was increased by over $27 million, in addition to the salary increases provided to all court employees and officials. The system added 271 new employees.

In addition to the budget changes, the most significant legislation affects judicial ethics, the lines used to define judicial districts, and the rules governing judicial elections.

Significant changes to the impaired driving and sex offender registration laws and the addition of an Innocence Commission will also have impacts on the work of the courts. Those changes, however, are discussed in other chapters.

Court System Budget

Funding

The court's budget for 2006–07 will be $373 million. The 2006 additions include funds for new technology initiatives; ninety-nine new positions in prosecutors' offices (ninety-two attorneys and seven witness/victim assistance coordinators); seventy-five new deputy clerk of court positions; seventeen new district court judgeships; six new magistrates; and additional support positions in district court, drug court, family court, business court, and guardian ad litem offices. More than fifteen years after the state began phasing in the custody mediation program in district courts, the 2006 budget, for the first time, funds enough positions to cover the entire state.

Program Modifications

Interpreters. As North Carolina's population has grown more diverse, providing foreign language interpreters has become an increasingly complex and expensive task. The 2006 appropriations act,

S.L. 2006-66 (S 1741), provides an additional $775,000 to pay for the increased costs in 2006–07. However, the Omnibus Courts Act, S.L. 2006-187 (H 1848), makes significant changes in the program's policy and administration. It amends G.S. 7A-314 to provide that the state is responsible for providing interpreters in the same circumstances in which the state provides attorneys. Keying the entitlement to the provision of counsel means that the cost of the interpreter can be collected from a criminal defendant upon conviction, in the same manner as attorneys' fees are collected. Many other states provide interpreters in all cases when they are needed and not just to indigents entitled to lawyers. In many other contexts, federal law mandates that governmental agencies that receive federal funds provide services to persons with limited English proficiency at no cost to the person served, but there is no definitive case law defining the scope of a person's right to an interpreter when that person is a party or a witness to a court proceeding. The North Carolina court system also provides interpreters to prosecutors whenever they need them, although the statute does not address that issue.

S.L. 2006-187 also changes the administrative unit of the interpreter program. Originally, local court officials made decisions about the need for interpreters. The state Administrative Office of the Courts (AOC) provided technical assistance and training and administered a state test that certifies interpreters but did not hire interpreters directly. S.L. 2006-187 provides that the AOC director may prescribe policies and procedures for the appointment and payment of interpreters throughout the state. The director may also create full- or part-time positions for interpreters. Previously, all interpreters were contractors. The effect of this change will be to provide standard policies throughout the courts and shift the responsibility for providing interpreters from the local level to the state level. However, the policies apparently do not apply to the use of interpreters by prosecutors or when a judge determines that an interpreter is necessary even though the party or witness is not entitled to indigent counsel.

Permanency Mediation Program. S.L. 2006-187 requires the AOC to establish a statewide Permanency Mediation Program. The program will work with cases involving abuse, neglect, dependency, or termination of parental rights. It will be administered by the AOC and will be phased in as funds are available. The AOC may use contracts to obtain mediators and is exempt from the competitive bidding procedures generally applicable to contracts. Like other mediations in the court system, the mediation proceedings are private and confidential.

Collection of Money Owed the Court. Courts are among the last major institutions that do not accept any form of electronic payment. S.L. 2006-187 may change that. It authorizes the Judicial Department to accept credit card payment for fines, costs, and fees owed the court. The AOC director may contract with private vendors to receive these payments on behalf of the state. The private vendor would charge the person paying the funds a convenience fee for the processing of the transaction.

District Changes

It is a rare session of the General Assembly that does not alter the lines of one or more judicial or prosecutorial districts. This session, there were three district changes. Prosecutorial district 19B has been altered numerous times since the judicial and prosecutorial lines were redrawn in the mid-1970s. Section 14.19 of S.L. 2006-66 (S 1741) divides the existing district 19B, Randolph, Montgomery, and Moore counties, into two districts, 19B, Randolph and Montgomery counties, and 19D, Moore County. The new prosecutorial districts will be the same as the superior court districts for those counties. The cost of creating the new district is $217,192, but that figure includes only six months of operation, so the annualized cost will be over $400,000.

District 13 was one of the few districts remaining from the original districts that were established when the court reform effort of the 1950's and 1960's was concluded in 1970. It was made up of Brunswick, Bladen, and Columbus counties. S.L. 2006-96 (S 1991) divides the district for superior court purposes into District 13A, Bladen and Columbus counties, and District 13B, Brunswick County. There are currently two judges for District 13; one lives in Brunswick County and the other in Columbus County, so there are no new judgeships required for this split.

The district court lines for the 13th district remain the same, but S.L. 2006-96 changes the district court electoral system. There are six district judgeships allocated to the 13th district. For future elections, in order to be eligible to run for two of the judgeships, candidates must reside in Brunswick County; for one of the other judgeships, candidates must live in Bladen County; and for another of the judgeships, candidates must reside in Columbus County. The remaining two seats may be filled by candidates from any of the three counties. The current incumbents meet these residency requirements. This electoral change is similar to one first required in the 11th district court district in 2001. Like that change, this provision raises the issue of whether a county residency requirement is consistent with the provisions of Article IV, Section 10 of the North Carolina Constitution, which specifies that "[e]very district judge shall reside in the district for which he is elected." Adding a requirement of residency in a specific county may impose an additional qualification to run for the office of district court in District 11 that is not authorized by the constitution. Adding additional qualifications to hold elective office has in at least one instance been held to be beyond the authority of the General Assembly. *See* Moore v. Knightdale Board of Elections, 331 N.C. 1, 413 S.E.2d 541 (1992). District court residency requirements have not been challenged in litigation to this point.

In a final district change, S.L. 2006-264 (S 602) corrects a change made last session. In that session, Union County was made a single county district court district, but it was subdivided for electoral purposes. Apparently the designation of the districts was switched inadvertently. S.L. 2006-264 reverses those designations. District 20B now consists of property specifically described in the legislation and District 20C is the remainder of the county.

Ethics and Judicial Standards Commission

Judicial Standards Commission

Judicial ethics is rarely the subject of legislative action. The North Carolina Supreme Court has primary responsibility for determining the code of ethics applicable to judges, and it promulgates a Code of Judicial Conduct for that purpose. However, the 2006 General Assembly enacted two very significant pieces of legislation affecting the courts' ethics rules.

The most significant was a revision of the procedures applicable to the Judicial Standards Commission in S. L. 2005-187 as amended by S.L. 2006-259 (S 1523). The mission of the commission remains unchanged: to provide a forum to investigate claims of misconduct by judges and to recommend discipline or removal of judges when warranted by the facts. In most cases, the commission considers whether a judge has violated the Code of Judicial Conduct, but there are other bases for it to recommend discipline.

Since its inception, the Judicial Standards Commission has had seven members. Those members have had dual responsibilities—they determine if a complaint should be presented for a full hearing, and they conduct the hearing. That dual role has led to criticism that the hearing is not being conducted by people without prior knowledge of the facts. S.L. 2006-187 addresses that concern by expanding the commission to 13 members, doubling the number of lawyers and trial judges and the number of lay members on the commission. The two new lay members will be appointed by the Speaker of the House of Representatives and the President Pro Tempore of the Senate, respectively. Members serve staggered six-year terms. In cases that are being considered by the commission, the members will be divided into two panels. One panel will conduct preliminary reviews to determine if a hearing is justified, and the other panel will conduct the hearing. Commission members are granted immunity from civil suit for their official actions.

S.L. 2006-187 expands the range of disciplinary measures the Judicial Standards Commission may take to include, in addition to recommendations for censure or removal, recommendations for suspension (all of which require action by the supreme court) and issuance by the commission of private or public letters of reprimand.

S.L. 2006-187 makes it clear that the supreme court may remove a judge from office, upon recommendation of the Judicial Standards Commission, for willful misconduct, commission of a crime, incapacity, habitual intemperance, persistent failure to perform duties, and "conduct prejudicial to the administration of justice." The most common ground for finding "conduct prejudicial" is violation of the Code of Judicial Conduct. Judges removed for any ground other than physical disability are barred from further office and forfeit their right to retirement pay.

The lesser sanction of censure is justified when a judge willfully engages in "conduct prejudicial" but that conduct doesn't warrant removal or suspension. A censured judge must personally appear to receive the censure unless the supreme court excuses the judge. A censure order may include a requirement that the judge take remedial action.

The Judicial Standards Commission may now recommend that a judge be suspended, and upon that recommendation, the supreme court may suspend the judge for a period of time, upon conditions that may be imposed by the Court. A judge suspended for any reason other than temporary incapacity is suspended without pay.

A public reprimand is a written action by the Judicial Standards Commission based on a minor violation of the Code of Judicial Conduct or on "conduct prejudicial", if the conduct is minor. A judge may decline a public reprimand by asking for a public disciplinary hearing instead; in that case, the judge would either be exonerated or receive one of the greater sanctions. A letter of caution is a private communication from the commission to the effect that the judge is not to engage in conduct that violates the Code of Judicial Conduct.

Information submitted to the Judicial Standards Commission is confidential, unless the commission orders that a full disciplinary hearing be held. In that case, the notice and all pleadings and orders of the commission are public. Letters of caution are confidential, but letters of reprimand are public.

Finally the Judicial Standards Commission may issue advisory opinions to judges in accordance with its own rules. Judges following those opinions may not be disciplined by the commission.

Governmental Ethics

One of the major emphases of the 2006 legislative session was ethics reform. S.L. 2006-201 (H 1843) adds a new Chapter 138A to the General Statutes and establishes the State Ethics Commission. That commission is composed of appointees by the legislative and executive branches, but its authority extends in some limited respects to "judicial officers" (judges, district attorneys, and clerks of court, whether elected or appointed) and to "judicial employees" (the AOC director and assistant director and any person making an annual salary of $60,000 or more and designated by the Chief Justice). The Ethics Commission may receive complaints alleging "unethical conduct" (as that term is defined in G.S. Chapter 138A) committed by judicial officers or employees. Allegations of violations of the Code of Judicial Conduct and other complaints against judges are referred to the Judicial Standards Commission. Complaints against district attorneys are referred to the senior resident superior court judge, and complaints against clerks of court are referred to the chief district judge. Complaints against judicial employees are handled by the Ethics Commission. The judicial employees covered by the act must participate in an ongoing ethics education program to be developed by the commission. Both covered judicial employees and judicial officers must file annual statements of economic interest with the commission; the statement must be filed before they can be hired or receive a certificate of election. The act also establishes detailed statutory limits on use of one's position for private gain, receipt of gifts by judicial employees, acceptance of honoraria, employment or supervision of extended family members, and other similar actions.

S.L. 2006-201 is discussed in more detail in Chapter 25, "State Government Ethics and Lobbying."

Closing of Courts in Emergencies

In 2000 the General Assembly authorized the Chief Justice, by written order, to extend the time limits applicable to the filing of papers or the performance of certain time-sensitive actions when it was necessary to cancel court operations due to weather. The legislation was in response to catastrophic conditions caused by major hurricanes in recent years. S.L. 2006-187 allows the Chief Justice to use this power in other emergencies, such as a flu pandemic. The act relieves the Chief Justice of the obligation to file the order extending time limits in the clerk's office in the county affected by the order; it is effective when it is entered or on the date set forth in the order, whichever is later. The act also extends the authority of local court officials to close court facilities or cancel court sessions for any emergency, instead of allowing closings only for weather-related emergencies.

Juror Summonses and Fees

Legislation in 2006 made several changes to statutory provisions governing juror summonses and fees. In a conforming change, S.L. 2006-264 amends G.S. 9-10 to provide that the jury summons must inform prospective jurors that persons seventy-two—rather than sixty-five—years of age or older are entitled to establish an exemption from jury service by writing rather than by personal appearance. This change conforms the statute to the age change made to G.S. 9-6.1 in 2005.

In a change regarding jury fees, S.L. 2006-66 amends G.S. 7A-312 to increase the daily fee paid to jurors (with the exception of grand jurors) in the General Court of Justice who serve more than one day. The act increases the daily fee for these jurors from $12 to $20 for the second through fifth day of service, and from $30 to $40 for each day in excess of five days. The act increases fees for grand jurors from $12 to $20 per day. Those fees had been set at virtually the same level for more than twenty years.

Judicial Elections

Vacancies

In recent years, all judicial elections in North Carolina have been nonpartisan. One effect of that change is to eliminate the ability of a political party to nominate a candidate to fill a vacancy that occurs after the filing period for the primary election. As a result, numerous candidates may run, and the person receiving the most votes wins, regardless of the percentage of votes received. In a recent race for the North Carolina Supreme Court, there were eight candidates for the vacancy on the general election ballot, which resulted in a winning candidate with far less than a majority of the votes.

S.L. 2006-192 (H 1024) amends the judicial election law to change that process. If a vacancy occurs in the superior court after the filing period opens but more than sixty days before the general election and the election is for the remainder of a term, the election is held without a primary, using the "instant runoff" method. For vacancies in appellate judgeships and most superior court judgeships, in which candidates always run for a full term, if the vacancy occurs after the filing period opens, there are two alternatives, depending on when the vacancy occurs. If the vacancy occurs more than sixty-three days before the second primary date in that election cycle, a special primary for the vacancy is held on that date. If the vacancy occurs after that date, the judgeship is decided on general election day using instant runoff voting.

The instant runoff method requires voters to rank candidates in order of preference. If no candidate gets a majority of votes indicating that he or she is the voter's first preference, then the field is reduced to two (if the election is for a single seat) and the votes are recounted. In this round, each ballot counts as a vote for whichever of the two final candidates is ranked highest by the voter. The instant runoff method is described in more detail in Chapter 9, "Elections."

S.L. 2006-192 also prohibits a living, qualified candidate from withdrawing after the close of the filing period.

Public Campaign Financing and Contribution Limits

S.L. 2006-192 amends the state's public campaign financing rules. Campaign financing funds became available for appellate judgeships in 2004. S.L. 2006-192 authorizes candidates for appellate judgeships in which vacancies occur after the filing period opens to qualify for public financing of campaigns. It also establishes procedures and minimum fundraising requirements for those candidates to qualify. If the public financing fund is prematurely depleted, a candidate certified to receive public financing may raise money up to the amount he or she would have received had the fund not been depleted. The act imposes a limit of $1,000 per election on the contributions an individual can make to a superior or district court candidate.

Civil Procedure

Relatively few bills enacted in 2006 affect civil procedure in North Carolina. The following are the more significant legislative developments.

Electronic Filing of Court Documents

More and more court systems are allowing electronic filing of pleadings and other documents. In the Omnibus Courts Act, S.L. 2006-187, the General Assembly enacted G.S. 7A-49.5 to authorize the use of electronic filing in North Carolina courts. The statute authorizes the North Carolina Supreme Court to adopt rules governing electronic filing and fees, including fee waiver provisions for indigents, and authorizes the Administrative Office of the Courts to contract with a vendor to provide electronic filing. The act also makes conforming changes to Rule 5 of the North Carolina Rules of Civil Procedure, replacing the former reference to filing by "telefacsimile transmission" with a reference to filing by "electronic means."

Recovery of Costs in Civil Cases

A number of statutory provisions, including G.S. 6-20 and 7A-305, address the recovery of costs in civil cases. The appellate cases interpreting these provisions have reached different conclusions as to what costs may be recovered. S.L. 2006-248 (H 1723) establishes a House of Representatives task force to review the relevant North Carolina law and recommend a solution to the conflict. The task force will consist of six members, including three members of the House of Representatives, one member of the North Carolina Academy of Trial Lawyers, one member of the North Carolina Association of Defense Attorneys, and one member of the North Carolina Bar Association. The task force is to report to the House of Representatives by December 31, 2006.

Property Tax Foreclosures

G.S. 105-374 authorizes civil actions to foreclose on property subject to certain tax liens and, among other things, lists those who must be served with a summons and made a party to the foreclosure action. S.L. 2006-106 (S 1451) amends that list to provide that the owner of record as of the date the taxes became delinquent and any subsequent owner are among those who must be named as defendants in the action.

S.L. 2006-106 also amends G.S. 105-375, which deals with in rem tax foreclosure. Among other provisions, that statute requires the tax collector to provide notice of the tax lien foreclosure by registered or certified mail, return receipt requested, to the taxpayer and others. S.L. 2006-106 amends G.S. 105-375(c) to specify the contents of that notice. The act also addresses service of the notice,

providing that if the tax collector does not receive a return receipt indicating receipt of the letter within ten days, the collector must make additional, reasonable efforts to notify the taxpayer and all lienholders of record and must also serve the notice by publication. The act makes similar changes to provisions in G.S. 105-375(i) governing the manner in which the sheriff must serve a notice of sale under an execution. Revised G.S. 105-375(i) provides that if the sheriff does not receive a return receipt indicating receipt of the notice within ten days, the sheriff must make additional efforts to locate and notify the taxpayer and all lienholders of record and must also serve the notice by publication.

Matters of Particular Interest to Clerks

Estates and Special Proceedings

Article 3 of G.S. Chapter 31A bars slayers from acquiring property or receiving a benefit from a decedent's estate by testate or intestate succession. S.L. 2006-107 (S 1378) amends the definition of "slayer" in G.S. 31A-3. Prior to the amendment, the statute defined slayer to include, among other definitions, a person found—in a civil action or proceeding brought within one year after the decedent's death—to have willfully and unlawfully killed the decedent or procured the decedent's killing, if that person died or committed suicide before having been tried for the offense and before the settlement of the estate. S.L. 2006-107 expands this definition by eliminating the requirement that the alleged slayer must have died or committed suicide before having been tried for the offense and before the settlement of the estate. As amended, the statute now also provides that the civil action must have been filed within two years (not one) after the decedent's death, or even longer if a criminal proceeding is brought within two years to establish the person's guilt and the civil action is brought within ninety days after a final determination in the criminal proceeding. The act provides that the burden of proof by a preponderance of the evidence is on the party seeking to establish that the killing was willful and unlawful. The act also includes within the definition of slayer a juvenile who has been adjudicated delinquent by reason of committing an act that would be a willful and unlawful killing by an adult. In one other definitional change, the act excludes from the definition of slayer a person who is found not guilty by reason of insanity.

Finally, S.L. 2006-107 enacts new G.S. 31A-12.1, which provides that the statutory provisions governing slayers wholly supplant the common law rule preventing a person whose culpable negligence causes the death of a decedent from succeeding to any property by reason of the death.

Uniform Trust Code Changes

Section 13 of the 2006 technical corrections act, S.L. 2006-259 (S 1523), makes a number of technical and conforming changes to the North Carolina Uniform Trust Code, G.S. Chapter 36C. In noteworthy changes, the act (1) modifies G.S. 36C-4-408(d) to provide that the clerk having jurisdiction over the trust, rather than the decedent's estate, hears a matter regarding enforcement of a trust for care of an animal; (2) repeals a number of statutory provisions stating that the jurisdiction statute of the code (G.S. 36C-2-203) governs proceedings brought to modify or terminate trusts, since those proceedings are civil actions before the superior court judge; (3) amends G.S. 36C-4-417, which allows the trustee to combine or divide trusts if it does not impair the rights of the beneficiaries, to delete the requirement that the trustee first give notice to qualified beneficiaries; and (4) modifies G.S. 36C-7-701 to provide that a trustee who does not accept the trusteeship within 120 days after written notice to accept the trusteeship is provided is considered to have rejected the trusteeship.

Child Support Cases

In 2005 the General Assembly enacted S.L. 2005-389 repealing the provisions of G.S. 50-13.9 that require the clerk of superior court to maintain payment records in non-IV-D child support cases, to

monitor compliance with child support orders entered in non-IV-D cases, and to initiate legal proceedings to enforce non-IV-D child support orders, but made the changes effective July 1, 2007.

Section 97 of S.L. 2006-264 amends S.L. 2005-389 to make these changes effective January 1, 2007.

Attorneys' Fees in Nonjusticiable Cases

G.S. 6-21.5 permits the court, "in any civil action or special proceeding," to award attorneys' fees to the prevailing party upon a finding that there was a complete absence of a justiciable issue of either law or fact raised by the losing party in any pleading. Section 13 of the 2006 technical corrections act, S.L. 2006-259, amends G.S. 6-21.5 to clarify that the statute applies to estate or trust proceedings as well as to civil actions and special proceedings.

Payment of Fines

S.L. 2006-187 enacts G.S. 7A-321, authorizing the Judicial Department to accept payment by credit card, charge card, or debit card for fines, fees, and costs owed to the courts by offenders. The act also amends G.S. 7A-343 to authorize the Director of the Administrative Office of the Courts to enter into contracts with private vendors to provide for these payments and permits the vendor to assess a convenience or transaction fee to cover the costs of providing the service.

Clerks' Conference

G.S. 7A-806(b) provides for election of officers to the Conference of Clerks of Superior Court. Prior to its amendment this legislative session, the statute provided that officers were to be elected at the conference's annual summer conference and would take office on July 1 immediately following their election. S.L. 2006-221 (S 198) deletes the reference to July 1. As a result of the amendment, officers will take office immediately after their election at the summer conference, whenever that occurs.

Lien on Aircraft for Repair and Storage

G.S. Chapter 44A governs statutory liens and charges, such as mechanics', laborers', and materialmen's liens. S.L. 2006-222 (S 2010) establishes a statutory lien for unpaid labor, skills, or materials on an aircraft and for unpaid storage of an aircraft.

Among other statutory changes, the act adds G.S. 44A-50 through 44A-90, which provide for a lien on an aircraft to a person who has expended labor, skills, or materials on the aircraft or who has stored the aircraft at the request of its owner, even if the lienor surrenders possession of the aircraft. The lien expires 120 days after the lienor voluntarily surrenders possession of the aircraft unless, within that 120 day period, the lienor files a notice of lien, in a form specified by the act, in the office of the clerk of court of the county in which the labor was performed or the storage furnished. The clerk must file the notice of lien and index it in a record maintained for that purpose, which will require the clerk's office to establish a new record of aircraft liens. If a lienor has filed a notice of lien, the act also requires the lienor to file a notice of satisfaction with the clerk within twenty days following a request in writing by the owner, and the act specifies the form and content of the notice of satisfaction. The act directs the clerk, upon receipt of a notice of satisfaction, to make an entry of acknowledgment of satisfaction in the index. The act also directs the clerk to collect regular fees for filing, copying, and certifying any document under the statute. Other provisions address priority and the amount of the lien and the process by which the lienor is to sell the aircraft if the owner does not satisfy the lien.

DWI Omnibus Bill

Among the significant changes to the driving while impaired (DWI) legislation in the 2006 legislative session were those affecting record-keeping obligations in the clerk's office. S.L. 2006-253

(H 1048) amends G.S. 7A-109.2 to require clerks to maintain an electronic database of any offense involving impaired driving, all charges of driving while license revoked for an impaired driving license revocation, and any other violation of the motor vehicle code involving the operation of a vehicle and the possession, consumption, use, or transportation of alcohol. The database must include the reasons for any pretrial dismissal by the court, the alcohol concentration reported by the charging officer or chemical analyst, if any, and the reasons for suppression of any evidence. These record-keeping requirements become effective after the next rewrite of the clerk's criminal information system by the Administrative Office of the Courts.

In addition, S.L. 2006-253 adds new G.S. 7A-109.4, which requires clerks to maintain all records of convictions for an offense involving impaired driving for at least ten years after the conviction date. Before destroying the record, the clerk must record the defendant's name, the judge, the prosecutor, any attorney or waiver of attorney, the alcohol concentration or fact of refusal to take a chemical analysis, the sentence, whether the case was appealed, and, if appealed, the disposition in superior court. Unlike new G.S. 7A-109.2, above, this section became effective December 1, 2006.

Cartridge Pistol Permits

G.S. 14-407.1 requires a permit to purchase pistols suitable for firing blanks and, before its amendment this legislative session, made the clerk of court responsible for issuing the permits. S.L. 2006-264 shifts responsibility for issuing the permit from the clerk of court to the sheriff.

Protection of Animals

G.S. Chapter 19A contains a variety of provisions for the protection of animals, including provisions allowing a person to seek an injunction to protect animals that are being cruelly treated. S.L. 2006-113 (H 2098) makes a number of amendments to that chapter. Although these changes will not have a significant impact on the clerk's office, clerks should be aware of one change. Prior to its amendment, the law authorized the court to order the owner of a dog illegally used for fighting to deposit funds with the clerk of court, to be drawn upon by an animal shelter for the actual cost of caring for the dog pending disposition of any criminal charges against the owner. The statute also entitled an owner who was adjudicated not guilty of the criminal charges to a full refund of the deposit. As amended, the statute provides that the court may order an owner to deposit funds in a broader range of circumstances, including pending civil litigation seeking an injunction against cruel treatment. After being acquitted of criminal charges or found not to have committed animal cruelty in a civil action, the owner is entitled only to a refund of the deposit remaining in the clerk's office, rather than to a full refund.

Electronic Bondsmen Registry

S.L. 2006-188 (S 846) amends G.S. 58-71-140 to require the Administrative Office of the Courts to create a statewide Electronic Bondsmen Registry for licenses, powers of appointment, and powers of attorney for bondsmen. All licensed professional bondsmen, surety bondsmen, runners, and insurance companies engaged in bail bond business in North Carolina must register, after which the registrant is authorized to execute bail bonds in all counties under the registrant's license, power of appointment, or power of attorney. Bondsmen and runners will no longer register an original or certified copy of their license, power of appointment, or power of attorney in the clerk's office.

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Criminal Law and Procedure

The General Assembly passed three major acts affecting criminal law and procedure in 2006. One significantly expanded the obligations of and restrictions on individuals who are required to register as sex offenders. The second created a new commission to review claims of innocence by individuals who have been convicted of felonies. The third made sweeping changes to the state's impaired driving laws. The first two acts, along with the many other acts passed in 2006 that affect criminal law and procedure, are discussed here. The impaired driving act is summarized in Chapter 19, "Motor Vehicles."

Sex Offender Act

In S.L. 2006-247 (H 1896), the General Assembly significantly revised the obligations of individuals required to register as sex offenders. The act is referred to here as the Sex Offender Act. The revisions have various effective dates, discussed below.

The North Carolina Attorney General's Office has prepared a summary of the sex offender registration program and the changes the General Assembly has made since the program started in 1996. The summary may be viewed at http://www.jus.state.nc.us/ncja/sexoffen.pdf. It identifies the effective dates of significant revisions made by the General Assembly, which are useful in understanding the registration requirements that different individuals must satisfy.

Length of Registration Period

North Carolina has had two adult sex offender registration programs—a ten-year program and a lifetime program. For those subject to the ten-year program, the law has provided that their registration obligations terminated automatically after ten years. The Sex Offender Act repeals the automatic termination provision and requires a person subject to the ten-year program to continue to register beyond ten years unless a court terminates the requirement.

After ten years from the date of initial registration, a person subject to the ten-year program may petition the superior court in the district where the person resides to terminate the registration requirement. *See* G.S. 14-208.12A (setting forth procedure for petitioning court). The court may grant relief if all of the following conditions are met:

- the person has not been convicted of a subsequent offense requiring registration;
- the person demonstrates to the court that since completing his or her sentence, he or she has not been arrested for any crime that would require registration;
- the court is satisfied that the person is not a current or potential threat to public safety; and
- termination of registration complies with any federal standards applicable to the termination of registration or required as a condition of receipt of federal funds by the state.

The final requirement indicates that if federal law is revised and requires a period of registration longer than ten years, the superior court judge considering the petition may not terminate the registration requirement until that additional period of time elapses.[1]

These changes apply to anyone for whom the period of registration would terminate on or after December 1, 2006. This effective date means that people who are subject to the ten-year program but who have not reached the ten-year mark as of December 1, 2006, must continue to register until a court terminates their registration requirement. They no longer qualify for automatic termination of their registration obligations on their ten-year anniversary. Most of the people who have been in the ten-year program fall into this category. The sex offender program did not begin in North Carolina until January 1, 1996. Therefore, only those individuals whose ten-year registration obligations began during the first year of the sex offender program will have satisfied their obligations before the effective date of the revised statute.[2]

Offenses Subject to Registration

The Sex Offender Act makes the following additional offenses subject to registration requirements. A person convicted of any of the listed offenses must register for at least ten years unless the person falls into the lifetime registration program for other reasons [for example, the person meets the definition of "recidivist" in G.S. 14-208.6(2b)].

Statutory rape or sexual offense. The offense of statutory rape or sexual offense of a person who is thirteen, fourteen, or fifteen years of age when the defendant is at least six years older than the person—a violation of G.S. 14-27.7A(a)—is added as a sexually violent offense under G.S. 14-208.6(5) and is therefore a "reportable conviction" under G.S. 14-208.6(4). This change applies to offenses committed on or after December 1, 2006. Statutory rape or sexual offense of a person who is thirteen, fourteen, or fifteen when the defendant is more than four but less than six years older than the person—a violation of G.S. 14-27.7A(b)—is not subject to the sex offender registration program.

Sexual servitude. The offense of subjecting or maintaining a person in sexual servitude—a violation of new G.S. 14-43.13, discussed further below—is classified as a sexually violent offense

1. A new federal law, enacted July 27, 2006, extends the minimum period of registration to fifteen years and makes several other changes to the federal standards for sex offender registration programs. States are not required to implement these changes, however, until the later of three years after July 27, 2006, or one year after the U.S. Attorney General creates software for states to use in operating uniform sex offender registries and Internet websites. See Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 42 U.S.C. 16915, 16924. Superior court judges hearing termination petitions therefore may not be bound by the new fifteen-year minimum until North Carolina takes further action to implement the new federal standards. As under previous federal law, a state that fails to adopt the federal standards may lose 10 percent of the federal funds that it otherwise would receive through the Edward Byrne Memorial Justice Assistance Grant Program.

2. For these few individuals, the commencement date of their obligation is not entirely clear. G.S. 14-208.12A has provided that the ten-year registration obligation terminates ten years after the date of initial county registration. But, G.S. 14-208.7 has provided that the ten-year registration obligation commences on the defendant's release from a penal institution or, if the defendant did not receive active time, the date of conviction. Effective December 1, 2006, the statutes were conformed to provide that the ten-year period begins on the date of initial county registration.

under G.S. 14-208.6(5). This change applies to offenses committed on or after December 1, 2006, when the statute creating the new offense became effective. The related new offenses of human trafficking (G.S. 14-43.11) and involuntary servitude (G.S. 14-43.12), also discussed below, are not subject to the sex offender registration program.[3]

Out-of-state conviction. The definition of "reportable conviction" in G.S. 14-208.6(4) is revised to include a final conviction in another state that requires registration under the sex offender registration statutes of that state. The change applies to offenses committed on or after December 1, 2006. It also applies to individuals who move into North Carolina on or after that date. Previously, the subsection applied to an out-of-state conviction only if the conviction was substantially similar to an offense against a minor or a sexually violent offense as defined by North Carolina's sex offender statute. That part of the definition remains in effect along with the revised definition.

Registration Obligations

The Sex Offender Act modifies and expands the obligations of individuals who are required to register in the following respects.

In-person registration. Revised G.S. 14-208.6A and 14-208.7 provide that an individual required to register under either the ten-year program or the lifetime program must register in person.[4] The requirement is effective December 1, 2006, which means that it applies to anyone still required to register as of that date. Other statutes are similarly revised to require registrants to appear in person to verify their registration information (discussed below), notify the sheriff of a temporary residence for out-of-county employment or of an intended move to another state (discussed below), and notify the sheriff of a change in academic status or educational employment [under revised G.S. 14-208.9(c) and (d), also effective December 1, 2006].

Semiannual verification of registration information. Revised G.S. 14-208.9A states that registrants must verify their registration information semiannually rather than annually.[5] The revised section also directs the sheriff to photograph the person if the picture that is on record does not provide an accurate likeness. [Under new G.S. 14-208.9A(c), a sheriff also may request a registrant to appear at the sheriff's office between verification dates for a new photograph if the photograph on file no longer provides an accurate likeness. A willful failure to comply with the sheriff's request for a photograph is a Class 1 misdemeanor.] This part of the Sex Offender Act is effective December 1, 2006, and applies to offenses committed on or after that date. Thus, the new procedures go into effect December 1, 2006, and a person required to register who violates the procedures on or after that date may be subject to prosecution.

The Sex Offender Act imposes a similar semiannual verification requirement, in G.S. 14-208.28, for juveniles who are required to register. Juvenile court counselors have been responsible for submitting registration information on behalf of juveniles, and the revised statute retains that procedure. The sheriff must mail a verification form to the court counselor semiannually, rather than annually, and the juvenile court counselor must obtain the necessary information from the juvenile, sign the form along with the juvenile, and return it to the sheriff. The revised statute does not require

3. The codifier of statutes modified the statute numbers of these offenses and other provisions in the new article on Human Trafficking (Art. 10A of G.S. Ch. 14). Those statutes were originally numbered in the legislation as G.S. 14-43.4 through 14-43.7.

4. Revised G.S. 14-208.6B likewise provides that a juvenile transferred to superior court and convicted of an offense subject to registration must register in person. Registration in juvenile transfer cases is limited, however, to "sexually violent offenses" and "offenses against a minor" as defined in G.S. 14-208.6. Adults must register for those categories of offenses and, if required by the court, certain peeping offenses listed in G.S. 14-208.6(4)d.

5. Subsection (1) of G.S. 14-208.9A(a) states that the Division of Criminal Statistics of the Department of Justice must mail a verification form to the registrant on the anniversary of the person's initial registration date "and again six months after that date." This language suggests that registrants must verify their registration information twelve months after they initially register and then every six months thereafter. The General Assembly's intent, however, may have been to require that registrants reverify their registration information every six months after they initially register.

the juvenile to appear in person. The change is effective December 1, 2006, and applies to offenses committed on or after that date.

Temporary residence for out-of-county employment. New G.S. 14-208.8A requires registrants to notify the sheriff of the county in which they're registered if they work and maintain a temporary residence outside that county for more than ten business days within a thirty-day period or for more than thirty days a year. The new requirements take effect June 1, 2007, which means that they apply to individuals still required to register as of that date.

Moving to another state. G.S. 14-208.9 has required registrants to notify the sheriff of the county in which they are currently registered if they move to another state. The statute is revised to require registrants to notify the sheriff at least ten days before they intend to move. The sheriff may take a new photograph of the registrant. Registrants also must notify the sheriff within ten days after they were supposed to move to another state if they change their mind and decide to remain in North Carolina. The revised requirements became effective December 1, 2006, which means that they apply to individuals still required to register as of that date.

Violations of registration obligations. G.S. 14-208.11 is the general punishment statute for violating registration obligations. Violations of the registration obligations listed in the statute, including the obligations discussed above, are Class F felonies, except for failing to comply with a sheriff's request for a new photograph, which is a Class 1 misdemeanor under G.S. 14-208.9A(c).

Effective for violations committed on or after December 1, 2006, all violations must be "willful." *See* G.S. 14-208.11 (general punishment statute); G.S. 14-208.9A(c) (photograph violations). Also effective that date, G.S. 14-208.11 provides that a person is deemed to have complied with the registration and verification obligations if he or she is incarcerated, notifies the officer in charge of his or her obligations, and meets his or her registration or verification obligations no later than ten days after release.

Restrictions on Association with Minors

North Carolina's probation statutes contain special conditions of probation for individuals convicted of an offense requiring registration. Those conditions include restrictions on residing with a minor if the offense requiring registration involved abuse of a minor. If the abuse of the minor was sexual, the defendant may not reside in a household with a minor during the period of probation; if the abuse was physical or mental, the defendant may not reside in a household with a minor unless permitted by the court. *See* G.S. 15A-1343(b2); *see also* G.S. 15A-1368.4(b1) [setting forth similar conditions for individuals who are on post-release supervision, which last for five years after release pursuant to G.S. 15A-1368.2(c)].

In 2005, the General Assembly made it a Class 1 misdemeanor (and a Class H felony for a subsequent offense) to provide a baby-sitting service if the provider is registered as a sex offender or, when the service is provided in a home, a resident of the home is registered as a sex offender. *See* G.S. 14-321.1. The statute is limited to baby-sitting services that are for profit, for children under the age of thirteen who are not related to the provider, and for more than two hours per day while the child's parent or guardian is not on the premises.

The Sex Offender Act creates three new felonies imposing broader restrictions on contact between anyone required to register and minors.

Residential restrictions. New G.S. 14-208.16 makes it a Class G felony for

- a person who is required to register as a sex offender
- knowingly to
- reside within 1,000 feet
- of property on which any public or nonpublic school, or child care center as defined in G.S. 110-86(3), is located.

Subject to certain exclusions, a child care center is "an arrangement where, at any one time, there are three or more preschool-age children or nine or more school-age children receiving child care." *See* G.S 110-86(3)a. The new statute does not apply to home schools as defined in G.S. 115C-563; institutions of higher education; child care centers not included in the definition in G.S. 110-86(3); and

child care centers included in that definition that are located on or within 1,000 feet of an institution of higher education where the registrant is a student or is employed.

With certain exceptions, the statute applies to individuals who are still required to register on or after December 1, 2006. The statute states that a registrant does not violate the statute if the ownership or use of the nearby property changes after he or she has established residence. [New G.S. 14-208.16(d) describes the ways a residence is considered to be established.] The effective-date provision adds that the statute does not apply to a person who established a residence before the statute's effective date, December 1, 2006.

Restrictions on working and volunteering. New G.S. 14-208.17(a) makes it a Class F felony for a person who is required to register as a sex offender

- to work for any person or as a sole proprietor, with or without compensation
- at any place where a minor is present if
- the registrant's responsibilities or activities include instruction, supervision, or care of a minor or minors.

The statute applies to violations committed on or after December 1, 2006.[6]

Restrictions on care and custody of minor within residence. New G.S. 14-208.17(b) makes it a Class F felony for any person

- to conduct any activity at his or her residence where
- the person accepts a minor or minors into his or her care or custody from another
- knowing that a person who resides at that location is required to register as a sex offender.

The statute applies to violations committed on or after December 1, 2006.

Satellite Monitoring of Registrants

The Sex Offender Act creates a new satellite-based monitoring program for certain sex offenders. It appears in new Part 5 of the sex offender registration article (Article 27A of G.S. Chapter 14).[7] The new program applies to two categories of registrants—lifetime registrants and registrants convicted of certain offenses involving minors. Some requirements apply to both categories; others apply to only one category or the other.

Requirements applicable to all individuals subject to satellite monitoring. Everyone who is subject to the new program must submit to an active, continuous satellite-based monitoring system unless an active program will not work; then, the person must submit to a passive continuous satellite-based system. The system will incorporate continuous tracking of the geographic location of the person using global positioning system technology. The frequency of reporting of a person's whereabouts may range from near real-time (with an active system) to once a day (with a passive system). *See* G.S. 14-208.40.

Satellite monitoring is a mandatory condition of probation for anyone who is subject to the monitoring program [G.S. 15A-1343(b2)(7) and (8), 15A-1343.2(f1)], including during any extended period of probation [G.S. 15A-1344(e2)]. It is also a condition of any post-release supervision [G.S. 15A-1368.4(b1)(6) and (7)) or parole (G.S. 15A-1374(1)].

Each person required to submit to satellite monitoring must pay a one-time fee of $90. The court may waive the fee for good cause. *See* G.S. 14-208.45.

Criteria and requirements for lifetime registrants. A person who has been found to be a sexually violent predator, who is a recidivist, or who has been convicted of an aggravated offense as those terms are defined in G.S. 14-208.6—that is, a person who is required to register for life—is subject to the new satellite monitoring program for life. *See* G.S. 14-208.40(a)(1), 14-208.42. Upon

6. The caption of the new statute states that it prohibits "sexual predators" from working or volunteering as specified in the statute, but the body of the statute provides that all individuals who are required to register are subject to the statute's prohibitions.

7. The codifier of statutes modified the statute numbers of the provisions in the new article on satellite monitoring (Art. 10A of G.S. Ch. 14). The statutes were originally numbered in the legislation as G.S. 14-208.33 through 14-208.38.

completion of their sentences, these registrants also must remain on unsupervised probation for life.[8] The lifetime satellite monitoring requirement (and unsupervised probation) may be terminated by the North Carolina Post-Release Supervision Commission. New G.S. 14-208.43 sets forth the procedure for a person to request termination of the lifetime requirements.

Criteria and requirements for registrants convicted of certain offenses involving minors. A person who meets all of the following criteria is subject to satellite monitoring under G.S. 14-208.40(a)(2). The person

- must have been convicted of a reportable offense;
- must be required to register;
- must have committed an offense involving physical, mental, or sexual abuse of a minor; and
- requires the highest possible level of supervision and monitoring based on a risk assessment program to be developed by the Department of Correction (DOC).

A person who meets these criteria is subject to monitoring for the period of time ordered by the court. *See* G.S. 14-208.40(a)(2), 14-208.41(a). The statutes do not explicitly set an outside limit; however, the period of monitoring could be for no longer than the period during which the person is "required to register," one of the criteria for satellite monitoring for this category of registrants. The Post-Release Supervision Commission does not have the authority to terminate the period of monitoring ordered by the court for this category of registrants. *See* G.S. 14-208.43(e).

Violations of monitoring requirements. Two new crimes were created in conjunction with the satellite monitoring program. Under G.S. 14-208.44(a), a person commits a Class F felony if he or she

- is required to enroll in the satellite-based monitoring program and
- fails to enroll.

It is not entirely clear at what point a person would become guilty under this statute for not enrolling. The new satellite monitoring statutes do not designate a specific event triggering the obligation to enroll, such as notice from the court upon sentencing or from the Department of Correction upon release from prison. They also do not set a deadline for enrolling after that event occurs. Consequently, the statutes do not establish a specific time for enrolling, after which a person is criminally liable for failing to enroll. The statutes establishing the obligation to register as a sex offender, in contrast, set a time for registering and provide an explicit basis for determining whether a person's failure to register is untimely. *Compare* G.S. 14-208.8 (if person will be released from penal institution and become subject to registration obligation, penal institution must notify person of obligation to register; when person does not receive active sentence, court must notify person of obligation to register); G.S. 14-208.7 (specifies amount of time individual has to register in various circumstances—for example, ten days from release from penal institution).

G.S. 14-208.44(b) creates a second offense once a person is enrolled in the program. A person is guilty of a Class E felony if he or she

- intentionally
- tampers with, removes, or vandalizes
- a device issued as part of the satellite-based monitoring program
- to a person duly enrolled in the program.

Effective dates. The satellite monitoring program became effective August 16, 2006, and applies to those persons described in the applicable effective-date provision [section 15(*l*) of the Sex Offender

8. The purpose of the post-sentence requirement of unsupervised probation, in G.S. 14-208.42, is unclear. There is no sentence for the court to activate if it revokes this probation. Likewise, it does not appear that a court could impose additional active time for contempt for a violation of this probation because the person already would have served all of the active time due under his or her sentence. *See generally* State v. Belcher, 173 N.C. App. 620, 619 S.E.2d 567 (2005) (defendant was entitled to credit against sentence for time incarcerated for contempt for violating probation; legislature intended that defendant be credited with all time spent in custody as result of charge). The lifetime probationary requirement could be interpreted as depriving the person of his or her citizenship rights, including the right to vote, until the requirement is terminated. *See* G.S. 13-1 (person convicted of felony who is probationer has rights of citizenship automatically restored when unconditionally discharged by Department of Correction). It seems unlikely, however, that the General Assembly intended to make such a significant change in citizenship rights through a mechanism aimed principally at implementing the satellite monitoring program.

Act]. A person subject to the monitoring program does not have to enroll until January 1, 2007, when the program is scheduled to get underway.

First, the satellite monitoring provisions apply to any offenses committed on or after August 16, 2006. Thus, a person who commits an offense on or after that date would be subject to satellite monitoring if the person meets the program criteria.

Second, the provisions apply to any person released from prison by post-release supervision or parole on or after August 16, 2006. Thus, a person who commits an offense before August 16, 2006, but is released from prison on or after that date, would be subject to the monitoring program if the person meets the program criteria; however, a person released from prison before August 16, 2006, is not subject to the program, whether or not still on post-release supervision or parole on or after that date.

Third, the provisions apply to any person who completes his or her sentence on or after August 16, 2006, and is not on post-release supervision or parole. This third category could be construed as complementing the second category and applying only to individuals who are released from prison on or after August 16, 2006, and who are not on post-release supervision or parole. For example, under structured sentencing, a person who is sentenced to prison for a Class F through I felony does not have to serve any period of post-release supervision or parole after release from prison; under this third part of the effective-date provision, such a person would be subject to the monitoring program if released from prison on or after August 16, 2006. Literally construed, however, this third category could apply more broadly and reach any person who, as of August 16, 2006, had not completed his or his sentence. Thus, it could be construed to apply to anyone still serving a probationary sentence as of that date. Such an interpretation would mean that the program includes people who did not serve active time but are on probation on or after August 16, 2006, but that the program excludes the presumably more dangerous offenders who served active time, were released before August 16, but are subject to post-release supervision or parole on or after that date.

Funding and implementation of satellite monitoring program. The Sex Offender Act directs the Department of Correction to use $1.3 million of the funds appropriated for fiscal year 2006–07 to implement the satellite monitoring program. A little over $1.2 million of that amount is designated as recurring, and five new positions within the DOC are authorized. The DOC may use additional funds if it anticipates that expenditures will exceed that amount. To implement the program, the DOC may contract with a single vendor for the necessary hardware services. The North Carolina Department of Justice also was appropriated $200,000 in nonrecurring funds to upgrade its sex offender registry to include, among other things, geographic information system mapping. *See* Section I (Justice, Correction), Joint Conference Committee Report on the Continuation Expansion and Capital Budgets (June 30, 2006).

Other measures. The Department of Correction also is directed to study and develop a plan for offering mental health treatment for incarcerated sex offenders to reduce the possibility of recidivism. The DOC must consider the fiscal impact, if any, of implementing a plan and must submit a preliminary report by January 15, 2007, and a final report by October 1, 2007, to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.

Other Monitoring of Registrants

Duties of Probation Officers. Effective August 16, 2006, new G.S. 15A-1341(d) provides that when a court places a defendant on probation, the probation officer assigned to the case must conduct a search of the defendant's name against the registration information maintained by the Division of Criminal Statistics of the North Carolina Department of Justice. The officer may conduct the search using the Internet site maintained by the division.[9]

9. Revised G.S. 15A-1343.2(f) also appears to delegate to probation officers the authority to add satellite monitoring as a condition of probation for registrants subject to G.S. 14-208.40(a)(2), the more limited monitoring program. This provision may be of no effect because G.S. 14-208.40(a)(2) requires the court to set any period of satellite monitoring for such registrants.

Duties of Division of Motor Vehicles. The Division of Motor Vehicles (DMV) must notify each person who applies for a driver's license, learner's permit, instruction permit, or special identification card that if the person is a sex offender, he or she must register. This requirement applies regardless of how long the person has resided in the state. *See* G.S. 20-9.3.[10]

The following requirements, set forth in new G.S. 20-9(i), apply to applicants for a drivers license or special identification card who have resided in the state for less than twelve months.

- The DMV may not issue a license or identification card to the person until it has searched the National Sex Offender Registry to determine whether the person is currently registered as a sex offender in another state.
- If the person is registered in another state, the DMV may not issue a license or identification card until the person submits proof of registration issued by the sheriff of the county where the person currently resides.
- If the person does not appear on the National Registry, the DMV may not issue a license or identification card unless the person signs an affidavit acknowledging that if he or she is a sex offender, he or she must register.
- If the DMV is unable to access all of the information in the National Registry at the time of the person's application, the DMV may issue a license or identification card to the person but must require the person to sign an affidavit stating that he or she does not appear in the National Registry and acknowledging that he or she has been notified of the duty of sex offenders to register. The DMV also must continue to check the National Registry to obtain any missing information, and if the person is in the National Registry, the DMV must revoke the person's license or identification card and notify the sheriff of the county where the person resides. The statutes do not specify how long the revocation lasts.
- A person denied a license may obtain judicial review of a denial as provided in G.S. 20-9(i)(4).

These requirements became effective December 1, 2006, and apply to applications submitted on or after that date.

Assisting Violator in Eluding Arrest

Effective for offenses committed on or after December 1, 2006, new G.S. 14-208.11A makes it a Class H felony in certain circumstances to assist a person who has failed to comply with his or her registration obligations. Under the new statute, it is a Class H felony for any person

- who has reason to believe that a sex offender is in violation of Article 27A of G.S. Chapter 14 and
- who has the intent to assist the offender in eluding arrest
- to do any of the following:
    1. withhold information from or fail to notify a law enforcement agency about the offender's noncompliance and, if known, the offender's whereabouts; or
    2. harbor, attempt to harbor, or assist another person in harboring or attempting to harbor the offender; or
    3. conceal, attempt to conceal, or assist another person in concealing or attempting to conceal the offender; or
    4. provide information to a law enforcement agency about the offender that the person knows to be false.

The section does not apply if the offender is in custody.

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10. When sex offenders convicted in other states have moved into North Carolina in the past, issues have arisen as to whether the offenders have been adequately notified of their duties to register in this state. That issue was raised in State v. Bryant, 163 N.C. App. 478, 594 S.E.2d 202 (2004), and the Court of Appeals concluded that the North Carolina sex offender statute failed to provide notice to out-of-state offenders and was unconstitutional as applied to those offenders. Although that decision was reversed by the North Carolina Supreme Court, 359 N.C. 554, 614 S.E.2d 479 (2005), the new statutory requirement provides a mechanism for showing that notice was given.

The unique part of this statute is that in certain circumstances it criminalizes failing to report a crime—that is, failing to notify law enforcement of an offender's noncompliance, as provided in 1., above. Ordinarily, not reporting a crime is not itself a crime. The potential reach of the new offense is limited by the requirement that the person must have the "intent" to assist the offender in eluding arrest. A failure to report may be insufficient alone to satisfy this intent requirement. A person's inaction may be as much the result of indifference as an intent to assist. *See also* 1 WAYNE R. LAFAVE, SUBSTANTIVE CRIMINAL LAW § 5.3(a), at 358 (2d ed. 2003) (for criminal law purposes, "motive" is not the same as "intent," and even a bad motive may not make an act criminal). The intent requirement may not present the same proof difficulties for the other actions criminalized by the new statute—harboring, concealing, and providing false information. An intent to assist the offender can more easily be inferred from the overt act of harboring, concealing, or lying.

For all the variants of the new offense, the person also must have acted (or not have acted) to assist the offender in "eluding arrest." The new statute does not define this requirement. One interpretation is that at the time of the person's action (or inaction), law enforcement must have been trying to arrest or apprehend the offender or, at least, have been trying to locate him or her. *Compare* G.S. 20-141.5 (this offense, captioned as "Speeding to elude arrest," requires that the defendant be fleeing or attempting to elude a law enforcement officer while the officer is performing his or her duties). The General Assembly may have used the term in a broader sense, however, to indicate that the person must have acted with the intent to assist the offender in avoiding detection, whether or not the authorities were then trying to locate the offender.

New and Revised Criminal Offenses in Sex Offender Act

The Sex Offender Act creates several new offenses, in a new Article 10A, "Human Trafficking," in G.S. Chapter 14.[11] It also modifies some existing offenses. The provisions apply to offenses committed on or after December 1, 2006.

Involuntary servitude. G.S. 14-43.2 has made it a crime to hold a person in involuntary servitude as defined in that statute. The Sex Offender Act repeals that statute and enacts a new G.S. 14-43.12, making it a Class F felony to

- knowingly and willfully
- hold another
- in involuntary servitude.

New G.S. 14-43.10(a)(3) defines the term "involuntary servitude." The definition states that it includes labor obtained by deception, coercion, or intimidation. New G.S. 14-43.10(a)(1) and (2), in turn, define "coercion" and "deception." Those definitions include such acts as causing or threatening bodily harm (a form of coercion) and promising benefits that the defendant does not intend to provide (a form of deception).

The statutes do not define what it means to "hold" another in involuntary servitude. This requirement may be significant, as it suggests some ongoing control or power over the person amounting to "servitude." The statute also states that failing to deliver benefits or perform services alone is not sufficient to support a conviction.

The offense is not subject to the sex offender registration program.

Failure of party to labor contract to report involuntary servitude. New G.S. 14-43.12(e) provides that it is a Class 1 misdemeanor if

- any person reports a violation of the involuntary servitude statute,
- which violation arises out of a contract for labor,
- to a party to the contract, and
- the party fails to report the violation immediately to the sheriff of the county in which the violation is alleged to have occurred.

11. The codifier of statutes modified the statute numbers of the provisions in the new Human Trafficking article. The statutes were originally numbered in the legislation as G.S. 14-43.4 through 14-43.7.

Sexual servitude. New G.S. 14-43.13 creates the offense of sexual servitude, a Class F felony if the victim is an adult and a Class C felony if the victim is a minor. A person commits this offense if he or she

- knowingly
- subjects or maintains another
- in sexual servitude.

New G.S. 14-43.10(a)(5) defines "sexual servitude." The definition states that it includes "sexual activity" induced, obtained, or provided by coercion or deception or from a minor. That subsection refers, in turn, to existing G.S. 14-190.13 for the meaning of "sexual activity," which covers a broad array of acts of a sexual nature. Inducing those acts alone does not amount to sexual servitude, however; the other elements of the offense must be met.

New G.S. 14-43.10(a)(1) and (2) define "coercion" and "deception," discussed above in connection with the new offense of involuntary servitude. The statutes do not define what it means to "subject" or "maintain" another in sexual servitude, but as under the new involuntary servitude statute, the terms suggest some ongoing control or power over the person amounting to "servitude." Again, failing to deliver benefits or perform services alone is not sufficient to support a conviction.

The offense of sexual servitude is classified as a sexually violent offense under G.S. 14-208.6(5) and thus is subject to the sex offender registration program. This requirement applies to offenses committed on or after December 1, 2006, when the statute creating the new offense becomes effective.

Human trafficking. New G.S. 14-43.11 creates the offense of human trafficking, a Class F felony if the victim is an adult and a Class C felony if the victim is a minor. A person commits this offense if he or she

- knowingly
- recruits, entices, harbors, transports, provides, or obtains by any means another person
- with the intent
- that the other person be held in involuntary or sexual servitude.

The offense is not subject to the sex offender registration program.

Revised definition of sexual battery. A person is guilty of sexual battery under G.S. 14-27.5A if he or she engages in sexual contact with another person in certain circumstances. Effective for offenses committed on or after December 1, 2006, the Sex Offender Act expands the definition of "sexual contact," in G.S. 14-27.1, to include ejaculating, emitting, or placing semen, urine, or feces on any part of another person.[12]

Revised definition of kidnapping. G.S. 14-39(a) makes it kidnapping to confine, restrain, or remove a person for certain purposes. The Sex Offender Act revises the list of purposes to add holding a person in involuntary servitude in violation of new G.S. 14-43.12 (rather than repealed G.S. 14-43.2); subjecting or maintaining a person for sexual servitude in violation of new G.S. 14-43.13; and trafficking another person with the intent that the person be held in involuntary or sexual servitude in violation of new G.S. 14-43.11. Kidnapping for these or other purposes is not subject to the sex offender registration program.

Innocence Commission

S.L. 2006-184 (H 1323) sets up a new commission, the North Carolina Innocence Inquiry Commission (Innocence Commission), to review claims of innocence by individuals who have been convicted of a felony in the North Carolina courts. New Article 92 in G.S. Chapter 15A (G.S. 15A-1460 through 15A-1475) establishes this new commission and sets forth the process for review of claims of innocence. In essence, the new article authorizes the Innocence Commission to

12. Under legislation enacted in 2005 and applicable to offenses committed on or after December 1, 2005, sexual battery was made a reportable offense, subject to the sex offender registration program. Because it is a reportable offense, sexual battery is subject to the revised registration requirements enacted in 2006, discussed above.

investigate claims of innocence and refer meritorious cases to a special three-judge panel with the authority to dismiss the charges if it finds that the convicted person is innocent.

The act creating the Innocence Commission took effect August 3, 2006. Claims of innocence may be filed beginning November 1, 2006, except that claims of innocence by individuals convicted on a plea of guilty may not be filed until November 1, 2008. The Innocence Commission is to give priority to cases in which the convicted person is currently incarcerated solely for the crime for which he or she has filed a claim of innocence. *See* G.S. 15A-1466(2). Claims may be filed until December 31, 2010.

Structure of Innocence Commission. The Innocence Commission is an independent commission within the Judicial Department and receives administrative support from the Administrative Office of the Courts. It consists of eight members—a superior court judge, who serves as chair; a prosecutor; a victim advocate; a criminal defense attorney; a public member who is neither an attorney nor an employee of the Judicial Department; and two members whose vocations are within the discretion of the Chief Justice of the North Carolina Supreme Court. The Chief Justice appoints five members as specified in the act, and the Chief Judge of the North Carolina Court of Appeals appoints three members. The commission will have a director, who must be a North Carolina attorney, and the director may hire staff with the approval of the commission chair. For more detail regarding the method of appointment of Innocence Commission members, their terms, and the duties of the director, see G.S. 15A-1463 through 15A-1465. The 2006 appropriations act appropriates $160,000 in recurring funds and $50,000 in nonrecurring funds for the Innocence Commission and establishes three staff positions. *See* Section I (Judicial) of Joint Conference Committee Report on the Continuation Expansion and Capital Budgets (June 30, 2006).

Meaning of "claim of innocence." The Innocence Commission is authorized to consider "claims of factual innocence," as defined in G.S. 15A-1460(1). To qualify, a claim must be

- on behalf of a living person
- convicted of a felony in the North Carolina trial courts
- asserting the complete innocence of the felony for which the person was convicted and any reduced level of criminal responsibility relating to the crime
- for which there is some credible, verifiable evidence of innocence
- that has not been presented at trial or considered at a hearing granted through postconviction relief.

The last element of the definition requires that evidence supporting the claim be "new" in a limited sense. Thus, it requires that "some" evidence be submitted in support of the claim that was not previously presented, but all of the evidence need not meet this requirement. The definition does not require the claimant to have been unaware of the evidence or to have been unable to obtain the evidence at the time of trial; it only requires that the evidence not have been presented at a trial or at a hearing granted through postconviction relief. Evidence is not considered to have been previously presented in postconviction proceedings if it was presented in support of a postconviction request for which a hearing was not granted.

Submission of claim and waiver of rights. Any person, court, or agency may submit a claim of innocence to the Innocence Commission on behalf of a convicted person. The commission may informally screen and dismiss a case summarily or undertake a formal inquiry. *See* G.S. 15A-1467(a). Before the commission begins a formal inquiry, the convicted person must execute an agreement waiving his or her procedural safeguards and privileges and agreeing to provide full disclosure to the commission on matters related to his or her claim of innocence. The waiver does not apply to matters unrelated to the claim. *See* G.S. 15A-1467(b). Evidence of criminal acts, professional misconduct, or other wrongdoing disclosed during the formal inquiry or later commission proceedings is to be referred to the appropriate authority. Evidence favorable to the convicted person must be disclosed to the convicted person and his or her counsel, if any. *See* G.S. 15A-1468(d). If at any point during the inquiry the convicted person refuses to comply with the commission's requests or is otherwise deemed to be uncooperative, the commission may discontinue the inquiry. *See* G.S. 15A-1467(g).

Right to counsel. The convicted person has the right to advice of counsel before executing a waiver of rights, and if a formal inquiry is conducted, throughout the formal inquiry. If the convicted person does not have counsel, the commission chair must determine whether the person is indigent and, if appropriate, enter an order for the appointment of counsel. *See* G.S. 15A-1467(b); *see also*

G.S. 15A-1469(e) (indigent person has right to appointed counsel in proceedings before three-judge panel).

Notice to victim. If the Innocence Commission proceeds with a formal inquiry, the director must use due diligence to notify the victim in the case and explain the process. The victim has the right to present his or her views and concerns throughout the commission's investigation. *See* G.S. 15A-1467(c). The victim also has the right to notice of any proceedings before the full Innocence Commission, discussed below, and to attend commission proceedings subject to limitations imposed by the commission. *See* G.S. 15A-1468(b); *see also* G.S. 15A-1469(f) (victim receives notice of hearing before three-judge panel).

Access to evidence. The Innocence Commission has the power to issue process to compel the attendance of witnesses and production of evidence, administer oaths, and petition the Superior Court of Wake County or of the original jurisdiction for enforcement of process or other relief. *See* G.S. 15A-1467(d), (e). In addition, all state discovery and disclosure statutes in effect at the time of the inquiry are enforceable as if the convicted person were being tried for the charge being investigated by the commission. *See* G.S. 15A-1467(f).

Innocence Commission proceedings. G.S. 15A-1468 details the procedures before the Innocence Commission once the formal inquiry is completed. All relevant evidence from the inquiry must be presented to the full commission, which may hold a public hearing or keep the proceedings closed. *See* G.S. 15A-1468(a). After reviewing the evidence, the commission votes on whether to refer the case for review by a three-judge panel. In cases in which the convicted person did not plead guilty, five or more commission members must find sufficient evidence of innocence for the case to be referred for judicial review. In cases in which the convicted person pled guilty, all eight commission members must find sufficient evidence of innocence. *See* G.S. 15A-1468(c). The Innocence Commission must issue an opinion, whether it finds sufficient or insufficient evidence of innocence. If a case is referred to a three-judge panel, all of the records in support of the commission's conclusion, including a transcript of the hearing before the commission, become public; if the case is not referred for judicial review, the files remain confidential except as otherwise provided in the new article. *See* G.S. 15A-1468(e).

Review by three-judge panel. G.S. 15A-1469 details the procedures before the three-judge panel. If the Innocence Commission concludes that there is sufficient evidence of innocence to merit judicial review, the Chief Justice appoints a three-judge panel to conduct an evidentiary hearing. The panel may not include any trial judge who has had substantial previous involvement in the case. Following an order setting a date for a hearing, the State has sixty days to file a response to the commission's opinion. The district attorney of the district of conviction represents the State at the hearing. The panel may compel the testimony of any witness, including the convicted person. The convicted person has the right to be present but may not assert any privilege or prevent any witness from testifying. If the three-judge panel unanimously finds by clear and convincing evidence that the convicted person is innocent of the charges, it enters a dismissal of the charges. If the vote is not unanimous, the panel denies relief.

Finality of proceedings and availability of other relief. The decisions of the Innocence Commission and the three-judge panel are final and are not subject to review. *See* G.S. 15A-1470(a). Submission of a claim to the Innocence Commission does not adversely affect the right to other postconviction relief. *See* G.S. 15A-1470(b); G.S. 15A-1411(d) (claim to Innocence Commission does not constitute motion for appropriate relief and does not affect right to relief under postconviction statutes). Revised G.S. 15A-1417(a) provides that a court may, in ruling on a motion for appropriate relief, refer a claim of factual innocence to the Innocence Commission; but, the revised statute does not require the court to refer such claims to the Innocence Commission if other grounds exist for relief (for example, a violation of the person's constitutional rights).

Criminal Offenses

Restrictions on sale of pseudoephedrine. In 2005 the General Assembly enacted several restrictions on the sale of pseudoephedrine, an ingredient used in lawful cold medication and in the

illegal manufacture of methamphetamine. *See* G.S. Chapter 90, Article 5D (Control of Methamphetamine Precursors), G.S. 90-113.50 through 90-113.60. Effective for offenses committed on or after August 3, 2006, S.L. 2006-186 (S 686) revises these statutes to prohibit the retail sale of pseudoephedrine products, whether in the form of a tablet, caplet, or gel cap, except in blister packages; this restriction previously applied only to tablets or caplets containing more than 30 milligrams of pseudoephedrine. The revised statutes also prohibit the sale of more than two packages containing a combined total of more than 3.6 grams of any pseudoephedrine product per day; the previous limit was two products containing more than 6 grams. New G.S. 90-113.61 provides that certain pseudoephedrine products are not subject to the article's restrictions but are subject to the requirements of the federal Combat Methamphetamine Act of 2005, a part of the USA Patriot Improvement and Reauthorization Act of 2005 (Pub. L. No. 109-177).

Disorderly conduct at funeral. Effective for offenses committed on or after December 1, 2006, S.L. 2006-169 (S 1833) creates a new disorderly conduct offense involving funerals. A person violates new G.S. 14-288.4(a)(8) if he or she

- intentionally causes a public disturbance
- by engaging in conduct with the intent to impede, disrupt, disturb, or interfere
- with the orderly administration of any funeral, memorial service, or family processional to the funeral or memorial service or with the normal activities and functions in facilities where a funeral or memorial service is taking place.

The new provision states that it includes military funerals, services, and family processionals. It also specifies that certain conduct during, or within one hour before or after, a funeral or memorial service constitutes disorderly conduct—for example, displaying within 300 feet of the ceremonial site any visual image that conveys fighting words or actual or imminent threats of harm toward any person or property associated with the service.

A first offense is a Class 2 misdemeanor, a second offense is a Class 1 misdemeanor, and a third or subsequent offense is a Class I felony.

Assault on handicapped person. G.S. 14-32.1 is a specialized assault statute imposing enhanced punishments for assault on a handicapped person. Effective for offenses committed on or after December 1, 2006, S.L. 2006-179 (S 488) increases the offense of simple assault or battery on a handicapped person from a Class 1 to a Class A1 misdemeanor. This change brings the punishment for this offense in line with such offenses as assault on a child and assault on a female, both Class A1 misdemeanors.

Harassment of participant in neighborhood watch program. S.L. 2006-181 (H 1120) authorizes cities and counties to establish neighborhood crime watch programs. As part of this initiative, the act adds G.S. 14-226.2 creating a new offense of harassing a participant in a neighborhood crime watch program, effective for offenses committed on or after December 1, 2006. A violation is a Class 1 misdemeanor and must include a minimum fine of $300. A person commits this offense if he or she

- willfully threatens or intimidates
- an identifiable member or resident in the same household as the member of a neighborhood crime watch program
- for the purpose of intimidating or retaliating against that person for the person's participation in a neighborhood crime watch program.

The statute states that a violation includes threats or intimidation that occur while a member is traveling to or from a neighborhood crime watch meeting, actively participating in a neighborhood crime watch program activity, or actively participating in an ongoing criminal investigation.

Dog fighting. G.S. 14-362.2 has prohibited promoting, conducting, and related conduct involving dog fighting, making a violation a Class H felony. Effective for offenses committed on or after December 1, 2006, S.L. 2006-113 (H 2098), as amended by Section 37 of S.L. 2006-259 (S 1523), expands the statute to make it a Class H felony to engage in such conduct in connection with the fighting of a dog with an animal other than a dog. The revised statute states that it does not prohibit the use of dogs in the lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission—in other words, using dogs to hunt.

The act also makes changes to civil remedies for animal cruelty, effective for actions commenced on or after December 1, 2006. G.S. 19A-70 has provided that in cases in which a person has been arrested for illegally fighting dogs, a shelter that has taken custody of the dogs may petition the court to require the defendant to deposit sufficient funds for the care of the dogs. S.L. 2006-113 revises that statute to authorize a petition for animal care expenses upon an arrest for a violation of any provision of G.S. Chapter 14, Article 47 (the animal cruelty statutes) or G.S. 67-4.3 (attack by dangerous dog) or upon the commencement of a civil action for an injunction under G.S. 19A-3. Under revised G.S. 19A-70, a person who is acquitted of all criminal charges, or is found in the action for an injunction not to have committed animal cruelty, is entitled to a refund of the deposit less any funds already expended for animal care (not a refund of the entire deposit as under prior law).

Phase-out of video gaming machines. In 2000 the General Assembly banned the introduction of new video gaming machines into North Carolina and regulated the use of machines already in the state.[13] Legislation enacted this session [S .L. 2006-6 (S 912), as amended by Sections 6 and 33 of S.L. 2006-259 (S 1523)] phases out video gaming machines, banning them by mid-2007. The only exceptions are for federally recognized Indian tribes, which may operate video gaming machines on Indian land, and for assemblers, repairers, manufacturers, sellers, lessors, or transporters of video gaming machines, which may perform those functions for machines to be used outside the state or by a federally recognized Indian tribe on Indian land. Unless otherwise noted, the changes appear in current G.S. 14-306.1, which is repealed effective July 1, 2007, and new G.S. 14-306.1A, which takes effect July 1, 2007. The old and new statutes contain the same definition of "video gaming machine"—essentially, a video machine, of one of the types listed (video poker, video keno, and the like), requiring payment to activate, and awarding any prizes, merchandise, cash, replays, or coupons that may be exchanged for such awards.

The act establishes various cutoff dates for the phase-out of video gaming machines. From July 6, 2006, the date the act became law, through September 30, 2006, it was permissible for a single location to operate up to three video gaming machines, as under prior law. Effective October 1, 2006, a single location may operate up to two video gaming machines. Effective March 1, 2007, a single location may operate only one video gaming machine. During these time periods, the machines may not be moved from their registered location to a new location within North Carolina. Beginning July 1, 2007, the possession and operation of video gaming machines are prohibited entirely in North Carolina unless one of the exceptions applies.

The penalty for a first violation involving a video gaming machine remains a Class 1 misdemeanor, but the penalty for a second violation is raised from a Class I to H felony and the penalty for a third or subsequent offense is raised from a Class H to G felony. These punishment changes also apply to violations involving slot machines and other gambling devices under G.S. 14-304 through 14-309, effective for offenses committed on or after July 1, 2007. A violation involving five or more video gaming machines remains a Class G felony. *See* G.S. 14-309.

Litigation is currently pending over the legality of the ban. The act provides that it is void if a court issues a final order prohibiting video gaming machines by a federally recognized Indian tribe on the ground that machines are prohibited elsewhere.

Sexual offenses. The Sex Offender Act (S .L. 2006-247) created and modified a number of offenses involving sexual and other conduct. The new offenses are involuntary servitude, sexual servitude, and human trafficking. The modified offenses involve sexual battery and kidnapping. The Sex Offender Act also created and modified a number of offenses involving individuals required to register as sex offenders. Those offenses are discussed under Sex Offender Act, above.

Breaking and entering place of worship. Effective for offenses committed on or after December 1, 2006, G.S. 14-72(b) is amended to provide that a larceny committed pursuant to a violation of G.S. 14-54.1 (breaking or entering building that is place of religious worship) is a felony regardless of the value of the property in question. *See* Section 4 of S.L. 2006-259. A "building that is a place of religious worship" is defined in G.S. 14-54.1(b).

13. The earlier act, S.L. 2000-151 (S 1542), is summarized in Administration of Justice Bulletin 2000/03 at 7–10 (School of Government, Oct. 2000), posted at http://www.sog.unc.edu/programs/crimlaw/aoj200003rubin legis.pdf.

Carrying of concealed weapon by company police. Effective October 1, 2006, G.S. 14-269(b) is amended to exempt from the prohibition on carrying a concealed weapon officers of a company police agency while discharging their official duties. Revised G.S. 74E-6(c) permits company police officers to carry concealed weapons if duly authorized by their superior officer. *See* Section 5 of S.L. 2006-259.

Possession of antique firearm by felon. Effective August 23, 2006, G.S. 14-409.11 is amended to provide a new definition of "antique firearm," and G.S. 14-415.1 is amended to provide that the prohibition on the possession of a firearm by a felon does not apply to antique firearms as defined in revised G.S. 14-409.11. *See* Section 7 of S.L. 2006-259.

Raffles by government entities. Effective August 27, 2006, Section 3 of S.L. 2006-264 (S 602) amends G.S. 14-309.15(a) to allow a government entity to conduct a raffle. Such raffles were permitted by a prior session law, Chapter 219 of the 1993 Session Laws, which was repealed with the above amendment.

Boating safety laws. Effective for offenses committed on or after January 1, 2007, S.L. 2006-185 (S 948) makes numerous changes to Chapter 75A, Article 1, the Boating Safety Act. The most significant changes involving criminal law are described here.

Revised G.S. 75A-10(b1) applies the prohibition on impaired boating to the operation of all vessels on state waters, not just motorboats or motor vessels. An offense is a Class 2 misdemeanor for all vessels. (G.S. 75A-10(b) has prohibited the manipulation of water skis, surfboards, nonmotorized vessels, or similar devices while under the influence of an impairing substance, but it did not make it a per se offense to manipulate these devices while having an alcohol concentration of .08 or more.)

Revised G.S. 75A-11 requires the operator of a vessel involved in a collision or accident that results in a person's death or disappearance to notify the nearest law enforcement agency as soon as possible. The operator also must notify the Wildlife Resources Commission within forty-eight hours of the occurrence. If the collision or accident results in property damage of $2,000 or more, or the complete loss of a vessel, the operator must notify the Wildlife Resources Commission within ten days of the occurrence. A violation is a Class 3 misdemeanor, punishable by a fine only of up to $250 under G.S. 75A-18.

Revised G.S. 75A-17 makes the following changes regarding law enforcement vessels:

- Law enforcement vessels are authorized to use a flashing blue light while engaged in law enforcement or public safety activities. A person other than a law enforcement officer who activates, installs, or operates a flashing blue light on a vessel other than a law enforcement vessel is guilty of a Class 1 misdemeanor.
- No vessel other than a law enforcement vessel or other emergency response vessel may use a siren. A violation is a Class 3 misdemeanor, punishable by a fine only of up to $250 under G.S. 75A-18.
- Vessels operated on state waters must stop when directed by a law enforcement officer and must remain at idle speed or must maneuver in a way that permits the officer to come alongside the vessel. A violation is a Class 2 misdemeanor.
- Vessels operated on the waters of this state must slow to a no-wake speed when passing a law enforcement vessel that is displaying a flashing blue light and must maintain a certain distance depending on the width of the waterway. A violation is a Class 3 misdemeanor.

Consumption of alcohol by underage person. G.S. 18B-302(b) has prohibited the purchase or possession of alcohol by a person under the age of twenty-one. Effective for offenses committed on or after December 1, 2006, Section 26 of S.L. 2006-253 (H 1048) amends that subsection to prohibit consumption of alcohol by a person under the age of twenty-one. A violation is a Class 3 misdemeanor under G.S. 18B-302(i) if the person is nineteen or twenty years old, and a Class 1 misdemeanor under G.S. 18B-102(b) if the person is less than nineteen years old. New G.S. 18B-302(j) allows a law enforcement officer to require a person to submit to an approved alcohol screening device if the officer has probable cause to believe the person is under twenty-one and has consumed alcohol; that subsection also provides that the results or a refusal to submit to the test are admissible in evidence. The revised statute exempts alcohol consumption by an underage person for medical, sacramental, or culinary school activities, as described in G.S. 18B-103.

Keg sales. Effective for offenses committed on or after December 1, 2006, Sections 2 and 3 of S.L. 2006-253 regulate keg sales. Under revised G.S. 18B-101, a "keg" is defined as a portable container designed to hold at least 7.75 gallons of beer or other malt beverage. Under new G.S. 18B-403.1, a person who purchases a keg for transportation and off-premises consumption must obtain a purchase-transportation permit from the seller, and the seller must retain the permit record for at least ninety days. A purchaser's failure to obtain a permit is a violation of the unlawful purchase statute (G.S. 18B-303), punishable as a Class 1 misdemeanor under G.S. 18B-102(b). A seller's first violation is punishable by only a warning under G.S. 18B-403.1(e); a subsequent violation is a Class 1 misdemeanor under G.S. 18B-102(b).

Law Enforcement

Enforcement of immigration laws. One of the session's two technical corrections acts (Section 24 of S.L. 2006-259) added a new statute authorizing state and local law enforcement officers to exercise the powers of federal immigration officers in certain circumstances. New G.S. 128-1.1 provides that any state or local law enforcement agency may authorize its law enforcement officers to perform the functions of an officer under 8 U.S.C. 1357(g) if the agency has a memorandum of understanding for that purpose with a federal agency. The federal statute establishes the parameters for these agreements, permitting the United States Attorney General to enter into agreements with state and local law enforcement agencies that authorize their officers to perform the functions of immigration officers at the expense of the state or local agency. The act states that the new state statute became effective January 1, 2006, and any actions taken between that date and the date that the act became law (August 23, 2006) are retroactively validated.

Handgun permits. Effective June 30, 2006, S.L. 2006-39 (H 126) revises G.S. 14-404(a)(1) to clarify that the sheriff must conduct a criminal history background check before issuing a handgun permit and must check the National Instant Criminal Background Check System (NICS). The act likewise revises G.S. 14-415.13(b) to require the sheriff to check the NICS before issuing a concealed handgun permit.

Effective August 27, 2006, Section 5 of 2006-264 amends G.S. 14-407.1 to provide that sheriffs, rather than clerks of superior court, issue purchase permits for blank cartridge pistols.

Sentencing

Parole review of inmates sentenced before structured sentencing. In 2005 the General Assembly directed the Post-Release Supervision and Parole Commission to analyze the amount of time served by each parole-eligible inmate compared to the time served by offenders for comparable crimes under structured sentencing. The commission was directed to report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by October 1, 2005. *See* Section 17.28 of S.L. 2005-276 (S 622), summarized in *Administration of Justice Bulletin* 2005/08, at 18-19 (School of Government, Dec. 2005), posted at http://www.sog.unc.edu/pubs/electronicversions/pdfs/aojb0508.pdf. In 2006 the General Assembly revised that provision to direct the commission to conduct such an analysis for each inmate who is eligible for parole on or before July 1, 2007. It also directed the commission to report by April 1, 2007, to the above legislative committee and to the Chairs of the Senate and House Appropriations Committees and Appropriations Subcommittees on Justice and Public Safety. *See* Section 16.5 of S.L. 2006-66 (S 1741).

Notification of parole. Effective August 27, 2006, Section 34 of S.L. 2006-264 amends G.S. 15A-1371(b) to require that when the Post-Release Supervision and Parole Commission is considering the parole of a person sentenced to life in prison, it must notify the sheriff of the county where the crime occurred at least thirty days beforehand. (This provision has no effect on inmates sentenced to life in prison for offenses committed after October 1, 1994, when the General Assembly eliminated the possibility of parole.)

Sentencing for impaired driving. S.L. 2006-253 revises the sentencing procedures for impaired driving offenses, in G.S. 20-179, in response to the U.S. Supreme Court's decision in *Blakely v. Washington,* 542 U.S. 296 (2004), which invalidated sentencing schemes in which a person could be sentenced to an enhanced sentence based on aggravating factors found by a judge rather than a jury. The new sentencing procedures are discussed in Chapter 19, "Motor Vehicles."

Collateral Consequences and Proceedings

Compensation for crime victims. Effective for claims filed on or after July 1, 2006, S.L. 2006-183 (H 2060) revises Chapter 15B, which sets forth a procedure for victims of crime to apply for state funds to compensate them for their injuries and losses. The act makes two changes regarding funeral expenses: it increases from $3,500 to $5,000 the allowable amount for expenses related to funeral, cremation, and burial; and it includes as a collateral source of benefits, which serves to reduce any award of compensation from state funds, a contract for insurance for expenses related to a funeral, cremation, and burial. *See* G.S. 15B-2. The act also clarifies the circumstances in which an award may be denied for a claimant's failure to cooperate in the pursuit of a criminal case. Revised G.S. 15B-11(c) provides that a claim may be denied or reduced, or an award may be reconsidered, if a claimant or victim fails to cooperate, without good cause, with law enforcement agencies or in the prosecution of the case regarding the criminal acts that are the basis of the claim or award.

Criminal record checks. The General Assembly authorized the North Carolina Department of Justice to provide criminal history checks to the boards and departments indicated below. The record check may be conducted only with the person's consent; however, a refusal to consent gives the board or agency grounds to take adverse action against the person, such as terminating employment or denying licensure.

Effective August 1, 2006, the North Carolina Psychology Board may obtain a criminal history check of an applicant for licensure or reinstatement of a license, or of a licensed psychologist or psychological associate under investigation by the board for violating Chapter 90, Article 18A (Psychology Practice Act). *See* S.L. 2006-175 (H 1327).

Effective October 1, 2006, the Judicial Department may obtain a criminal history check of any current or prospective employee, volunteer, or contractor of the Judicial Department. *See* Section 3 of S.L. 2006-187 (H 1848).

Forfeiture of property rights by slayers. Effective for property passing from decedents dying on or after July 13, 2006, S.L. 2006-107 (S 1378) revises Article 3 of G.S. Chapter 31A, which bars a "slayer" from succeeding to various property rights if the slayer was found in a criminal or civil case to have willfully and unlawfully killed the decedent. The act revises the article by redefining the circumstances in which a civil case may bar a slayer's inheritance rights; making a juvenile subject to the forfeiture provisions if he or she is found delinquent for an act that, if committed by an adult, would make the adult guilty of a willful and unlawful killing of the decedent; and excluding from the term "slayer," and thus from the forfeiture of property rights, a person found not guilty by reason of insanity. The revised article also states that it preempts the common law rule preventing a person whose culpable negligence causes the death of a decedent from succeeding to the decedent's property.

Studies

The studies bill, S.L. 2006-248 (H 1723), authorizes the Legislative Research Commission (LRC) to study several topics related to criminal law and the courts.

The LRC may study the state's discovery obligations in criminal cases in superior court, including the following topics:

- identities of informants who furnished information leading to a search warrant against the defendant,
- personal information of the victim,

- the "work product" provision in G.S. 15A-904,
- open discovery in noncapital postconviction cases, and
- any other related issues.

The LRC also may study the following topics: banning of cell phone use while driving; credit report identity theft; a good faith exception to the exclusionary rule;[14] habitual felon statutes; minority incarceration; driving by a person less than twenty-one years old after consuming alcohol or drugs; racial bias and the death penalty; trafficking of persons; victim restitution; the impact of undocumented immigrants on the state, including the impact on the criminal justice system and corrections; and modifying the definition of "clear proceeds" in a manner that allows the proceeds from red light camera systems to be used for the operation of such systems. An additional act [S.L. 2006-32 (H 2120), as amended by Section 8 of S.L. 2006-187 and Section 44(a) of S.L. 2006-259] charges the LRC with studying drug treatment courts, including issues relating to funding mechanisms, target populations, interagency collaboration, and any other appropriate matters.

The North Carolina Courts Commission will study the current state of the trial courts, including workloads, case backlogs, and other issues relevant to the efficient administration of justice. The commission also will examine whether the current organization of the state into judicial divisions and superior court, district court, and prosecutorial districts needs to be revised.

The North Carolina Sentencing and Policy Advisory Commission may study issues related to the conviction and sentencing of youthful offenders aged sixteen to twenty-one years of age.

A new Joint Legislative Study Committee on Sex Offender Registration and Internet Crimes Against Children will study several issues related to sex offender registration and Internet crimes, including the offenses subject to registration, length of registration, verification of registration, and use of registration fees.

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14. The United States Supreme Court has created an exception to the exclusionary rule for certain good faith actions by law enforcement officers. The North Carolina Supreme Court has declined to recognize this exception, holding that the state constitution requires exclusion of evidence obtained in violation of a person's constitutional rights regardless of whether the officers were acting in good faith. *See* State v. Carter, 322 N.C. 709, 370 S.E.2d 553 (1988).

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Economic and Community Development

The General Assembly was very active in the economic development arena in 2006. As a result of public outcry following the United States Supreme Court decision in *Kelo v. City of New London,*[1] the General Assembly conducted a study and enacted legislation governing the use of eminent domain for economic development. In response to media attention questioning the ethics of certain decisions by regional economic development commissions, the General Assembly enacted standards governing the activities and procedures of these commissions.

The legislature substantially revised the methods for designating which counties and zones are most in need of economic development but signaled its dissatisfaction with the result by simultaneously calling for further study of the issue. The General Assembly enacted a major new system of tax credits for new and expanding businesses—but retained the old system as well—with a complicated set of rules for determining which system applies to which taxpayers.

The 2006 session continued the trend of accelerating public expenditures on credits and grants for private industry. Over $30 million was appropriated for economic development grants in the 2006–07 fiscal year. The General Assembly expanded the Job Development Investment Grant (JDIG) program by extending its sunset, doubling the amount of authorized grants for 2006, and reducing the consequences for businesses that fail to comply with JDIG requirements. It lowered the sales tax rate on electricity sold to manufacturers. New or bigger incentives were enacted for a host of specific projects and industries: (1) private rehabilitation of two specific historic facilities; (2) expenditures by movie, television, and radio production companies; (3) financial services and securities companies that invest at least $50 million; (4) motorsports racing teams and facilities; (5) a $250-million facility to be constructed for use by an Internet service provider or Web search portal; and (6) Johnson and Wales

1. 545 U.S. 469 (2005).

University in Charlotte. Retroactive tax benefits were enacted for an economic development district in Johnston County and a thread mill in Gaston County.

The amount of public funds spent to lure industry continues to grow. The Department of Commerce reported that it had committed $55 million in incentives during the first six months of 2006, as compared to $12 million in 2005. North Carolina was named state of the year by *Southern Business & Development* magazine, based on announcements of projects involving an investment of $30 million or more or the creation of two hundred or more jobs.

The 2006 session saw little activity relating to community development. Most notably, the Housing Trust Fund received the highest level of funding in its history: a one-time appropriation of $15.9 million, in addition to $3 million in recurring funds.

Eminent Domain for Economic Development

In response to the 2005 United States Supreme Court case *Kelo v. City of New London*, the General Assembly enacted S.L. 2006-224 (H 1965) to restrict the use of eminent domain for economic development purposes. The act invalidates any provision in a local act that authorizes the exercise of the power of eminent domain for any purposes other than those listed in G.S. Chapter 40A. It also amends the urban redevelopment statutes to limit condemnation within redevelopment areas to blighted parcels, which it defines as those that are predominantly developed or residential (not vacant) and substantially impair sound community growth; are conducive to health problems, juvenile delinquency, and crime; and are detrimental to the public health, safety, morals, or welfare. Before this change, it had been possible to condemn land located within a qualifying redevelopment area even if some of the parcels were vacant or not blighted. Finally, S.L. 2006-224 amends the Revenue Bond Act to clarify that eminent domain may not be used for an economic development project funded by revenue bonds. For a more detailed analysis of S.L. 2006-224, *see* Chapter 15, "Local Government and Local Finance."

One North Carolina Fund/Economic Development Reserve

The 2006 Appropriations Act, S.L. 2006-66 (S 1741), appropriates $15 million for the One North Carolina Fund and an additional $5 million for the Small Business Fund within the One North Carolina Fund. The $5 million is to provide incentive funds for small businesses to apply for federal innovation grants.

The appropriations act also creates an economic development reserve in the Department of Commerce to award grants for site acquisition and economic development projects and appropriates $10 million to the reserve.

Transportation Projects for Economic Development

Section 21.6 of the appropriations act, S.L. 2006-66, allocates $28 million of Department of Transportation funds for economic development projects; each of the fourteen highway divisions is to receive $2 million. The projects are to be recommended by the board of transportation member representing the division in which the project is to be constructed in consultation with the division engineer and must be approved by the full board of transportation.

Biotechnology

In 2005 the University of North Carolina and the Community College System formed a consortium with the state's biotechnology industry to develop a comprehensive educational program

designed to address the state's shortage of skilled workers for the biotechnology industry. The initiative is intended to revitalize the economy by attracting biotechnology companies to the state with the creation of a highly skilled workforce. Three components of the plan currently under development are the North Carolina Research Campus in Kannapolis, the Biomanufacturing Training and Education Center (BTEC) at North Carolina State University, and the Biomanufacturing Research Institute and Technology Enterprise (BRITE) Center at North Carolina Central University. The 2006 Appropriations Act provides $6 million to the University of North Carolina and $2.2 million to the Community College System for operations at the Research Campus in Kannapolis. The 350-acre campus will feature several university-run research facilities and laboratories as well as private industries. The appropriations act also allocates operating funds to the UNC system for BTEC, which is designed to provide advanced, hands-on training and education using facilities and equipment similar to those in place at leading biomanufacturing companies, and for the BRITE Center, which will provide laboratories for research relating to biotechnology and biomanufacturing.

Development Tiers, Urban Progress Zones, and Agrarian Growth Zones

Article 3A of G.S. Chapter 105 (the Bill Lee Act) provides a system of tax credits designed to foster the relocation and expansion of North Carolina businesses. The act has divided North Carolina counties into five enterprise tiers so that more favorable tax treatment is available to businesses investing in the more disadvantaged counties. The act also designates certain areas as development zones, which receive more generous incentives as well. Various state job creation, machinery and equipment investment, historic preservation, and worker training programs refer to the Bill Lee Act tier and zone system and the related wage standards.

S.L. 2006-252 (H 2170) enacts a new Article 3J (Tax Credits for Growing Business) in G.S. Chapter 105 and a new G.S. 143B-437.08 through G.S. 143B-437.10, creating a package of state economic development tax incentives that will replace the Bill Lee Act for most affected taxpayers. It substitutes three development tiers for the old five-tier system and replaces development zones with urban progress zones and agrarian growth zones. S.L. 2006-252 is effective January 1, 2007, and sunsets in 2011.

Development Tiers

S.L. 2006-252 enacts new G.S. 143B-437.08 to require the Department of Commerce, by November 30 of each year, to assign a development tier designation of one, two, or three to each of the one hundred counties in the state based on four factors: unemployment, median household income, percentage population growth, and per capita adjusted assessed property value. The forty[2] counties with the highest ranking are tier one, the next forty highest counties are tier two, and the remaining twenty counties are tier three. Several other conditions can trump the ranking based on the four factors, however: a county with a population of less than 12,000 must be included with the forty highest ranking counties, a county that has a population of less than 50,000 and more than 19 percent of its population below the federal poverty level must be included with the forty highest ranking counties, and a county with a population of less than 50,000 must be included with the eighty highest ranking counties. In addition, a county designated as a tier one county must remain in the forty highest ranked counties for at least two years. Because the number of counties in each tier is fixed, counties with these trump cards will push other counties into higher tiers. In comparison to the new system in S.L. 2006-252, the Bill Lee Act allows for five tiers, does not fix the number of counties in each tier, uses per capita income rather than median family income, does not consider assessed property value, and requires county designation by December 31.

2. For 2007, the forty-one highest counties are designated as tier one; thereafter, the number drops to forty.

The act makes it easier for a multijurisdictional industrial park to qualify for tier one status by (1) reducing from four to three the minimum number of counties that must be involved, (2) reducing from two to one the minimum number of these counties that must have a tier one designation, and (3) reducing from 300 to 250 acres the minimum size of the industrial park. It also makes it easier for a two-county industrial park to qualify for the lowest development tier designation of the two counties it includes.

S.L. 2006-252 directs the Department of Commerce, in consultation with the North Carolina Rural Center and lower-tiered counties, to develop additional strategies to enhance economic growth in enterprise tier one areas and to report to the Joint Legislative Economic Development Oversight Committee by January 1, 2007.

Urban Progress Zones and Agrarian Growth Zones

S.L. 2006-252 enacts new G.S. 143B-437.09 and G.S. 143B-437.10 to create "urban progress zones" and "agrarian growth zones," respectively. An *urban progress zone* is an area (1) that is wholly within the corporate limits of a municipality with a population of at least 10,000, (2) that has no more than 35 percent of its area zoned nonresidential, and (3) in which every census tract and block group has greater than a 20 percent poverty level and meets minimum requirements for the percentage of its area that is zoned nonresidential and the percentage of its neighboring tracts and groups that is below the poverty level. In general, the combined area of all urban progress zones in a municipality may not exceed 15 percent of the total area of the municipality. Urban progress zones will replace the Bill Lee Act's development zones. An *agrarian growth zone* is an area that meets the following conditions: (1) it is composed of one or more contiguous census tracts or block groups located within a single county that does not have any municipality with a population in excess of 10,000; (2) 20 percent of the population of each census tract and block group in the zone is below the poverty level; and (3) the area of the zone, less its smallest census tract, does not exceed 5 percent of the total area of the county. A county can have no more than one agrarian growth zone. An agrarian growth zone is designated by the secretary of commerce upon county application.

For activities in urban progress and agrarian growth zones, the wage standard is lower than for activities in development tiers two and three outside of the zones: the zone wage standard is 90 percent of the lesser of the average county wage and the average state wage. Under the Bill Lee Act, there is no wage standard for activities occurring in development zones.

The credit in G.S. 105-129.87 for creating jobs is increased by $1,000 if a job is located in an urban progress or an agrarian growth zone and by another $1,000 if the zone job is filled by a long-term unemployed worker. In addition, in these zones there is no minimum number of jobs that must be created before the job credit is allowed. For purposes of calculating the credit in G.S. 105-129.88 for investing in business property, investments in an urban progress or an agrarian growth zone are treated as investments in tier one: no threshold applies and the credit rate is 7 percent.

For businesses that remain eligible for the Bill Lee Act, Section 24.16 of the 2006 Appropriations Act also authorizes the creation of agrarian growth zones for the Bill Lee Act credits, effective January 1, 2006. For agrarian growth zones under the Bill Lee Act, no wage standard applies, there is no application fee, and the worker training tax credit, the jobs tax credit, and the investment tax credit are more generous.

Conforming Changes

Since the creation of the Bill Lee Act in 1996, many other state programs have adopted the enterprise tier designation as an indicator of the economic viability or the available resources of a particular county. In addition, some programs refer to other aspects of the Bill Lee Act, such as development zones and the wage standard. Because S.L. 2006-252 largely replaces these provisions of the Bill Lee Act, it makes conforming changes to a number of affected programs so that a single, consistent system for tiers, zones, and wage standards will apply across the board. Because the new tier and zone structure is not equivalent to the Bill Lee Act structure, the conforming changes will benefit

some areas while reducing benefits to others. The following economic development provisions are affected by the conforming changes:

- Research and development expenses. Conforming changes relating to the tier revision will make the research and development tax credit less generous for some taxpayers. Conforming changes relating to the wage standard will make more taxpayers eligible for the credit.
- Sales tax refunds. Conforming changes relating to the tier revision should have only a minor impact on the sales and use tax refund for low enterprise tier machinery and equipment but will result in some taxpayers becoming ineligible for the sales and use tax refund for building materials for major eligible industrial facilities.
- Industrial Development Fund. Conforming changes relating to the tier revision should not affect which counties are eligible for grants or are exempt from the matching requirement. Conforming changes relating to which industries are eligible for grants substitute company headquarters for central administrative offices and substitute information and technology services for data processing.
- Community Development Block Grant Funds. Conforming changes relating to the tier revision should not affect which counties have priority for grants or are exempt from the matching requirement. Substituting urban progress zones for development zones in the provisions relating to priority will result in some projects not receiving priority for grants.
- Jobs Development Investment Grant Program. Conforming changes relating to the tier revision are unlikely to have any practical effect on eligibility for grants but will affect the dollar amount of grants in certain counties. Under current law, grants for projects in enterprise tiers four and five are reduced by 25 percent and the amount of the reduction goes to the Industrial Development Fund Utility Account. The conforming changes will provide that development tier three is subject to the 25 percent reduction and development tier two is subject to a 15 percent reduction. As a result, some counties in former enterprise tier three will be newly subject to a reduction and some counties in former enterprise tier four will be subject to a smaller reduction.
- Tax increment financing. Conforming changes relating to the tier revision increase the number of counties in which there is an exception to the cap on retail square footage for tourism projects.

Bill Lee Act/Growing Business Tax Credits Restructuring

S.L. 2006-252 enacts a new Article (Tax Credits for Growing Business) in G.S. Chapter 105, creating a package of state economic development tax incentives that will replace the Bill Lee Act for most affected taxpayers. The Growing Business Article is effective January 1, 2007, and expires January 1, 2011. The act changes the sunset date of the Bill Lee Act for most businesses from January 1, 2008, to January 1, 2007, but retains an overlap period in 2007 during which businesses may choose to take credits under the Bill Lee Act rather than the Growing Business Article by signing a letter of commitment by December 31, 2006. In addition, for certain major industries, the Bill Lee Act will remain in effect until 2010. A taxpayer may not take credits under both the Bill Lee Act and the Growing Business Article for the same activity or for different activities at the same establishment.

In addition to the changes discussed in the previous section relating to development tiers, urban enterprise zones, and agrarian growth zones, S.L. 2006-252 modifies the types of businesses eligible to receive tax credits, makes certain credits more generous, and provides for studies of the equity implications and impact of tax incentive programs. Under the Growing Business Article, the provisions relating to health insurance, environmental impact, safety and health programs, overdue tax debts, expiration, and forfeiture remain essentially the same as under the Bill Lee Act. The Growing Business Article contains three tax credits: a credit for creating jobs, a credit for investing in business property, and a credit for investing in real property. It does not recreate the following four Bill Lee Act credits: the technology commercialization credit (which has never been claimed), the credit for worker

training, the credit for investing in central office or aircraft facility property, and the credit for donations to a development zone agency.

Eligible Businesses

New G.S. 105-129.83 sets the primary activity of a particular establishment as the sole business-type eligibility criterion for the credit (except in the case of corporate headquarters, which must meet a job creation standard as well). Under the Bill Lee Act, eligibility depends on several factors, including the primary business of the taxpayer as a whole, the primary activity of the particular establishment, the location of the establishment, and the number of new jobs created. The Growing Business Article makes motorsports facilities and motorsports racing teams eligible for credits. (They are not currently eligible under the Bill Lee Act.) Also, the new article makes a larger group of manufacturers, warehousers, wholesalers, electronic mail order houses, and customer service centers eligible for credits than are eligible under the Bill Lee Act. The Growing Business Article replaces the credits for data processing and computer services with credits for information technology and services, which include Internet service providers and Web search portals. It also replaces the credits for central administrative office facilities with credits for facilities that are corporate headquarters and that created at least seventy-five jobs in a twenty-four-month period within the past three years. A corporate headquarters is a corporate, subsidiary, or regional managing office that is responsible for strategic or organizational planning and decision making for the business on an international, national, or multistate basis.

Wage Standard

New G.S. 105-129.83 provides that a taxpayer is eligible for a credit under the Growing Business Article only if the jobs provided by the taxpayer meet a wage standard. As with the Bill Lee Act, no wage standard applies in tier one areas. For development tiers two and three, the jobs provided by the taxpayer must pay at least the lower of 90 percent of the average county wage or 110 percent of the average state wage to qualify for a tax incentive. If the tier two or three jobs are in an urban progress or an agrarian growth zone, however, the wage standard is 90 percent of the lesser of the average county wage or the average state wage. Under the Bill Lee Act, the wage standard for enterprise tier areas three through five is 110 percent of the lowest of (1) the average county wage, (2) the average state wage, or (3) the average county wage adjusted to reflect discrepancies in the relative county income and county wage levels.

Unlike under the Bill Lee Act, part-time jobs are not included in the calculation of the wage standard under the Growing Business Article.

Tax Election, Ceiling, and Carryforward

The Growing Business Article permits a credit to be taken against the franchise tax, income tax, or gross premiums tax, or a combination of all three taxes. Under the Bill Lee Act, the taxpayer must elect one tax against which to take a credit. The new article caps the total amount of credits at 50 percent of the cumulative amount of the taxpayer's liability for franchise, income, and gross premium taxes. It also shortens the period that the excess can be carried forward for some credits and eliminates some enhanced carryforward provisions available under the Bill Lee Act.

Investment Tax Credit

The Growing Business Article replaces the Bill Lee credit for investing in machinery and equipment with an expanded credit for investing in any business personal property that the taxpayer capitalizes for federal tax purposes. In addition, the new credit is spread out over only four years, rather than seven years as under the Bill Lee Act. Changes in tier designations, investment thresholds, and the credit rates will result in the credit being more generous in some cases and less in others. The reduction of the lowest credit rate from 4 percent to 3.5 percent, as well as the application of a

$2 million threshold in more counties, should reduce the overall cost of the credit. In applying the wage standard to the credit for investing in business property, the average weekly wage of all jobs at the establishment with respect to which the credit is claimed must meet the standard.

Jobs Credit

The dollar amounts of the new credit for creating jobs in G.S. 105-129.87 will be more generous in many cases than the equivalent credit under the Bill Lee Act: $750 in tier three, $5,000 in tier two, and $12,500 in tier one. On the other hand, the number of taxpayers eligible for the credit will decrease because taxpayers must now meet a job creation threshold ranging from five to fifteen, based on the development tier designation of the location where the jobs were created. In addition, the average weekly wage of the jobs for which the credit is claimed and the average weekly wage of all jobs at the establishment with respect to which the credit is claimed must meet the wage standard.

Fees

When filing a return for a taxable year in which the taxpayer engaged in activity for which the taxpayer is eligible for a credit under the Growing Business Article, the taxpayer must submit a fee of $500 for each type of credit the taxpayer intends to claim with respect to an establishment. The Bill Lee Act contains a similar fee requirement, with a maximum fee of $1,500 per taxable year. The new article does not have a maximum fee amount.

Job Development Investment Grant Program

S.L. 2006-168 (H 2744) makes extensive changes to the Job Development Investment Grant (JDIG) program, administered by the Economic Investment Committee (EIC). It extends the expiration date of the program from January 1, 2008, to January 1, 2010, and increases from $15 to $30 million the maximum amount of grant liability the state may incur for the program in 2006. Under the JDIG program, agreements entered into in one calendar year may result in annual grant payments for the succeeding twelve years. Therefore, this increase of $15 million for 2006 could have a fiscal impact of up to $180 million over a twelve-year period. The act further expands the JDIG program by making professional motorsports racing teams eligible to receive grants.

S.L. 2006-168 also relaxes the consequences for businesses that fail to comply with their JDIG agreements. The act amends G.S. 143B-437.51 to provide that the EIC is no longer required to terminate the incentives agreement of a business that fails to comply with the requirements for two consecutive years. Instead, if the business is still within its "base period," during which new employees are to be hired for positions upon which the grant is based, the EIC may extend the base period for up to twenty-four months to give the business more time to come into compliance. Grants would be withheld during the base period if the business remains out of compliance and the agreement would be terminated if the business was not back in compliance by the end of the extended base period.

The act directs the Department of Commerce to conduct a comprehensive study of the costs of the JDIG program in relation to other state incentive programs and to provide information on the use of the program in urban, suburban, and rural areas throughout the various geographic regions of the state. The study must be submitted to the chairs of the House and Senate Finance and Appropriations committees by February 1, 2007.

Sales Tax Reduction for Manufacturers

Section 24.19 of the 2006 Appropriations Act, S.L. 2006-66, reduces the sales tax rate for electricity sold to manufacturing plants from 2.83 percent to 2.6 percent, effective July 1, 2007.

Renewable Fuel Business Incentives

S.L. 2006-66 expands tax incentives for certain renewable fuel businesses. Section 24.7 extends from January 1, 2008, to January 1, 2011, the sunset on the credits for constructing renewable fuel production facilities and constructing renewable fuel dispensing facilities. Section 24.7, as amended by Section 19.5 of S.L. 2006-259 (S 1523), also creates a more generous credit if the taxpayer invests at least $400 million in three separate facilities over a five-year period. The details of the enhanced credit are apparently tailored to fit a specific project. A taxpayer may not claim both credits with respect to the same facility.

Section 24.8 of S.L. 2006-66 enacts a new tax credit for providers of 100 percent (not blended) biodiesel that produce at least 100,000 gallons of biodiesel during the taxable year. The amount of the credit is equal to the per gallon motor fuel tax paid by the producer on the biodiesel, not to exceed $500,000 a year. The credit may be claimed against income or franchise tax, is limited to 50 percent of the amount of tax liability against which it is claimed, and has a carryforward period of five years. The credit sunsets January 1, 2010.

Economic Incentives for Specific Industries and Projects

Internet Service Providers and Web Search Portals

S.L. 2006-252 adds Internet service providers and Web search portals to the types of businesses eligible for the new Tax Credits for Growing Business. Section 24.17 of the 2006 Appropriations Act, as amended by Part 4 of S.L. 2006-168 and Section 2.25 of S.L. 2006-252, enacts a sales tax exemption for sales of electricity and eligible business property to be used at an eligible Internet data center. The exemption is effective October 1, 2006, and has no sunset. This incentive is unusual in that it takes the form of an exemption rather than a refund. An Internet data center is eligible if it meets the following conditions:

- It is primarily used for the Internet service provider and Web search portal industry.
- It is located in one of the eighty most distressed counties in the state.
- At least $250 million of private funds will be invested within five years in eligible business property, real property, or both.

Eligible business property is tangible personal property capitalized for federal tax purposes and used for the Internet service provider and Web search portal industry, for electricity, or to support related computer engineering or computer science research.

Additional Tax Credits for Historic Rehabilitation

North Carolina rewards historic rehabilitation through income tax credits. In S.L. 2006-40 (H 474) the General Assembly added more generous tax credits for two categories of historic rehabilitation: (1) renovations of historic facilities that formerly served as a state training school for juvenile offenders and (2) major renovations of historic mills that have been mostly empty for at least two years.

North Carolina allows an income tax credit of 20 percent of the expenses of rehabilitating an income-producing historic structure and a credit of 30 percent of the expenses of rehabilitating a historic structure that is not income-producing. The credit for income-producing structures is lower because federal law also allows a 20 percent credit for those expenses, yielding a combined credit of 40 percent. Effective beginning with the 2006 tax year, S.L. 2006-40 (as amended by S.L. 2006-252) increases to 40 percent the state tax credit allowed for a historic structure that at one time served as a state training school for juvenile offenders, whether or not the property is also eligible for the 20 percent federal credit.

Effective beginning with the 2006 tax year, S.L. 2006-40 also enacts a new Article 3H in G.S. Chapter 105 to provide a more generous tax credit for certain mill facilities. To qualify for the new credit, the eligible rehabilitation expenses for the project must exceed $3 million and the site (1) must

have been used for manufacturing, as an agricultural warehouse, or as a utility site; (2) must be certified by either the state or federal historic preservation office; and (3) must have stood at least 80 percent vacant for at least two years.

The rate of the new tax credit is higher than the existing tax credit. If the property is income-producing (and also qualifies for a federal tax credit), the amount of the new state credit is 40 percent (rather than 20 percent) of eligible expenses, if the site is located in a development tier one or two county. If the site is in an enterprise tier three county, the amount of the credit is 30 percent (rather than 20 percent) of eligible expenses. If the property does not produce income, the amount of the state tax credit is equal to 40 percent (rather than 30 percent), but only if the site is in a development tier one or two area. If the non-income-producing property is in development tier three, no credit is allowed.

The new tax credit is more generous than the existing credit in several other ways. While the existing credit is allowed against income tax only, the new tax credit is also allowed against franchise and gross premiums taxes. While the existing credit must be taken in installments over five years after the historic structure is placed in service, the new tax credit may be taken in the year the site is placed in service. While the existing credit for income-producing properties has a temporary special exception allowing more freedom in allocating the credit among the owners of a pass-through entity, the new credit extends this special exception to the credit for non-income-producing properties as well and makes the exception permanent. Finally, while any unused portion of the existing credit may be carried forward for a five-year period, the new credit may be carried forward for nine years.

Article 3H, which provides for the new credit, sunsets January 1, 2011.

Tax Credit for Production Companies

S.L. 2006-220 (S 1522) and S.L. 2006-162 (H 1963) amend the income tax credit for qualifying expenses of movie, television, or radio production companies (G.S. 105-130.47 and G.S. 105-151.29). Effective beginning with the 2007 tax year, S.L. 2006-220 allows taxpayers to take a deduction for the same expenses for which they may take a credit. Effective beginning with the 2006 tax year, Section 4 of S.L. 2006-162 amends the tax secrecy statute (G.S. 105-259) to allow the Department of Revenue to share with a taxpayer information used to adjust the taxpayer's production company credit and amends the credit by modifying the definition of *highly compensated individual*. (A production company may not claim a credit for payments to a highly compensated individual.)

Financial Services and Securities Operations

S.L. 2006-168 adds financial services, securities operations, and related systems development to the types of businesses that may qualify for refunds of sales taxes paid on building materials and equipment for an industrial facility if the Department of Commerce certifies that the business will invest a minimum amount in constructing the facility. This change would automatically add financial services, securities operations, and related systems development to the types of businesses eligible to be designated as an eligible major industry for purposes of the delayed sunset of the Bill Lee Act credits, except that the Bill Lee Act credits are not allowed for this type of business.

Sales Tax Refunds for Large Industrial Facilities, Passenger Air Carriers, and Motorsports Entities

S.L. 2006-168 extends the sunset on the sales tax refund for certain large industrial facilities from January 1, 2010, to January 1, 2013. Section 24.6 of S.L. 2006-66 extends the sunsets on the following sales tax refunds from January 1, 2007, to January 1, 2009: certain fuel purchased by interstate passenger air carriers and aviation fuel used by motorsports teams and sanctioning bodies to travel to and from motorsports events.

Effective July 1, 2007, Section 24.10 of S.L. 2006-66 provides a sales tax refund for a professional motorsports racing team that purchases professional motor racing vehicle component parts other than tires or accessories. The amount of the refund is equal to 50 percent of the sales tax paid. There is no sunset on this refund.

Johnson and Wales University

Section 12.2 of the appropriations act, S.L. 2006-66, allocates $1 million from the One North Carolina Fund for Johnson and Wales University in Charlotte.

Fiber, Yarn, or Thread Mills

Section 24.14 of S.L. 2006-66 retroactively alters the definition of *location* with respect to certain manufacturers for the purpose of meeting the wage standard under the Bill Lee Act. This change applies to a fiber, yarn, or thread mill that uses a sequential manufacturing process and is effective for taxable years beginning on or after January 1, 1996. The change is designed to address the situation of American & Efird Inc., in Gaston County, which otherwise would not qualify for Bill Lee Act credits due to failure to meet the wage standard.

Johnston County Economic Development and Training District

Section 24.5 of the appropriations act modifies the definition of a development zone retroactively to January 1, 2004, to include an economic development and training district. To date the only such district is in Johnston County; it consists of real property owned by Bayer Corporation, Novo Nordisk Pharmaceutical Industries Inc., Fresenius Kabi Clayton LP, and the Johnston County Airport Authority. Designation as a development zone retroactively bestows eligibility for various economic development benefits under the Bill Lee Act and other economic incentive programs.

Other Economic Development Changes

Standards for Regional Economic Development Commissions

S.L. 2006-263 (H 1417) demonstrates an interest on the part of the General Assembly in improving and standardizing the activities and procedures of regional economic development commissions. The act applies to the Western, Northeastern, and Southeastern North Carolina Regional Economic Development commissions; North Carolina's Eastern Region (formerly the Global TransPark Development Zone); the Charlotte Regional Partnership Inc.; the Piedmont Triad Partnership; and the Research Triangle Regional Partnership.

The act requires each regional economic development commission to provide an annual comprehensive evaluation report to various state agencies and legislative committees. It directs the Department of Commerce to develop uniform financial standards, personnel practices, and purchasing procedures, which the commissions must follow as a condition of receiving state funds. It provides that regional entities must share equally the costs of developing these standards up to a maximum aggregate amount of $50,000, with the balance to be paid from the Department of Commerce budget. Further, the act directs each commission to hold an orientation session for newly appointed commission members concerning the duties and responsibilities of commission members and addressing policies and laws governing conflicts of interest, financial disclosure, and ethical behavior.

Research and Development Equipment

Section 24.9 of S.L. 2006-66, as amended by Section 12 of S.L. 2006-196 (H 1891), exempts certain research and development equipment from state and local sales tax and substitutes a 1 percent privilege tax with an $80 cap, effective July 1, 2007. The change applies to equipment purchased by a research and development company in the physical, engineering, and life sciences; capitalized for federal tax purposes; and used for research and development of tangible personal property. Equipment purchased by manufacturers is already taxed at a 1 percent rate with an $80 cap; this change extends the preferential tax treatment to equipment used by other companies to conduct the same type of research and development.

Dairy Stabilization and Growth Program

S.L. 2006-139 (S 1156) enacts a new Article 68A of G.S. Chapter 106 to establish the North Carolina Dairy Stabilization and Growth Program and Fund. The act sets out the General Assembly's findings that the dairy industry in North Carolina makes a substantial economic, environmental, and quality-of-life contribution to North Carolina and that the state's dairy industry is "at serious risk of total collapse" because the price paid to farmers for milk under federal milk programs is too low to cover actual costs of production. The new law requires the Board of Agriculture to set a milk support baseline price and provides that if an announced federal price mover is lower than the baseline price established by the board, dairy farmers are eligible for a quarterly distribution equal to the difference multiplied by the amount of milk each farmer sold. Distributions are subject to the availability of funds; the General Assembly did not make an appropriation to the fund for 2006–07. To receive assistance under the program, milk producers must demonstrate compliance with applicable federal or state regulations. The act requires the commissioner of agriculture to file an annual report with various General Assembly committees regarding the North Carolina dairy industry and the new program.

Community Development

The 2006 Appropriations Act instructs the Office of State Budget and Management to study the effectiveness of the New and Expanding Industry Training Program offered by community colleges. The program is considered to be the state's flagship customized workforce training program.

Housing

Funding for the Housing Trust Fund

As a result of the Campaign for Housing Carolina, a statewide public awareness campaign designed to bring attention to the need for increased affordable housing in the state, the General Assembly appropriated almost $19 million in state funding for affordable housing. The appropriations act includes $15.9 million in nonrecurring money and the $3 million in recurring funding that the Housing Trust Fund has received for the past several years. The total marks the highest level of funding in the history of the Trust Fund.

The ultimate goal of the Campaign for Housing Carolina is a $50 million annual appropriation to the North Carolina Housing Trust Fund. The proposed sources for this funding were varied. The source receiving the most attention would have been part of a large general obligation bond bill that might have included open space, university buildings, mental hospitals, schools, water and sewer, and housing. A specific bond bill for $250 million (which would have produced $50 million a year for five years for housing) was introduced but did not pass. None of the other bond efforts were successful.

The campaign is led by the North Carolina Housing Coalition, North Carolina Justice Center, United Way of North Carolina, North Carolina Coalition to End Homelessness, A.J. Fletcher Foundation, North Carolina Association of CDCs, AARP–NC, North Carolina Coalition Against Domestic Violence, and ARC–NC with the support of the North Carolina Housing Finance Agency.

Foreclosure Prevention Program

S.L. 2006-66 appropriates $1.5 million in nonrecurring funds to continue the Home Protection Pilot Program, which provides short-term loans to help dislocated workers continue to make mortgage payments. These loans are available only to workers who lost their jobs through no fault of their own (i.e., plant closures or downsizing) and who have strong prospects for reemployment.

Public Housing Target Incomes

S.L. 2006-219 (H 767) amends G.S. 157-29(b) to clarify a public housing authority's (PHA's) basic targeting requirement for serving extremely low-income households. The new law requires that, in each fiscal year, no less than 40 percent of the families admitted to a public housing program from a PHA's waiting list must be extremely low-income families, defined as households with incomes at or below 30 percent of the area median income. Formerly the provisions of G.S. 157-29(b) required only that public housing authorities give preference on their waiting lists to such households. The new law provides some flexibility to PHAs by allowing a PHA that admits more than 75 percent extremely low-income families to a section 8 voucher program to credit the excess against its basic targeting requirement for that fiscal year. There are some limits to the credit, however. A fiscal year credit for section 8 voucher program admissions that exceed the minimum section 8 voucher program targeting requirement cannot exceed the lower of the following: (1) 10 percent of the PHA's waiting list admissions during its fiscal year; (2) 10 percent of waiting list admissions to the section 8 tenant-based assistance program during its fiscal year; and (3) the number of qualifying low-income families (not just extremely low-income families) who, during that fiscal year, move into public housing units located in census tracts with a poverty rate of 30 percent or more.

Affordable Housing for Teachers

In many North Carolina communities, recent increases in the cost of housing have so outpaced increases in income that public servants lack the income to buy, or sometimes even to rent, a home. This phenomenon has become a barrier to the recruitment of essential personnel, including teachers. Responding to two communities' concerns, S.L. 2006-61 (S 1896) and S.L. 2006-86 (S 1903) authorize the Bertie and Hertford boards of education to enter into contracts to construct and provide affordable housing on property owned or leased by those respective boards. The housing must be restricted to public school teachers or other employees of the public school system. The boards are authorized to set reasonable rents.

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Martha H. Harris

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Elections

In 2006 the General Assembly made it easier for new political parties to retain official recognition; took the first steps toward introducing a new method of elections in North Carolina—"instant runoff" voting; limited the uses that candidates can make of campaign contributions; and amended a large number of elections statutes on a wide variety of subjects.

Parties, Candidates, and Access to the Ballot

The 2006 General Assembly passed several statutory provisions concerning the status of new parties, the appearance of their candidates on the ballot, and challenges to candidates.

Maintaining Status as a Recognized Party

North Carolina's system for the conduct of elections takes parties into account in many ways: the state conducts primary elections by which parties choose their candidates to stand in the general election; parties nominate officials to be named as members of county boards of elections and as precinct election officials; when voters register, they register as affiliated with one party or another or as unaffiliated; parties are permitted to have observers present within the voting place on election day; and parties are entitled to quick access to certain kinds of information related to election day activities. To meet these and many other statutory requirements, the law must provide for the creation and maintenance of political parties.

As of the close of the 2006 session of the General Assembly, there were two recognized political parties in the state—the Democratic Party and the Republican Party—but at other times in the recent past there have been others, including the Libertarian Party and the Socialist Workers Party.

G.S. 163-96(a)(2) provides that a new political party may be formed through the circulation of a petition with a minimun number of signatures of qualified registered voters. Once the new party is recognized by the State Board of Elections as the result of a successful petition drive, G.S. 163-97 provides the standard for determining whether the party will continue over time to be recognized. The statute previously provided that any party, to maintain its recognized status, must receive at least 10 percent of the vote cast for governor or for president in each election. If a party fails to meet the statutory requirement, the State Board will withdraw recognition. S.L. 2006-234 (H 88) amends

G.S. 163-97, and makes a corresponding change to G.S. 163-96(a)(1), to lower the threshold for continued recognition from 10 percent to 2 percent.

New Party Candidates on the Ballot

G.S. 163-98 provides that when a new party is recognized, for the first election after its recognition it is to name its candidates in a party convention—rather than in a primary election—and is entitled to have the names of those candidates appear on the general election ballots. S.L. 2006-234 makes clear that these candidates must meet the regular filing fee (or alternative) requirements that apply to the candidates of other parties when those candidates file notices of candidacy to run in the primaries.

Unaffiliated Candidates' Access to the Ballot

G.S. 163-122 provides a method by which an individual may gain a spot on the general election ballot without standing as a candidate in a party's primary elections, by securing a minimum number of signatures of qualified registered voters on a petition. If the office at issue is a statewide office, the statute has required that the individual must secure signatures of at least 2 percent of the registered voters of the state. S.L. 2006-234 changes that requirement: it is now 2 percent of the total number of voters who voted in the most recent election for governor. The act also adds a new requirement that the petition must contain the signatures of at least 200 registered voters in each of four North Carolina congressional districts.

S.L. 2006-234 also amends G.S. 163-122 to make it clear that unaffiliated candidates reaching the ballot through the petition process must meet the regular filing fee (or alternative) requirements that apply to the candidates of parties who have followed the standard procedure of filing notices of candidacy to run in the primaries.

Filling Vacancies in Nominations

G.S. 163-114 provides the method for securing party nominees for the general election ballot when a nominee selected in a primary is unable to go forward. In general, the executive committees of the relevant political parties select the replacements. S.L. 2006-234 amends the statute to add a provision that an individual whose name appeared on the ballot in the primary election may not be selected to fill a vacancy on the ballot for the other political party.

Challenges to Candidates

S.L. 2006-155 (H 2188) adds new Article 11B to Chapter 163 of the General Statutes, creating a new procedure under which a challenge may be made and a hearing may be held before the election on an assertion that a candidate who has filed a notice of candidacy is not "qualified to be a candidate for the office."

Who may file the challenge. Any registered voter of the district covered by the office may file a challenge.

When the challenge may be filed. The challenge may be filed at any time between the filing of the notice of candidacy and ten days after the close of the filing period.

Who hears the challenge. If the district for the office is a single county or part of only one county, then the board of elections for that county hears the challenge. If the office is statewide, then the State Board of Elections hears the challenge. If the office includes parts of more than one county, but is not statewide, then the challenge is to be heard by a panel consisting of members of the boards of elections of the affected counties, to be appointed by the State Board in proportion to the relative number of registered voters eligible to vote for that office in each county. Both parties are to be represented on such a blended panel. The maximum number of panel members is five.

How the hearing is to be conducted. The panel hearing the challenge is to allow for depositions prior to the hearing; is to issue subpoenas for witnesses or documents upon request of the parties or on

its own motion (and is to allow the parties to issue subpoenas); is to allow evidence at the hearing in the form of affidavits supporting documents or examination of witnesses; and, most surprisingly, is to follow the rules of evidence that apply in regular court proceedings. The panel is to make a written decision stating findings of fact, conclusions of law, and an order.

Burden of proof. The burden of proof is on the candidate to show by a preponderance of the evidence that he or she is qualified to be a candidate for the office.

Appeals. Appeals from decisions of a single-county or multi-county hearing are to be taken to the State Board of Elections, which is to make an appellate decision based on the record as a whole. An appeal may then be taken to the court of appeals. Appeals from decisions made by the State Board regarding statewide candidates are taken directly to the court of appeals.

Duty of the Board of Elections When a Candidate Files

G.S. 163-106(g) (for most offices) and G.S. 163-291(2) (for partisan municipal offices) have long required that when a candidate files a notice of candidacy to run in a partisan primary, the board of election must check the registration records of the county to ensure that the individual is eligible to run in that party's primary and must cancel the notice of candidacy of anyone who is not eligible. S.L. 2006-155 amends the statute to expand the obligations of county boards with respect to candidate eligibility. Now, when a candidate files, the board is to cancel the notice of candidacy of anyone who "does not meet the constitutional or statutory qualifications for the office, including residency." The statute as amended also provides for an appeals process for any candidate whose notice of candidacy is canceled. That candidate may appeal using the procedures described immediately above with respect to challenges to candidates under new Article 11B of Chapter 163 of the General Statutes.

S.L. 2006-155 makes corresponding changes to G.S. 163-122 regarding individuals seeking to get on the ballot by petition as unaffiliated candidates and to G.S. 163-123 regarding individuals who seek to qualify by petition as write-in candidates.

Conduct of Elections

The 2006 General Assembly enacted a number of changes in the statutes related to the conduct of the election itself.

Counting of Absentee Ballots

As absentee ballots come in during the days before election day, county boards of elections meet to pass on the applications that accompany the ballots and to set the valid ballots aside for counting. G.S. 163-234 provides that county boards may begin to count absentee ballots as early as 2:00 p.m. on election day, as long as the results are not announced before 7:30 p.m., when the polls close. S.L. 2006-262 (H 128) amends the statute to add a provision permitting county boards of elections, in the days before election day when they are approving ballot applications, to open the ballot envelopes and feed the ballots into optical scan counting machines—but not to complete the counting—in order to save time on election day.

Unmarked Provisional Ballots

In certain circumstances in which a voter's eligibility to vote is not clear at the polls—perhaps the person's name does not appear on the voter roll despite the person's assertion that he or she is properly registered to vote—the voter may fill out a provisional ballot application and cast a provisional ballot, sealing the provisional ballot in an envelope on which the application appears. The provisional ballot will not be counted until the provisional ballot application can be assessed and the eligibility determined. S.L. 2006-262 amends G.S. 163-165(6) to make it clear that while the envelope is to be

numbered so that the application can be properly processed, the provisional ballot that is to be sealed inside the envelope is not to be numbered.

Selection of Precincts for Sample Hand-to-Eye Count

G.S. 163-182.1 requires that in elections in which optical scan or direct record electronic (DRE) voting systems are used (which, in effect, is all elections), there must be a sample hand-to-eye count of the optical scan paper ballots or the DRE paper record in every county. S.L. 2006-192 (H 1024) adds a provision to the statute specifying that the State Board of Elections is to approve, in an open meeting, the procedure for randomly selecting the sample precincts for each election. The random selection itself is to be done publicly after the initial count of the returns for that county is publicly released, or twenty-four hours after the polls close on election day, whichever is earlier. A corresponding change is made to G.S. 163-182.2.

Date of the Second Primary

In a partisan primary, a candidate must receive at least 40 percent of the vote (termed a "substantial plurality") in order to be declared the winner of the primary. If the leading candidate does not receive at least a substantial plurality, then the candidate who finished second may call for a second primary between just the two top finishers. G.S. 163-111(e) previously provided that the second primary was to be held four weeks after the first primary. S.L. 2006-192 amends the statute to provide that the second primary is to be held seven weeks after the first primary, for all elections after January 1, 2007.

Dates of Partisan Municipal Primaries

Most cities in North Carolina conduct their elections for city council and mayor on a nonpartisan basis, but a few use partisan elections. G.S. 163-279 previously set the date of partisan elections as the regular election day in November, with the first primary held on the sixth Tuesday before election day and the second primary, if needed, on the fourth Tuesday before election day. S.L. 2006-192 changes the date of the first primary, for all elections after January 1, 2007, to the second Tuesday after Labor Day.

Municipal Candidates' Notice of Candidacy Filing Period

G.S. 163-294.2 and G. S. 163-291 have set the period during which county boards of elections will accept the filing of notices of candidacy by candidates in nonpartisan municipal elections and partisan municipal elections, respectively. The period has been from noon on the first Friday in July to noon on the first Friday in August. S.L. 2006-192 changes the period, for all elections after January 1, 2007, so that it will open at the same time and close at noon on the third Friday in July, a three-week period.

Eligibility to Register and Vote

The General Assembly amended a number of statutory provisions related to voter registration and eligibility to vote.

Election Day Challenges

The general statutes provide a method by which a registered voter of the county may, at any time during the year, challenge the eligibility of any other voter in the county, on the grounds of residency, age, citizenship, or certain other bases. In that case, the county board of elections will consider the matter and rule on the challenged voter's eligibility. G.S. 163-87 permits a special challenge *on*

election day, by any registered voter of the precinct, of any other voter of the precinct. In this special election-day challenge, two additional grounds for challenge are available: (1) that the person has already voted in that election and (2) that the person is voting in a partisan primary election but is a member of another party. The statute formerly provided that this second ground for challenge included the challenge that the person "does not in good faith intend to support the candidates nominated in that party's primary." S.L. 2006-262 deletes this antiquated provision.

S.L. 2006-262 also adds a provision with respect to election-day challenges, providing that if a ballot is successfully challenged but, because of the nature of the challenge, there remain some races on the ballot for which the voter remains eligible, then the ballot is to be counted in all those races. Further, while the statute formerly provided that, upon a successful challenge to a voter, the voter's registration was to be cancelled, the new provision calls for the registration to be cancelled "or corrected."

Moves within the County

G.S. 163-82.15(a) provides that if a registered voter moves within the county, the voter need not re-register but may simply inform the board of elections of the move. In giving that notice, the voter has been required to provide the "date of moving." With a change enacted by S.L. 2006-262, the voter is instead to attest that he or she "moved at least 30 days before the next primary or election" from the old to the new address.

Nontraditional Residences for Voting Purposes

G.S. 163-57 defines residency for voting purposes and provides direction on dealing with unusual circumstances, such as instances in which a county boundary line splits a voter's house. S.L. 2006-262 amends the statute to deal with circumstances in which the residency of a person must be determined when the person does not live in "a traditional residence associated with real estate." In that case, residency is to be controlled by "the usual sleeping area" for the person, with residence to be "broadly construed to provide all persons with the opportunity to register and vote." In that vein, a registrant's mailing address may be different from his or her residence address.

Pilot Tests for Instant Runoff Voting

The 2006 General Assembly directed the State Board of Elections to conduct pilot tests of an innovative method of conducting elections. S.L. 2006-192 provides that in jurisdictions participating in the pilot tests, second primaries and runoff elections will be eliminated in favor of instant runoff voting.

Traditional Second Primaries and Runoffs

Most regular North Carolina partisan primaries and many nonpartisan elections have the potential to require a second primary or runoff.

In a partisan primary, a candidate must receive at least 40 percent of the vote (a "substantial plurality") in order to be declared the winner of the primary. If the leading candidate does not receive at least a substantial plurality, then the candidate who finished second may call for a second primary between just the two top finishers, frequently referred to as a "runoff."

In nonpartisan elections using the election-and-runoff method, a first election is held among all candidates. If any one candidate receives a majority of the votes, that candidate is elected and no runoff is held. If no candidate receives a majority, then a runoff is held between the two top finishers.

In nonpartisan elections using the primary-and-election method, a primary is held to narrow the field to two, and then an election is held between the two top finishers.

In jurisdictions participating in the pilot tests, instant runoff voting will replace all three of these methods.

How Instant Runoff Voting Works

S.L. 2006-192 describes how instant runoff voting works (but authorizes the State Board of Elections to make modifications as necessary).

In instant runoff voting, voters cast their ballots only once, so that they do not have to return to the polls for a second primary or runoff. When they mark their ballots, they mark not only their choice for the winner—as they would in traditional voting—but also their second and third choices. When the ballots are counted, only the first choices are counted in the initial round of counting.

If the race is a partisan primary and any candidate receives the 40 percent substantial plurality of the vote, then that candidate is declared the winner and no further counting is necessary. If, however, no candidate receives the substantial plurality, then the ballot counters conduct a second round of counting, with only the two top finishers from the first round advancing to the second round. In the second round, each ballot counts as a vote for whichever of the two finalists is ranked higher on the ballot. The candidate with the higher number of votes in the second round wins.

If the race is a nonpartisan election and any candidate receives a majority of the votes, then that candidate is the winner and no further counting is necessary. If, however, no candidate receives a majority, then the counting continues to a second round as described above.

Pilot Tests in 2007 and 2008

The statute directs the State Board of Elections to test instant runoff voting in up to ten cities (which mostly use nonpartisan elections) in the 2007 municipal elections and ten counties (which exclusively use partisan elections) in the 2008 elections. The State Board is to seek diversity of population and demographic composition and to conduct the pilot tests around the state. Each test will require the concurrence of the local board of elections.

The State Board is to report its findings and recommendations to the 2007 General Assembly.

Instant Runoff Voting in Judicial Races

See the discussion immediately below regarding changes in the method of elections of superior court judges and judges on the North Carolina Supreme Court and the North Carolina Court of Appeals. In one particular instance, the law creates the possibility of instant runoff voting in those races.

Changes in Nonpartisan Judicial Elections

In 1996 the General Assembly enacted Article 25 of G.S. Chapter 163, changing superior court judge elections from partisan to nonpartisan, effective with the 1998 elections. In 2001 it made the same change for district court judge elections, and effective with the 2004 elections, it did likewise for elections of judges to the North Carolina Supreme Court and the North Carolina Court of Appeals. In the 2004 elections, between the time of the nonpartisan primaries and the general election, a member of the supreme court resigned, creating a vacancy to be filled by election. As G.S. 163-329 stood at that time, it called for that seat to be filled in the general election by a simple plurality election, with no primary. The result was a crowded field and a winning candidate with far less than a majority of the votes.

The 2006 General Assembly responded with changes to G.S. 163-329 and related statutes.

Filling in Statutory Gaps

In the standard situation, candidates for superior court, the court of appeals, and the supreme court file their notices of candidacy and run in a nonpartisan primary. In each primary race, the two highest finishers are declared the nominees, and they face one another in the general election. Unusual situations can arise in many different ways, however; perhaps no candidates file notices of candidacy, perhaps a candidate dies or becomes disqualified before the primary (either before or after the ballots have been printed), perhaps a candidate who has advanced from the primary (and is therefore a nominee) dies, perhaps a nominee wishes to withdraw from the election. The set of statutes addressing these concerns is found at G.S. 163-327 through 163-329.

S.L. 2006-192 amends those statutes to make a few clarifications, as follows:

1. It adds a provision detailing what is to happen if a candidate for nomination dies or becomes disqualified before the primary. The State Board of Elections is to determine whether there is enough time to reprint the ballots. If there is not, the candidate's name stays on the ballot. If that candidate receives enough votes for nomination, those votes are to be disregarded and the next-highest candidate is declared nominated. If the death or disqualification leaves only two candidates in the primary, the primary is not to be held and the two are declared nominated.
2. It adds a provision specifying that a candidate who has filed a notice of candidacy may not withdraw from the race after the close of the filing period. If that candidate wins in the primary, he or she goes on the general election ballot. If the candidate wins in the general election, he or she may refuse to take the oath of office, thereby creating a vacancy.
3. It adds a provision specifying that if a nominee wins the election and then dies or becomes disqualified before taking the oath of office, or refuses to take the oath, a vacancy is created.

S.L. 2006-192 also establishes rules by which money from the North Carolina Public Campaign Fund (which provides public funding for campaigns of participating appellate judicial candidates) can be made available to candidates running in these nonstandard judicial elections.

Instant Runoff Voting in Some Elections

In 2004, when a North Carolina Supreme Court member resigned after the primary, the general election for that seat was a single-vote, plurality, highest-vote-getter-wins election. S.L. 2006-192 amends G.S. 163-329 to change the procedure for future elections.

In future judicial elections, if a vacancy occurs more than sixty days before the general election, but after the close of the candidate filing period, the State Board of Elections is to open a new filing period of one week. (If a vacancy occurs within sixty days before the general election, the vacancy is not filled by election at that time.). At that point, the nature of the election will depend on the timing of the creation of the vacancy.

If the vacancy occurs more than sixty-three days before the date of the second primary for members of the General Assembly (some time in late April), a special primary is to be held on the date of the second primary. The two candidates with the highest votes in that special primary go on the ballot for the general election.

If, however, the vacancy occurs less than sixty-four days before the date of the second primary, then all the candidates are to be voted on together at the time of the general election. That vote is not to be a simple plurality election, as in 2004, however. It is instead to be conducted by the instant runoff method.

By this method, voters will rank up to three of the candidates on the general election ballot in order of preference. If a candidate receives a majority of the first-preference votes, that candidate is elected. If no candidate receives a majority of first-preference votes, the two highest finishers move to a second round of counting (but not to a second round of voting—the voters vote only once, in the general election). In the second round of counting, each ballot counts as a vote for whichever of the two candidates is ranked higher on that ballot. The winner is then the candidate with the higher total vote count.

The new statute sets out the following rules for instant runoff voting:

1. If the two remaining candidates are not among the three ranked preferences on a particular ballot, then that ballot is not counted in the second round.
2. If the voter on the ballot indicates only a first choice but not a second or third preference (or a first and second but not a third), the failure to mark lower preferences does not invalidate the vote for the higher preference.
3. If a voter gives more than one level of preference to a single candidate, that does not invalidate the ballot; it merely gives the highest preference among those marked to that candidate.

Fund-Raising by Publicly Funded Judicial Candidates

In 2002, effective for the 2004 elections, the General Assembly created a system by which candidates for the North Carolina Supreme Court and the North Carolina Court of Appeals may, if they meet certain qualification standards, choose to have their campaigns funded by the North Carolina Public Campaign Fund. Candidates who make this choice agree to limit their total spending and to give up the opportunity for private fund-raising.

G.S. 163-278.65 provides that if there is not enough money in the public campaign fund to provide all participating candidates the full amount to which they would normally be entitled under the statute, then the funds are to be distributed proportionally, according to each candidate's eligible funding. S.L. 2006-192 adds to that statute a provision that in such an instance, the participating candidate may resume private fund-raising to raise additional money up to the amount to which the candidate would have been entitled if the public campaign fund were fully funded.

G.S. 163-278.66 previously required entities making independent expenditures (that is, not direct contributions) on behalf of or in opposition to a participating candidate or that candidate's opponent to start reporting the expenditures within twenty-four hours of the time that any single independent expenditure exceeded $3,000 and the total of independent expenditures met a certain threshold. S.L. 2006-192 deletes the $3,000 size-of-expenditure requirement and changes the threshold, so that reporting of these independent expenditures must begin within twenty-four hours of the total of the expenditures exceeding $5,000, regardless of the size of individual expenditures.

G.S. 163-278.13(e2)(3) previously provided that candidates for the North Carolina Supreme Court and the North Carolina Court of Appeals who were not participating in the North Carolina Public Campaign but who were opposed by a participating candidate could not accept contributions in the final twenty-one days before the general election. S.L. 2006-192 amends the statute to provide that these candidates may continue to receive contributions during this period, as long as total contributions to the candidate do not exceed the "trigger for rescue funds"—that is, the point at which the opposing candidate is eligible for additional public financing.

G.S. 163-278.13 sets limits on amounts that may be contributed to political candidates generally. Subsection (e) previously exempted political parties from the contribution limits. S.L. 2006-192 amends subsection (e) to provide that even political parties are covered by limitations on contributions to candidates for the North Carolina Supreme Court and the North Carolina Court of Appeals.

G.S. 163-278.13 provides that the maximum contribution that any one entity may make to any one candidate is $4,000 per election. Subsection (e2) reduces that maximum contribution to $1,000 for a candidate for the North Carolina Supreme Court or the North Carolina Court of Appeals. S.L. 2006-192 adds new G.S. 163-278.13(e3) setting the maximum contribution to a candidate for superior court or district court judge at $1,000 as well.

Funding the Public Campaign Fund

The North Carolina Public Campaign Fund receives $3 from the income tax obligation of each individual North Carolina income tax payer, if that individual gives permission on his or her tax return for that $3 to go to the fund. S.L. 2006-192 amends G.S. 105-159.2 to require that the following statement appear on the tax return form: "Mark 'Yes' if you want to designate $3 of taxes to this special Fund for voter education materials and for candidates who accept spending limits. Marking 'Yes' does not change your tax or refund." It also requires the following statement in the income tax

preparation instructions: "The N.C. Public Campaign Fund provides an alternative source of campaign money to qualified candidates who accept strict campaign spending and fund-raising limits." This statement is a modification of the statement previously required, which specified that the eligible candidates were only those running for the North Carolina Supreme Court and the North Carolina Court of Appeals.

Campaign Finance

The 2006 General Assembly made a number of adjustments to the state's campaign finance laws. Some of those adjustments came in reaction to charges of campaign finance irregularities investigated by the State Board of Elections, involving checks given to the Speaker of the House of Representatives within lawful amounts but without the payee indicated, for the Speaker to fill in and pass along to an eventual recipient. Significant controversy existed over whether this practice was prohibited by statutes banning anonymous contributions or contributions made in the name of another or was permitted by G.S. 163-278.20, which permitted groups or committees to solicit and receive contributions upon advising the donor that "a decision will be reached later as to the candidate(s), political committee(s), or political party(ies) to be supported."

Contributions Must Specify Recipient

S.L. 2006-195 (H 1846) amends G.S. 163-278.14(b) to specify that contributions in the form of a check or other noncash method of payment must contain a specific designation of the intended contributee chosen by the contributor. G.S. 163-278.20, described in the paragraph above, is repealed.

Cash Contributions Limited to $50

G.S. 163-278.14(b) formerly provided that all contributions above $100 must be in the form of a check, draft, money order, credit card charge, debit, or other noncash method that can be subject to written verification. S.L. 2006-195 lowers the threshold to $50. It also repeals G.S. 163-278.8(d), which dealt with the proper reporting of the receipt of numerous small cash donations at a single event, and replaces it with new G.S. 163-278.11(a1). The new legislation mandates that the State Board of Elections is to provide on its reporting forms for the reporting of the date and amount of contributions below the threshold and provides that the State Board "may treat differently for reporting purposes contributions below the threshold that are made in different modes and in different settings."

Candidates' Use of Contributions Restricted

Until the enactment of S.L. 2006-161 (H 1845), there were no restrictions on the uses that candidates could make of campaign contributions, as long as the candidate fully and accurately reported the uses on the required campaign spending disclosure reports. A candidate could, for example, use contributions to pay for a vacation to get away from the rigors of the campaign.

S.L. 2006-161 imposes new restrictions. Now, a candidate or candidate campaign committee may use contributions only for the following purposes: expenditures resulting from the campaign for public office by the candidate or from holding public office; contributions to a political party; contributions to another candidate or candidate's committee; return of the contribution to the contributor; payment of campaign finance penalties; certain charitable contributions; and payment to the state's Escheat Fund.

A candidate may file a written designation that directs how funds are to be distributed in the event of the candidate's death or incapacity. In the absence of such a designation, funds remaining after the payment of outstanding debts go to the Escheat Fund.

Loans to Campaigns by Financial Institutions

G.S. 163-278.19 generally prohibits contributions to candidates or political committees by corporations or business entities, including financial institutions. Subsection (a)(1) has contained a provision permitting loans by banks and savings and loan associations in the ordinary course of business. S.L. 2006-262 amends the statute to delete that subsection (a)(1) exception and substitute for it a new subsection (a)(2) providing that the proceeds of loans made in the ordinary course of business by financial institutions may be used for contributions that are otherwise in compliance with the law. It also provides that financial institutions may grant revolving credit to political committees and referendum committees in the ordinary course of business.

Also amended is the companion statute to G.S. 163-279.19 (which prohibits the making of contributions by corporations), G.S. 163-278.15 (which prohibits acceptance of contributions from corporations), to permit candidates and committees to accept a contribution knowing it is composed of proceeds of a loan from a financial institution in the ordinary course of business under the following conditions: (1) the loan is secured by collateral placed or guarantees given by individuals who are permitted to make contributions; (2) the amounts of the collateral and guarantees are considered contributions as long as the loan is outstanding; and (3) a loan to a candidate or candidate's committee may be repaid only by the candidate, candidates's spouse, or the candidate's committee.

Clarification of Reasonable Administrative Support

G.S. 163-278.19 generally prohibits contributions by corporations, business entities, professional associations, insurance companies, and labor unions to candidates or political committees. Subsection (e) contains a provision permitting these entities to provide "reasonable administrative support" to political committees. S.L. 2006-262 amends the statute to define reasonable administrative support as including record keeping, computer services, billing, mailings to members of the committee, membership development, fund-raising activities, office supplies, office space, and other support reasonably necessary for the administration of the committee.

Expanded Reporting of Expenditures

G.S. 163-278.8 requires candidates and committees to report all media expenditures and all other expenditures in excess of $50. S.L. 2006-161 adds a requirement that the report include a specific description to provide a reasonable understanding of the expenditure. It also adds a specification to G.S. 163-278.11(a)(2) that the "payee" on such a report is the individual or person to whom the candidate or committee is obligated to make the expenditure. If the expenditure is to a financial institution for revolving credit, the report is to include a specific itemization of the goods and services purchased with the revolving credit.

Safe Harbor from Criminal Prosecution or Civil Penalties

G.S. 163-278.8 requires campaign treasurers to acquire significant amounts of information regarding campaign contributions, including the occupations of contributors. G.S. 163-278.11 requires the reporting of that information. Subsection (c) provides that if a treasurer has made best efforts to obtain and report the required information, the treasurer's reports are to be considered in compliance. S.L. 2006-195 adds to the statute a provision specifying that in such a case the report may not be the basis for criminal prosecution or imposition of civil penalties.

Mandatory Treasurer Training

G.S. 163-278.7(f) requires the State Board of Elections to make training available to campaign treasurers. S.L. 2006-195 amends the statute to require treasurers to take the training within three months of appointment and at least once every four years after that. The act also amends

G.S. 163-278.9 to provide that required campaign finance reports may be submitted only by treasurers who have had the training.

Electioneering Communications Expenditures

Statutes enacted by the General Assembly in 2004 require reporting of disbursements made by any individual or other entity for broadcast, cable, or satellite communication; mass mailings; or telephone banks; if the communication refers to a clearly identified candidate for a statewide office or the General Assembly and the communication is made within sixty days before a general election in which that candidate is running for election or within thirty days of a primary election in which that candidate is running for nomination (or within thirty days of a nominating convention). Revisions in 2005 made clear that any disbursement for an electioneering communication of this sort must be made from a segregated account into which no funds from a prohibited source have been directly or indirectly introduced.

S.L. 2006-182 (H 1847) makes a few changes. First, throughout G.S. 163-278.80 through G.S. 163-278.83, amendments make clear that the reporting requirements apply once an entity has "incurred expenses" for a covered expenditure, rather than, as previously, when the entity has "made disbursements." Second, the requirements of these electioneering communications statutes are expanded to include mass mailings or telephone banks reaching an audience of 7,500 in connection with a General Assembly race.[1] The statutes formerly set that threshold at 5,000. Third, the statutes are amended to make clear that it is a violation of the act to set up several entities with the intent of avoiding the prohibitions of the act that would apply if the entities were acting cumulatively.

Robert P. Joyce

1. As amended by Section 29(e) of S.L. 2006-259.

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Elementary and Secondary Education

In 2006 the General Assembly rewrote the law regarding public school services for children with special needs, bringing it into closer harmony with federal law on the same subject. It backed away from a controversial eye-examination requirement passed in 2005 that was the subject of a challenge in court and could have kept some young children out of school. The General Assembly also directed schools to provide for daily recitation of the Pledge of Allegiance and provided for the largest pay raises for school employees in a number of years.

Financial Issues

Appropriations

The Current Operations and Capital Improvements Act of 2006, Section 2.1 of S.L. 2006-66 (S 1741), appropriates to the Department of Public Instruction (DPI) nearly $140 million in additional funds, for a total appropriation of close to $6.58 billion for 2006–07. This appropriation includes $42 million for low-wealth supplemental funding, $27 million for disadvantaged student supplemental funding, as well as $90 million for incentive awards under the ABCs program and restoration of $44 million in base budget funding. Section 6.15 of S.L. 2006-66 sets the 2006–07 appropriation from the Education Lottery at $425 million, which will be used for class-size reductions, prekindergarten programs, the Public School Capital Fund, and college scholarships for students who need financial aid.

Capital Leases

To help school boards address their capital needs, S.L. 2006-232 (S 2009) allows capital lease financing for public schools. This act is discussed in Chapter 21, "Public Purchasing and Contracting."

Sales Tax Refunds

Section 7.20 of S.L. 2006-66 amends G.S. 105-467(b) to allow school administrative units to apply for a partial sales tax refund. This provision is discussed in Chapter 15, "Local Government and Local Finance."

Effective County Tax Rate

Section 7.15 of S.L. 2006-66 clarifies the definition of "effective county tax rate" that is used to determine the distribution of capital funds from the lottery. The term now includes any countywide supplemental tax levied for the public schools.

Student Issues

Admission

The most basic question about a child's public education—whether that child has a right to enroll in a public school in North Carolina—is not always easy to answer. The general rule is that a child has a right to enroll, without payment of tuition, in the local school administrative unit where the child's parent, guardian, or legal custodian (the person or agency to which the court has awarded legal custody of the student) is domiciled; a child's domicile is that of the adult. However, state law, primarily G.S. 115C-366 and G.S. 115C-366.2, has also long allowed certain students who are not domiciled in a school administrative unit to enroll there without payment of tuition.

S.L. 2006-65 (H 1074) rewrites several sections of G.S. 115C-366 and repeals G.S. 115C-366.2 (essentially incorporating its provisions into G.S. 115C-366) to clarify the standard for admission and make enrollment decisions less complicated. The act brings state law into accord with the federal McKinney-Vento Homeless Education Assistance Improvements Act of 2001 and directs the State Board of Education (State Board) and all local school boards to comply with that statute.[1]

S.L. 2006-65 adds to G.S. 115C-366(a3) a new category of students entitled to admission: students whose parent or guardian has relinquished physical custody and control of the student on the recommendation of the county department of social services or the North Carolina Division of Mental Health.

In all cases when a child admitted under G.S. 115C-366(a) resides with an adult other than a parent, guardian, or legal custodian, that caregiver adult must assume responsibility for making educational decisions for the minor student and has the same legal authority and responsibility as a parent. However, the minor student's parent, guardian, or legal custodian retains liability for the student's acts.

New G.S. 115C-366(a6) helps schools identify the adult who has the authority and responsibility to make educational decisions for a student placed in or assigned to a licensed facility by the student's legal custodian. The individual to whom this authority and responsibility are assigned must reside in or be employed within the local school administrative unit and must provide the school with a signed statement accepting responsibility for the student.

Students with Disabilities

North Carolina public schools have long provided special education to "children with special needs." The state's special education programs have operated under a complex mix of federal and state statutes and regulations. S.L. 2006-69 (H 1908) rewrites the state's special education statutes, Article 9

1. For a discussion of McKinney-Vento, see "Education Rights of Homeless Children and Youths: The McKinney-Vento Act and Its Impact on North Carolina's Schools," by Joseph D. Ableidinger, *School Law Bulletin* 35 (Fall 2004): 1–11. Also available at www.sogpubs.unc.edu/index.php?tl=1&l1=4 (last accessed December 29, 2006).

of G.S. Chapter 115C (G.S. 115C-106.1 through 115C-112.1), and renames Article 9 Education of Children with Disabilities.

One major goal of the rewrite is to make state law consistent with the federal Individuals with Disabilities Education Act (IDEA). G.S. 115C-106.2 says, "If this Article is silent or conflicts with IDEA, and IDEA has specific language that is mandatory, then IDEA controls." This statement will reduce some of the confusion that has made administering special education programs a challenging task.

S.L. 2006-69 is explicit about its other goals. The state's goal is "to provide full educational opportunity to all children with disabilities who reside in the State." The specific purposes of Article 9 are to

- ensure that all children with disabilities ages three through twenty-one years old have available a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;
- ensure that the rights of these children and their parents are protected; and
- enable the State Board and local educational agencies (LEAs) to provide for the education of all students with disabilities.

The act clarifies eligibility for special education services. Under G.S. 115C-107.1 all children with disabilities (as defined in the act) aged three through twenty-one years old who reside in North Carolina and who have not graduated from high school are entitled to a FAPE. A student who turns twenty-two during the school year must be served for that entire school year. Students with disabilities who are suspended or expelled from school and who are entitled to receive a FAPE under IDEA must continue to receive a FAPE during their suspension or expulsion. Schools are not required to provide a FAPE to an adult in an adult correctional facility unless that person was identified as a student with a disability and was being served under an Individualized Education Program (IEP) in his or her educational placement immediately before being incarcerated. The State Board and the Department of Health and Human Services may enter into agreements to exempt schools from providing a FAPE to a preschool child with a disability if the child continues to receive early intervention services as provided in the agreement.

S.L. 2006-69 sets out the State Board's duty to adopt rules for programs serving students with disabilities. The board must, among other duties, set standards for special education programs and personnel working with children with disabilities, train hearing officers, and provide technical assistance to LEAs. G.S. 115C-107.4 requires the board to monitor all LEAs for compliance with IDEA and Article 9 and for their effectiveness in meeting the educational needs of children with disabilities. Under a new provision, the State Board must implement an effective and efficient system of sanctions and incentives—including recognition of LEAs that demonstrate significant improvement over time—in order to improve results and meet the requirements of IDEA and Article 9. Sanctions include identifying schools as level one (needs assistance), level two (needs intervention), and level three (needs substantial intervention). For each of these levels the State Board is directed to take particular steps. The State Board must also develop sanctions for LEAs that fail to implement a corrective action or hearing decision.

G.S. 115C-108.1 states that the State Board "shall cause all local educational agencies to provide special education and related services to children with disabilities in their care, custody, management, jurisdiction, control, or programs." In addition, the State Board's jurisdiction with respect to the design and content of special education programs includes the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency, and the Department of Correction.

Article 9 also sets out LEAs' duties for the education of children with disabilities, including duties with regard to enrollment, fees or other charges, and discipline.

Children with disabilities and their parents have a special set of rights that other children do not have. These rights allow parents to have significant involvement in the development of their child's IEP and the opportunity to formally resolve disputes with the school board over their child's disability identification, educational program, or placement. Article 9 contains many procedural safeguards to protect these rights. These safeguards include publication and distribution of a parents' handbook,

access to and explanation of school records, and notice of actions the schools propose to take related to a child's identification, evaluation, or IEP.

When a dispute arises over any of these issues, informal efforts to resolve the dispute occur at the local level. One option is mediation. G.S. 115C-109.4 states that it is the state's policy to encourage LEAs and parents to seek mediation for any dispute under Article 9 and sets out the requirements for mediation. If the parties resolve a dispute through mediation, they must execute a legally binding document stating the terms of the agreement.

If parents are not satisfied with the results of mediation, they have one year (except under two narrow exceptions) to file a petition with the Office of Administrative Hearings (OAH) to request an impartial due process hearing. To protect the parties' rights to a fair and impartial hearing, the State Board and OAH must enter a binding memorandum of understanding to ensure compliance with IDEA procedures, timelines, and provisions applicable to the hearing and to the hearing officers' decisions. An amendment to G.S. 150B-22.1 specifies that the timelines and other procedural safeguards of IDEA and Article 9 must be followed in an impartial due process hearing initiated by a petition filed under Article 9.

Mediation is available even after a petition for a hearing is filed. Unless the parties agree to use mediation at this point, a "resolution session" must be held before the hearing, although the parties may agree to waive the session. The purpose of the session is to give the parents an opportunity to discuss the petition and the basis for it and to give the LEA an opportunity to resolve the dispute. If the dispute is resolved in this session, the parties must execute a legally binding agreement.

If a due process hearing is held, the parents or the LEA may appeal the decision and have the matter heard by a review officer selected by the State Board. The review officer's decision is final unless a lawsuit is filed in state or federal court.

G.S. 115C-121, which reestablishes the Council on Educational Services for Exceptional Children as an advisory group to the State Board, increases the membership of the council from twenty-three to twenty-four. The State Board must appoint a state or local official to carry out activities under the McKinney-Vento Homeless Assistance Act.

S.L. 2006-29 amends many other statutes to bring them in line with the terminology and requirements of new Article 9.

Providing education for children with disabilities may often be expensive as well as complicated. Section 7.7 of S.L. 2006-66 directs the State Board to allocate funds for children with disabilities on the basis of $2,972.52 per child for a maximum of 170,240 children in the 2006–07 school year. Each local unit will receive funds for the lesser of all children identified as children with disabilities or 12.5 percent of the average daily membership of the school unit.

Pregnant and Parenting Students

Until this year's rewrite of the state's special education statutes (S.L. 2006-69, discussed above), pregnant students were included within the definition of "children with special needs," although they were never entitled to the protections of IDEA. References to pregnant students are now in a separate new section, G.S. 115C-375.5, which addresses the educational rights of parenting as well as pregnant students.[2]

Pregnant and parenting students must receive the same educational instruction as other students, or its equivalent. A local school board may offer programs to meet pregnant or parenting students' special scheduling and curriculum needs. The curriculum in these programs must be comparable to that provided other students. A student's participation in any such program must be voluntary.

All local boards of education must adopt a policy to ensure that pregnant and parenting students are not discriminated against or excluded from school or from any program, class, or extracurricular activity because they are pregnant or parenting. Such a policy must include several provisions.

2. The School of Government's Adolescent Pregnancy Project has a wealth of information for professionals and for students and their families. Guides for schools, teens and parents, health professionals, and social services are available at www.adolescentpregnancy.unc.edu/ (last accessed December 29, 2006).

- Pregnant and parenting students must be given excused absences from school for pregnancy and related conditions for the length of time the student's physician finds them medically necessary. This includes absences caused by a child's illness or medical appointments if the student is the child's custodial parent.
- Homework and make-up work must be made available to pregnant and parenting students so that they can keep current with assignments and avoid losing course credit. In addition, to the extent necessary, a homebound teacher must be assigned to the student.

Vision Screening

A provision in Section 10.59F of the Current Operations and Capital Improvements Appropriations Act of 2005, S.L. 2005-276 (S 622), required children entering public kindergarten to have a "comprehensive eye examination" conducted by a North Carolina optometrist or ophthalmologist; it provided that children who did not have that examination within six months of starting school would be barred from attending school. Many ophthalmologists, pediatricians, educators, and others spoke out against this requirement as unnecessary. In a more formal protest, the North Carolina School Boards Association, along with over eighty local school boards, sued, alleging that the law created an unreasonable barrier to access to the public schools and denied students a FAPE. A consent order issued on March 14, 2006, prohibited the state from implementing the eye examination requirement until July 1, 2007.[3]

The General Assembly responded this year, amending the law to eliminate mandatory comprehensive eye examinations for all students and to prohibit barring any student from attending public school because he or she had not had a comprehensive eye examination. S.L. 2006-240 (H 2699) amends G.S. 130A-440.1 to require that every child entering public kindergarten must have a vision screening in accordance with standards adopted by the Governor's Commission on Early Childhood Vision Care (the commission). Children entering first grade who attended a kindergarten that did not require vision screening also must be screened. Within 180 days of the start of the school year, a parent, guardian, or person standing in loco parentis must present to the school principal or principal's designee certification that the child has had the screening within the past twelve months. The health assessment transmittal form required by G.S. 130A-440 satisfies this requirement. Screening is mandatory beginning with the 2007–08 school year.

Vision screening may be performed by a licensed physician, optometrist, physician assistant, nurse practitioner, registered nurse, orthoptist, or a vision screener certified by Prevent Blindness North Carolina. A comprehensive eye examination performed by an ophthalmologist or optometrist also fulfills the requirement. Screeners must provide parents with written results of the screening on forms supplied by the commission. Screeners must also orally communicate the results to parents and take reasonable steps to ensure that parents understand the information.

If the child does not pass the screening, he or she must have a comprehensive eye examination. School personnel may also recommend to parents that a child have a comprehensive examination if they notice that a child in kindergarten through third grade is having vision problems. When school personnel notify parents of a child's need for a comprehensive eye examination, they must also tell parents that funds may be available from the commission to pay for the examination and for corrective lenses, if needed.

The results of a comprehensive eye examination must be included on the transmittal form developed by the commission pursuant to G.S. 143-216.75. The form must contain a summary of the examination and any treatment recommendations, which must also be entered on the student's school health card. After the examination, the screener must provide the parent a signed form, and the parent must submit the form to the school.

No child may be excluded from school because of a parent's failure or refusal to obtain a comprehensive eye examination for the child. If a parent does not obtain the examination or does not

3. Available through www.ncsba.org (last accessed December 29, 2006).

provide the necessary certification, the school must send a written reminder to the parent. The reminder must include information about commission funds that may be available for the examination.

Schoolchildren's Health Act

S.L. 2006-143 (H 1502), the Schoolchildren's Health Act, is one new step in the ongoing effort to protect and improve the health of public school students. The act's particular concern is toxicants (poison or poisonous agents) in the classroom and on school grounds.

S.L. 2006-143 amends G.S. 115C-12 to provide that the State Board must develop guidelines to

- deal with arsenic-treated wood on playgrounds and the possible contamination of the soil;
- reduce students' exposure to diesel emissions produced by school buses;
- adopt Integrated Pest Management; and
- provide notification of pesticide use on school grounds to parents, guardians, and custodians and to school staff.

The State Board must also study methods of mold and mildew prevention and mitigation and incorporate related recommendations into public school facilities guidelines.

New G.S. 115C-47(45) through G.S. 115C-47(48) place related responsibilities on local boards of education as follows:

- Boards must adopt policies that address use of pesticides in schools; the policies must include notification requirements. Effective October 1, 2011, the policy must require the use of Integrated Pest Management as defined in the act.
- Boards may not purchase or accept chromated copper arsenate-treated wood for future use on school grounds. Boards must seal existing arsenic-treated wood or establish a timeline for removing it. Boards are encouraged to test the soil on school grounds for contamination caused by leaching of arsenic-treated wood.
- Boards are encouraged to remove and properly dispose of teaching aids in science classrooms that have mercury in them, excluding barometers. Schools may not use teaching aids in science classrooms that contain bulk elemental mercury, chemical mercury compounds, or bulk mercury compounds, except for barometers.
- Boards must adopt policies and procedures to reduce students' exposure to diesel emissions.

The act does not create a private right of action against the State Board, local school boards, or their agents or employees. It bars individual lawsuits against the protected entities and individuals for an injury resulting from an act or failure to act under the Schoolchildren's Health Act.

Flag Display and Pledge of Allegiance

S.L. 2006-137 (S 700) amends G.S. 115C-47(29a) to require, rather than merely encourage, local boards of education to adopt policies relating to the display of flags in classrooms and to the Pledge of Allegiance. Now, when available, the United States and North Carolina flags must be displayed in each classroom. The Pledge of Allegiance must be recited daily. (As before, students cannot be compelled to stand during the pledge, salute the flag, or recite the pledge.)

New G.S. 115C-238.29F extends to charter schools all the requirements of G.S. 115C-47(29a), including providing age-appropriate instruction on the flag and pledge.

Memorial Day

S.L. 2006-75 (H 836) adds new G.S. 115C-12(33) requiring the State Board to develop recommended instructional programs to enable students to develop a better understanding of the meaning and importance of Memorial Day. In addition, the act requires all schools to recognize the significance of Memorial Day, though it is silent on the manner in which schools should do so.

School-Sponsored Travel

S.L. 2006-208 (H 1155) concerns the safe transportation of students during school-sponsored travel. The act amends G.S. 115C-247 to require local school boards that operate activity buses to adopt a policy setting forth the proper use of the vehicles. The policy must permit use of the buses for travel to and from school-sponsored activities, including regular season and playoff athletic events.

The DPI, in cooperation with the Department of Transportation, must develop a program for issuing statewide permits to commercial motor coach companies seeking contracts with local school systems to transport students, school employees, and other persons on school-sponsored trips. S.L. 2006-208 sets out a number of substantive and procedural requirements for developing the program.

This act does not affect the regular school buses that provide daily transportation to and from school.

Miscellaneous

Identify Theft Protection Act of 2005

In 2005 the General Assembly enacted the Identity Theft Protection Act (S.L. 2005-414) as one response to the problems presented by breaches of data security and identity theft in public agencies. S.L. 2006-173 (H 1248) amends the act to clarify the relationship between confidential information protected by the act and the state's public records law.

An amendment to G.S. 132-1.10(b)(5) provides that "identifying information," as defined in the statute, must be kept confidential; such information is not a public record. However, the act states that "[t]he presence of identifying information in a public record does not change the nature of the public record." This means that a record with identifying information removed or redacted remains a public record. If a request is made for a record that contains identifying information and otherwise meets that definition, a public agency must respond to the request "as promptly as possible" by providing the record with the identifying information removed or redacted.

An amendment to G.S. 132-1.10 directs that in the event of a security breach, the affected public agency must comply with the notice requirements and procedures of G.S. 75-65.

More at Four and Office of School Readiness

Section 7.8 of S.L. 2006-66 transfers the More at Four Pre-Kindergarten Program and the Office of School Readiness from the Office of the Governor to DPI and amends G.S. 115C-242(1) to allow the use of school buses to transport children enrolled in a More at Four program.

Passing Stopped School Buses

S.L. 2006-106 (H 2880) amends G.S. 20-217(e) to prevent a person found guilty of passing a stopped school bus from receiving a prayer for judgment continued (PJC). A PJC is a determination of guilt by a jury or court without the imposition of a sentence.

North Carolina School of Science and Mathematics

Section 9.11 of S.L. 2006-66 makes the North Carolina School of Science and Mathematics a constituent institution of the University of North Carolina. This change is discussed in Chapter 14, "Higher Education."

Cable Service

S.L. 2006-151 (H 2047), the Video Service Competition Act, enacts new Article 42 of G.S. Chapter 66. G.S. 66-360 requires cable service providers operating under a state-issued franchise to provide, upon request by a city or county, basic cable service without charge to public buildings located within 125 feet of the provider's system. A "public building" is a building used as a public school, charter school, a county or city library, or a function of the county or city. Other provisions of this act are discussed in Chapter 15, "Local Government and Local Finance."

Registered Sex Offenders

An Act to Protect North Carolina's Children/Sex Offender Law Changes, S.L. 2006-247 (H 1896), makes several changes to statutes dealing with sex offenders. The most important change for elementary and secondary schools is new G.S. 14-208.16, which prohibits a registered sex offender from knowingly residing within 1,000 feet of the property on which any public or nonpublic school or child care center is located. A violation of this restriction is a Class G felony. This provision does not affect sex offenders residing near home schools. Other provisions of S.L. 2006-247 are discussed in Chapter 7, "Criminal Law and Procedure."

Diplomas for Veterans

G.S. 115C-12(29) authorizes the State Board of Education to issue special high school diplomas for veterans of World War II. S.L. 2006-260 (S 862) extends the authority to issue diplomas to American veterans of the wars in Korea and Vietnam.

Studies and Reports

DPI Budget

Part L of the Studies Act, S.L. 2006-248 (H 1723), creates the Legislative Study Commission on the Budget of the Department of Public Instruction. The commission must review the DPI, including a zero-based budget review, and then determine the level of funding and staff necessary to accomplish DPI's goals and mission. The commission must report its results and recommendations to the 2007 General Assembly when it convenes.

School Counselors

S.L. 2006-176 (S 571) directs the State Board to report to the Joint Legislative Education Oversight Committee on the role public school counselors play in providing effective and efficient dropout prevention and intervention services to students in middle and high schools.

Red Light Camera Programs

Article IX, Section 7, of the North Carolina Constitution provides that the clear proceeds of all penalties and forfeitures and of all fines collected in counties for any breach of the penal laws must be used for public schools. The North Carolina Court of Appeals recently ruled that this provision applies to the proceeds of city and county red light camera programs, which collect penalties from the owner or driver of a vehicle found to have committed a traffic violation.[4] The court noted that "the Legislature feels it has the authority to clarify the meaning of clear proceeds in the context of red light camera programs."

4. Shavitz v. City of High Point, 630 S.E.2d 4 (N.C. App. 2006), *available at* www.aoc.state.nc.us/www/public/html/opinions.htm (last accessed December 29, 2006).

S.L. 2006-248 and S.L. 2006-189 (S 1442) authorize the Legislative Research Commission to study the impact of court decisions on the funding and operation of red light camera programs. The commission may recommend statutory changes to the definition of "clear proceeds" in a manner that will allow these funds to be used for the operation of red light programs.

Technology Plan

S.L. 2006-248 establishes the Legislative Study Commission on Information Technology to review the North Carolina Education Technology Plan developed by the State Board. The review must include best practices for using technology to enhance teaching and learning in the schools.

State and Local Fiscal Modernization

S.L. 2006-248 establishes the State and Local Fiscal Modernization Study Commission. Its duties include examining state and local responsibilities for public education.

Other Authorized Studies

S.L. 2006-248 authorizes the Legislative Research Commission to conduct the following studies related to public schools:

- Adequate public facilities ordinances
- Employee sick-leave bank and family leave
- Public building contract laws
- Impact of undocumented immigrants
- Impact of ethics legislation on locally elected officials

S.L. 2006-248 authorizes the Joint Legislative Education Oversight Committee to study the following subjects:

- Changes in education districts
- Raising the compulsory school-attendance age
- Child nutrition services
- Class-size funding formula for children with special needs
- Tracking students throughout their education
- Impact of student mobility on academic performance
- Corporal punishment
- Appropriate education for suspended students
- Strategies for targeting educational programs and resources
- Workforce preparation in the public schools
- Information requirements for school admission and assignment
- Establishment of a Joint Education Leadership Team for Disadvantaged Students
- Education facility funding
- School psychologists
- Civics education
- Local school construction financing
- Teacher assistant salary schedule
- Sales tax exemption for local school units
- High school graduation and dropout rates
- Strategies and resources that contribute to the opportunity for students to obtain a sound basic education

The Joint Legislative Study Committee on Sex Offender Registration and Internet Crimes Against Children, created by Part LIII of S.L. 2006-248, has many tasks, including evaluating whether law enforcement should have an affirmative duty to notify schools that a sex offender lives in the neighborhood and evaluating proposals that require sex offenders to stay a certain distance from schools and day care centers.

The State Board, in cooperation with Division TEACCH and the North Carolina Justice Academy, must study training for public school personnel to facilitate effective communication and transfer of information about students with autism and other disabilities between school personnel and school resource officers.

The Environmental Review Commission may study mercury reduction and prohibitions on the use of mercury in primary and secondary schools.

Selected Local Acts

Cherokee County Schools Attendance

S.L. 2006-13 (H 2527) provides that any student who was not a resident of Cherokee County but who attended public school there during the 2005–06 school year may continue to attend without paying tuition until the student graduates or leaves the school system. This local act is significant because it overrides the local board of education's decision to charge tuition, a decision that is specifically authorized by G.S. 115C-366.1.

Affordable Housing

Attracting and retaining highly qualified teachers is a challenge for all school systems, particularly where teachers may have a hard time finding affordable housing. A few school boards now have the authority to provide housing, and others may seek similar authority in the future.

S.L. 2006-61 (S 1896) authorizes the Bertie County Board of Education to provide affordable rental housing for teachers and other school system employees. S.L. 2006-86 (S 1903) authorizes the Hertford County Board of Education to provide affordable rental housing for the school system's professional staff, with priority given to teachers.

These two acts follow the example of the Dare County Board of Education, which was authorized by S.L. 2004-16 to construct and provide affordable rental housing, with priority given to teachers, on property owned or leased by the school board.

School Employment

Salaries

S.L. 2006-66 sets provisions for the salaries of teachers and school-based administrators. On average, teachers received an 8 percent salary increase, principals and assistant principals received 7 percent, and most other school employees received 5.5 percent.

For teachers, the act sets a salary schedule for 2006–07 that ranges from $28,510 for a ten-month year for new teachers holding an "A" certificate to $61,380 for teachers with thirty or more years of experience, an "M" certificate, and national certification. For school-based administrators (meaning principals and assistant principals), the ten-month pay range is from $35,920 for a beginning assistant principal to $80,630 for a principal in the largest category of schools who has more than forty years of experience. Of course, many school-based administrators are employed not for ten but for eleven or twelve months, which adds a proportionate amount to their salaries.

In addition, teachers with thirty or more years of experience who are, consequently, at the top of the salary schedule, and principals and assistant principals who are at the top of their salary schedules received a one-time bonus of 2 percent.

Central office administrators are paid salaries set by the local school board within salary ranges fixed by the General Assembly, not salaries determined by a salary schedule. For 2006–07, each central office administrator received a salary increase of 5.5 percent.

Similarly, noncertified public school employees paid with state funds received an increase of 5.5 percent. Every permanent, full-time noncertified public school employee whose salary is paid from state funds and who is employed on a twelve-month basis is to receive at least $20,112. Such employees employed for less than twelve months are paid at least this minimum on a pro rata basis.

Funds provided in the act enable the following payments to be made under the ABCs of Public Education program: $1,500 per teacher and $500 per teacher assistant in schools that achieve higher than expected improvements and $750 per teacher and $375 per teacher assistant in schools that meet expectations.

Math and Science Salary Supplement Pilot

S.L. 2006-66 sets aside $515,115 to fund a pilot program in three school administrative units. Under the program, newly hired teachers who are licensed in and teaching middle school mathematics or science or high school mathematics, science, earth science, biology, physics, or chemistry will receive a salary supplement of $15,000. The State Board is to focus the program on low-performing school units, and the units selected are to use the salary supplements for teachers at low-performing schools. A maximum of ten teachers per administrative unit may receive the bonus.

Instructional Planning Time and Duty-Free Lunch

G.S. 115C-301.1 has long required that school boards provide full-time classroom teachers with a duty-free period during student contact hours, but only "insofar as funds are provided for this purpose by the General Assembly." S.L. 2006-153 (H 1151) amends that statute only to define the duty-free period as "duty-free instructional planning time." It does not repeal the "insofar as funds are provided" provision. The act does, however, amend G.S. 115C-105.27, which mandates that each school adopt a school improvement plan and provides that the plan shall include provision of duty-free instructional planning time for every teacher "under G.S. 115C-301.1." The new provision specifies that the plan should have the "goal" of providing an average of at least five hours of planning time per week.

The act also specifies that each school's improvement plan should include plans to provide every teacher a duty-free lunch period "on a daily basis or as otherwise approved by the school improvement team."

These provisions apply to school improvement plans beginning with the 2007–08 school year.

Retirement Health Benefits

S.L. 2006-174 (S 837) amends G.S. 135-40.2 regarding the provision of health coverage for retired employees under the Teachers' and State Employees' Comprehensive Major Medical Plan. As the provision previously stood, all vested, retired employees (that is, those with five years' service) received coverage on a noncontributory basis—that is, without having to make premium payments—just as current employees do. Under the amendment, employees who were first hired on or after October 1, 2006, must have twenty years' service before they receive such noncontributory coverage after retirement. Those hired after that date who accumulate at least ten years of service but less than twenty years will have to contribute 50 percent of the cost of the premium.

Employee Citizenship Verification

In S.L. 2006-259 (S 1523) the General Assembly enacted a new G.S. 126-7.1(f), requiring that state agencies, departments, institutions, universities—and, perhaps, community colleges and local

boards of education—verify the citizenship or right-to-work status of each person hired after January 1, 2007, through the Basic Pilot Program of the U.S. Department of Homeland Security.

It is not clear whether the new requirement applies to employees of community colleges and local boards of education. These employees are exempt from Article 2 of Chapter 126, to which the new provision was added.

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Emergency Management

Emergency management issues received considerable attention at the beginning of the 2005 Session when the General Assembly enacted the Hurricane Recovery Act of 2005 (S.L. 2005-1) funding $247.5 million in disaster relief and establishing programs to assist communities in western North Carolina in recovering from Hurricanes Frances and Ivan in 2004. Little attention was given to emergency management issues for the remainder of the 2005 Session. When Hurricanes Katrina and Rita struck the Gulf Coast region in late August and early September 2005, legislative leaders became concerned about North Carolina's level of preparedness and ability to respond to a catastrophic disaster.

In response to these concerns, the President Pro Tempore of the Senate and the Speaker of the House of Representatives established the Joint Study Committee on Emergency Preparedness and Disaster Management Recovery. The forty-member committee divided into four subcommittees (Disaster Preparedness Issues, Public Health and Bioterrorism Issues, Energy Security Issues, and Building Code Issues) reflecting the main priorities of the committee's legislative charge. The committee issued an interim report with recommendations for legislative action to the 2006 session and is authorized to make a final report to the 2007 session. The majority of the committee's recommendations were either enacted as substantive legislation or incorporated as funding items in the 2006 adjustments to the 2005–06 state budget. In addition, several bills not included as part of the committee's recommendations were considered and enacted, reflecting the General Assembly's increased attention to disaster preparedness and response issues.

Liability Protection for State Medical Assistance Teams

G.S. 166A-14 provides immunity from liability (except in cases of willful misconduct, gross negligence, or bad faith) for emergency management workers when engaged in emergency management activities under the direction of either state or local governments. S.L. 2006-81 (H 2195) amends this statute to extend this liability protection to health care workers who are performing health care services in an emergency incident as a member of a hospital-based or county-based State Medical Assistance Team. State Medical Assistance Teams are designated as such by the Office of Emergency Medical Services (which is located within the North Carolina Department of Health and Human Services). This liability protection extends to State Medical Assistance Team members working anywhere within the state, including outside of the team members' normal jurisdiction. This legislation came as a recommendation from the Joint Study Committee on Emergency Preparedness and Disaster Management Recovery.

Embargo Authority Enhancements/Protection of Food Supply

In response to potential threats of contamination to food or drink supplies in North Carolina, the General Assembly enacted S.L. 2006-80 (H 2200) expanding the authority of the secretary of Environment and Natural Resources and local health directors to embargo food or drink suspected of being contaminated. Previously, the Department of Agriculture and Consumer Services was vested with the primary authority to embargo food or drink suspected of contamination, and this authority was available to the secretary of Environment and Natural Resources and local health directors only when delegated to them by the commissioner of agriculture. S.L. 2006-80 amends G.S. 130A-21 by repealing this delegation requirement and directly authorizing the secretary of Environment and Natural Resources and local health directors to embargo food or drink suspected of being contaminated under G.S. 106-125. If the secretary or a local health director exercises embargo authority, he or she must also perform all duties and procedures required under G.S. 106-125. This expanded authority applies to all establishments subject to regulation by the Department of Environment and Natural Resources or that are under a communicable diseases investigation pursuant to G.S. 130A-144. Primary embargo authority still rests with the Department of Agriculture and Consumer Services in establishments under inspection or regulation by that department. If food or drink is embargoed by any authorized official, it is unlawful to remove or dispose of the food or drink without the permission of the embargoing authority. This embargo authority, while directly authorized for local health directors, is not extended to individual environmental health specialists in local health departments. S.L. 2006-80 also directs the Departments of Agriculture and Consumer Services, Environment and Natural Resources, and Health and Human Services to jointly develop a comprehensive plan to protect the food supply in North Carolina (including plants, crops, and livestock) from intentional contamination. This legislation came as a recommendation from the Joint Study Committee on Emergency Preparedness and Disaster Management Recovery.

Extreme Pricing Practices

Allegations of price gouging often follow soon after a major disaster. S.L. 2006-245 (H 1231) adds additional measures to existing consumer protection statutes designed to prevent price gouging following disasters. G.S. 75-38 prohibits excessive pricing practices during a state of emergency by a seller of goods or services that are used as a direct result of an emergency or used to preserve, protect, or sustain life, health, safety, or economic well-being. S.L. 2006-245 amends this statute to expand this prohibition to apply not only to the seller, but to all parties in the chain of distribution of the goods or services (such as the manufacturer, wholesaler, or distributor). The legislation further clarifies that the prohibition against *excessive pricing practices* (defined as being prices charged that are "unreasonably excessive under the circumstances") is triggered by a declaration of a state of emergency by state or local officials under G.S. Chapter 166A, or the finding and declaration of the Governor of the existence of "abnormal market disruption." The new *abnormal market disruption* triggering event is defined as a significant imminent or actual disruption to the production, distribution, or sale of goods and services in this state resulting from a disaster in which a disaster declaration at the state or federal level has been made, including federal declarations in other states (an example would be the threat of disruption to fuel supplies in North Carolina following Hurricane Katrina and the resulting increase in gas prices). If the Governor declares that an abnormal market disruption exists, excessive pricing practices prohibitions are triggered and remain in effect for forty-five days unless extended by the Governor.[1]

1. Before House Bill 1231 became law, it was amended by S.L. 2006-259 (S 1523) (The 2006 Technical Corrections Act) to make technical adjustments to the definition of a *triggering event* in G.S. 75-38(d).

Disaster Insurance Claim Voluntary Mediation Program

To help disaster victims resolve insurance claim disputes, the General Assembly created a voluntary alternative dispute resolution procedure. S.L. 2006-145 (S 277) creates a new Part 2 of Article 44 of G.S. Chapter 58 titled Mediation of Emergency or Disaster-Related Property Insurance Claims. As the title suggests, this part establishes a nonadversarial voluntary alternative dispute resolution procedure for handling residential property insurance claims resulting from a state or federally declared disaster. The program is limited to residential property insurance claims disputes and is not applicable to claims involving commercial, motor vehicle, or property liability insurance. Disputes eligible under this program include those over either the cause or the amount of the loss. Unless the parties agree otherwise, the amount in dispute must be at least $1,500. Insurers are required to notify a policyholder in writing of the right to mediate eligible disputed claims (G.S. 58-44-80). This notice must be mailed to the policyholder within five days after notice of the underlying dispute has been given. Additional requirements relating to this notice (such as the style of the notice, certain required language, and instructions on how to request mediation) are also set out in G.S. 58-44-80. The policyholder must request mediation within sixty days of denial of a claim (G.S. 58-44-85). If such a request is made, the mediation process begins and is conducted under the procedural requirements set out in G.S. 58-44-85 through G.S. 58-44-115 (including the selection and qualifications of the mediator, scheduling and conduct of the mediation conference, the opportunity for rescission of the settlement agreement, and review by the Commissioner of Insurance). The insurer is responsible for payment of the mediator's fees, and the parties each bear their respective costs (G.S. 58-44-90).

The General Assembly also addressed another disaster-related insurance issue in S.L. 2006-145 by enacting a new section in Article 44 to require insurers to clearly state on all property insurance policies any exclusions of coverage for flood, earthquake, mudslide, mudflow, or landslide perils. The new G.S. 58-44-60 requires that this exclusion warning be printed in 16-point font on a separate page immediately before the declarations page of the policy and further specifies the exact language that must be contained in the warning.

The final section of the bill addressing disaster-related insurance issues adds two new sections to Article 2 of G.S. Chapter 58 to automatically stay proof of loss deadlines set forth in a real property insurance policy for forty-five days during a state or federal disaster declaration. The new G.S. 58-2-46 also requires that certain listed insurers give their customers who reside within the area covered by the disaster declaration the option of deferring for thirty days premium or debt payments due during the declaration period. This section also requires that losses for claims filed under separate windstorm policies (excluding those policies written by the North Carolina Insurance Underwriting Association, or "Beach Plan") be adjusted by the insurer that issued the property insurance policy as opposed to the insurer that issued the windstorm policy. Finally, in the event that the daily operations of the Department of Insurance (DOI) are disrupted and substantially affected, new G.S. 58-2-47 authorizes the Commissioner of Insurance to order the stay for up to thirty days of any deadlines and deemer provisions imposed on the DOI or the commissioner or persons subject to the commissioner's jurisdiction.

2006 Budget Actions Affecting Emergency Management and Disaster Preparedness

The General Assembly responded favorably to a number of the funding items recommended by the Joint Study Committee on Emergency Preparedness and Disaster Management Recovery. Included in the 2006 adjustments to the 2005–06 biennial budget (S.L. 2006-66, S 1741) were the following appropriations and capital projects:

Appropriations:

- $40,000 appropriated to the Department of Administration to conduct an update of the North Carolina Energy Emergency Plan (the requirements for this update are found in Section 18 of S.L. 2006-221)
- $5.9 million appropriated to the Department of Health and Human Services to acquire expanded influenza vaccines and antiviral medications for pandemic flu prioritized for first responders and front-line healthcare workers
- $200,000 appropriated to the Department of Health and Human Services to support continued activities under the Division of Medical Services of the Regional Advisory Committees
- $2.1 million appropriated to the Department of Agriculture and Consumer Services to establish 15 new positions within the department to support emergency response and food safety programs and purchase lab equipment
- $1.2 million appropriated to the Department of Crime Control and Public Safety for additional planning, response, and recovery staff within the Division of Emergency Management and additional training and equipment for the state's Urban Search and Rescue/Swift Water Rescue teams and HAZMAT regional response teams
- $20 million appropriated to a new State Emergency Response Fund

Capital Projects:

- $101 million (funded by borrowing) to construct a new 205,000 square foot State Public Health Lab and Office of Chief Medical Examiner to be located in Raleigh
- $8.5 million appropriated to the Department of Crime Control and Public Safety for the construction of a new state Emergency Operations Center to be co-located in Raleigh with the new federally funded National Guard Readiness Center
- $250,000 to the Department of Agriculture and Consumer Services to upgrade the biosecurity level of the Rollins Lab

In addition to significant capital investments in disaster preparedness facilities (new State Health Lab, new State Emergency Operations Center, and upgrades to Rollins Lab), the creation of the State Emergency Response Fund represents a major new commitment on the part of the General Assembly and the Governor to disaster response and recovery (the fund was recommended by Governor Easley). Previously, state funds needed for disaster response and recovery efforts (such as National Guard mobilization, N.C. Department of Transportation roadway clearing, Division of Emergency Management assets deployment, and assuming local governments' FEMA cost-sharing requirements) were taken from within existing state budget resources. Unless the General Assembly specifically appropriated additional funds from the state's Savings Reserve Account (Rainy Day Fund) as was done in response to Hurricane Floyd in 1999 and Hurricanes Ivan and Frances in 2005, costs incurred in state disaster response and recovery operations were absorbed within existing agency resources. The new G.S. 166A-6.02 [S.L. 2006-66, Sec. 6.5(b)] creates a new reserve account in the state General Fund called the State Emergency Response Account from which funds appropriated by the General Assembly to the account can be expended by the Governor to cover start-up costs of state emergency response team and first responder operations in Type I, II, or III declared disasters.

One further budget action taken in response to disaster recovery concerns is included in S.L. 2006-221 (S 198), commonly referred to as the Budget Technical Corrections Act. Section 1 of this act amends the Hurricane Relief Act of 2005 (S.L. 2005-1) to expand opportunities for persons in need of Crisis Housing Assistance Funds (CHAF) to apply for this assistance by clarifying that persons otherwise eligible for CHAF assistance could apply even if they failed to apply for federal assistance through FEMA (previously, only persons who failed to qualify solely on the basis of failing to apply for Small Business Assistance Administration Real Property Disaster loans could apply for state CHAF assistance). As a result of this change, up to 110 persons in western North Carolina affected by Hurricanes Ivan and Frances were given the opportunity to seek state crisis housing assistance where they were previously ineligible for both state and federal assistance. This extension expired on November 1, 2006.

Norma Houston

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Environment and Natural Resources

Although 2006 was a short session of the General Assembly in which an early agreement was reached on the budget, many environmental bills passed. Major legislation included a new stormwater management bill intended to resolve differences in the various past laws implementing federal Phase II stormwater requirements, a moratorium on municipal solid waste landfill permitting, new requirements for local solid waste disposal franchises, a new certification program for on-site wastewater contractors, and a new permitting and inspection program for private drinking water wells.

Agriculture

S.L. 2006-38 (S 1598) extends until September 1, 2007, the time period in which animal waste management technical specialists who are not professional engineers or who have no other specific qualifications can certify waste management plans and systems. The Department of Environment and Natural Resources (DENR) will report to the legislature by November 2006 regarding its opinion about whether additional requirements are needed for technical specialists.

Air Quality

S.L. 2006-73 (S 1591) extends the Commission on Global Climate Change until April 15, 2008 (from November 1, 2006), and requires an interim report by January 15, 2007.

Section 5.4 of S.L. 2006-255 (S 1587) exempts boilers at Duke Energy's proposed new Cliffside facility from compliance with state air quality regulations regarding new sources of emissions.

Coastal Resources

S.L. 2006-229 (H 1523) increases the maximum penalties for violations of the Coastal Area Management Act (CAMA) and allows the recovery of investigative costs along with the penalties. The new maximum penalties are $1,000 for minor development violations (was, $250) and $10,000 for major development violations (was, $2,500). The act also specifies the factors to be considered by CAMA regulators in setting penalties.

Contaminated Property Cleanup

Brownfields

S.L. 2006-71 (S 1121) makes several noncontroversial changes to the Brownfields Property Reuse Act. It clarifies that the state brownfields statute cannot be applied to sites on the National Priorities List. It clarifies the definition of *unrestricted use standards*. It tightens the definition of *prospective developer* to limit persons eligible for the brownfields program to those with a bona fide, demonstrable desire to redevelop a property. It shortens public comment periods on proposed brownfields agreements.

Underground Storage Tanks

S.L. 2006-200 (S 1584) transfers $165,000 from the underground storage tank funds to DENR for increased administrative costs of the program.

Energy

S.L. 2006-206 (S 2051) directs the Department of Administration to plan for the conversion of state fuel distribution facilities to facilitate use of ethanol, biofuels, and other gasoline alternatives. It creates new Part 34A in G.S. Chapter 143B setting up a Weatherization Assistance Program for Low Income Persons in the Department of Health and Human Services. It creates a multiagency Biofuels Industry Strategic Plan workgroup to plan the development of biofuels in the state. It calls for studies to assess water and energy conservation and the possibility of utilities commission regulation of petroleum distribution.

Environmental Finance

S.L. 2006-66 (S 1741), the 2006 appropriations act, funds the Clean Water Management Trust Fund at $100 million for fiscal year 2006–07 and funds the Parks and Recreation Trust Fund and Natural Heritage Trust Fund. It does not include funding for the Agricultural Development and Farmland Preservation Fund. It appropriates $15 million to expand the new Hickory Nut Gorge State Park and includes a significant increase in funding for the Agricultural Cost Share Program.

Forest Resources

S.L. 2006-102 (H 2570) and S.L. 2006-115 (S 1928) give Greenville (H 2570), the Town of Clayton, and the City of Reidsville (S 1928) the express authority to regulate the removal of trees prior to development, including the authority to deny building permits for up to three years after the illegal removal of trees.

Marine Fisheries

S.L. 2006-254 (S 1242) authorizes the Marine Fisheries Commission to establish gear-specific permits and limits for striped bass taken from the ocean and to charge up to $10 for permits.

State Parks, Natural Areas, and Land Conservation

A bill titled Land for Tomorrow would have authorized a $1 billion bond referendum to provide funding for public acquisition of land for conservation, historic preservation, and related economic development purposes. The bill did not pass, but S.L. 2006-223 (S 1122) creates a sixteen-member study commission to evaluate current state funding for these purposes. The commission is charged with holding at least three meetings across the state and delivering a report to the 2007 session of the General Assembly.

S.L. 2006-138 (H 2127) authorizes two new natural areas in the State Parks System, Mountain Bog State Natural Area and Sandy Run Savannas State Natural Area. It also directs DENR to study the feasibility of creating a park at Cabin Lake.

S.L. 2006-231 (S 1621) authorizes, among other things, $20 million in special indebtedness (COPS financing) for the Wildlife Resources Commission to purchase game lands being sold by the International Paper Company.

Solid Waste

S.L. 2006-244 (S 353) puts a one-year moratorium on permits for new landfills, subject to six exceptions:

- An amendment, modification, or other change to a permit for a landfill issued on or before June 1, 2006
- A permit for a horizontal or vertical expansion of a landfill permitted on or before June 1, 2006
- A permit to construct a new landfill within the facility boundary identified in the facility plan of a landfill permitted on or before June 1, 2006
- A permit to operate a new landfill if a permit to construct the new landfill was issued on or before June 1, 2006
- A permit for a sanitary landfill used only to dispose of waste generated by a coal-fired generating unit that is owned or operated by an investor-owned utility subject to the requirements of G.S. 143-215.107D
- A permit for a sanitary landfill determined to be necessary by the Secretary of Environment and Natural Resources to respond to an imminent hazard to public health or a natural disaster

The act also directs the Environmental Review Commission to study various issues relating to solid waste and sets up a Joint Select Committee on Environmental Justice.

S.L. 2006-193 (S 951) requires local governments that take over solid waste collection from private contractors (either through annexation, franchising, or otherwise) to give notice to the contractors and either provide a period in which the private service continues or compensate the contractor. The period in which private service may continue by statute is two years in the case of annexation or roughly two years from the notice given by a local government that it intends to displace a private firm for a reason other than annexation. Private firms are required under the act to file notice of their waste collection activities with local government clerks, and local governments intending to provide compensation for service displacement can request and receive business information from the private providers.

S.L. 2006-256 (S 1564) clarifies and adds requirements to the process of awarding local solid waste disposal franchises. In the mid-1990s, the state began requiring issuance of a local solid waste disposal franchise before a private company could get a state permit to construct a disposal facility.

However, the DENR solid waste rules regarding the process for local government approvals of solid waste disposal facilities were never revised to reflect the new franchise requirement. As a result there was no requirement under state law for a prior public notice of a proposed solid waste franchise. S.L. 2006-256 requires this notice and specifies the elements of a conceptual solid waste disposal facility plan that the franchisee must reveal before a public hearing is held on the proposed franchise, including the location of the proposed facility. The act does allow a private company to obtain a "preliminary franchise" before developing its conceptual facility plan.

Toxics and Biocides

S.L. 2006-143 (H 1502) directs the State Board of Education to take steps to protect children from toxics at school, particularly arsenic-treated wood, mercury, bus exhaust, pesticides, mold, and mildew.

Water Supply

S.L. 2006-90 (S 402) revises G.S. 143-64.17 to specify that guaranteed energy savings contracts can include savings from water and other utilities, not just electricity. It lengthens the permissible term of guaranteed energy savings contracts from twelve to twenty years and raises the state's aggregate limit on these contracts from $50 to $100 million. It provides for life-cycle analyses when state heating, ventilation, or air conditioning equipment is replaced in buildings of 20,000 or more gross feet.

S.L. 2006-202 (H 2873) sets up a permit, inspection, and testing program for private drinking water wells. It creates a new defined term, *private drinking water well*, in G.S. 87-85. It directs the Environmental Management Commission (EMC) to adopt rules for the permitting and inspection of new private drinking water wells with designed capacities of 100,000 gallons per day or greater or any wells in areas deemed to need protection by the EMC. It requires new private drinking water wells to be sterilized. It also requires each county to develop, through the public health department, a well-permitting, inspection, and testing program. New well sites require a health department inspection, and permits will be conditioned on the proper closing of any abandoned wells already in place. Newly constructed wells must be tested by the county within thirty days of their certificate of completion. The act authorizes fees for well-testing and inspection services.

S.L. 2006-255 (S 1587) establishes an Emergency Drinking Water Fund in G.S. 87-98. The fund is to be used for testing of private drinking water wells within 1,500 feet of known contamination, notification of well-water users in areas at risk from groundwater contamination, and provision of clean water. Disbursements from the fund are to be prioritized by ability to pay and the lack of availability of alternative water supply funding. The fund is not to be used to clean up contamination.

S.L. 2006-238 (H 1099) allows local governments to contract for professional engineering services necessary to meet state certification requirements for managing public water system construction.

S.L. 2006-214 (H 2164) allows sanitary districts to require property owners in the district to connect to water and sewer lines but also limits the size of any availability fee charged to unconnected properties.

Water Quality

Stormwater

In 2004, in the face of litigation over the EMC's stormwater rules, the General Assembly passed a major stormwater act, S.L. 2004-163, which sets out the process and requirements for the federal Phase

II program.[1] In 2005, the EMC won its lawsuit against the Rules Review Commission over the "permanent" EMC stormwater rules, which were more stringent in several respects than S.L. 2004-163. So as the 2006 session of the General Assembly convened, the regulated community pressed for yet another stakeholder negotiation over the Phase II stormwater program, hoping to pull back some of the stringent requirements in the current judicially sanctioned EMC permanent rules.

S.L. 2006-246 (S 1566) is the result of these negotiations and ensuing legislative decisions. The 2006 legislation lessens the stringency of certain technical requirements in the stormwater program and also provides vested rights language requested by the regulated community, but it also expands the geographic scope of the program to take in more than twenty-five counties (and their municipalities) that were not covered by the 2004 act. The principal issues negotiated and revised in 2006 include the following:

- Vested rights for current development
- Which counties and cities are covered by the Phase II program
- Important technical provisions of the post-construction stormwater requirements, including low density thresholds, the amount of stormwater for which controls must be designed, high density standards, and a rule for resolving conflicts in overlapping programs
- The designation process for newly covered local governments
- The petition process for covering additional jurisdictions
- Exceptions and variances
- Waivers
- Implementation time frames
- Express authority for cities and counties to create stormwater programs under the broad enabling legislation of their respective chapters in the General Statutes, 153A and 160A
- Express authority for the enforcement of land use restrictions required for maintenance of stormwater best management practices

For stormwater permittees who already are setting up programs under permits issued after the 2004 bill, the new provisions will go into effect when their five-year permits are renewed.

Section 6 of S.L. 2006-250 (H 1413) extends the civil penalty authority of the EMC and the Secretary of Environment and Natural Resources to local governments in administering stormwater programs and riparian buffer protection programs under G.S. Chapter 143. This authority was previously restricted to discharge permit pretreatment programs.

Nutrient Reduction and Mitigation

In response to the water quality problems caused by excess nitrogen and phosphorus in the Neuse and Tar-Pamlico river basins, the EMC put a series of rules in place in the mid-1990s, including rules that limit development in riparian buffers and that regulate the amount of impervious surface near streams. To give developers flexibility in how they build near streams, DENR allows more impervious surface in these basins if developers pay into a mitigation fund that is used to limit nutrient loading in other places. In a rulemaking process concluded and approved in 2006, the EMC raised the mitigation fees from $11 per pound for nitrogen and $11 per tenth of a pound for phosphorus to $57 for nitrogen and $45 for phosphorus. S.L. 2006-215 (S 1862) legislatively rolls back that rulemaking process and sets the offset payment amounts at the original rate, which the EMC considers inadequate. S.L. 2006-218 (S 927) allows DENR to deny an off-site phosphorus mitigation project if it believes the $11 per-tenth-pound fee is inadequate to cover the costs.

S.L. 2006-255 (S 1587) allows donation of riparian property for mitigation that is in the same river basin as the affected property, but not necessarily on the same stream.

1. For a summary and the background on Phase II stormwater legislation in North Carolina, see Richard Whisnant, "Environment and Natural Resources," in North Carolina Legislation 2004, ed. William C. Campbell, 78–79 (Chapel Hill: School of Government, The University of North Carolina at Chapel Hill, 2004).

Soil and Water Conservation

S.L. 2006-78 (H 2129) creates a new funding program for community practices that reduce nonpoint source water pollution, administered by the Soil and Water Conservation Commission and a new fifteen-member advisory committee. This program allows the state's soil and water districts to extend their cost-share funding outside of the traditional farm-based practices to a more urban setting. Funding is limited to $75,000 per applicant, with a 25 percent match required. The act exempts soil and water officials from the state's conflict of interest provisions for grant funding, as is now done for agricultural cost-share funding.

Clean Water Management Trust Fund

S.L. 2006-178 (H 2208) repeals the requirement (imposed by the 2005 session of the General Assembly) that Clean Water Management Trust Fund decisions about funding water, wastewater, and stormwater projects follow the "common criteria" for funding set out at G.S. 159G-23, thus allowing the trustees of the fund to set their own criteria. It also removes a provision authorizing a 20 percent match requirement for these projects.

On-Site Wastewater

S.L. 2006-82 (H 688) sets up a new professional licensing board for on-site wastewater contractors. New G.S. 90A-70 through 90A-81 require anyone, subject to seven exceptions, who constructs, installs, repairs, or inspects an on-site wastewater system to first have a suitable certificate from the newly created North Carolina On-Site Wastewater Contractors and Inspectors Certification Board. The board consists of nine members (with designated seats for stakeholders) who will serve three-year terms. The board has rule-making, enforcement, and fee-setting powers.

S.L. 2006-136 (H 1094) creates a pilot program in small counties with a backlog of at least nine hundred pending septic system permits under which private licensed soil scientists can conduct suitability inspections for on-site wastewater systems.

Sedimentation Pollution Control Act

S.L. 2006-250 (H 1413) authorizes local governments to request a limited delegation of authority for sedimentation and erosion control regulation in their jurisdictions. Under the new law, the local government can request delegation only to perform inspections of covered sites and to require fees to cover the costs of those inspections. Enforcement authority, however, is retained by the state. The act also provides for local permitting of reclaimed water utilization systems.

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Health

As usual, the General Assembly was quite active in the area of health law in 2006. There was some major new public health legislation, including new laws affecting private drinking water wells, food safety, and the on-site wastewater permitting program. A controversial 2005 law that would have required kindergarteners to receive comprehensive eye examinations was amended. An overhaul of North Carolina's impaired driving laws contains several sections that significantly affect health care providers who interact with law enforcement officers investigating impaired driving cases. Several new laws affect the management of confidential information maintained by health care providers, including the impaired driving law changes, amendments to the Identity Theft Protection Act of 2005, new protection for records maintained by the public health lead program, and changes to North Carolina's juvenile code (G.S. Chapter 7B).

This chapter summarizes all of the above, as well as the 2006 appropriations act provisions affecting public health, new laws affecting health insurance, the regulation of various health care professions, and health care facilities. Other laws that may be of interest to public health agencies or health care providers are briefly noted.

Public Health

Budget

The 2006 appropriations act, S.L. 2006-66 (S 1741), provides funding to the North Carolina Division of Public Health to expand several significant public health programs. Recurring funds were appropriated as follows:

- $7.1 million to the early intervention program for children from birth to age three, to support the increased number of children who have been referred to the program for services.
- $5.5 million to the universal vaccine program, to expand coverage of influenza and pertussis vaccines.
- $3.25 million to support sixty-five school nurse positions that previously had time-limited support from federal grants
- $2 million to the Community-Based Eliminating Health Disparities Initiative. (The 2005 appropriations act, S.L. 2005-276, provided $2 million in nonrecurring funds.) The money is

to be used to provide grants-in-aid to local health departments, American Indian tribes, and faith-based or community-based organizations, to improve minority health status. The funds will also support one position to manage the program.

- $390,000 in funding for dental preventive services. The funds are to be used to support the fluoride mouth rinse program in schools, community water fluoridation, and dental sealants and other dental services for children at high risk of tooth decay.
- $90,000 to fund one position and support the costs of implementing the North Carolina Institute of Medicine's recommendations for initiatives to prevent child abuse and neglect.

The General Assembly also appropriated nonrecurring funds to support several public health programs and initiatives. Nonrecurring funds were appropriated as follows

- $400,000 to the Division of Public Health to match federal funds for the purchase of antiviral influenza medication. The North Carolina pandemic influenza response plan calls for the state to stockpile antiviral medication to be used for first responders and healthcare workers in the event of a flu pandemic. $300,000 as a grant-in-aid to the Healthy Start Foundation.
- $200,000 to the Women's Health Services Branch to provide family planning services for uninsured women who are not eligible for Medicaid.
- $150,000 to provide education on pre-term birth and, in some cases, to purchase medication for women at risk of giving birth prematurely.

Both the Division of Public Health, which is within the Department of Health and Human Services (DHHS), and the Division of Environmental Health, within the Department of Environment and Natural Resources (DENR), received funds to support a new statewide private well program (described below). The Division of Environmental Health received a recurring appropriation of $271,079 and a nonrecurring appropriation of $827,550. These funds will pay for five new positions—four environmental health regional specialists and one administrative assistant. In addition, funds will support technical and enforcement assistance to counties. A nonrecurring appropriation of $226,000 will pay for equipment and supplies for the state public health laboratory to expand its capacity to test private well water samples, as it is anticipated that the number of samples the lab must test will increase when the new program is implemented. Section 10.20 of S.L. 2006-66 amends G.S. 130A-5 to authorize the Secretary of DHHS to charge a fee of up to $55 to pay for the state laboratory's analyses of water samples from newly constructed private wells and use fee receipts to support personnel working in the new public well program.

Additional appropriations to the Division of Environmental Health will support the following programs and activities:

- Nonrecurring funds in the amount of $300,000 are allocated to pay for notification of residents and business operators who obtain drinking water from a private well that is located within 1,500 feet of known groundwater contamination. The funds may also be used for testing private drinking water wells for contamination and providing alternative drinking water supplies to persons whose drinking water is contaminated.
- Recurring funds in the amount of $140,079 will pay for two positions (one soil scientist and one environmental engineer) to provide technical on-site assistance to customers requesting septic tank permits.
- A recurring appropriation of $167,980 and a nonrecurring appropriation of $11,020 will create three new positions to work with shellfish sanitation and provide funds to monitor and classify North Carolina's shellfish growing waters.

Several special provisions in the appropriations act expand or modify public health programs and activities.

Section 11.7 amends G.S. 130A-328 to increase community water system operating permit fees effective January 1, 2007. The appropriations act provides that the new revenue from the fee increases will fund eighteen environmental engineer positions and one environmental technician position within DENR. The new staff members will be responsible for field response, inspections, technical assistance, compliance oversight, laboratory support, and review and approval of plans to protect public drinking water supplies. The positions will be funded as revenue is generated. It is expected that seven positions will be funded in fiscal year 2006–07 and the remainder in 2007–08.

Section 10.13 appropriates nearly $10 million to the Division of Public Health to fund the development and implementation of the Health Information System (HIS), which is intended to replace the outdated Health Services Information System (HSIS). The purpose of the Health Information System is to provide an automated means of capturing, monitoring, reporting, and billing services provided by local health departments, children's developmental services agencies, and the state public health laboratory. Allocation of the funds is contingent upon full compliance with Section 10.59A.(b) of the 2005 appropriations act, which required the Division of Public Health to report on the use of funds appropriated in 2005–06 by March 1, 2006.

A special provision in the 2005 appropriations act provided that $2 million of the funds appropriated for community health grants for the 2005–06 and 2006–07 fiscal years would be allocated to federally qualified health centers, local health departments, and specified other health care facilities to increase medically indigent and uninsured persons' access to preventive and primary care services. Section 10.16 of the 2006 appropriations act amends this special provision to provide that $5 million of the funds appropriated for community health grants must be used in this manner in fiscal year 2006–07. It also amends the 2005 provision (1) to allow additional types of agencies that provide health care to receive funding and (2) to add items to the list of issues DHHS is required to consider in distributing funds to the various facilities.

Finally, a special provision in the 2006 appropriations act allows expanded eligibility for the state's AIDS Drug Assistance Program. In fiscal year 2005–06, eligibility for the program was limited to HIV-positive individuals with incomes at or below 125 percent of the federal poverty level. Section 10.21 of S.L. 2006-66 provides that, for the 2006–07 fiscal year, DHHS may adjust the financial eligibility criterion for the program up to at or below 250 percent of the federal poverty level. If such an adjustment is made and a waiting list for the program develops as a result, DHHS must give priority on the waiting list to individuals at or below 125 percent of the federal poverty level.

Private Wells

Arguably the most significant public health legislation enacted this past session was a new mandate for local governments to develop programs to regulate private drinking water wells [S.L. 2006-202 (H 2873), S.L. 2006-259, sec. 51 (S 1523)]. Under the law, a "private drinking water well" (or private well) is one that (1) serves or is proposed to serve fourteen or fewer service connections or (2) serves or is proposed to serve twenty-four or fewer individuals.[1] Prior to the adoption of this new law, private drinking water wells were not subject to regulation by the state. Since 1967, state law has included construction standards for private wells, but there was little oversight of the construction or enforcement of the standards in most counties.[2]

All local health departments are involved with private wells to some extent. State law requires each local health department to have a program for collecting water samples from private wells and submitting the samples for laboratory testing.[3] This sampling and testing is typically done in response to a property owner's or resident's request or in response to a disease or outbreak investigation. Some local governments had gone even further, however, by establishing local permitting programs for private wells and actively enforcing the state construction standards. Under G.S. 87-96, local boards of health are authorized to implement such programs by adopting the Environmental Management Commission's well regulations by reference and incorporating more stringent provisions when necessary to protect the public health.

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1. The full definition of "private drinking water well" is "any excavation that is cored, bored, drilled, jetted, dug, or otherwise constructed to obtain groundwater for human consumption and that serves or is proposed to serve 14 or fewer service connections or that serves or is proposed to serve 24 or fewer individuals. The term 'private drinking water well' includes a well that supplies drinking water to a transient noncommunity water system as defined in 40 Code of Federal Regulations § 141.2 (1 July 2003 Edition)." S.L. 2006-202 (amending G.S. 87-85).

2. *See* G.S. Chapter 87, Article 7 (North Carolina Well Construction Act).

3. *See* 10A NCAC 46 .0210(a); *see also* G.S. 130A-1.1(b)(2)b (providing that water safety and sanitation is a mandated public health service under state law).

Under the new law, all local health departments are now required to implement programs for permitting, inspecting, and testing wells. Local programs must be operational by July 1, 2008. The statute outlines some of the basic requirements applicable to these local programs, but many of the details will be outlined in the coming months in regulations to be adopted by the Environmental Management Commission.[4] Once the state regulations are in place and the local environmental health specialists are enforcing the state regulations, the specialists will be considered agents of DENR for liability and insurance purposes.

Finally, the new law permits local health departments to charge fees associated with their private well programs.[5] The fees must be cost-related and must be deposited in the local health department's account and used for public health purposes.[6]

The General Assembly appropriated $827,550 in nonrecurring funds to DENR to distribute to counties that need assistance setting up local programs to enforce the statewide well construction standards.[7]

Food Safety

Two new laws relate to food safety. One expands the authority of public health officials to embargo unsafe food and drink, and the other requires certain stakeholders to develop a plan to protect the food supply from intentional contamination.

For many years, environmental health professionals have lacked the direct authority to embargo—or hold—unsafe food or drink they discovered in restaurants and other regulated establishments. The law granted the North Carolina Department of Agriculture and Consumer Services (DACS) broad embargo authority and provided that DENR and local public health officials could embargo food or drink (with the exception of milk and shellfish) only if DACS delegated the authority to them. Typically, if an environmental health specialist encountered unsafe food or drink in a regulated establishment, he or she would ask the owner or manager not to serve it to the public. If the owner or manager insisted upon serving it, the specialist could

- contact DACS and request the agency's assistance in embargoing the item,
- immediately suspend or revoke the establishment's permit on the ground that the item presented an imminent hazard to the health of the public, or
- ask the state or local health director to declare the food or drink an imminent hazard and proceed with an abatement of the hazard under G.S. 130A-20.[8]

S.L. 2006-80 (H 2200) revises the existing embargo statute (G.S. 130A-21) to supplement the embargo authority of DACS by providing both DENR and local health directors with the authority to embargo food and drink in regulated establishments. There are several important limitations on this authority with respect to its scope and delegation.

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4. S.L. 2006-202, sec. 2 [amending G.S. 87-87; subdivision (7)] requires the Environmental Management Commission to adopt regulations governing private wells. The commission is expected to adopt state regulations governing the private well programs by July 1, 2008.

5. The fees must be based upon a plan recommended by the local health director, approved by the local board of health, and approved by the board(s) of county commissioners. G.S. 130A-39(g).

6. For detailed information about the new well law, see Aimee N. Wall, *North Carolina Environmental Health: 2006 Legislative Update*, HEALTH LAW BULLETIN No. 85 (UNC School of Government, October 2006).

7. North Carolina General Assembly, Joint Conference Committee Report on the Continuation, Capital and Expansion Budgets (S 1741) at H-5 (June 20, 2006) (providing "funds for technical support and enforcement assistance to counties as they enforce statewide private water supply well construction standards"). In addition to this technical assistance funding for counties, the General Assembly provided DENR with funding for five new staff positions to support the new well program.

8. The term "imminent hazard" is defined as "a situation that is likely to cause an immediate threat to human life, an immediate threat of serious physical injury, an immediate threat of serious adverse health effects, or a serious risk of irreparable damage to the environment if no immediate action is taken." G.S. 130A-2(3). Environmental health specialists are authorized to suspend or revoke permits immediately only when an imminent hazard exists. G.S. 130A-23(d).

The new embargo authority may be used only with respect to food or drink that is either adulterated or misbranded (as defined by state law)[9] and found in establishments that are either

- regulated by DENR pursuant to G.S. Chapter 130A; or
- the subject of a food-borne illness outbreak pursuant to G.S. 130A-144.

Regulated establishments include, for example, restaurants, food carts, and hotels. Establishments that are exempt from regulation, such as private clubs and certain nonprofit corporations, are not subject to this new embargo authority.

The law grants this embargo authority to the Secretary of DENR and to local health directors. Many of North Carolina's public health laws provide legal authority or responsibility to the Secretary of DENR or DHHS or to a local health director. In practice, however, local environmental health staff members typically perform functions such as inspecting restaurants. State law specifically authorizes delegation of these responsibilities and authority to local environmental health specialists.[10]

The embargo law is different. It states that the new embargo authority "shall not be delegated to individual environmental health specialists in local health departments."[11] The new law grants this authority to two groups of individuals:

- local health directors, and
- DENR regional environmental health specialists and their superiors.

Local health directors may not act alone when seeking to exercise embargo authority. The director must consult with a regional environmental health specialist before issuing an embargo order.

When faced with a potential embargo, a person in charge of a regulated establishment may voluntarily agree to destroy the food or drink that the local health department or DENR identifies as problematic. If the person does not voluntarily dispose of the food or drink, then the health director or DENR staff has the authority to move forward with the embargo. This means that the health director (in consultation with DENR) or a DENR representative can take immediate steps to detain the item and subsequently go to court seeking an order requiring the person to destroy it.[12]

The same legislative subcommittee that recommended enhancing public health's embargo authority also called for development of a broader food defense plan. S.L. 2006-80 directs DACS, DENR, and DHHS to "jointly develop a plan to protect the food supply from intentional contamination." According to DENR, a joint task force with representatives from all three agencies is currently in the process of developing a three-part plan that will address protection of food, plants and crops, and livestock.

Smoking Regulation

Article 64 of G.S. Chapter 143 regulates smoking in public places in North Carolina. In most cases, Article 64 requires at least 20 percent of the interior space of public buildings to be designated as a smoking area, unless to do so is physically impracticable. However, G.S. 143-599 provides a list of facilities that are exempt from the provisions of Article 64 and in which smoking may be prohibited entirely. In recent years, the General Assembly has added several facilities to the list of exemptions. For example, in 2005 it added local health department grounds and large indoor arenas, among other facilities.[13] S.L. 2006-133 (H 448) adds community colleges to the list of facilities that are not required to provide smoking areas in their buildings.

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9. *See* G.S. 106-129 (foods deemed to be adulterated); G.S. 106-130 (foods deemed to be misbranded).

10. G.S. 130A-4 ("When requested by the Secretary, a local health department shall enforce the rules of the Commission under the supervision of the Department. The local health department shall utilize local staff authorized by the Department to enforce the specific rules."); G.S. 130A-6 ("Whenever authority is granted by this Chapter upon a public official, the authority may be delegated to another person authorized by the public official.").

11. G.S. 130A-21(a). Note that this restriction on delegation does *not* apply to the pre-existing embargo authority for milk and shellfish.

12. For more detailed information about the embargo law, see Aimee N. Wall, *North Carolina Environmental Health: 2006 Legislative Update*, HEALTH LAW BULLETIN No. 85 (UNC School of Government, October 2006).

13. *See* NORTH CAROLINA LEGISLATION 2005, Chapter 12, "Health."

The 2006 General Assembly also restricted smoking in its own buildings. S.L. 2006-76 (H 1133) amends G.S. 143-597 to designate all areas of any building occupied by the General Assembly as nonsmoking areas.

On-Site Wastewater

State law provides a comprehensive certification program for persons who install and repair drinking water wells[14] and for registered sanitarians,[15] but until recently, it did not have a similar certification system for people who install or inspect on-site wastewater systems. S.L. 2006-82 (H 688) enacts Article 5 of G.S. Chapter 90A, a comprehensive new law that sets out a certification system for on-site wastewater contractors and inspectors. In summary, the law

- establishes a new certification board;
- authorizes the board to adopt regulations and oversee the certification process;
- requires persons to be certified at different grade levels that will vary based on design capacity, complexity, projected costs, and other factors; and
- outlines the basic requirements for certification.

The provisions establishing the new certification board went into effect on July 10, 2006, but the provisions requiring certification by the new board do not go into effect until January 1, 2008.

Over the last few years, the public health community has discussed the possibility of integrating private-sector soil scientists into the on-site wastewater permitting process in order to possibly expedite the permitting process. During recent legislative sessions, several bills have been introduced that would have made these and other changes to the current permitting system.[16] In 2006, the General Assembly did not pass a comprehensive change to the current system, but it did enact S.L. 2006-136 (H 1094), authorizing DENR to establish a pilot program to test out such a system in certain counties.

The pilot program is an option only in a county that meets the following three conditions:

- The county's population must be 25,000 or less (according to the most recent census).
- The county must have had more than 900 on-site wastewater applications (improvement permits or construction authorizations) pending before the health department on July 19, 2006.
- The county's board of commissioners and board of health must approve a resolution authorizing the county's participation in the pilot program.

In August, both the board of health and the board of county commissioners in Cherokee County approved resolutions requesting participation in the pilot program, and the county health department and DENR are currently moving forward with implementation. The pilot program is scheduled to expire on July 1, 2011. Beginning in October 2007, DENR is required to submit annual evaluations of the pilot program to the General Assembly. The evaluations must examine whether the pilot program

1. reduced the amount of time for processing applications,
2. resulted in an increased number of on-site system failures, and
3. resulted in new or increased environmental impacts.[17]

Injury Prevention

North Carolina has had a mandatory seat belt use law since 1985. Initially, G.S. 20-135.2A applied only to the driver and front-seat passengers. A later-enacted law, G.S. 20-137.1, required persons under the age of sixteen who occupied the rear seats to be restrained either by a seat belt or a child safety seat (depending on the child's age or weight). S.L. 2006-140 (S 774) makes seat belt use

14. G.S. Chapter 87, Article 7A (Well Contractors Certification).

15. G.S. Chapter 90A, Article 4 (Registrations of Sanitarians).

16. During the 2005-06 session, the primary vehicles for this discussion were House Bill 900 and Senate Bill 902.

17. For more information about the new on-site wastewater legislation, see Aimee N. Wall, *North Carolina Environmental Health: 2006 Legislative Update*, HEALTH LAW BULLETIN No. 85 (UNC School of Government, October 2006).

mandatory for all occupants of motor vehicles, including adults occupying the rear seats. It also adds to the existing list of exceptions to the seat belt requirement an exception for occupants of motor homes who are not either driving or riding as a passenger in the front seat. A driver or front-seat passenger's failure to wear a seat belt is a primary offense, meaning a law enforcement officer needs no other justification to stop the vehicle and issue a citation. In contrast, S.L. 2006-140 provides that the failure of a rear-seat passenger to wear a seat belt is not in itself justification for stopping the vehicle. Rather, it is a secondary offense that may be charged only if the vehicle has been stopped for another reason. Finally, the new law sets the fine for the offense at $10 and no court costs (the fine for a front-seat passenger's failure to wear a seatbelt is $25 plus court costs). The new law became effective December 1, 2006, and only warnings for violations may be issued for the first six months. Law enforcement officers may begin issuing citations for violation of the new law on July 1, 2007.

S.L. 2006-177 (S 1289) enacts new G.S. 20-137.3, which prohibits teens under the age of eighteen from using mobile phones while driving. The driver may use a mobile phone if the vehicle is stationary. In addition, the driver may use a mobile phone while driving to communicate with his or her parent, legal guardian, or spouse. The driver may also use a mobile phone while driving if there is an emergency and the driver is using the phone to communicate with an emergency response operator, a hospital, a physician's office, a health clinic, an ambulance company, a fire department, or a law enforcement agency. Violation of the new law is an infraction punishable by a fine of $25. In addition, a teenager who would otherwise be eligible to move up a level in the graduated driver licensing system—for example, from a limited learner's permit to a limited provisional license, or from a limited provisional license to a full provisional license—will not be permitted to do so if he or she has committed this infraction within the preceding six months. However, no driver's license points, insurance surcharge, or court costs may be assessed as a result of the violation. The new law became effective December 1, 2006.

Other Public Health Issues

The General Assembly established the Justus-Warren Heart Disease and Stroke Prevention Task Force in 1995.[18] The Task Force's duties include adopting and promoting a state Heart Disease and Stroke Prevention Plan and facilitating the efforts of state and local agencies in implementing it. S.L. 2006-197 (H 1860) amends G.S. 143B-216.60(j) to require the task force to establish and maintain a Stroke Advisory Council. The council must advise the Task Force on the development of a statewide system of stroke care, including a system for identifying and disseminating information about the location of primary stroke centers. Uncodified portions of the law specify the membership of the advisory council and require the task force to make recommendations to the General Assembly by February 15, 2007.

School Health

Kindergarten Vision Screening

In 2005, the General Assembly enacted G.S. 130A-440.1, which required a child entering kindergarten in a public school to have a comprehensive eye examination performed by an ophthalmologist or optometrist. The law proved quite controversial and was quickly challenged in court. In the summer of 2006, a court delayed enforcement of the law in order to allow the General Assembly an opportunity to reconsider the provisions under challenge.

The General Assembly responded by enacting G.S. 2006-240 (H 2699), which amends G.S. 130A-440.1. The law replaces the requirement for a comprehensive eye examination with a requirement for vision screening. Beginning with the 2007–08 school year, children enrolling in public

18. S.L. 1995-507, sec. 26.9. The task force was initially called the North Carolina Heart Disease and Stroke Prevention Task Force. It was renamed the Justus-Warren Heart Disease and Stroke Prevention Task Force in 2003 (S.L. 2003-284, sec. 10.33B).

kindergarten[19] must have *either* a comprehensive eye examination *or* a vision screening within the twelve months preceding their enrollment. The vision screening may be conducted by a physician, optometrist, physician assistant, nurse practitioner, registered nurse, or orthoptist or by a vision screener certified by Prevent Blindness North Carolina. Parents of children subject to this requirement must present certification of the screening to the school within 180 days of the start of the school year. If a child receives a vision screening as part of the kindergarten health assessment required by G.S. 130A-440, the health assessment transmittal form required by that statute satisfies this certification requirement.

The new law still requires comprehensive eye examinations for a subset of children—those who receive and fail to pass the required vision screening. The optometrist or ophthalmologist who conducts such an examination must present a signed transmittal form to the child's parent, and the parent must submit the form to the child's school. However, a child may not be excluded from school because the child's parent fails to obtain a required examination. Instead, the school must send a written reminder to the parent that includes information about funds to pay for the examination that may be available from the Governor's Commission on Early Childhood Vision Care.

The law also provides that school personnel may recommend a comprehensive eye examination for a child enrolled in grades K–3 if there is reason to believe the child has a vision problem. When such a recommendation is made, the school personnel must notify the parent that funds to pay for the examination may be available.[20]

Section 2 of the new law amends G.S. 143B-216.75 to expand the membership of the Governor's Commission on Early Childhood Vision Care to include a pediatrician and a school nurse. An uncodified provision of Section 2 requires the commission to work with the Department of Public Instruction to establish procedures for identifying and referring children who need vision screenings or comprehensive eye examinations.

Environmental Hazards in Schools

The Schoolchildren's Health Act of 2006, S.L. 2006-143 (H 1502), adds several provisions to G.S. Chapter 115C that are intended to protect school children from environmental hazards in schools. The act requires the State Board of Education to

- Develop guidelines for sealing arsenic-treated wood in playground equipment or establish a timeline for removing the wood from playgrounds.
- Develop guidelines for testing soil for contamination from arsenic-treated wood.
- Establish guidelines to reduce students' exposure to diesel emissions from school buses.
- Study methods for mold and mildew prevention and mitigation and incorporate recommendations into the public school facilities guidelines.
- Establish guidelines for integrated pest management in accordance with a 2004 policy of the North Carolina School Boards Association.
- Establish guidelines for notifying students' parents and school staff about pesticide use on school grounds.

The act also requires local boards of education to

- Adopt policies addressing the use of pesticides in schools. Among other things, the policies must require annual notification of parents and school staff of the schedule of pesticide use.
- By October 1, 2011, require the use of integrated pest management,[21] with an emphasis on pest prevention.

19. In some cases, children entering first grade will be subject to this requirement as well. If a child entering first grade has not previously been enrolled in a kindergarten program that required a vision screening, the child must receive a vision screening and the child's parents must provide certification of the screening within 180 days of the start of the school year.

20. Funds for this program were reduced by $1.5 million in the 2006–07 budget. Joint Conference Committee Report on the Continuation, Capital and Expansion Budgets (June 30, 2006), page G-2 (available on the Internet at http://www.ncleg.net/sessions/2005/budget/2006/budgetreport6-30.pdf).

21. The law defines "Integrated Pest Management" as "the comprehensive approach to pest management that combines biological, physical, chemical, and cultural tactics as well as effective, economic, environmentally

- Prohibit the purchase or acceptance of arsenic-treated wood for future use on school grounds and either seal existing arsenic-treated wood or establish a timeline for removing it. The boards are encouraged but not required to test soil on school grounds for arsenic contamination.
- Prohibit the use of elemental mercury and mercury compounds as teaching aids. There is an exception for barometers containing mercury. The boards are encouraged but not required to remove and properly dispose of existing mercury.
- Adopt policies and procedures to reduce students' exposure to diesel emissions.

Section 3 of the act, which is not codified, provides that the act does not create a private cause of action against the State Board of Education, a local board of education, or the agents or employees of those boards.

Transportation Safety

S.L. 2006-208 (H 1155) addresses the safety of public school students involved in school-sponsored travel. Section 1 amends G.S. 115C-247 to require local boards of education that operate activity buses to adopt a policy for proper use of those vehicles. Section 2 is uncodified and directs the Department of Public Instruction, in cooperation with the Department of Transportation, to develop a program for issuing a statewide permit to commercial motor coach companies that seek to contract with local school systems to transport students and others on school-sponsored trips. Among other things, the program must require the companies to demonstrate compliance with federal safety regulations.

Pregnant or Parenting Students

Public school students who are pregnant or have children are entitled to receive the same educational instruction as other students under new G.S. 115C-375.5, enacted by Section 4 of S.L. 2006-69 (H 1908). This law, which was effective at the beginning of the 2006–07 school year, requires local boards of education to adopt policies to ensure that pregnant or parenting students are not subjected to discrimination or excluded from school or school programs, classes, or extracurricular activities. Among other things, the local policies must provide for homebound instruction when necessary, allow excused absences for pregnancy-related care, and provide for the student to attend to his or her child's illness or medical appointments.

Other sections of S.L. 2006-69 may be of interest to school nurses and other health care providers. The bulk of this act rewrites the laws governing the education of children with special needs. Those provisions are summarized in Chapter 10, "Elementary and Secondary Education."

Health Insurance

Teachers' and State Employees' Medical Plan

S.L. 2006-174 (S 837) requires individuals who are first hired as teachers or state employees on or after October 1, 2006, to complete at least twenty years of service under the Teachers' and State Employees' Retirement System before becoming eligible for the Comprehensive Major Medical Plan on a noncontributory basis. If an individual first hired on or after October 1, 2006, has at least ten but less than twenty years of service, the state will pay 50 percent of the contributory portion. However, any individual who is first hired on or after October 1, 2006, and who has less than ten years of service may participate in the medical plan only if he or she pays the full premium for participation—the state

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sound, and socially acceptable methods to prevent and solve pest problems that emphasizes pest prevention and provides a decision-making process for determining if, when, and where pest suppression is needed and what control tactics and methods are appropriate."

will not pay any part of the premium. The same provisions apply to members of the General Assembly first taking office on or after February 1, 2007.

S.L. 2006-249 (H 1059) makes several substantive and technical changes to the Teachers' and State Employees' Comprehensive Major Medical Plan. It empowers the plan's Executive Administrator and Board of Trustees to authorize coverage for over-the-counter medications and to require co-payments for these medications. It authorizes the Executive Administrator and Board of Trustees to adopt incentive programs to encourage plan members to achieve and maintain healthy lifestyles and improve their health. Participation in these programs is voluntary for members. An incentive plan may provide for waiver of deductibles, co-payments, and coinsurance in order to determine the effectiveness of the incentive program. The law also amends G.S. 135-40.6A(b) to add surgically implanted bone anchored hearing aids to the list of services that may be subject to prior approval procedures. Finally, it amends G.S. 135-39.5B(b) to provide that benefits under the Comprehensive Major Medical Plan may not be paid to persons enrolled in an optional prepaid hospital and medical benefits program, except when approved by the Executive Administrator in cases of continuous hospital confinement.

A special provision to the 2004 appropriations act authorized five North Carolina local governments to provide health care coverage to their employees through the Teachers' and State Employees' Comprehensive Major Medical Plan (S.L. 2004-124, sec. 31.26). The provision applied only to Bladen, Cherokee, Rutherford, Washington, and Wilkes counties and had a sunset date of June 30, 2006. In S.L. 2006-7 (S 1208), the 2006 General Assembly repealed the sunset date.

Teachers' and State Employees' Disability Income Plan

Article 6 of G.S. Chapter 135 establishes a disability income plan for members of the Teachers' and State Employees' Retirement System or the Optional Retirement Program for certain employees of North Carolina's public universities. The plan permits a member who has been receiving short-term disability benefits to participate in a trial rehabilitation, in which the member is given an opportunity to attempt to return to work and will not be required to undergo a waiting period before disability benefits resume if the attempt is unsuccessful. S.L. 2006-74 (S 1738) provides for a similar trial rehabilitation period for a member who has been receiving long-term disability benefits. It adds a new subsection (c1) to G.S. 135-106 (long-term disability benefits) permitting the member to return to service for up to thirty-six months. If the member is unable to continue in service—whether due to the initial cause of incapacity or a different cause—the member may be eligible to have his or her long-term disability benefits restored without a waiting period or a period of short-term disability benefits if the member's disability is certified by a medical board.

Small Employer Health Plans

S.L. 2006-154 (H 1987) implements several recommendations of the House Select Committee on Health Care for small employer health plans. It amends G.S. 58-50-125 to permit the statutory basic and standard health plans for small employers to have optional deductible and co-payment levels, including high deductible options. Changes in deductibles or co-payments must be approved by the Commissioner of Insurance, who is also authorized to periodically review and update the benefits provided by small employer plans.

G.S. 58-50-125(d) requires small employer health insurance carriers that wish to operate in North Carolina to offer at least one basic and one standard health care plan. S.L. 2006-154 enacts a new section, G.S. 58-50-126, which permits the carriers to limit the coverage offered under G.S. 58-50-125(d) if the carrier offers at least two different health insurance policies that meet certain conditions. One of the options permits the carrier to offer a choice of a lower-level coverage and a higher-level coverage.

The new law makes several other changes to the laws governing small employer health insurance carriers, including permitting the carrier to charge premium rates that vary by up to 25 percent from the adjusted community rates. Under prior law, carriers were not permitted to charge rates that varied by

more than 20 percent. Amendments also permit carriers to take an employer's industry into account in determining rating factors.

Finally, the act amends G.S. 58-50-149 to provide for the termination of the North Carolina Small Employer Health Reinsurance Pool. The pool will cease to reinsure any individual or group on January 1, 2007.

Health Care Access for Uninsured Persons

Section 10.12(a) of the 2006 appropriations act (S.L. 2006-66) directs the Secretary of Health and Human Services to develop a plan to expand health care access for uninsured North Carolinians. The plan must make use of public/private partnerships and federal resources and must promote the provision of charity care. The Secretary must use $100,000 of the funds appropriated to the Division of Medical Assistance for fiscal year 2006–07 to support the development of the plan.

Medicaid

The 2006 General Assembly made a number of changes to North Carolina's Medicaid program. These are described in detail in Chapter 24, "Social Services."

Health Information

Disclosure of Information to Law Enforcement Officers in Impaired Driving Cases

S.L. 2006-253 (H 1048) made extensive changes to the laws governing driving while impaired. Two of the changes significantly alter health care providers' duties with respect to medical information that may be relevant to an impaired driving case.

Section 17 enacts new G.S. 90-21.20B, which requires any health care provider[22] who provides medical treatment to a person involved in a motor vehicle crash to

- Disclose to a law enforcement officer investigating the crash, upon the officer's request, the person's name, current location, and whether the person appears to be impaired by alcohol, drugs, or another substance.
- Provide law enforcement officers with access to the person for visiting (presumably so that the person may be observed) or interviewing, except when the health care provider requests temporary privacy for medical reasons.
- Disclose a certified copy of all identifiable health information related to the person as specified in a search warrant or an order issued by a judicial official.

22. The new section incorporates the definition of "health care provider" found in G.S. 90-21.11, "any person who pursuant to the provisions of Chapter 90 of the General Statutes is licensed, or is otherwise registered or certified to engage in the practice of or otherwise performs duties associated with any of the following: medicine, surgery, dentistry, pharmacy, optometry, midwifery, osteopathy, podiatry, chiropractic, radiology, nursing, physiotherapy, pathology, anesthesiology, anesthesia, laboratory analysis, rendering assistance to a physician, dental hygiene, psychiatry, psychology; or a hospital or a nursing home; or any other person who is legally responsible for the negligence of such person, hospital or nursing home; or any other person acting at the direction or under the supervision of any of the foregoing persons, hospital, or nursing home."

A prosecutor or law enforcement officer who receives identifiable health information under this section may not re-disclose the information, except as necessary to the investigation or as otherwise required by law.[23]

Section 19 of S.L. 2006-253 also amends G.S. 8-53.1 to provide that no privilege established in G.S. Chapter 8, Article 7 precludes a health care provider from disclosing information to a law enforcement agency pursuant to new G.S. 90-21.20B.

Confidentiality of Public Health Lead Program Records

Local health departments and the Department of Environment and Natural Resources (DENR) keep extensive records related to childhood blood lead level testing, results, investigation, and remediation.[24] Over the last several years, health departments and DENR have received numerous public record requests for copies of results from childhood blood lead testing. Public health officials were usually uncomfortable releasing the information in a manner that identified the child or the family because the information was health-related. Given that medical records held by local health departments are confidential under state law and are therefore exempt from the public records law,[25] many assumed that lead screening and investigation records were also confidential.

Prior to the 2006 legislative session, the law in this area was not entirely clear. First, no specific confidentiality laws appeared to protect the blood test results that are collected and maintained by DENR. In the absence of a law making the information confidential, the information should be a public record under state law.

When the information was maintained by local health departments, some argued that G.S. 130A-12, the statute that protects the confidentiality of much of the medical information maintained by health departments, applied to the lead screening and investigation information, at least with respect to the name of the child. But a close reading of the statute and other laws suggested otherwise. Specifically, the law protected two types of records:

- Records containing privileged patient medical information
- Records containing information protected under the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule (often called "protected health information" or PHI)

The child lead investigation records created by local health departments and shared with DENR are typically neither privileged information[26] nor protected health information.[27]

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23. Some health care providers may be concerned that the federal HIPAA privacy rule prohibits them from making these disclosures of information. It does not. The privacy rule explicitly permits health care providers who are covered by the rule to make disclosures of identifiable health information when the disclosures are required by law. 45 C.F.R. 164.512(a). So long as providers limit their disclosures of information to the information specified in the law, they will not run afoul of the privacy rule.

24. All laboratories in the state are required to report the results of all childhood blood lead tests to DENR. G.S. 130A-131.8. As a result, DENR maintains a large database containing individually identifiable test results. Local health departments maintain this type of information in at least two capacities. First, they have information in medical records for children who are receiving testing and care through the clinical arm of the department. Second, the environmental health arm of the department holds information related to investigations of children within its jurisdiction.

25. G.S. 130A-12.

26. In general, the term "privilege" applies to information that was generated as part of a physician–patient relationship or a nurse–/patient relationship and is used in the course of caring for the patient. *See, e.g.*, G.S. 8-53 (physician privilege); G.S. 8-53.13 (nurse privilege). The lead-related information collected by DENR or the environmental health arm of a local health department is not generated through such clinical relationships.

27. Information is protected health information only if it is held by an entity or person that is regulated by HIPAA (a "covered entity"). DENR is not a covered entity under HIPAA and therefore lead-related medical information in DENR's custody is not considered protected health information.

While all North Carolina local health departments are covered entities, the environmental health arms of many health departments are not subject to HIPAA. Health departments have the option of carving out non–health care components (i.e., those components of the entity not providing patient care), such as environmental health, from the covered entity so as to minimize the department's compliance responsibilities. *See* 45 C.F.R. 164.105(a).

Section 13.2 of S.L. 2006-255 (S 1587) settled this issue by amending G.S. 130A-12 to make confidential all records collected under the authority of the state's child lead screening and investigation program. Therefore, all lead screening and investigation records in the custody of local health departments, DHHS, or DENR are now clearly not public records. It is worth noting that the confidentiality protection in G.S. 130A-12 extends to the entire record that contains information collected through the state's lead program. It is not limited to the medical information.

Identity Theft Protection Act Changes

In 2005, the General Assembly enacted a law requiring private businesses and government agencies to protect personally identifying information that could be used for identity theft. S.L. 2005-414 added a new Article 2A to G.S. Chapter 75, called the "Identity Theft Protection Act." This article applied only to businesses, which were defined to exclude government agencies. Another part of the law amended G.S. Chapter 132 and applied only to government agencies. It enacted G.S. 132-1.10, which restricted government agencies' collection of Social Security numbers and required agencies that collect Social Security numbers to take specific steps to guard against their unauthorized disclosure and to take other actions to guard against the public disclosure of specified identifying information. Although the law applied the name "Identity Theft Protection Act" only to the new article in Chapter 75, the entirety of S.L. 2005-414 has come to be known as the Identity Theft Protection Act.[28]

S.L. 2006-173 (H 1248) amends the portions of the Identity Theft Protection Act that apply to government agencies in several significant ways. First, it adds a new subsection (c1) to G.S. 132-1.10 to extend to government agencies the portions of G.S. Chapter 75, Article 2A that deal with security breaches. The new subsection requires government agencies that experience a "security breach" as defined in G.S. 75-61(14)[29] to comply with G.S. 75-65, which specifies the actions to be taken in the event of a security breach. Among other things, government agencies that experience a security breach are required to notify affected persons of the breach, determine the scope of the breach, and restore the security and confidentiality of the data system from which the breach occurred. The content of the notice that must be provided to persons affected by a security breach is specified in G.S. 75-65, as are the methods by which notice may be given.

The law also amends G.S. 132-1.10(b)(5) to clarify that information protected by the Identity Theft Protection Act is confidential and not a public record. However, if a record would be a public record but for the identifying information, the portions of the record that do not include identifying information remain public. Agencies that maintain such records must produce them in response to a public records request as promptly as possible by providing the record with the identifying information removed or redacted.

Additional amendments to G.S. 132-1.10 provide that documents filed with the Secretary of State must not include Social Security numbers or specified other financial and identifying information unless expressly required by law and permit any person to request that the Department of the Secretary of State redact such information from records that are made available to the general public.

Many departments have chosen to carve out their environmental health arms and, as a result, the environmental health records—including lead reports and investigations—would not be considered protected health information.

28. The effects of S.L. 2005-414 on public health agencies and private health care providers were summarized in NORTH CAROLINA LEGISLATION 2005, Chapter 12, "Health."

29. G.S. 75-61(14) defines "security breach" as "[a]n incident of unauthorized access to and acquisition of unencrypted and unredacted records or data containing personal information where illegal use of the personal information has occurred or is reasonably likely to occur or that creates a material risk of harm to a consumer. Any incident of unauthorized access to and acquisition of encrypted records or data containing personal information along with the confidential process or key shall constitute a security breach. Good faith acquisition of personal information by an employee or agent of the business for a legitimate purpose that is not used for a purpose other than a lawful purpose of the business is not a security breach, provided that the personal information is not used for a purpose other than a lawful purpose of the business and is not subject to further unauthorized disclosure."

Confidential Information about Juveniles

S.L. 2006-205 (S 1216) amends portions of North Carolina's juvenile code that affect the ability of local agencies to disclose confidential information about children in specified circumstances. Section 1 amends G.S. 7B-302 to permit departments of social services to disclose confidential information to any federal, state, or local government entity that needs the information in order to protect a child from abuse or neglect. The new law could result in disclosures of confidential information to local health departments if a department of social services were to determine that the disclosure was necessary to protect a child. When confidential information is disclosed by a department of social services, the agency that receives the information must keep it confidential and re-disclose it only for purposes directly connected with carrying out the agency's mandated responsibilities.

Section 2 of the law amends G.S. 7B-3100, the law that authorized the Department of Juvenile Justice and Delinquency Prevention to adopt rules designating local agencies that are required to share information about juveniles with the department or other local agencies upon request. Local health departments are on the list of agencies that must share information.[30] Under prior law, an agency's duty to share information began when a juvenile petition was filed and lasted only as long as a court was exercising jurisdiction over the juvenile. The law still requires agencies to share information under those circumstances, but it has been expanded to create a duty to share information in child protective services cases in which a petition has not been filed. Thus, agencies on the list must now share information with other listed agencies upon request when a department of social services begins an assessment of a report of child abuse, neglect, or dependency or begins the provision of protective services. The duty to share information in these cases continues until the child protective services case is closed by the department of social services.

Provision of Private Health Insurance Information to the Division of Medical Assistance

A special provision in the 2006 appropriations act requires health insurers to provide specified information to the North Carolina Department of Health and Human Services, Division of Medical Assistance. Section 10.8 enacts G.S. 58-50-46, which requires health insurers and pharmacy benefit managers to provide information about individuals who are eligible for state medical assistance benefits to the Division of Medical Assistance upon request. The purpose of the disclosure of information is to permit the division to determine what period the individual or the individual's spouse or dependents may be (or may have been) covered by a health insurance policy and the nature of the coverage provided.

Release of Medical Review Information to Patient Safety Organizations

Some health care facilities use medical review committees to review cases or incidents for quality assurance purposes. G.S. 131E-95 protects the information considered and created by these committees from discovery or introduction into evidence in civil actions against the facilities or providers whose actions were the subject of review. However, the information may be released to professional standards review organizations that accredit or certify the facilities. Section 3.2 of S.L. 2006-144 (H 1301) amends G.S. 131E-95 to provide that the information may also be released to a patient safety organization or its contractors. "Patient safety organization" is defined as "an entity that collects and analyzes patient safety or health care quality data . . . for the purpose of improving patient safety and the quality of health care delivery." A patient safety organization that receives the information must keep it confidential, except as necessary to carry out its patient safety activities.

30. 28 NCAC 01A .0301 (2003).

Health Care Professions

Physicians and Others Licensed by the North Carolina Medical Board

S.L. 2006-144 (H 1301) amends North Carolina's medical practice act in several ways. Section 4 of the new law amends G.S. 90-14, the statute that permits the North Carolina Medical Board to deny licenses to practice and to discipline physicians, physician assistants, and nurse practitioners. In the past, the board's disciplinary powers have permitted it to suspend or revoke licenses and take other actions such as limiting the licensee's practice. The amendments to G.S. 90-14 authorize the board to take additional disciplinary actions. Among other things, the board may now place a licensee on probation, reprimand a licensee or issue a public letter of concern, require the licensee to provide free medical services, or require the licensee to complete treatment or educational programs. The amendments also add a new ground for the board to take disciplinary action: failure to practice or maintain continued competency for the two-year period immediately preceding an application for an initial license or a request to reactivate an inactive, suspended, or revoked license.

G.S. 90-14(b) requires the board to refer physicians and physician assistants who are significantly impaired by substance abuse or mental illness to the North Carolina Physicians Health Program (formerly the State Medical Society Physician Health and Effectiveness Committee). The new law amends this subsection to specify that sexual misconduct does not constitute mental illness for purposes of the referrals.

Section 5 of S.L. 2006-144 rewrites G.S. 90-14.5, one of several statutes that address how the board conducts hearings before revoking or suspending licenses. The changes clarify that the board may appoint a hearing committee to take evidence and submit a recommended decision to the full board. As previously written, the statute appeared to provide for the use of one or more "trial examiners" appointed by the board only when the licensee requested that the hearing be held in a county other than the county designated for the full board to meet to consider the matter.

G.S. 90-14.13 requires the administrators of health care facilities and provider organizations (including HMOs and PPOs) to report disciplinary actions they take against physicians to the North Carolina Medical Board. Under prior law, administrators were required to report only revocation, suspension, or limitations of a physician's privileges to practice in the facility or organization. Section 6 of S.L. 2006-144 amends this statute to require the administrators of health care facilities and provider organizations to report all of the following actions within thirty days of their occurrence:

- Summary revocation, suspension, or limitation of privileges, regardless of whether a final determination on the action has been made.
- Revocation, suspension, or limitation of privileges that has been finally determined. However, hospitals are not required to report suspensions or limitations of privileges that are due to failure to timely complete medical records, unless it is the third such suspension or limitation within a single calendar year.
- A resignation from practice or a voluntary reduction of privileges, unless the resignation is due solely to the physician's completion of a medical residency, internship, or fellowship.
- Any action reportable under the federal Health Care Quality Improvement Act of 1986.

G.S. 90-14.13 requires the board to report violations of the reporting requirement to an institution's licensing agency. The new law further amends this statute to authorize the licensing agency for the health care institution to order institutions that fail to report to pay civil penalties.

G.S. 90-14.13 also requires administrators of insurance companies that provide professional liability insurance for physicians to report awards of damages or settlements of lawsuits to the North Carolina Medical Board. Cancellations or nonrenewals of professional liability coverage must also be reported if the cancellation or nonrenewal was for cause. Section 6 of S.L. 2006-144 adds to this statute a requirement that professional liability insurers report to the board any malpractice payments reportable under the federal Health Care Quality Improvement Act of 1986. The new law also authorizes the Commissioner of Insurance to assess civil penalties against insurers who fail to make the required reports.

A final amendment to G.S. 90-14.13 establishes that reports required under that statute are confidential and not subject to discovery, subpoena, or other means of legal compulsion for release to anyone other than the board or its employees or agents, except in limited circumstances.

Section 7 of S.L. 2006-144 amends G.S. 90-14.16 similarly, to provide the same confidentiality and protection from production for all records, papers, and investigative information the board receives or possesses in connection with complaints or disciplinary matters. However, that information must be divulged to a licensee or applicant if the board intends to use the information as evidence in a contested case and the licensee or applicant, or his or her attorney, submits a written request for it.[31] Further, if the investigative information indicates that a crime may have been committed, the board must make a report to an appropriate law enforcement agency and must cooperate with and assist law enforcement agencies in criminal investigations by providing information that is relevant to the investigation. However, information disclosed to law enforcement under these circumstances remains confidential and may not be disclosed by the investigating agency except as necessary to further the investigation. Finally, the board may release to any health care licensure board in any state confidential information about licensure actions and the reasons for them, voluntary surrenders of licenses, and investigative reports made by the board. The board must notify a licensee within sixty days after the information is transmitted. A licensee may make a written request for a copy of the information, and the board must provide it unless the information relates to an ongoing criminal investigation or the enforcement or investigative responsibilities of the Department of Health and Human Services.

Another amendment to G.S. 90-14.16 requires a person licensed by the North Carolina Medical Board to self-report to the board within thirty days if the person is arrested or indicted for any felony, driving while impaired, or possession, use, or sale of a controlled substance.

Dentists and Dental Hygienists

G.S. 90-29.4 authorizes the State Board of Dental Examiners to grant an intern permit to a person who has graduated from an approved dental school but is not licensed to practice in North Carolina. An intern permit authorizes the person to practice dentistry under the supervision or direction of a licensed dentist. Intern permits are valid for one year and generally may not be renewed for more than five additional one-year periods or for more than a total of seventy-two months for a person who has attempted and failed a board-approved examination. S.L. 2006-41 (H 1343 amends the statute to authorize the board, in its discretion, to renew intern permits for additional one-year periods beyond the seventy-two-month limitation if the intern permit holder has held an unrestricted dental license in another state for at least five years immediately preceding the issuance of the intern permit and the permit holder's employing institution supports the continuance of the permit.

S.L. 2006-235 (S 1487) amends G.S. 90-233(a) to permit the Board of Dental Examiners to contract with a regional or national testing agency to conduct clinical examinations of applicants for a North Carolina dental hygienist license. The results of the examinations may then be used by the board in determining whether to grant a license to an applicant. The law also amends G.S. 90-232 to provide that the board may require an applicant who takes a clinical examination administered by a regional or national testing agency to pay the actual cost of the examination, instead of the usual examination fee of $350.

Physical Therapists

The North Carolina Board of Physical Therapy Examiners is responsible for licensing physical therapists and physical therapy assistants. G.S. 90-270.26 sets forth the board's powers and duties. Among other things, the statute empowers the board to examine applicants for licensure and to suspend

31. Even if such a request is made, the board still may refuse to divulge a board investigative report, the identity of a complainant who is not providing testimony, attorney work product, attorney–client communications, or any material protected by a privilege recognized by the rules of civil procedure or evidence. If information is provided to a licensee or applicant or his or her attorney, the information will be subject to discovery or subpoena in a civil case in which the licensee or applicant is a party.

or revoke licenses or otherwise discipline its licensees. Section 1 of S.L. 2006-144 amends this statute by adding a provision authorizing the board to require licensees to demonstrate their continuing competence in the practice of physical therapy. The board may adopt rules requiring licensees to submit evidence of continuing education activities, accomplishments, or compliance with board-approved measures, audits, or evaluations. The board may require remedial action if necessary for license renewal or reinstatement. Section 2 of S.L. 2006-144 amends G.S. 90-270.32 to provide that the board may also decline to renew the license of a physical therapist or physical therapy assistant who fails to comply with continuing competence requirements.

Orthopedic Physicians and Podiatrists

Section 3.1 of S.L. 2006-144 (H 1301) amends the Professional Corporation Act (G.S. Chapter 33B) to permit physicians practicing orthopedics and licensed podiatrists to jointly form professional corporations to render both orthopedic and podiatric services.

Other Health Care Professionals

S.L. 2006-175 (H 1327) amends the Psychology Practice Act (G.S. Chapter 90, Article 18A) to permit the North Carolina Psychology Board to request criminal history record checks on applicants for licensure or licensees who are under investigation for alleged violations of the act. The board may deny licensure to an applicant who refuses to consent to a criminal history record check. If a licensee refuses to consent to a check, the board may revoke or refuse to reinstate the person's license or take other disciplinary actions.

Occupational Licensing Boards

Occupational licensing boards, including boards that license and regulate the conduct of the various categories of health care professionals, are required by G.S. 93B-2 to prepare annual reports summarizing their licensure activities, financial status, and other matters. In the past, boards were required to file the reports with the Secretary of State and the Attorney General. S.L. 2006-70 (S 1485) amends G.S. 93B-2 in three ways. First, it requires the reports to be filed with the Joint Legislative Administrative Procedure Oversight Committee as well. Second, it requires an occupational licensing board to include in its annual report the substance of any anticipated changes in the board's rules and any anticipated request by the board for legislation. Finally, it specifies the nature of the information that must be included in the board's financial report. The law became effective July 1, 2006, and requires each board to submit a report complying with the amended statute no later than July 1, 2007.

Health Care Facilities

Public Hospitals

On three separate occasions in the past twenty years, the General Assembly made amendments to G.S. 131E-18 that applied only to Craven County (S.L. 1997-922, S.L. 1999-190, and S.L. 1999-15). The amendments affected the appointment of commissioners for the Craven Hospital Authority. S.L. 2006-24 (H 2110) repealed the amendments that were specific to Craven County.

Long-Term Care Facilities

New laws affecting long-term care facilities are summarized in Chapter 23, "Senior Citizens."

Other Laws of Interest

Impaired Driving Law Changes

Two of the provisions of S.L. 2006-253 (H 1048) that are likely to be of most significance to health care providers are described above, in the section on Health Information. Another significant change is found in Section 16, which amends G.S. 20-139.1. As previously written, subsection (c) of that statute provided that when the charging officer specified that the chemical analysis of a potentially impaired person should be a blood sample, only a physician, registered nurse, or other qualified person was permitted to draw the sample. The law did not require any such person to draw a sample. As rewritten, the law requires a physician, registered nurse, emergency medical technician, or other qualified person to obtain a blood sample or a urine sample when a law enforcement officer determines a blood or urine test is required for chemical analysis. The rewritten law specifies that no further authorization or approval for the test is required. It also provides immunity from liability for persons who comply with a law enforcement officer's request and for their employers, except that there is no immunity for negligence in obtaining the samples. Upon the request of the physician or other person directed to obtain the sample, the law enforcement officer must provide written confirmation of his or her request for the sample.

Section 16 also adds three new subsections to G.S. 20-139.1 that pertain to the procurement of urine or blood samples. If a person refuses to submit to a blood or urine test, subsection (d1) permits a law enforcement officer to compel the person to submit without obtaining a court order if the officer reasonably believes that the delay caused by obtaining the court order would result in the dissipation of alcohol in the person's blood or urine. Subsection (d2) requires physicians, registered nurses, emergency medical technicians, and other qualified persons to obtain a blood or urine sample that is requested by a law enforcement officer under the authority of subsection (d1). Upon the request of the physician or other person directed to obtain the sample, the law enforcement officer must provide written confirmation of his or her request for the sample. Subsection (d3) provides immunity from liability for persons who comply with a law enforcement officer's request and their employers, except that there is no immunity for negligence in obtaining the samples.

Other portions of this extensive rewrite of the impaired driving laws may be of interest to health care providers as well, including

- New G.S. 20-38.3, which authorizes a law enforcement officer to take an arrestee for evaluation by a medical professional to determine the extent or cause of the person's impairment.
- New G.S. 20-38.5, which directs the Department of Health and Human Services to work with chief district court judges, district attorneys, and sheriffs to approve a procedure for allowing access to a person in custody so that blood or urine samples may be obtained.
- An amendment to G.S. 20-16.3 transferring from the Commission for Health Services to the Department of Health and Human Services the duty to examine and approve devices suitable for on-the-scene tests of a driver's impairment by alcohol.
- An amendment to G.S. 20-139.1(b2) to require the Department of Health and Human Services to perform preventive maintenance on breath-testing instruments.
- A new subsection, G.S. 20-139.1(b6), which requires the Department of Health and Human Services to post on a website and file with each clerk of superior court a list of all persons who have a permit to perform chemical analyses, along with information about the types of analyses the person can perform, the instruments the person is authorized to operate, the effective dates of the person's permit, and the records of preventive maintenance of instruments.
- An amendment to G.S. 20-17.8 creating an exception to the requirement that certain drivers whose licenses have been restored after a conviction of impaired driving may drive only motor vehicles that have been equipped with ignition interlock devices. The new exception applies to persons who have a medical condition that makes them incapable of activating an ignition interlock system. Two or more physicians must examine the person and complete a certificate devised by the Commissioner of Motor Vehicles and designed to elicit the

maximum medical information necessary to assist in the determination of whether the person is incapable of activating the system. The certificate must contain a waiver of physician–patient privilege.[32] The commissioner is not bound by the recommendations of the examining physicians.

The new law is described in detail in Chapter 19, "Motor Vehicles."

Methamphetamine Lab Prevention Act Changes

In 2005 the General Assembly enacted the Methamphetamine Lab Prevention Act (G.S. Chapter 90, Article 5D), which placed restrictions on over-the-counter sales of certain products containing pseudoephedrine (a decongestant that is often used in the manufacture of methamphetamine). S.L. 2006-186 (S 686) amends the restrictions placed on the purchase and sale of those products. The new law specifies that pseudoephedrine products sold in tablet, caplet, or gel cap form may not be sold loose in bottles but must be in blister packages. Previously, the blister packaging requirement applied only to tablets containing at least thirty milligrams of pseudoephedrine per tablet. The act also reduces the amount of certain pseudoephedrine products that may be purchased, from 6 grams per single transaction to 3.6 grams per calendar day. Retailers who sell regulated pseudoephedrine products must provide information about the restrictions to purchasers and obtain purchasers' signatures on a form that states the purchaser is aware of the restrictions and the possibility of criminal penalties. The new law amends G.S. 90-113.52(c) to clarify that signatures may be obtained in electronic form and to specify how retailers who use electronic signatures may provide the required information to purchasers.

Finally, the law enacts new subsection G.S. 90-113.61 to provide that pediatric pseudoephedrine products and other pseudoephedrine products in the form of liquids, liquid capsules, or gel capsules are not subject to the requirements of the state Methamphetamine Lab Prevention Act unless the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services exercises its authority under G.S. 90-113.58 to make the products subject to the Act. These products are subject to the federal Combat Methamphetamine Act of 2005.[33]

Immunity for Members of State Medical Assistance Teams

G.S. 166A-14 provides qualified immunity from liability for emergency management workers in a disaster or other state of emergency. S.L. 2006-81 (H 2195) amends this statute to extend qualified immunity to health care workers performing health care services when the health care workers are members of a hospital- or county-based State Medical Assistance Team.

Mental Health Reform

S.L. 2006-142 (H 2077) amends Chapter 122C of the General Statutes to make changes in how mental health reform is being implemented in North Carolina. Among other things, the changes

- Require area authorities, when contracting with private providers, to use a standard contract adopted by the Secretary of Health and Human Services.
- Require the state plan for mental health, developmental disabilities, and substance abuse services to include mechanisms for measuring performance on several indicators, including access to services.
- Clarify that the term "local management entity" includes area authorities, county programs, and consolidated human services agencies.

32. The limits of the waiver of the privilege are unclear. It seems most likely that the waiver would be limited to the information provided in the certificate and perhaps to the records of the examination that produced the information for the certificate.

33. Pub. L. No. 109-177, Title VII.

- Specify the functions and responsibilities of local management entities.
- Establish community and family advisory committees within area authorities and at the state level.

This law is summarized in Chapter 17, "Mental Health."

Miscellaneous

Several other new laws affecting health services are summarized in Chapter 23, "Senior Citizens." S.L. 2006-108 (S 1278) addresses the provision of adult day health services to persons served by the Community Alternatives Program. S.L. 2006-110 (S 1279) requires the Department of Health and Human Services to make recommendations to address biases identified in the North Carolina Institutional Bias Study Report. S.L. 2006-194 (S 1280) requires the North Carolina Division of Medical Assistance to establish a pilot program to evaluate the use of telemonitoring equipment for home- and community-based services. Also, in order to allow time for the implementation of new home care rules, the law places a one-year moratorium on the issuance of new licenses for home care agencies that intend to offer in-home aide services (however, the Department of Health and Human Services may issue licenses to certified home health agencies to offer these services or to agencies that need a new license for an existing home care agency being acquired).

Other new laws are summarized in Chapter 24, "Social Services." S.L. 2006-109 (S 1276) requires the Department of Health and Human Services to review the Community Alternatives Program for Disabled Adults.

Jill Moore

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Higher Education

After a number of lean years in a row, officials of the University of North Carolina (UNC) and the state's community college system rejoiced in 2006 over happier fiscal news. Appropriations by the General Assembly raised the university's budget by almost 12 percent and the community college system's budget by more than 15 percent. In other actions, the legislature made the North Carolina School of Science and Mathematics a constituent institution of the university (a "constituent high school") and directed the university's Board of Governors to study the feasibility of bringing North Carolina Wesleyan College into the system as a constituent institution. It also authorized the Board of Governors to delegate authority to the university's president and expanded several scholarship programs.

Appropriations and Salaries

The University of North Carolina Current Operations

In even-year sessions, the General Assembly modifies the appropriations made in the previous odd-year session for the second year of the biennium. The Current Operations and Capital Improvements Appropriations Act of 2005 appropriated approximately $2.12 billion from the General Fund to UNC for fiscal year 2006–07. The 2006 appropriations act (S.L. 2006-66, S 1741) adjusts UNC's 2006–07 appropriations by increasing some items and making reductions in others. The largest funding increase, $138 million for instructional programs, offsets all reductions. Just over $79 million of the increase was to cover anticipated enrollment growth of 7,110 students. The net increase was approximately $129 million, bringing the 2006–07 budget to a total that is 11.8 percent higher than the 2005–06 budget.

Community Colleges Current Operations

The appropriation for community colleges' current operations made in 2005 for 2006–07 was approximately $767 million. The 2006 appropriations act adds $64 million to that total, bringing the 2006–07 budget to a total that is 15.2 percent higher than the 2005–06 budget.

Capital Improvements

The 2006 appropriations act contains just over $139 million in capital improvement appropriations for the university. The three largest are $61 million for an engineering complex at North Carolina State University, $28 million for a genomics science building at Chapel Hill, and $27 million for a nursing school at Wilmington.

In addition, S.L. 2006-146 (S 1809) authorizes forty-one capital improvement projects at UNC institutions totaling $529 million; all are to be financed with funds other than state appropriations (chiefly, revenue bonds and special-obligation bonds). The largest of these is $92 million for a science complex at Chapel Hill.

Historically, the General Assembly has only occasionally made appropriations for capital improvements within the community college system, leaving the chief burden for community college facilities where the general law places it, on counties. The 2006 appropriations act contains no capital improvements appropriations for community colleges.

Salaries

Sections 22.11 and 22.12 of the 2006 appropriations act provide funds for salary increases for UNC and community college employees.

For UNC employees who are exempt from the State Personnel Act, the increases average 6 percent per employee, to be distributed according to rules established by the UNC Board of Governors. For teaching employees of the School of Science and Mathematics, the increases average 8 percent, with the minimum increase being $2,250. For UNC employees who are subject to the State Personnel Act and for employees of the community college system paid from state funds (other than faculty and professional staff), the increase is 5.5 percent. Community college faculty and professional staff receive a 6 percent increase plus an additional one-time 2 percent bonus.

Section 22.12A allocates $5 million to a reserve to be used at the discretion of the UNC president for individual salary increases for the purpose of recruiting and retaining faculty members as necessary at UNC institutions.

In 2004 the General Assembly enacted a community college faculty salary plan that established a uniform minimum salary based on level of education and equivalent applicable experience, with the stated intent of moving North Carolina community college faculty and professional staff salaries to the national average. The minimum salaries set for 2004–05 (for full-time, nine-month annual employment) ranged from $28,512 for instructors with vocational diplomas to $34,874 for instructors with doctorates. The 2006 appropriations act sets the comparable range for 2006–07 at $31,728 to $38,607.

Use of Funds

A number of provisions in the budget act affect the use of funds by the community college system, UNC, or individual institutions.

Section 8.4 of the 2006 appropriations act authorizes the community college system to carry forward without reversion to the General Fund up to $10 million of operating funds and to reallocate them to the system's Equipment Reserve Fund. Section 8.3 provides that funds appropriated for the system's College Information System Project will not revert. Section 8.9 amends G.S. 115D-31.3 (which permits community colleges to retain and carry forward certain portions of their General Fund appropriations based on the degree to which they meet established performance standards) to permit qualifying community colleges to use retained and carried-forward state funds to maintain their facilities if the college is located in a county that is designated as Tier 1 or Tier 2 under G.S. 105-129.3, has an unemployment rate at least 2 percent higher than the state average or 7 percent (whichever is higher), and is in a county with a wealth calculation of 80 percent or less of the state average. Section 8.10 of the 2006 appropriations act creates the Community Colleges Facilities and Equipment Fund, allocates $15 million to it, and directs the State Board of Community Colleges to develop a competitive grant application program by which individual grants of up to $1 million each may be made to community colleges for facility and equipment needs.

Section 9.8 of the 2006 appropriations act amends G.S. 116-30.2(a), which provides budget flexibility to UNC special responsibility constituent institutions, to permit the institutions to transfer appropriations of the General Assembly between budget codes. The transfers are to be considered certified even if they result from agreements between special responsibility institutions. Section 9.14 directs the Office of Budget and Management not to release funds appropriated for the North Carolina Research Campus at Kannapolis until the UNC president certifies that the university and the developers of that campus have entered into a memorandum of understanding approved by the president concerning the participation in and use of space at the campus.

University and Community College Governance

Board of Governors Delegation to the UNC President

G.S. 116-11 sets out the powers and duties of the UNC Board of Governors, including the power to delegate any part of its authority over any UNC institution to the board of trustees or chancellor of that institution. S.L. 2006-95 (S 1283) adds a provision specifying that the board may delegate any part of its authority over UNC institutions generally to the president of the university. The statute continues to provide that such a delegation may be rescinded, in whole or in part, at any time.

School of Science and Mathematics under UNC Board of Governors

Section 9.11 of the 2006 appropriations act changes the status of the North Carolina School of Science and Mathematics (NCSSM) from an institution "affiliated" with the University of North Carolina to a "constituent institution" of the university, effective July 1, 2007. The sixteen existing constituent institutions are reclassified as "institutions of higher education" and NCSSM is classified as a "constituent high school." All property owned by the Board of Trustees of NCSSM is transferred to the UNC Board of Governors, along with all obligations of NCSSM. The Board of Governors and the NCSSM Board of Trustees are prohibited from imposing any tuition or mandatory fee at NCSSM without the approval of the General Assembly. The title of the chief officer of NCSSM is changed from "Director" to "Chancellor."

Study of Potential New UNC Campus

Section 9.4 of the 2006 appropriations act directs the UNC Board of Governors to study the feasibility of making North Carolina Wesleyan College a constituent institution of the university. It allocates $50,000 for the cost of the study.

Community Colleges Exempt from Mandatory Smoking Areas

Article 64 of G.S. Chapter 143 requires units of government in North Carolina to set aside smoking areas in their facilities. G.S. 143-599 exempts certain facilities, such as public schools, elevators, school buses, hospitals, health departments, and prisons. S.L. 2006-133 (H 448) adds community colleges to the exempted list, so that the law no longer requires community colleges to set aside areas in which smoking is permitted.

State Board of Community Colleges Membership

G.S. 115D-2.1 establishes the State Board of Community Colleges and sets its membership. The statute has provided that the State Treasurer is an ex officio member. S.L. 2006-31 (H 677) provides that that seat is for the treasurer or the treasurer's designee.

State Retirement System Changes

Faculty and certain other employees of the University of North Carolina have the option of participating in an optional retirement program, rather than the standard Teachers' and State Employee's Retirement System (TSERS). S.L. 2006-172 (H 853) makes two changes in this arrangement. First, it amends G.S. 135-5.1 to extend this option to members of the faculty of the North Carolina School of Science and Mathematics. Second, it amends G.S. 135-5 to permit certain

individuals who have participated in the optional retirement system, but who are not receiving benefits under that system, and who are not eligible to receive benefits in the future, to purchase, at full actuarial cost, credit in TSERS for their years of service under the optional system.

Pledge of Allegiance

S.L. 2006-137 (S 700) requires public schools to display the American and North Carolina flags and to schedule the recitation of the Pledge of Allegiance on a daily basis. (*See* Chapter 10, "Elementary and Secondary Education.") By adding new G.S. 116-69.1 and amending G.S. 116-235, the act extends the requirement to the North Carolina School of the Arts and the North Carolina School of Science and Mathematics.

College Facilities Used by High School Students

S.L. 2006-221 (S 198) amends G.S. 115D-41 to add a provision that community college facilities that comply with applicable state and local fire codes for community college facilities may be used without modification for public school students in joint or cooperative programs such as middle college or early college programs and duel-enrollment programs. It enacts new G.S. 116-44.5 to add a comparable provision for UNC and private college facilities.

Community Colleges Motorsports Consortium

S.L. 2006-221 directs the State Board of Community Colleges to create a consortium of colleges, under the leadership of Forsyth Technical Community College, to address the training needs of the motorsports industry.

Scholarship Eligibility

Article 35A of G.S. Chapter 115C establishes rules for eligibility for certain college scholarships. G.S. 115C-499.1 has included "nonpublic" postsecondary institutions meeting certain requirements among the eligible institutions that a student receiving a covered scholarship may attend. S.L. 2006-221 amends the statute to change "nonpublic" to "nonprofit" and to add postsecondary institutions owned by a hospital authority or a school of nursing affiliated with a nonprofit postsecondary institution.

New State Ethics Act

S.L. 2006-201 (H 1843), the State Government Ethics Act, creates the new State Ethics Commission and imposes new requirements on certain public officials, including some university and community college officials. For a discussion of the act and its requirements, see Chapter 25, "State Government Ethics and Lobbying."

Construction Plans

S.L. 2006-217 (H 2147) amends G.S. 143-31.1 to add a provision requiring state agencies to take steps to determine whether construction plans fitting the needs of an upcoming project may already exist and to use them if they do. It amends G.S. 116-31.11 to apply this requirement to UNC.

Consultant Services Contracts

Article 3C of G.S. Chapter 143 imposes certain requirements on state agencies that wish to contract for the services of a consultant. G.S. 143-64.24 exempts certain entities, including the General Assembly, from the requirements. S. L. 2006-95 (S 1283) adds the UNC Board of Governors to the exempted list and directs the board to adopt policies and procedures for UNC institutions to use in obtaining consultant services.

UNC Employee Tuition Waiver Program

G.S. 116-143 has provided that employees of UNC may enroll in one course per semester free of tuition. Section 9.12 of the 2006 appropriations act amends the statute to permit enrollment in three courses per year.

Center for the Advancement of Teaching

Under G.S. 116-74.6, the North Carolina Center for the Advancement of Teaching (NCCAT) has operated "under the general auspices" of the UNC Board of Governors and had a director appointed by the NCCAT board of trustees. Section 9.15 of the 2006 appropriations act changes the status of NCCAT to "a center of" the Board of Governors. It also provides that its chief officer, the executive director, will be appointed by the Board of Governors and will serve at the pleasure of the UNC president. The president is not to terminate the executive director without prior consultation with the NCCAT board of trustees. The statute has provided that the president, the State Superintendent of Public Instruction, and the chancellor of Western Carolina University are ex officio members of the NCCAT board of trustees. Section 9.15 provides that the members may be these individuals or their designees.

NC Teacher Academy Trustees

Under G.S. 115C-296.4, the Board of Trustees of the North Carolina Teacher Academy (NCTA) has operated under the authority of the UNC Board of Governors. Section 9.17 of the 2006 appropriations act removes that provision and adds an uncodified provision transferring all the resources, assets, liabilities, operations, and personnel of NCTA to the State Board of Education. Despite this transfer, NCTA is to exercise its powers and duties independently of that board through its own board of trustees. The act amends the statute to change the structure of board membership by removing one member of the UNC Board of Governors, the director of NCCAT, and one dean of the UNC School of Education and adding one public school teacher and two members at large.

Center for School Leadership Development

Section 9.17 of the 2006 appropriations act amends G.S. 116-11(12b) to (1) delete the provision establishing the board of directors of the Center for School Leadership Development (CSLD), (2) provide that the UNC Board of Governors must designate the programs that comprise the Center, and (3) direct that board to submit to the Governor and the General Assembly a single, unified recommended budget for all CSLD programs.

Principal Fellows Program Stipend

Under G.S. 116-74.42, participants in the Principal Fellows Program have received a two-year scholarship loan of $20,000 per year. Section 9.16 of the 2006 appropriations act amends the statute to provide that the first year's loan is to be $30,000 and that the second-year loan is to be set at 60 percent of the beginning salary for an assistant principal, plus $4,100 for tuition, fees, and books.

Student Relationships and Financial Aid

Nurse Scholarship Programs

Section 9.6 of the 2006 appropriations act adds new Article 9H to G.S. Chapter 90, establishing the Graduate Nurse Scholarship Program for Faculty Production. It directs the North Carolina Nursing Scholars Commission to determine selection criteria and methods of selection and to select recipients under the program. The program will provide scholarship loans of up to $15,000 per year for nursing master's degree students, who will become qualified to teach at the community college level, and doctoral students, who will become qualified to teach at the university level. The loans will be forgiven, year for year, if, within seven years after graduation, the recipient teaches in a public or private educational institution in North Carolina.

Section 9.9 amends G.S. 90-171.61, which governs a companion program, the Nursing Scholars Program. It raises the annual scholarship loan amount under that program from $5,000 to $6,500 and makes loans at that level available to students in associate degree programs and diploma programs as well as those in baccalaureate programs.

Medical and Dental Scholarships

Section 9.10 of the 2006 appropriations act amends uncodified provisions governing the Board of Governors' Dental Scholarship Program and the Board of Governors' Medical Scholarship Program. Under those provisions, loans are forgiven if the student practices dentistry or medicine in North Carolina for four years within seven years after graduation. The amendments authorize the State Education Assistance Agency to extend the seven-year period because of extenuating circumstances.

Tuition and Contractual Grants to Private Colleges for Teaching and Nursing

Under G.S. 116-19 through 116-21.3, the State Education Assistance Authority is authorized to enter into contracts with private colleges under which they will receive state-appropriated money for each North Carolina resident enrolled at their colleges and will in turn administer the money to provide financial assistance for needy North Carolina residents. Section 9.13 of the 2006 appropriations act expands the program to include not only students enrolled in regular degree programs but also students who are enrolled for the purpose of attaining a teaching or nursing license. For students enrolled for less than full-time study, the money is to be provided on a pro rata basis.

Robert P. Joyce

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Local Government and Local Finance

For local governments the most pressing issues of the 2006 General Assembly involved money—either revenues or expenditures required by various mandates. County governments remained concerned over the escalating cost of Medicaid and received some temporary help, delaying a permanent solution until another time. Cities and counties both were concerned about the expansive coverage mandated for stormwater programs by the Environmental Management Commission and were successful in scaling back the commission's regulations. They were also concerned about proposals that would require making payments to solid waste collection firms displaced by local government action and were able to reduce, though not eliminate, the required payments. Local government revenues were at stake in the video programming legislation enacted this session, and although local governments lost (or were relieved of) responsibility for cable television regulation, they did receive new revenues that should more than replace the lost cable television franchise tax. This chapter describes much of the 2006 legislation important to cities and counties, although not all. Interested readers should also review Chapter 5, "Community Planning, Land Development, and Related Topics"; Chapter 8, "Economic and Community Development"; Chapter 12, "Environment and Natural Resources"; Chapter 16, "Local Taxes and Tax Collection"; Chapter 20, "Public Employment"; Chapter 21, "Public Purchasing and Contracting"; and the several chapters dealing with human services.

Video Service Competition Act

Local governments currently have the authority under federal and state law to award franchises for cable television services and impose cable franchise taxes on cable providers of up to 5 percent of gross receipts. Effective January 1, 2007, S.L. 2006-151 (H 2047) replaces the local cable television franchising system with a statewide video service franchising scheme and eliminates the authority of local governments to grant new, or renew existing, cable franchises and to assess and collect cable franchise taxes. It replaces local revenues from the cable franchise taxes with a new distribution of

shared state sales tax collections on telecommunications services, video programming services, and direct-to-home satellite services. The legislation is a product of a nationwide lobbying effort by telephone companies seeking to expand their businesses by offering the video programming services traditionally provided by cable companies. They view local franchise requirements as an impediment to their entry into the market and are engaging in campaigns to eliminate local franchising authority in numerous states across the country.

New Franchise Authority

The act designates the secretary of state as the exclusive state franchising authority for cable services provided over a cable system. Applicants must file a notice of franchise with the secretary of state and pay a filing fee equal to the filing fee for articles of incorporation (currently $125). An entity that files a notice of franchise is required to begin providing service in the designated area within 120 days of filing. In addition, an entity providing service must submit an annual service report on or before July 31 of each year and pay a filing fee (currently $200).

There are no build-out requirements for entities providing cable services under a state-issued franchise, but discrimination on the basis of race or income is prohibited and constitutes an unfair or deceptive act or practice under G.S. 75-1.1. An entity that provides video service but fails to file a notice of franchise or a notice of service must forfeit all revenue received during the period of noncompliance.

The Consumer Protection Division of the Attorney General's Office will be responsible for responding to all customer complaints regarding providers operating under the statewide franchising agreements. There are no provisions for increased staffing levels at this time, but the attorney general will monitor customer service complaint levels and make a report to the General Assembly recommending any additional staffing by April 1, 2007.

Changes to Existing Cable Franchises

Local cable franchise agreements in effect as of January 1, 2007, will remain valid. A cable service provider under an existing local agreement may terminate the agreement if (1) one or more households in the local area served are passed by both the local cable service provider and the holder of a state-issued franchise, (2) a local government has an existing agreement with more than one cable service provider for substantially the same area and at least 25 percent of the households have service available by more than one cable service provider, or (3) an entity provides wire-line competition in the franchise area by a method that does not require a franchise.

Public Access Channels

Cities with at least 50,000 residents will continue to operate any public access (PEG) channels currently activated, with a minimum of three. Cities with fewer than 50,000 residents and counties also will continue to operate any PEG channels currently activated, with a minimum of two. Cities and counties may be eligible for additional PEG channels, up to a maximum of seven, if specified programming requirements are met. The act also establishes a PEG Channel Fund, which will be administered by the e-NC Authority to provide loans to qualifying local governments and counties for capital expenditures necessary to provide PEG channel programming.

Local Government Revenue

The statewide franchising agreements will authorize the construction and operation of cable systems over public rights-of-way, but municipalities will retain their authority to regulate their public rights-of-way. Municipalities may impose a fee or charge for the use of the public rights-of-way (if otherwise authorized) if the fee is nondiscriminatory and of general applicability to all users of the public rights-of-way. Municipalities, however, may not impose license, franchise, or privilege taxes on any businesses engaged in providing video programming services (defined as "programming provided

by, or generally considered comparable to programming by, a television broadcast station, regardless of the method of delivery"). And, as stated above, cities and counties no longer will be authorized to impose franchise taxes on existing cable franchises.

In lieu of the cable franchise tax revenue, all cities and counties will receive shares of three state sales tax revenues—7.23 percent of the net proceeds of tax collections on telecommunications services, 22.61 percent of the net proceeds of taxes collected on video programming services, and 37 percent of the net proceeds of taxes collected on direct-to-home satellite services. (The share of telecommunications tax is in addition to the existing municipal share of this tax.) Based on current projections, local governments will at least break even and stand to gain over $3 million in the aggregate under the new shared revenue scheme.

The first $2 million of the local share of the proceeds from these three taxes will be distributed to local governments to support local public, educational, or governmental access channels (PEG channels). Local governments will receive $6,250 per quarter for each qualifying PEG channel, up to a maximum of 3 channels. (A qualifying PEG channel is one that meets specified programming requirements.) If the aggregate distribution for qualifying PEG channels does not equal $2 million, the remaining funds will be allocated to the PEG Channel Fund to be used to provide loans to local governments for the capital expenditures necessary to provide PEG channel programming. Conversely, if the aggregate distribution would exceed $2 million, the amount to be distributed for each qualifying PEG channel will be proportionately reduced. The remaining funds will be distributed according to each local government's proportionate share. A city's or county's proportionate share for 2006–07 is calculated by dividing the local government's base amount by the aggregate base amounts of all the cities and counties. The base amount is determined in one of two ways: (1) for cities or counties that did not impose a cable franchise tax before July 1, 2006, the base amount is $2 times the most recent annual population estimate; or (2) for cities or counties that did impose a cable franchise tax before July 1, 2006, the base amount is the total amount of cable franchise tax and subscriber fee revenue the city or county certifies to the secretary of state (by March 15, 2007) that it imposed during the first six months of the 2006–07 fiscal year. In subsequent fiscal years, the proportionate shares will be adjusted for per capita growth. Both for the initial distribution and for any subsequent distributions, a county's population includes only its unincorporated population plus the population of any cities in the county that are ineligible to participate in a distribution because they do not levy at least a 5¢ ad valorem tax, do not provide a sufficient number of services, or do not open a majority of their street mileage to the general public.

The proceeds to local governments from the three state taxes are partially earmarked. A city or county that imposed subscriber fees during the first six months of the 2006–07 fiscal year must use a portion of the funds distributed to it for the operation and support of PEG channels, equal to two times the amount of subscriber fee revenue the county or city certifies it imposed during this period. In addition, a city or county that used part of its franchise tax revenue in fiscal year 2005–06 for the operation and support of PEG channels or a publicly owned and operated television station must continue the same level of support. The remainder of the distribution may be used for any public purpose.

Potential Federal Legislation

The United States Congress is considering legislation which would establish a national franchising system. The House of Representatives recently passed a video franchise reform bill and the Senate Commerce Committee approved a similar bill. Both bills currently allow states or local governments to assess franchise taxes, provide for PEG channel support, and retain at least some control over their public rights-of-way. The House bill contains no build-out requirements, but a number of proposed amendments in the Senate would establish build-out requirements. It is likely that any federal legislation passed would preempt statewide video franchise laws.

The State Budget

The state appropriations act, S.L. 2006-66 (S 1741), contains several provisions of interest to local government officials.

One-Time Cap on Medicaid County Share

North Carolina requires counties to pay 15 percent of the nonfederal share of all Medicaid service costs. The 2006–07 aggregate county Medicaid costs are projected to approach $488 million, reflecting an 85 percent increase since 2000. Citing increasing Medicaid-eligible populations and escalating Medicaid costs, counties sought permanent relief of their share of the Medicaid burden. The House of Representatives passed a budget that would have permanently capped the county Medicaid costs at 2005–06 levels and provided $35 million of additional one-time relief to the counties most affected by the county Medicaid burden. The Senate did not include any county Medicaid relief in its budget; instead it focused on other alternatives such as trading the county Medicaid burden for a portion of the counties' local option sales tax authority. After significant negotiations, House and Senate budget conferees reached a compromise agreement to include in the budget a one-time cap on the county Medicaid share for fiscal 2006–07 and to authorize a study committee to recommend a permanent solution.

The appropriations act provides that, for fiscal 2006–07, the state will pay the aggregate county share of the nonfederal share of Medical Assistance payments (including Medicare Part D) that exceeds the county share for the 2005–06 fiscal year, up to a maximum of $27.4 million. The county share of Medical Assistance payments for fiscal year 2005–06 is the sum of the twelve county warrants for Medicaid expenditures from June 2005 through May 2006.

The General Assembly estimates that the increase in the aggregate county share for 2006–07 (over the 2005–06 level), excluding administrative costs, will not exceed $27.4 million. If it does, the counties will be responsible for paying 15 percent of the nonfederal share of total Medical Assistance payments that exceed the aggregate 2005–06 costs plus $27.4 million. If, however, an individual county's share for fiscal 2006–07 is less than the share that county paid in fiscal 2005–06, then the county will pay the lower amount for fiscal 2006–07. The Department of Health and Human Services will continue to track, on a monthly basis, each county's portion of the nonfederal share of Medical Assistance payments, excluding administrative costs, as if the counties were still paying 15 percent of all applicable nonfederal costs.

Additionally, S.L. 2006-248 (H 1723) establishes the State and Local Fiscal Modernization Study Commission. The study commission is directed, among other things, to study and recommend a permanent financing strategy leading to the elimination of county financial participation in Medicaid services and to report its findings and recommendations to the General Assembly by May 1, 2007.

Refund of Local Sales and Use Taxes to Local School Administrative Units

In 1998 the General Assembly authorized local school administrative units to receive refunds of state and local sales and use taxes paid on purchases of tangible personal property and services. In 2005 the legislature intended to repeal the state sales tax portion of the refund for local school administrative units, effective July 1, 2005, and direct an equivalent amount of state funds to the State Public School Fund for allotment to local units through the budgetary process, effective July 1, 2006. Through a technical error, the legislature also repealed the local sales and use tax portion of the refund for local school administrative units and directed state funds to the State Public School Fund equivalent in amount to both the state and local refunds. The appropriations act corrects this error, retroactive to July 1, 2005, by reinstating a refund of local sales taxes and by providing that the amount of state funds transferred to the State Public School Fund is based on the amount of the repealed refund of state sales taxes.

One-Year Cap on Variable Wholesale Component of Motor Fuels Tax Rate

The state imposes an excise tax on motor fuel at a flat rate of 17.5¢ per gallon plus a variable rate of 3.5¢ per gallon or 7 percent of the average wholesale price of motor fuel for the base period, whichever is greater. Effective July 1, 2006, through June 30, 2007, the variable wholesale component of the tax is capped at 12.4¢ per gallon. Section 2.2(g) of the appropriations act provides for the transfer of up to $22.9 million from the Savings Reserve Account to the Highway Fund and the Trust Fund to offset any reduction that occurs from the tax cap.

G.S. 136-41.1 appropriates from the motor fuels tax proceeds an amount equal to the proceeds of 1¾ ¢ per gallon taxed, plus an additional 6.5 percent of the net proceeds of the North Carolina Highway Trust Fund, and distributes that amount among the state's cities. The proceeds are commonly known as Powell Bill funds. The cap on the variable wholesale component of the tax does not affect the appropriation to qualified cities of the 1¾ ¢ per gallon taxed but may affect the total funds available for distribution in the North Carolina Highway Trust Fund if the $22.9 million transfer is not sufficient to hold the Highway Trust Fund harmless.

Public School Building Capital Fund

The Public School Building Capital Fund assists county governments in meeting their public school building capital needs and their equipment needs under their local school technology plans. G.S. 18C-164 directs that 40 percent of the net revenue of the Education Lottery Fund be transferred to the Public School Building Capital Fund, to be allocated among counties for capital school construction projects. Under G.S. 115C-546.2(d)(2), 35 percent of the monies transferred are allocated to local school administrative units located in whole or part in counties in which the effective county tax rate as a percentage of the effective state average tax rate is greater than 100 percent. The appropriations act clarifies that the actual county tax rate used to calculate the effective county tax rate includes any countywide supplemental taxes levied for the benefit of public schools.

Increase in Permit and Plan Review Fees under Drinking Water Act

Effective January 1, 2007, the appropriations act amends G.S. 130A-328 to increase the annual operating permit fees for community water systems and impose new fees for nontransient noncommunity water systems. It also imposes new fees for the review of plans submitted to the Department of Environment and Natural Resources (DENR) for construction or alteration of water distribution systems, groundwater systems, and surface water systems and authorizes DENR to charge an administrative fee of up to $150 for the failure to pay the permit fees by January 31 of each year. The operating permit fees had not been increased since they were first implemented in 1992, and improvement in public water supply compliance and technical assistance staffing was a priority of the Governor and the secretary of Environment and Natural Resources this year. The appropriations act authorizes DENR to create a schedule for phasing in the new fees over multiple operating permit cycles.

Disaster Relief Grants

Under the North Carolina Emergency Management Act, the Governor or General Assembly may proclaim a state of disaster. If a state of disaster is proclaimed, the Governor is authorized to define the area subject to the state of disaster and categorize the disaster as Type I, Type II, or Type III according to specified criteria. The Governor also may make state funds available for disaster assistance to an eligible entity (including any political subdivision or private nonprofit utility). If the disaster is Type I, the Governor may award public assistance grants to an eligible entity that meets certain qualifications. The appropriations act modifies the qualifications by increasing the amount of required uninsurable loss from greater than 0.5 percent to greater than 1 percent of the annual operating budget of the eligible entity.

Various Revenue Law Changes

S.L. 2006-162 (H 1963) makes technical, clarifying, and administrative changes to the revenue laws. Of particular interest to local government officials are the following three provisions.

Occupancy Tax Administrative Changes

Local governments in more than seventy counties are permitted by local act to levy occupancy taxes, which are taxes on the occupancy of hotel and motel rooms in their jurisdictions. Every operator of a business subject to a room occupancy tax must collect the tax and remit it to the county finance officer each month. S.L. 2006-162 amends G.S. 153A-155(d) and G.S. 160A-215(d) to require that room occupancy taxes due and payable to a county each month must be paid to the county finance officer by the twentieth day of the month following the month in which the tax accrues. Previously, the taxes were due by the fifteenth of the month.

Municipal Service Districts Effective Date

The governing board of a city is authorized to define a part of the city as a service district, to levy a property tax in the district additional to the citywide property tax, and to use the proceeds to provide specified services to the district, if the proposed district needs the services "to a demonstrably greater extent" than the rest of the city. G.S. 160A-537(d) provides that a resolution defining a service district takes effect at the beginning of the fiscal year commencing after its passage. S.L. 2006-162 amends this subsection to authorize the governing body to make the resolution effective immediately upon its adoption if general obligation bonds are anticipated to be authorized for the project. No ad valorem tax may be levied for a partial fiscal year, however.

Imposition of Vehicle Rental Tax in Mecklenburg County

S.L. 2006-162 designates Mecklenburg County as a Regional Transit Authority under Article 50 of Chapter 105 of the General Statutes and, subject to the restrictions in G.S. 105-551, authorizes it to levy a privilege tax of up to 5 percent on the short-term lease or rental of U-drive-it vehicles or motorcycles by retailers whose places of business or inventories are located within Mecklenburg County. The proceeds of the tax must be transferred to the City of Charlotte and used only for financing, constructing, operating, and maintaining a public transportation system. The proceeds may supplant existing funds allocated for the public transportation system, which frees up general fund monies to be used for other purposes.

Minimum Wage Increase

Effective January 1, 2007, S.L. 2006-114 (H 2174) increases the minimum wage in North Carolina to equal the federal minimum wage or $6.15 per hour, whichever is higher. (The federal minimum wage is currently $5.15.) Pursuant to G.S. 95-25.14(d)(1), the minimum wage provision applies to cities, towns, counties, or other instrumentalities of government.

Capital Lease Financing for Public Schools

S.L. 2006-232 (S 2009) authorizes a school board to lease an existing building or arrange for a private firm to build a new one, then contract for its use as a school building or school facility for up to 40 years. It provides school districts with an alternative to the bond referendum as a mechanism to fund construction projects to keep pace with rapid enrollment growth. Capital lease financing does not require voter approval, but public notice must be given before the school board decides to proceed, and the funds to pay for the lease must be provided by the county commissioners. It also is subject to approval by the Local Government Commission. A capital lease also may provide that the private

developer is responsible for providing, or contracting for, construction, repair, or renovation work to the leased facilities. For a detailed description of the legislation's provisions, see Chapter 21, "Public Purchasing and Contracting."

Regional Planning Commissions and Regional Councils of Government Borrowing

S.L. 2006-211 (S 1436) authorizes regional councils of government, created under G.S. Chapter 160A, Article 20, Part 2, to pledge real property as security for indebtedness used to finance acquisitions of, or make improvements to, real property. It authorizes regional planning commissions, created under G.S. Chapter 153A, Article 19, both to acquire and improve real property and to pledge real property as security for indebtedness used to finance acquisitions of, or make improvements to, real property. Financing real property acquisitions and improvements for both regional councils of government and regional planning commissions must be approved by the Local Government Commission in accordance with G.S. 159-153.

State and Local Fiscal Modernization Study Commission

S.L. 2006-248 (H 1723) establishes a thirty-member State and Local Fiscal Modernization Study Commission. The commission is charged with the following:

- Examining state and local revenue-sharing and taxing authority and the division of responsibility for providing for infrastructure, public education, Medicaid and other needs in North Carolina and other states
- Reviewing and making recommendations with respect to modernizing North Carolina's state tax code
- Examining and recommending any changes to the authority of local governments to levy taxes and fees and their ability to pay for services required by their citizens
- Recommending to the Governor and the General Assembly any changes in state and local tax structure and sharing of revenues and responsibilities
- Studying and recommending a permanent financing strategy leading to the elimination of county financial participation in Medicaid services.

The commission must report its findings and recommendations to the General Assembly by May 1, 2007. The University of North Carolina will provide advice and staffing to the commission.

Protection of Private Solid Waste Collection Firms

In 1985 the General Assembly enacted legislation that offered some transitional protection to private solid waste collection firms whose business was adversely affected by a city's annexation. In general, if a collection firm qualifies for the statutory protections, the annexing city must either enter into a contract with the firm, allowing it to continue operating within the annexation area for at least two years after the annexation becomes effective, or reimburse the firm for its "economic loss," providing, essentially, a severance payment. The amount of the economic loss payment has been twelve times the firm's average monthly revenues from solid waste collection services in the annexation area during the period immediately preceding the annexation. S.L. 2006-193 (S 951) modifies the existing legislation, making it easier for a firm to qualify for the statutory protections and increasing the amount of economic loss payment. It also expands the policy of the existing law to other situations in which a city or county "displaces" an existing private solid waste collection firm. These new provisions resulted from extensive negotiations between the League of Municipalities and representatives of private solid waste collection firms, and they are considerably more favorable to local governments than were the provisions in the original bill.

Annexation

The new legislation makes the following changes to the existing protections for solid waste collection firms adversely affected by a city's annexation:

1. In order to qualify for protection under the original statutes, a firm had to either have had at least 50 residential customers in the annexation area or have earned an average of at least $500 a month from nonresidential customers in the annexation area. Under the 2006 revisions all that is necessary to qualify for protection is that the firm have at least 50 customers (of any sort) *in the county within which the annexation is taking place*. That is, as long as the firm has the requisite number of customers in the county as a whole, it does not matter how many customers it has in the annexation area itself.
2. The statutes have required the city to make a good faith effort to locate and then give notice to any firm that might be eligible for the statutory protections; in practice that has been occasionally difficult. In apparent response to that problem, the new legislation requires a firm that is providing solid waste collection services outside of cities to file a notice of its doing so to each city located within the firm's collection area or within five miles of the collection area.
3. As noted above, an annexing city has had the option of paying an eligible firm for the firm's "economic loss." That has been defined as twelve times the firm's average monthly revenues that will be lost because of the annexation. The new statutes increase the amount of the payment to fifteen times the firm's average monthly revenues that will be lost.
4. The legislation finally makes a number of minor changes to the statutory provisions concerning contracts with protected firms and to the procedures under which a city may request information from a firm seeking the statute's protections.

Displacement

The act adds new requirements, applicable to both cities and counties (as well as sanitary districts), that a local government must comply with if it "displaces" a private firm that is providing "collection services for municipal solid waste or recovered materials, or both." (These new provisions do not apply to annexations; the provisions described above govern there.) Displacement is defined as either of two events: some sort of formal action by a local government that prohibits a private company from continuing to provide collection services; or a local government's initiation of competing collection services that are funded, in some part, by "an availability fee, nonoptional fee, or taxes." The statute specifies, however, that displacement does not include a local government's failure to renew a franchise agreement or a contract with a private firm. There are two situations in which a local government might prohibit private firms from collecting solid waste within the government's jurisdiction, but only one of them is likely to trigger this new legislation. That situation is when a county or city for the first time adopts an ordinance requiring a franchise before a firm may collect solid wastes in some or all of the county or city. If a local government has adopted a franchise ordinance, it normally prohibits conducting the subject business without a franchise. Thus, it might be possible for a firm to be collecting solid wastes in an area and not receive a franchise; in such a case it has been prohibited from carrying on its business by a formal action of a local government and has therefore been displaced. The other situation is when a city takes advantage of the authorization in G.S. 160A-317(b)(4) to require city residents and businesses to use the city's collection services. Any such requirement, however, does not apply to customers with contracts with private collection firms, and so that city action could not lead to any firm being prohibited from continuing to serve existing customers.

If a local government plans to displace one or more existing collection firms, what does the new statute require? First, the local government must publish notice of the governing board's intention to discuss the relevant change in solid waste collection service. This notice must be published once a week for four weeks, with the first notice appearing between thirty and sixty days before the first meeting at which the changes will be discussed. In addition a copy of the notice must be mailed to each firm that might be affected by the changes. (Each collection firm operating in or within five miles of a

county or city must file a notice of that fact with the county or city in order to receive this notice.) The local government then has six months from the date of that first meeting to actually take some formal action that displaces one or more collection firms. Even after taking that action, the local government cannot implement the changes until fifteen months have passed from first publication of the notice unless it compensates each affected private collection firm. In essence, that compensation is a payment to a firm equal to the amount of the firm's total gross revenues in the displacement area for the six months immediately preceding the first published notice.

The new legislation becomes effective January 1, 2007. With respect to annexations, it applies to those annexations for which the resolution of intent was adopted on or after that date.

Eminent Domain for Economic Development

In the early summer of 2005 the United States Supreme Court decided the case of *Kelo v. City of New London,* in which it held that the federal constitution did not prohibit a local government from condemning private property for an economic development project and ultimately conveying the property to another private owner for development. Half a century earlier the court had upheld a similar condemnation in a blighted area; this case was an advance on the earlier case because the property being condemned in *Kelo* was not within a blighted area. The court's decision set off a storm of protest around the country, leading a number of states to adopt or propose state constitutional amendments that would prohibit the sort of condemnation permitted by *Kelo.* North Carolina was not immune from the turmoil, and the 2006 General Assembly had before it several proposed constitutional amendments as well as proposed statutory changes to ensure that a *Kelo* condemnation could not happen here. The proposed constitutional amendments eventually went nowhere, but the statutory changes, based on a bill proposed by the House Select Committee on Eminent Domain, were enacted into law in S.L. 2006-224 (H 1965).

The new legislation does three things. First, it makes ineffective all local acts that expand on the list of permitted purposes for eminent domain set out in G.S. Chapter 40A, the eminent domain statute. Chapter 40A does not permit and never has permitted the use of eminent domain for a purely economic development project, but the General Assembly has enacted a smattering of local acts over the years permitting such condemnations. This legislation provides that those local acts may no longer be used.

Second, the Select Committee discovered an obscure provision in the Revenue Bond Act that theoretically could allow the use of eminent domain for an economic development project. The act permits issuance of revenue bonds to fund certain sorts of economic development projects; it also permits the use of eminent domain for a revenue bond project. Although it would be very difficult to find a market for revenue bonds issued for an economic development project, S.L. 2006-224 provides that the eminent domain authority in the Revenue Bond Act will no longer apply to economic development projects.

Third, the legislation amends the urban redevelopment statutes to limit condemnation within redevelopment areas. As was noted above, the constitutionality of condemnation within urban redevelopment areas (usually "blighted areas") has been clear for fifty years. The characterization of an area as a redevelopment area, however, has depended on statutory definitions that were lengthy but not particularly precise. Furthermore, once an area has been defined as a redevelopment area, condemnation has been available as to all properties within that area, even properties that themselves were not in need of redevelopment. S.L. 2006-224 restricts condemnation within a redevelopment area by limiting it to "blighted parcels" only. It defines a blighted parcel as one

> on which there is a predominance of buildings or improvements (or which is predominantly residential in character), and which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, unsanitary or unsafe conditions, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs the sound growth of the community, is conducive to ill health, transmission of disease,

> infant mortality, juvenile delinquency and crime, and is detrimental to the public health, safety, morals or welfare.

The definition is long, but the key words perhaps are at the beginning—a blighted parcel must have buildings or improvements or be predominantly residential in character. Thus, a vacant lot cannot be a blighted parcel, as it has no buildings or improvements and cannot be said to be residential in character. If a local government, then, were trying to assemble land for a redevelopment project, and that land included one or more vacant parcels, the local government would not be able to use eminent domain for the vacant parcels, giving the owners of those parcels considerable leverage in any negotiations for purchasing the parcels.

Miscellaneous

Animal Control

Civil remedy for animal cruelty. Under existing law, any person may file a complaint in district court alleging that a person who owns or possesses an animal has treated the animal cruelly. The court then has the authority to issue preliminary and permanent injunctions. S.L. 2006-113 (H 2098) makes several important changes to the procedures related to these injunctions and the overall scope of the civil remedy.

S.L. 2006-113 amends G.S. 19A-3 to clarify that when a person files a complaint seeking a preliminary injunction and the court orders the plaintiff (i.e., complainant) to take possession of the animal, the plaintiff becomes custodian of the animal. New language provides that once the preliminary injunction is in place, the plaintiff may employ a veterinarian to provide necessary care for the animal without any additional court order. The plaintiff must, however, attempt to consult with the defendant prior to obtaining veterinary care, but the defendant's consent is not required. The plaintiff does not have the authority under a preliminary injunction to consent to euthanasia of the animal; the defendant's consent or a court order is required for such a procedure. In addition to the language governing veterinary care, the law now also specifically authorizes a plaintiff who succeeds in obtaining a preliminary injunction to place the animal in foster care.

The new legislation also modifies the provisions related to permanent injunctions. It amends G.S. 19A-4 to allow a court to award a successful plaintiff the costs incurred in providing food, water, shelter, and care for an animal during the litigation. If the plaintiff is an operator of an animal shelter, it may already be receiving some financial support under an order issued pursuant to G.S. 19A-70 (see discussion below regarding shelters); this new language allows them to recover additional money. The law now specifically authorizes the court to enjoin the defendant from acquiring new animals or place a limit on the number of animals the defendant owns or possesses. It includes new language authorizing the court to provide for custody and care of the animal until the time to appeal has expired or until all appeals are exhausted. This last addition could, for example, be called upon if the plaintiff does not succeed in obtaining an injunction in district court but still does not want to surrender custody of the animal during the appeals process out of concern for the safety of the animal.

Animal shelters. In 2005 the General Assembly enacted a new statute, G.S. 19A-70, to provide some financial relief for animal shelters. The law authorizes animal shelters housing dogs allegedly used or trained for fighting to ask a court to require the defendant to deposit sufficient funds with the court to cover the shelter's cost of caring for the dogs during the course of the criminal trial. [S.L. 2005-383 (H 1085).] This year, G.S. 19A-70 was amended to expand the scope of the law far beyond the dogfighting context [S.L. 2006-113 (H 2098)]. The law now allows shelters to seek such a court order when a shelter takes custody of an animal in a variety of different legal contexts. Specifically, the law now extends to all criminal cases prosecuted under Article 47 of Chapter 14 (e.g., cruelty, abandonment, fighting) or G.S. 67-4.3 (attacks by dangerous dogs) and any civil animal cruelty proceeding under G.S. Chapter 19A, Article 1, initiated by a county or municipality, a county-approved animal cruelty investigator, or an organization operating a county or municipal shelter under

contract. This financial relief is not specifically authorized when an animal's owner is charged with a violation of a local ordinance.

In addition to changing the scope of the law, S.L. 2006-113 amends the provision that would have required the court or the shelter to refund any money deposited by the defendant if the defendant was found not guilty of the dogfighting charges, including those funds already spent on caring for the dogs. The law now provides that, at the conclusion of the litigation, a defendant who has deposited money with the court in conjunction with any of the above cited civil or criminal proceedings is entitled to a refund of any remaining funds *less* any costs incurred by the shelter in caring for the animals in the course of the litigation.

Dogfighting. S.L. 2006-113 also amends the criminal dogfighting and baiting statute (G.S. 14-362.2) to clarify that the prohibition in the law applies when a dog is fighting with another dog or any other animal. Before this clarifying amendment, some might have argued that the prohibition applied only when a dog fought with other dogs. The statute also now provides that the prohibitions related to dogfighting and baiting do not prohibit the use of dogs for lawful hunting activities under the jurisdiction of the Wildlife Resources Commission.

Roadside Solicitations

G.S. 20-175(d), enacted in 2005, authorizes local governments to enact ordinances restricting or prohibiting persons from standing on any street, highway, or right-of-way (excluding sidewalks) while soliciting or attempting to solicit employment, business, or contributions from vehicle drivers or occupants. Section 7 of S.L. 2006-250 (H 1413) adds a new provision permitting cities to grant authorization for persons to stand in, on, or near a street or state highway within the municipal corporate limits in order to solicit charitable (but not other) contributions, as long as certain conditions are met:

- The person seeking authorization must file a written application with the local government not later than seven days before the solicitation is to occur. A separate application must be filed and a separate fee paid (see below) for each event or each day of a multiday event.
- The application must include the date, time, and locations at which the solicitation is to occur, and the number of solicitors at each location.
- The applicant must furnish to the local government advance proof of liability insurance of at least $2 million to cover damages that may arise from the solicitation. The insurance must provide coverage for claims against any solicitor and agree to hold the local government harmless.
- The local government may if it wishes charge a fee for a permit of $25 or less per day per event.

The statute specifies that a local government acting under it does not waive or limit any immunity or create any new liability for itself. It further provides that the issuance of an authorization and the conducting of a solicitation are not to be considered governmental functions of the local government.

Section 7 of S.L. 2006-250 provides that if the event or the solicitors create a nuisance, delay traffic, or create threatening or hostile situations, the law authorizes any law enforcement officer with proper jurisdiction to order the solicitation to cease. Failure to follow a lawful order to cease solicitation is a Class 2 misdemeanor. This section was effective December 1, 2006, and applies to offenses committed on or after that date.

Some of the provisions of Section 7 may prove to be problematic under existing United States Supreme Court precedent that recognizes that restrictions on charitable and other solicitation must be consistent with the free speech clause of the first amendment to the United States Constitution, as applied to the states through the fourteenth amendment. Soliciting has long been considered protected speech in "traditional public forums" such as streets and highways, and it generally can be restricted only because of a compelling governmental interest. While traffic safety may be such an interest, any restrictions on solicitation must be reasonable; must apply only to the time, place, and manner of the speech; must be narrowly tailored to meet the government concern; and must leave open adequate alternative channels of communication.

Among the provisions of Section 7 that may cause constitutional problems are the requirements that a solicitor purchase a large amount of insurance and file a solicitation application a week in advance of the event. Both of these rules may be seen by the courts as having impermissible negative or "chilling" effects on protected speech. In addition, the application requirement may be regarded by the courts as an impermissible prior restraint on speech that has not yet occurred. Constitutional problems may also arise because the law provides no clear guidelines or standards for the granting or denying of permits. Finally, serious questions may arise from the fact that Section 7 treats charitable solicitors that can obtain $2 million in insurance coverage differently from individuals who solicit or beg for themselves.

Expedited Transportation Improvement Fund Projects Around Cities

S.L. 2006-135 (H 1399), Section 3, enacts new G.S. 136-66.8, which authorizes the state Department of Transportation (DOT) to enter into agreements with local governments in order to expedite transportation projects. The projects must currently be included in the Transportation Improvement Plan (TIP), but scheduled more than two years after the date of the agreement. The agreement may authorize the local government to construct the project, using 100 percent local funding at current prices. In a future year when the project is funded from state and federal sources, the local government is to be reimbursed an appropriate share of the funds at the future programmed project funding amount, as identified and scheduled in the TIP. DOT was to report to the Joint Legislative Transportation Oversight Committee by December 1, 2006, on any agreements executed under G.S. 136-66.8.

Secondary Road Funding and Construction Changes

In 2005 the General Assembly changed the formula for allocating funds for secondary road construction in North Carolina's counties (S.L. 2005-404, H 750, effective July 1, 2006). S.L. 2006-258 (H 1825) delays implementation of this act for one year, until July 1, 2007. S.L. 2006-258 also specifies that when the changes do take effect, paved as well as unpaved state-maintained secondary roads will be included in the calculation formula (paved roads are added). Also, beginning July 1, 2007, and continuing until 2009–10, DOT must set aside up to $5 million to pay for the paving of any unpaved secondary road that had previously been determined to be ineligible for paving.

Other provisions of the act take effect on August 23, 2006. In particular, DOT is required "to make every effort to acquire right-of-way" in order to pave state secondary roads included in the annual secondary road program. In addition, the act authorizes the DOT Division Engineer to reduce the width of a right-of-way to less than 60 feet to pave secondary roads with funds allocated for that construction, as long as public safety is not compromised and the minimum accepted design practice is satisfied.

S.L. 2006-258 also requires the Joint Legislative Transportation Oversight Committee to study the cost of paving and maintenance of both paved and unpaved secondary roads in different geographic areas of North Carolina. The committee is to report by March 1, 2007.

Incorporation of Midway

The 2006 General Assembly incorporated one new municipality, the Town of Midway in Davidson County. The town is established by S.L. 2006-37 (S 1852), effective June 29, 2006. Midway operates under the mayor-council form of government, with a five-member council and a separately elected mayor. Council members will serve four-year staggered terms and the mayor will also serve a four-year term (the act sets up the staggering system beginning with the 2007 municipal election). Elections are to be conducted in accordance with the nonpartisan plurality system as provided in

G.S. 163-292. The act appoints an interim mayor and council for the town. The council is to appoint a town attorney and a town clerk to serve at its pleasure.

S.L. 2006-37 places several restrictions on actions by the Midway council. First, it cannot "increase the ad valorem tax rate more than $0.10 per $100.00 valuation in each fiscal year" without the consent of the voters. Second, the town may not annex property in certain areas of Davidson County unless it does so pursuant to an annexation agreement with the City of Winston-Salem, and finally, the town may not annex property in Forsyth County at all.

Midway's citizens and property are subject to municipal taxes levied for the year beginning July 1, 2006, payable at face value within ninety days of the town's adoption of its 2006–07 budget ordinance. The council is allowed to adopt this ordinance without following the timetable in the Local Government Budget and Fiscal Control Act.

High Point Elections

In 1971 the General Assembly enacted legislation to standardize the procedures for city and town elections. One aspect of that legislation was to place all elections for city and town councils in the fall of odd-numbered years, and that rule has been followed statewide since the mid-1970s. This year, however, the General Assembly breached that long-time policy. S.L. 2006-171 (S 350) reschedules city council elections in High Point to the even-numbered years, beginning in 2008. The city will not hold elections in 2007; rather, the terms of existing council members are extended until the 2008 elections.

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Local Taxes and Tax Collection

The most significant local tax legislation enacted by the 2006 General Assembly affects the collection of delinquent property taxes. Beginning with the 2006–07 tax year, changes to Machinery Act provisions governing the collection of delinquent taxes on transferred property eliminate the enforced collection of taxes from sellers who owned property as of the date of assessment but transferred the property before the taxes became delinquent. The 2006 legislation aligned taxpayer liability under the Machinery Act with property sellers' expectations that their property tax liabilities were satisfied upon transfer of property and resulted in amendments to several statutes, including the statutes governing in rem and mortgage-style foreclosure proceedings. The General Assembly further amended the statutory notice requirements for in rem tax foreclosure proceedings in response to a United States Supreme Court opinion, rendered a few weeks before the convening of the 2006 legislative session, holding that the State of Arkansas failed to provide due process before foreclosing on a home for delinquent property taxes.[1]

Legislation enacted in 2005 to fully integrate the registration and taxation of motor vehicles survived the 2006 session largely intact, notwithstanding the introduction of bills to repeal the 2005 act altogether or, alternatively, to render its provisions inapplicable to vehicles sold by dealers. Ultimately, the General Assembly postponed the deadline for implementation of the new system for one year, until July 1, 2010.

The 2006 General Assembly enacted relatively limited legislation affecting the listing and assessment of property for ad valorem taxation. Statutory amendments expand the electronic listing provisions to permit the electronic listing of non-business personal property, redefine "inventories" to include display modular homes, and permit late applications for continued present-use taxation upon the transfer of property. The legislature also directed the Revenue Laws Study Committee to study and report its recommendations on whether wildlife and other conservation land should be classified for taxation at present-use value.

1. Jones v. Flowers, 126 S. Ct. 1708 (2006).

Collection of Property Taxes

"Taxpayer" Redefined for Purposes of Enforced Collection

For years, many property owners have mistakenly assumed that upon the transfer of real property to another party, they transferred any liability for unpaid taxes levied on the property, particularly if the seller's or transferor's prorated portion of property taxes was deducted from the proceeds at closing. In circumstances in which the new owner did not pay property taxes levied for the current year, former owners were unpleasantly surprised to receive a notice from the tax collector informing them that their names would be advertised in the newspaper for nonpayment of taxes. Former owners' dismay was even greater upon learning that their bank accounts, wages, and personal property were subject to attachment, garnishment, and levy for the unpaid taxes. These unpleasant and, many argued, inequitable outcomes resulted from two circumstances. First, though property taxes are routinely accounted for in the closing of a real estate transaction, when the tax bill has not yet been issued the accounting is frequently accomplished by a balance sheet reduction and credit rather than the actual payment of taxes from the proceeds of a real estate transaction. Second, the Machinery Act defined the "taxpayer" whose personal property could be attached or levied upon for nonpayment of taxes as any person whose property was subject to property taxation, determined as of January 1 preceding the fiscal year for which the property taxes were levied. The Machinery Act likewise provided for the advertising of unpaid taxes that were liens on real property in the names of both the owner as of January 1 and the owner as of December 31. Though legislation enacted by the General Assembly in 2006 did not affect the practice of accounting for property taxes by way of a balance sheet deduction and credit, it did change the Machinery Act's tax liability provisions by redefining the term "taxpayer" for purposes of collecting delinquent taxes assessed on real property as "the owner of record on the date the taxes become delinquent and any subsequent owner of record" and by providing for advertising only in the name of the record owner of property as of the date the taxes become delinquent. A discussion of the specific statutory amendments bringing about these changes follows.

G.S. 105-366 authorizes tax collectors to levy upon and sell or attach personal property "owned by the taxpayer" at any time after taxes are delinquent and before the filing of a tax foreclosure complaint under G.S. 105-374 or the docketing of a tax foreclosure judgment under G.S. 105-375. The term "taxpayer" is defined in G.S. 105-273(17) as "any person whose property is subject to ad valorem property taxation by any county or municipality and any person who . . . has a duty to list property for taxation." S.L. 2006-106 (S 1451) amends that definition by adding the following provision: "For purposes of collecting delinquent ad valorem taxes assessed on real property under G.S. 105-366 through G.S. 105-375, 'taxpayer' means the owner of record on the date the taxes become delinquent and any subsequent owner of record of the real property if conveyed after that date." The term "owner of record" means the owner as reflected in the public record, generally the office of the register of deeds or the clerk of superior court, in the county in which the real property is situated. The amended definition of taxpayer in G.S. 105-273(17) applies to taxes imposed for 2006–07 and subsequent fiscal years.

An example may assist in illustrating the practical effect of this statutory change. Suppose that on January 1, 2006, Martha Jones is the owner of Lot 54 in the Hazelwood subdivision, at 411 Pinetree Road, in unincorporated Carolina County. Martha Jones conveys Lot 54 to Sam Smith by warranty deed, recorded by the Carolina County Register of Deeds on May 1, 2006. On January 6, 2007, the 2006–07 property taxes assessed on Lot 54 remain unpaid. The Carolina County tax collector may levy upon or attach personal property owned by Sam Smith, but not personal property owned by Martha Jones, to secure payment of the 2006–07 taxes assessed on Lot 54, because Sam Smith was the owner of record on the date the taxes became delinquent.

If Sam Smith conveys the property to Debra Lane by warranty deed recorded by the Carolina County Register of Deeds on January 30, 2007, the Carolina County tax collector may elect, *after the recording of the deed to Debra Lane,* to levy upon or attach the personal property of either Sam Smith or Debra Lane to secure payment of the 2006–07 property taxes on Lot 54.

Suppose that as of January 1, 2006, Martha Jones also owned a boat with a tax situs of Carolina County upon which the 2006–07 property taxes remained unpaid as of February 1, 2007. Pursuant to

G.S. 105-355, property taxes assessed on the boat are a lien on all real property owned by the taxpayer in the taxing unit as of the listing date. Since Martha Jones owned Lot 54 on January 1, 2006, the taxes assessed on the boat are a lien on Lot 54. The tax collector may not, however, levy upon or attach personal property of Sam Smith or Debra Lane to secure payment of the taxes assessed on Martha Jones's boat. This is the case because the amended definition of taxpayer applies only for purposes of collecting *delinquent ad valorem taxes assessed on real property*, rather than for purposes of collecting *all taxes that are a lien on real property*. This may be of little consolation to Debra Lane, however, since the tax collector may foreclose upon Lot 54 to enforce the lien for the unpaid taxes assessed on Martha Jones's boat.

Amendments to G.S. 105-369 change the name in which property tax liens are advertised for taxes levied in 2006–07 and subsequent years. G.S. 105-369 requires that tax collectors report to the governing body in February of each year the total amount of unpaid taxes for the current fiscal year that are liens on real property. The governing body then orders the tax collector to advertise the tax liens. G.S. 105-369 formerly required that property transferred after January 1 be advertised in the name of the record owner as of December 31 with a notation that the property was transferred and a notation of the name of the listing owner. Thus, in the above example, the advertisement under former law would have been: Smith, Sam, by transfer from Jones, Martha, Lot 54, 411 Pinetree Road, $1,200. As amended by S.L. 2006-106, G.S. 105-369 requires that all tax liens on real property for 2006–07 and subsequent years be advertised solely in the name of the record owner as of the date the taxes became delinquent. Amended G.S. 105-369 also requires that advance notice of the advertisement be mailed to the record owner as of the date the taxes became delinquent rather than to the listing and December 31 owners. Again referring to the Lot 54 example, the advertisement (which will be published after the transfer from Sam Smith to Debra Lane) will be: Smith, Sam, Lot 54, $1,200. Martha Jones's name will not be advertised since the provision for noting a transfer from the January 1 owner has been deleted from G.S. 105-369. Debra Lane's name will not appear in the advertisement because she was not the owner of record as of the date of delinquency, January 6, 2007.[2] As noted above, the tax collector may, however, levy upon and attach Debra Lane's personal property for nonpayment of the taxes once she becomes a subsequent owner of record. Again, it bears mentioning that the taxes assessed on the boat owned by Martha Jones as of January 1, 2006, are a lien on Lot 54. These taxes would be included in the total amount of the lien advertised for Lot 54.

G.S. 105-369, as amended, does not specify how a tax lien should be advertised if a parcel is subdivided into two or more parcels after January 1, 2006, and one or more of those parcels is transferred to a new owner. Given the lack of specific guidance in the Machinery Act on this point, it appears that the tax collector may advertise tax liens on such parcels in one of two ways.[3] First, the tax collector may assign a portion of the lien on the listed parcel to each of the new parcels. The tax collector may do this by apportioning the lien among the subdivided parcels based upon the acreage of each parcel. For example, suppose a 20-acre parcel upon which there is a $10,000 tax lien for 2006 taxes is subdivided into five 4-acre parcels on April 1. Suppose further that *A*, the January 1 owner of the entire 20-acre parcel, retains ownership of one subdivided parcel. The other parcels are transferred

2. While January 6 is generally the date on which taxes become delinquent, this is not always the case. G.S. 105-360 provides that taxes are payable without interest if paid before January 6 following the September 1 on which the taxes became due, and taxes paid on or after January 6 following the due date are delinquent. *Id.* Yet, G.S. 105-395.1 states that when the last day for doing an act required or permitted by the Machinery Act falls on a Saturday, Sunday, or public holiday, the act is considered to be done within the prescribed time limit if it is done the next business day. Thus, when January 5 falls on a Saturday or Sunday, taxpayers may pay taxes without interest on the following Monday. In this situation, the taxes do not become delinquent until Tuesday. For example, in 2002, January 5 was a Saturday. Because the last day for paying 2001–02 taxes without interest was Monday, January 7, 2002, taxes did not become delinquent until Tuesday, January 8. Tax collectors must, therefore, determine the actual date of delinquency for a particular year before they can identify the owner of record as of that date.

3. These are the same options that were available under the previous version of G.S. 105-369, which required advertisement of transferred property in the name of the December 31 owner as well as the January 1 owner. *See* WILLIAM A. CAMPBELL, PROPERTY TAX COLLECTION IN NORTH CAROLINA 12–13 (4th ed. 2000 Supp.) (setting forth the options under the previous version of G.S. 105-369 that are applied in this chapter to amended G.S. 105-369).

to *B*, *C*, *D*, and *E*, who each pay $2,000 in 2006 taxes to the tax office in December 2006, leaving a balance of $2,000. The tax collector may apportion the tax lien among the subdivided parcels in the amount of $2,000 per parcel. An apportionment based solely on acreage will, of course, be only an estimate of the lien attributable to each parcel, because factors other than acreage, such as road frontage and topographical features, may result in differing valuations of parcels that have the same acreage. The remaining lien may then be advertised in the name of *A* alone. If the tax collector elects to follow this approach, the lien advertisement should include a statement similar to the following:

> When a parcel was subdivided after January 1, 2xxx, and ownership of one or more of the resulting parcels was transferred, the amount of the tax lien on each parcel, as shown in the advertisement, is based on an estimate and is subject to adjustment when the taxes are paid or the lien is foreclosed.

The notice letters to the owner or owners of record should contain a similar statement. Alternatively, the collector may decide *not* to apportion the lien among the subdivided parcels. In that case, the tax collector will advertise all of the subdivided parcels as being subject to the entire tax lien imposed upon the parcel as it existed January 1. In the above example, owners *A*, *B*, *C*, *D*, and *E* each would be advertised. The advertisement would list a lien of $2,000 (the unpaid portion of the initial $10,000 lien) for *each* parcel. The advertisement should reflect that the parcels were subdivided from the January 1 tract by including an entry of "(subd.)" next to each parcel. If the tax collector advertises the liens on subdivided parcels in this manner, the advertisement and notices should include a statement similar to the following:

> When a parcel was subdivided after January 1, 2xxx, and ownership of one or more of the resulting parcels was transferred, the amount of the tax lien on each parcel, as shown in this advertisement, is the amount of the lien on the original parcel as it existed on January 1, 2xxx, and is subject to adjustment when the taxes are paid or the lien is foreclosed.

Though it does not affect the levy and collection of taxes, tax collectors may wish to note that real estate attorneys' longstanding practice of prorating fiscal year taxes on a calendar year basis has been codified in new G.S. 39-60, enacted as part of S.L. 2006-106.

Notice Procedures in Foreclosures for Delinquent Property Taxes

A few weeks before the General Assembly convened for the 2006 session, the United States Supreme Court issued its opinion in *Jones v. Flowers*,[4] a case in which a property owner challenged a tax foreclosure sale by the state of Arkansas on the basis that he was not afforded the notice required by the Due Process Clause of the Fourteenth Amendment of the United States Constitution. The Court agreed with the property owner, holding that the return by the post office of the foreclosure notice as unclaimed obligated the state to take additional reasonable steps, beyond newspaper publication of the notice, to notify the owner before taking the property.

The Court's holding cast into doubt the constitutionality of the notice procedures set forth in G.S. 105-375 providing for the in rem foreclosure of property for nonpayment of property taxes. At the time *Jones* was decided, G.S. 105-375 required that notice of intent to docket a judgment and issue an execution for sale of the property be served upon the listing and current owner of the property and lienholders by registered or certified mail, return receipt requested. In the event that a tax collector did not receive a return receipt from any of these parties within ten days, G.S. 105-375(c) required that the tax collector publish a notice—naming the taxpayer and all unnotified lienholders—that the judgment would be docketed but mandated no further efforts to notify interested parties.

S.L. 2006-106 amends G.S. 105-375 to require additional reasonable efforts to notify interested parties of an impending foreclosure proceeding if the tax collector does not receive a return receipt

4. 126 S. Ct. 1708 (2006).

within ten days following the mailing of the notice. New G.S. 105-375(c)(4)(a) states that "[r]easonable efforts may include posting the notice in a conspicuous place on the property, or, if the property has an address to which mail may be delivered, mailing the notice by first-class mail to the attention of the occupant." While a tax collector may employ other or different reasonable efforts, a tax collector should make such efforts in addition to those listed in the statute because the codified examples of reasonable efforts reflect the Supreme Court's view of additional efforts that would have afforded the taxpayer in *Jones* due process.

S.L. 2006-106 also amends G.S. 105-375 to provide for notice to the taxpayer as that term was redefined by G.S. 105-273(17) and to remove the requirement for notice to a listing owner who transfers the property to another party before the date on which the taxes become delinquent and who no longer has an interest in the property. These amendments are effective for taxes imposed for 2006-07 and subsequent years. Thus, a taxing unit utilizing in rem foreclosure proceedings for taxes levied before 2006 along with taxes levied in 2006–07 and subsequent years must comply with the notice provisions set forth in the former and current versions of the statute. When pre-2006 taxes are the basis for an in rem foreclosure action, the listing owner as of January 1 for the year in which the taxes were levied will continue to be served with notice regardless of whether the listing owner continues to have any legal interest in the property. Given the Supreme Court's holding in *Jones*, a taxing unit would be well-advised to employ the additional reasonable notification efforts required by amended G.S. 105-375 even if all of the delinquent taxes for which the property is foreclosed were levied before 2006.

S.L. 2006-106 also changes the requirements for service of the notice of the issuance of execution in an in rem foreclosure proceeding. That notice is subsequent to the initial notice of docketing of a judgment and must be mailed at least thirty days before the date set for sale of the property. Before the 2006 amendments, G.S. 105-375 required that the sheriff, who conducts execution sales of property in an in rem proceeding, send notice of the issuance of the execution to the listing, or January 1, owner. Amended G.S. 105-375 requires that the sheriff send notice to the taxpayer as that term has been redefined by 105-273(13). In addition, before the 2006 amendments, G.S. 105-375 required that notice be sent by registered or certified mail but did not require that a return receipt be requested. For in rem foreclosures conducted to secure payment of taxes for 2006 and subsequent years, the sheriff must request a return receipt upon mailing notices of the issuance of the execution. Amended G.S. 105-375(i)(2) also requires that the sheriff make additional efforts to locate and notify the taxpayer and all lienholders of record of the sale under execution if the sheriff has not received a return receipt indicating receipt of the notice within ten days following the mailing of the notice. Given that the amended statute requires proof that lienholders also were served with notice of the issuance of the execution, it is only reasonable to assume that the sheriff must serve lienholders, in addition to the taxpayer, with notice of the issuance of execution. The additional efforts that the sheriff must undertake upon failure to receive confirmation that the requisite parties received notice are the reasonable efforts required of the tax collector pursuant to G.S. 105-375(c)(4) upon the tax collector's failure to receive confirmation that all required parties received the initial notice of docketing. Amendments to G.S. 105-375(c) other than those already mentioned simply reorganize material without substantively changing the statute.

S.L. 2006-106 also amends the procedures that a taxing unit must follow in carrying out a mortgage-style foreclosure proceeding pursuant to G.S. 105-374. Because G.S. 105-374 already incorporates the service of process requirements set forth in the North Carolina Rules of Civil Procedure—which require additional measures, such as personal service of process, upon failure to notify a party by certified mail—the Supreme Court's opinion in *Jones* did not necessitate significant changes to the statute. Instead, S.L. 2006-106 amends G.S. 105-374 to remove for foreclosures for taxes for years 2006 and later the requirement that a listing owner who no longer has an interest in the property be served. Amended G.S. 105-374 requires that the owner of record as of the date the taxes became delinquent and any subsequent owner be made parties to a mortgage-style foreclosure action and specifies that the fact that such a party is a minor, is incompetent, or suffers from any other disability does not prevent or delay the tax lien sale.

Collection of Taxes on Assessments Appealed to the Property Tax Commission

S.L. 2006-30 (H 2097) repeals G.S. 105-321(d), which prohibited the delivery to the tax collector of a tax receipt for an assessment appealed to the Property Tax Commission until the appeal was finally adjudicated. In practice, many such receipts were delivered to the tax collector and corresponding tax bills were mailed before an appeal was filed with the Property Tax Commission. New G.S. 105-378(d) permits the delivery of tax receipts and the billing of taxes for assessments appealed to the Property Tax Commission but prohibits a tax collector from seeking collection of taxes or enforcement of the tax lien until the appeal is finally adjudicated. Corresponding amendments to G.S. 105-373, the statute requiring annual settlement from a tax collector and prescribing the form of settlement, credit a tax collector with the principal amount of taxes for any assessment appealed to the Property Tax Commission when the appeal has not been finally adjudicated, because those taxes now are part of the tax collector's charge.

Payment before Deed Recordation or Issuance of Building Permit

S.L. 2006-150 (H 2339) and S.L. 2006-16 (H 1806) amend G.S. 161-31 to add Davie, Lincoln, and Tyrrell counties to the list of counties that may adopt resolutions requiring that the register of deeds not accept a deed transferring real property unless the county tax collector certifies that no delinquent ad valorem county taxes, ad valorem municipal taxes, or other taxes with which the collector is charged are a lien on the property described in the deed.

S.L. 2006-150 also amends S.L. 2005-433 to permit Davie and Lincoln counties to adopt ordinances providing that a building permit may not be issued to a person who owes delinquent property taxes.

Annexation

When an annexation becomes effective during a fiscal year, property taxes are due for only part of the year. S.L. 2006-72 (S 1372) permits the governing body of a taxing unit to adopt a resolution permitting property taxes for the partial fiscal year of October 1, 2005, through June 30, 2006, to be collected over a three-year period with one-third due and payable on September 1, 2006, one-third due and payable on September 1, 2007, and the remaining one-third due and payable on September 1, 2008. The resolution may provide that interest accrues on unpaid property taxes only to the extent that the taxes have become due and payable under the payment schedule set out in the resolution. Such a resolution is permitted only for property taxes for the partial fiscal year of October 1, 2005, through June 30, 2006, for which the effective date of the annexation was set by judicial order. This legislation permits the City of Fayetteville to bill in three installments the 2005 property taxes for an annexation made effective September 30, 2005, by judicial order. Without this authorizing legislation, pursuant to G.S. 160A-58.10 the prorated municipal property taxes for 2005 would have been due and payable September 1, 2006, along with the 2006 municipal property taxes.

Assessment

Electronic Listing

S.L. 2006-30 amends G.S. 105-304(a1) to authorize a board of county commissioners to adopt a resolution providing for the electronic listing of all personal property. Formerly, counties could provide only for the electronic listing of *business* personal property. S.L. 2006-30 makes conforming amendments to G.S. 105-307 to permit only the period for electronic listing of *business* personal property, rather than the electronic listing of any personal property, to be extended until June 1.

Display Modular Homes Defined as Inventory

S.L. 2006-106 amends the definition of "inventories" in G.S. 105-273(8a) to include "a modular home as defined in G.S. 105-164.3(21b) that is used exclusively as a display model and held for eventual sale at the retail merchant's place of business." This amendment renders these display homes nontaxable pursuant to G.S. 105-275(34), which excludes from taxation inventories owned by retail and wholesale merchants.

Present-Use Value

S.L. 2006-30 amends G.S. 105-277.4 to permit the filing of a late application for taxation of property based upon its present-use value. Initial applications for present use value are due during the regular listing period of the year for which the benefit is first claimed or within thirty days after a notice of change in valuation made pursuant to G.S. 105-286 or 105-287. Applications for continued present-use taxation notwithstanding a transfer of ownership must be submitted within the calendar year in which the transfer occurs and within sixty days after the transfer. New G.S. 105-277.4(a1) permits a county board of equalization and review or board of commissioners to approve a late application for initial or continued present use taxation upon an applicant's showing of good cause for failure to timely apply. A late-filed application approved by the county board applies only to property taxes levied by the county or municipality in the calendar year in which the untimely application is filed.

S.L. 2006-106 requires the Revenue Laws Study Committee to study and recommend in a report to the 2007 General Assembly whether any changes should be made to the special class of property taxed at its present-use value. The committee is specifically directed to evaluate whether wildlife and other conservation land should be taxed at its present-use value and whether more specific land resource management criteria should be added to the sound management programs required for land in the present-use program.

Motor Vehicles

Combined System for Taxation and Registration

Section 31.5 of S.L. 2006-259 (S 1523) amends S.L. 2005-294 to postpone until July 1, 2010 (or upon earlier certification by the Division of Motor Vehicles and the Department of Revenue), the launching of the combined system for registration and taxation of motor vehicles, which was initially set to occur by July 1, 2009. This amendment was minor compared to changes proposed in other bills introduced during the 2006 session. A committee substitute to Senate Bill 600, which was reported favorably in the House of Representatives late in the 2006 session, would have repealed S.L. 2005-294. Three days before the General Assembly adjourned, Senate Bill 600 was re-referred to the Rules Committee, where it remained. A less drastic but still significant proposal to amend S.L. 2005-294 was embodied in Senate Bill 1893 and the identical House Bill 2461, which would have preserved the existing system for billing property taxes four month in arrears for vehicles purchased from motor vehicle dealers. Both bills failed to emerge from the Finance Committees to which they were referred.

S.L. 2006-30 enacted a clarifying amendment to G.S. 105-330.10 to specify that 60 percent of only the first month's interest (rather than 60 percent of all interest) on delinquent motor vehicle taxes must be transferred on a monthly basis to the Combined Motor Vehicle and Registration Account within the Office of the State Treasurer. Counties, which collect all registered motor vehicle taxes, were already remitting 60 percent of only the first month's interest pursuant to previous instructions from the State Treasurer.

Privilege License Taxes

S.L. 2006-216 (H 143) amends G.S. 105-40 to exempt from privilege license taxes imposed under Article 2 of Chapter 105 of the General Statutes all farm-related exhibitions, shows, attractions, or amusements offered on land used for bona fide farm purposes as defined in G.S. 153A-340. Thus, these farm-related amusements are exempt from state and local privilege license taxes on amusements, which are levied pursuant to G.S. 105-37.1. S.L. 2006-216 is effective retroactively to activities occurring on or after January 1, 1999.

Occupancy Taxes

S.L. 2006-162 (H 1963) amends G.S. 153A-155 and G.S. 160A-215, the uniform administrative provisions governing local occupancy taxes, to provide that occupancy taxes are due and payable on the 20th day of the month following the month in which the tax accrues. Both statutes were amended in 2004 to make occupancy tax returns due on the 20th day of each month, which conforms to the sales tax reporting and payment deadline. The 2006 amendments were necessary to clarify that the taxes do not become due before the due date for filing the return.

S.L. 2006-196 amends G.S. 105-259(b)(5) to permit the Department of Revenue to provide to a city or county, on an annual basis, the name, address, and identification number of a retailer that may be engaged in a business subject to a local occupancy tax when the city or county needs the information for the administration of its occupancy tax. As amended, G.S. 105-259(b)(5) also permits the Department of Revenue to share the name, address, and identification number of a retailer audited regarding sales and use taxes when the department determines that the audit results may be of interest to the county or city in the administration of its local occupancy tax.

Local Legislation

Occupancy Taxes

The 2006 General Assembly authorized several cities and counties to levy new or additional occupancy taxes.

Town of Ahoskie. S.L. 2006-164 (H 2445) authorizes the Town of Ahoskie to levy an occupancy tax of up to 3 percent pursuant to the uniform administrative provisions of G.S. 160A-215. The town must remit net proceeds of the tax to the Ahoskie Tourism Development Authority, which must use at least two-thirds of the funds to promote travel and tourism in Ahoskie and the remainder for tourism-related expenditures in Ahoskie.

Town of Benson. S.L. 2006-120 (H 945) authorizes the Town of Benson to levy an occupancy tax of up to 3 percent pursuant to the uniform administrative provisions of G.S. 160A-215. The town must remit net proceeds of the tax to the Johnston County Tourism Development Authority, which must use at least two-thirds of the funds to promote travel and tourism in Benson and the remainder for tourism-related expenditures in Benson. The town's occupancy tax must supplement rather than supplant any proceeds used in the town from Johnston County's occupancy tax.

Town of Boiling Springs. S.L. 2006-148 (S 1804) authorizes the Town of Boiling Springs to levy an occupancy tax of up to 3 percent pursuant to the uniform administrative provisions of G.S. 160A-215. Net proceeds of the tax must be remitted to the Boiling Springs Tourism Development Authority, which the town council must create upon levy of the tax. The Authority must use at least two-thirds of the funds to promote travel and tourism in Boiling Springs and the remainder for tourism-related expenditures.

Town of Dobson. S.L. 2006-118 (H 2259) authorizes the Town of Dobson to levy an occupancy tax of up to 6 percent pursuant to the uniform administrative provisions of G.S. 160A-215. Net proceeds of the tax must be remitted to the Dobson Tourism Development Authority, which the

Dobson Board of Commissioners must create upon levy of the tax. The Authority must use at least two-thirds of the funds to promote travel and tourism in Dobson and the remainder for tourism-related expenditures.

Town of Elkin. S.L. 2006-118 (H 2259) authorizes the Town of Elkin to levy an occupancy tax of up to 6 percent pursuant to the uniform administrative provisions of G.S. 160A-215. Net proceeds of the tax must be remitted to the Elkin Tourism Development Authority, which the town council must create upon levy of the tax. The Authority must use at least two-thirds of the funds to promote travel and tourism in Elkin and the remainder for tourism-related expenditures.

Town of Kenly. S.L. 2006-120 (H 945) authorizes the Town of Kenly to levy an occupancy tax of up to 2 percent pursuant to the uniform administrative provisions of G.S. 160A-215. The town must remit net proceeds of the tax to the Johnston County Tourism Development Authority, which must use at least two-thirds of the funds to promote travel and tourism in Kenly and the remainder for tourism-related expenditures in Kenly. Kenly's occupancy tax must supplement rather than supplant any proceeds used in the town from Johnston County's occupancy tax.

Ocracoke Township. S.L. 2006-128 (H 882) creates the Ocracoke Township Taxing District, which is coterminous with the Ocracoke Township in Hyde County, and provides that the Hyde County Board of Commissioners is to serve ex officio as the governing body of the district. The governing body of the newly created district is authorized to levy an occupancy tax of up to 2 percent pursuant to the uniform administrative provisions of G.S. 153A-155, which normally governs occupancy taxes levied by counties, and must adopt a resolution creating the Ocracoke Township Tourism Development Authority. The taxing district must distribute net proceeds of the tax to the Authority, which must use at least two-thirds of the proceeds to promote travel and tourism in the district and the remainder for tourism-related expenditures in the district.

Town of Pilot Mountain. S.L. 2006-118 (H 2259) authorizes the Town of Pilot Mountain to levy an occupancy tax of up to 6 percent pursuant to the uniform administrative provisions of G.S. 160A-215. Net proceeds of the tax must be remitted to the Pilot Mountain Tourism Development Authority, which the Pilot Mountain Board of Commissioners must create upon levy of the tax. The Authority must use at least two-thirds of the funds to promote travel and tourism in Pilot Mountain and the remainder for tourism-related expenditures.

Town of Selma. S.L. 2006-120 (H 945) amends S.L. 2001-439 to authorize the Town of Selma to levy a room occupancy tax of up to 1 percent in addition to the 1 percent previously authorized. The 2006 amendments also eliminate the sunset provisions applicable to the initial 1 percent occupancy tax.

Town of Smithfield. S.L. 2006-120 (H 945) amends S.L. 2001-439 to authorize the Town of Smithfield to levy a room occupancy tax of up to 1 percent in addition to the 1 percent previously authorized. The 2006 amendments also eliminate the sunset provisions applicable to the initial 1 percent tax.

Town of Tryon. S.L. 2006-148 (S 1804) authorizes the Town of Tryon to levy an occupancy tax of up to 3 percent pursuant to the uniform administrative provisions of G.S. 160A-215. Net proceeds of the tax must be remitted to the Tryon Tourism Development Authority, which the town council must create upon levy of the tax. The Tryon Tourism Development Authority must use at least two-thirds of the funds to promote travel and tourism in Tryon and the rest for tourism-related expenditures.

Chowan County. S.L. 2006-129 (H 1269) amends Chapter 174 of the 1989 Session Laws to permit Chowan County to levy an occupancy tax of 2 percent in addition to the 3 percent previously authorized and to make the uniform administrative provisions of G.S. 153A-155 apply to Chowan County. The 2006 amendments require the Chowan Tourism Development Authority to use at least two-thirds of the net proceeds of the tax to promote travel and tourism in the county and the remainder for tourism-related expenditures. In addition, the amendments alter the composition of the Chowan Tourism Development Authority, require that the Authority expend the net proceeds of the tax, redefine "net proceeds" to limit the percentage of gross proceeds that may be deducted for the costs of administering and collecting the tax, and clarify that the tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations *only* when those accommodations are furnished in furtherance of the organization's nonprofit purpose.

Clay County. S.L. 2006-120 (H 945) amends Chapter 969 of the 1985 Session Laws, as amended by Chapter 195 of the 1987 Session Laws, to make the uniform administrative provisions of G.S. 153A-155 apply to occupancy taxes levied by Clay County. The 2006 amendments change the method for distribution of proceeds of the tax, requiring that the county or the Tourism Development Authority, which must be established if the proceeds of the tax exceed $150,000 annually, use at least two-thirds of the net proceeds of the tax to promote travel and tourism in the county and the remainder for tourism-related expenditures. The 2006 amendments redefine "net proceeds" to limit the percentage of gross proceeds that may be deducted for the costs of administering and collecting the tax and clarify that the tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations *only* when those accommodations are furnished in furtherance of the organization's nonprofit purpose.

Halifax County. S.L. 2006-164 (H 2445) amends Chapter 377 of the 1987 Session Laws, as amended by S.L. 2005-46, to alter the membership requirements for the Halifax County Tourism Development Authority and to authorize the county board of commissioners rather than the Authority to designate the chair of the Authority. The amendments also provide for the board of commissioners to determine the compensation, if any, paid to the members of the Authority, designate the county finance officer as ex officio finance officer of the Authority, and mandate quarterly reports from the Authority to the county board.

Martin County. S.L. 2006-127 (H 350) amends S.L. 1991-80 to permit Martin County to levy an occupancy tax of 3 percent in addition to the 3 percent previously authorized and to make the uniform administrative provisions of G.S. 153A-155 apply to occupancy taxes levied by Martin County. The 2006 amendments redefine "net proceeds" by limiting the percentage of gross proceeds that may be deducted for costs of administering and collecting the tax and provide that the Martin County Tourism Development Authority (formerly the Martin County Travel and Tourism Authority) must use at least two-thirds of the net proceeds of the tax to promote travel and tourism in Martin County and must use the rest for tourism-related expenditures. S.L. 2006-127 repeals provisions of S.L. 1991-80 that permitted the Authority to contract with other persons and entities for assistance in carrying out the purposes for which the occupancy tax proceeds could be expended. The 2006 amendments require that the Authority spend the proceeds of the tax and require that the Authority promote travel, tourism, and conventions in the county; sponsor tourist-related events and activities in the county; and finance tourist-related capital projects in the county. The 2006 amendments repeal provisions of former law permitting the board of commissioners to abolish the Authority and itself carry out the duties of the Authority.

Vehicle Rental Tax

Section 30 of S.L. 2006-162 authorizes a county that imposes an additional half-cent sales and use tax for public transportation to also levy a vehicle rental tax. Mecklenburg County is the only county with authority to levy a public transportation sales tax (S.L. 1997-417) and has levied the tax. Thus, this provision applies only to Mecklenburg County.

Article 50 of G.S. Chapter 105, also enacted by S.L 1997-417, authorizes regional public transportation authorities to levy a gross receipts tax of up to 5 percent on retailers within the region engaged in the business of renting private passenger vehicles and motorcycles. The vehicle rental tax applies only to short-term rentals (rentals for a period of less than one year). Each authority may use the proceeds of the tax for public transportation purposes.

S.L. 2006-162 provides that a county that imposes the public transportation sales tax is considered a regional public transportation authority under Article 50 and may therefore levy the vehicle rental tax. The county must allocate the proceeds of the vehicle rental tax it imposes to the largest city in the county that operates a public transportation system. The city must use the proceeds to finance, construct, operate, and maintain local public transportation systems. However, unlike the tax proceeds from a vehicle rental tax levied by a public transportation authority, the proceeds of a vehicle rental tax levied by a county may be used to supplant existing revenues allocated for a public transportation system.

Prepared Food and Beverage Tax

S.L. 2006-171 (S 350) amends Section 1(a) of S.L. 2005-261 to permit the City of Monroe to submit to the voters during any election in 2006 or 2007 the question of whether to levy a 1 percent local prepared food and beverage tax. Before the 2006 amendments, S.L. 2005-61 authorized only a 2006 ballot measure on the issue.

Technical Corrections

Section 28 of S.L. 2006-162 makes technical corrections to G.S. 105-278 (classifying certain historic property as a special class of property to be taxed at 50 percent of its true value). These changes appear to have no substantive effect.

Shea Riggsbee Denning

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Mental Health

This chapter discusses acts of the General Assembly affecting mental health, developmental disabilities, and substance abuse services, with particular attention given to legislation affecting publicly funded services. Although these services are largely governed by policy administered on the state level by the Department of Health and Human Services' (DHHS) Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, they are primarily delivered at the community level through a service network managed by local governments or units of local government called area mental health, developmental disabilities, and substance abuse authorities (area authorities) or county mental health, developmental disabilities, and substance abuse programs (county programs). These entities are also referred to as "local management entities," a term codified and defined in statute only this year, but a common reference among administrators since the 2001 mental health system reform act (S.L. 2001-437) shifted the primary function of area authorities and county programs away from service provision to the management and monitoring of services provided by others.

The 2006 legislative session of the General Assembly produced several significant pieces of legislation affecting publicly funded mental health, developmental disabilities, and substance abuse (MH/DD/SA) services. Most of this legislation was adopted upon the recommendation of the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services (Legislative Oversight Committee). The Legislative Oversight Committee recommendations reflect, in part, the resolution of conflicting policy perspectives between the legislative and executive branches of state government regarding how local governments should carry out their responsibilities to administer and manage community-based services. The Legislative Oversight Committee recommendations also clarify aspects of the 2001 mental health system reform act, modify that law in light of unanticipated developments over the last five years, and attempt to strengthen some of the original principles underlying the reform law.

Significant legislative achievements for 2006 include a $60 million increase in funding for community-based MH/DD/SA services, increased funding and planning for crisis services, and statutory clarification of the functions to be carried out by local management entities. In addition, legislative enactments require DHHS to develop indicators for measuring the performance of local management entities, standardize the processes related to local management entity (LME) functions—particularly in the area of business transactions between LMEs and the organizations they contract with to provide MH/DD/SA services—and provide to LMEs technical assistance with the

implementation of LME functions. This chapter discusses these laws and many others, including legislation codifying the existing requirement that every LME establish a consumer and family advisory committee.

Appropriations

General Fund Appropriations

In 2005 the General Assembly appropriated $602,556,655 from the General Fund to the DHHS Division of MH/DD/SA Services for the second year of the 2005–07 biennium (S.L. 2005-276). In 2006, based largely on the recommendations of the Legislative Oversight Committee, the legislature added approximately $60 million to that appropriation, increasing the General Fund appropriation for 2006–07 to $662,795,012. Before this year, the highest appropriation for mental health services was the $630.4 million appropriation for 2000–01. Annual appropriations for the past five years were $603.3 million (2005–06), $574.4 million (2004–05), $577.3 million (2003–04), $573.3 million (2002–03), and $581.4 million (2001–02).

The Current Operations and Capital Improvements Appropriations Act of 2006, S.L. 2006-66 (S 1741), provides $26 million in new state funding to shore up losses in federal funding for developmental disabilities services. The appropriations act also provides $7.2 million for mental health services and $7.2 million for substance abuse services to be allocated to area authorities and county programs so that each entity receives a percentage of the total funding that is equal to its percentage of the state's total population living below the federal poverty level. These three disability-specific appropriations are all recurring. Of the funds appropriated for substance abuse services, up to $300,000 must be allocated to the Treatment Accountability for Safer Communities program before allocations are made to the area authorities and county programs.

The appropriations act makes two major appropriations for crisis services to individuals with mental illness, developmental disabilities, and substance abuse addictions. The act makes a $5,250,000 nonrecurring appropriation to area authorities and county programs for operational start-up, capital, or other expenses related to the development and implementation of a "crisis plan" for local crisis services and regional crisis facilities. These funds are to be allocated on a per capita basis and funds not expended in 2006–07 will remain available for crisis plan implementation and not revert to the General Fund. In addition, the act makes a $7 million recurring appropriation to area authorities and county programs to pay for crisis services provided to non-Medicaid eligible adults and children who are indigent and have no other third-party payment source. This money is to be distributed to area authorities and county programs in an amount equal to each entity's respective percentage of the state's total population living below the federal poverty level.

The appropriations act makes a $10,937,500 nonrecurring appropriation to the North Carolina Housing Trust Fund to finance the construction of four hundred independent and supportive-living apartments for individuals with disabilities. The funds are to be used to finance that portion of the housing costs not able to be financed within the existing means of the North Carolina Housing Finance Agency. The apartments must be affordable to those with incomes at the Supplemental Security Income level. An additional $1.2 million in recurring funding is provided to subsidize the operating costs associated with the apartments. The appropriations act also makes a $635,000 recurring and a $330,000 nonrecurring appropriation to support twelve group home beds and eighty apartments financed through the United States Department of Housing and Urban Development.

Other expansion funding in the appropriations act for MH/DD/SA services includes $523,638 for area authorities and county programs to hire eighteen care coordinators to work with child and family care teams, $3,969,719 for personnel and operating support associated with the expansion of the acute units of the Walter B. Jones and R. J. Blackley Alcohol and Drug Treatment Centers, and $3 million to the Division of Medical Assistance for additional slots for the Community Alternatives Program for the Mentally Retarded/Developmentally Disabled.

Section 10.33H of S.L. 2006-66 amends G.S. 143-15D, effective July 1, 2007, to provide that DHHS is no longer required to use recurring savings realized from the closure of Dorothea Dix and John Umstead psychiatric hospitals to pay the debt service on the new psychiatric hospital being constructed at Butner. Instead these funds may be used for community-based services, with the debt service to be paid with funds from the General Fund.

Finally, in the area of capital improvements, Section 23 of S.L. 2006-66 authorizes the issuance or incurrence of special indebtedness to finance the capital facility costs of completing the central regional psychiatric hospital in Butner ($20 million), planning and constructing a 304-bed eastern regional psychiatric hospital to replace Cherry Hospital in Goldsboro ($145.5 million), and planning and constructing a 382-bed western regional psychiatric hospital to replace Broughton Hospital in Morganton ($162.8 million).

Mental Health Trust Fund

In 2001 the General Assembly established the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs as a nonreverting special trust fund in the Office of State Budget and Management. G.S. 143-15.3D provides that the fund must be used solely to meet the mental health, developmental disabilities, and substance abuse services needs of the state and must supplement, not supplant, existing state and local funding for these services. Specifically, the fund must be used only for the following:

1. To provide start-up and operating funding for community-based treatment alternatives for individuals residing in state-operated institutions
2. To facilitate compliance with the U. S. Supreme Court's *Olmstead*[1] decision
3. To expand services to reduce waiting lists
4. To provide bridge funding to maintain client services during transitional periods of facility closings and departmental restructuring
5. To construct, repair, and renovate state mental health, developmental disabilities, and substance abuse facilities

This year the General Assembly made a nonrecurring appropriation of $14,390,000 to the trust fund. Section 10.33H of S.L. 2006-66 authorizes the secretary of DHHS to use trust fund money for the 2006-07 fiscal year to support up to sixty-six new positions in the Julian F. Keith Alcohol and Drug Abuse Treatment Center. Allocations to the trust fund for previous fiscal years include $10 million in 2005–06, $10 million in 2004–05, and $12.5 million in 2003–04.

Federal Block Grant Allocations

Section 5.1 of S.L. 2006-52 (H 2351) allocates federal block grant funds for fiscal year 2006–07. The Mental Health Services (MHS) Block Grant provides federal financial assistance to states to subsidize community-based services for people with mental illnesses. This year the General Assembly allocated $7,184,481 (up slightly from $6,983,202 in 2005–06) from the MHS Block Grant for community-based services for adults with severe and persistent mental illness, including crisis stabilization and other services designed to prevent institutionalization of individuals when possible. From the same block grant the legislature appropriated $3,921,991 (the same amount as in 2005–06) for community-based mental health services for children, including school-based programs, family preservation programs, group homes, specialized foster care, therapeutic homes, and special initiatives for serving children and families of children having serious emotional disturbances. As it did last year, the General Assembly allocated $1.5 million of the MHS Block Grant funds for the Comprehensive

1. Olmstead v. L.C., 527 U.S. 581, 119 S. Ct. 2176, 144 L. Ed. 2d 540 (1999). In *Olmstead*, the Court held that the unnecessary segregation of individuals with mental disabilities in institutions may constitute discrimination based on disability, in violation of the Americans with Disabilities Act. As a result of the ruling, states risk litigation if they do not develop a comprehensive plan for moving qualified persons with mental disabilities from institutions to less restrictive settings at a reasonable pace.

Treatment Services Program for Children (CTSP), which provides residential treatment alternatives for children who are at risk of institutionalization or other out-of-home placement.

The Substance Abuse Prevention and Treatment Block Grant provides federal funding to states for substance abuse prevention and treatment services for children and adults. This year's Substance Abuse Prevention and Treatment Block Grant funding generally matched the funding levels of 2005–06. The General Assembly allocated $20,537,390 for community-based alcohol and drug treatment services to adults and state-operated alcohol and drug abuse treatment centers. Other allocations include $4,940,500 for services for children and adolescents (for example, prevention, high-risk intervention, outpatient, and regional residential services), $5,835,701 for child substance abuse prevention, and $8,069,524 for services for pregnant women and women with dependent children. The budget act also appropriates $4,816,378 from the Substance Abuse Prevention and Treatment Block Grant for substance abuse services for treatment of intravenous drug abusers and others at risk of HIV disease and $851,156 for prevention and treatment services for children affected by parental addiction.

From the Social Services Block Grant, which funds several DHHS divisions, S.L. 2006-52 allocates $3,234,601 to the Division of MH/DD/SA Services for mental health and substance abuse services for adults, for mental health services for children, and for developmental disabilities programs. An additional allocation of $5 million is made to the developmental disabilities services program. From the same block grant, the General Assembly allocated $205,668 to the DHHS Division of Facility Services for mental health licensure purposes and $422,003 for the CTSP for Children. The Social Services Block Grant allocations match the allocations made for 2005–06.

Involuntary Commitment Pilot

North Carolina's involuntary commitment statutes set forth the procedure for evaluating an individual for court-ordered mental health or substance abuse treatment. Generally, before the district court may order involuntary commitment, the subject of the order must be examined at two different points in the process by either a physician or a psychologist. In 2003, the General Assembly authorized the secretary of DHHS to permit up to five area authorities or county programs to use a professional other than a physician or psychologist to conduct the first examination (S.L. 2003-178). Alternative professionals that may be used are a licensed clinical social worker, masters level psychiatric nurse, or masters level certified clinical addictions specialist. Intended as a pilot program, the secretary's waiver would be in effect for no more than three years or for the duration of the area or county program's business plan for system reform. Section 10.27 of S.L. 2006-66 extends the sunset provision in the 2003 law from July 1, 2006, to October 1, 2007.

Crisis Services

As noted above, the General Assembly has appropriated $5.25 million for the development and implementation of crisis services—both local crisis services and regional crisis facilities—for individuals with mental illness, developmental disabilities, and substance abuse addictions. Of the $925,000 appropriated to the Division of MH/DD/SA Services for consultant services, Section 10.26 of the appropriations act directs DHHS to use $225,000 to hire one or more consultants to provide technical assistance to local management entities as they develop and implement their local crisis services and regional crisis facilities (their "crisis plan"). Like the other crisis plan funds, any portion of these funds not expended during fiscal year 2006–07 does not revert to the General Fund and remains available for crisis planning technical assistance.

With the assistance of the consultant, LMEs within a designated crisis region must work together to identify gaps in their ability to provide a continuum of crisis services for all consumers and use the funds allocated to them to develop and implement a plan to address those needs. At a minimum, the plan must address the development over time of the following components: 24-hour crisis telephone lines, walk-in crisis services, mobile crisis outreach, crisis respite/residential services, crisis

stabilization units, 24-hour beds, facility-based crisis services, inpatient crisis services, and transportation. Options for voluntary admissions to a secured facility must include at least one service appropriate for adults and one service appropriate for children. Options for involuntary commitment to a secured facility must include at least one alternative to admission to a state facility.

The term "regional crisis facility" means a facility-based crisis unit that serves an area that may be larger than the catchment area of a single LME but that, with other regional crisis facilities, provides adequate facility access to all MH/DD/SA service consumers in the state. Section 10.26 of the appropriations act directs the secretary of DHHS, in consultation with the LMEs, to designate between fifteen and twenty regional groupings of LMEs for the development of regional crisis facilities. The groupings must take into consideration existing community facilities, prior LME groupings or partnerships, and geographical factors. If all LMEs in a crisis region determine that a facility-based crisis center is needed and sustainable on a long-term basis, the LMEs must first attempt to secure those services through a community hospital or other community facility. Further, if all the LMEs in a crisis region determine that the region's facility-based crisis needs are being met, then the LMEs may use their crisis funds to meet local crisis service needs.

Each LME must submit its crisis services plan to the secretary for review no later than March 1, 2007. The plan must take into consideration and attempt to utilize all other sources of funds in addition to the funds appropriated for crisis services. The secretary must review each plan to determine whether it meets all of the requirements of Section 10.26, and if the secretary approves the plan, the LME must receive implementation funding.

Until July 1, 2008, LMEs must report monthly to DHHS and to the consultant regarding the use of funds, whether there has been a reduction in the use of state psychiatric hospitals for acute admission, and any remaining gaps in local and regional crisis services. The consultant and DHHS must report quarterly to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, the Fiscal Research Division, and the Joint Legislative Oversight Committee on MH/DD/SA Services regarding each LME's proposed and actual use of crisis funds.

Secretary of the Department of Health and Human Services

Powers and Duties

Upon the recommendation of the Joint Legislative Oversight Committee for MH/DD/SA Services, the General Assembly amended the statutory powers and duties of the secretary to require the secretary to standardize processes related to LME functions, develop and implement performance measures (also called "performance indicators") for evaluating how well LMEs perform their functions, and provide to LMEs ongoing and focused technical assistance with the implementation of LME functions. S.L. 2006-142 (H 2077) emphasizes that performance indicators must be used to hold LMEs "accountable" for managing MH/DD/SA services and be implemented by July 1, 2007. Other changes that are more technical or clarifying in nature emphasize that (1) the local business plan is an LME business plan; (2) the LME *manages*, rather than directly provides, MH/DD/SA services; and (3) when the secretary monitors LMEs and providers for performance on outcome measures, the monitoring must examine adherence to best practices, assess consumer satisfaction, and include a review of client rights complaints.

When developing standard forms, quality measures, contracts, processes, and procedures to be used by all LMEs, the secretary must consult with LMEs, LME Consumer and Family Advisory Committees, counties, and qualified providers. Any document, process, or procedure developed for the purpose of implementing standardization must also place on providers a duty to transmit to LMEs timely client information and outcome data. The secretary must also adopt rules regarding what constitutes a clean claim for the purposes of billing. When implementing standardization, the secretary must balance the LME's need to exercise discretion in the discharge of LME functions with the need of qualified providers for a uniform system of doing business with public entities.

State Plan

In 2001 the General Assembly enacted legislation requiring DHHS to develop and implement a State Plan for Mental Health, Developmental Disabilities, and Substance Abuse Services that, among other things, sets out the vision and mission of the publicly funded service system. Every year thereafter, DHHS issued a state plan. As the years went by and each successive plan differed from earlier plans, it was unclear whether the plans were to be read cumulatively or whether the omission of subjects and provisions in subsequent plans signaled a shift in state policy away from earlier plans. This phenomenon, combined with policymaking by DHHS in fiscal year 2005–06 that departed from policies enunciated in the state plan, created uncertainty and a lack of continuity in local government planning and policymaking.

To address this issue, the Legislative Oversight Committee recommended and the General Assembly adopted Section 2 of S.L. 2006-142, which amends G.S. 122C-102 to clarify that the purpose of the State Plan is to provide a three-year, strategic template on how state and local resources are to be organized and used. The first plan, to be issued on July 1, 2007, must identify specific goals to be achieved by DHHS, area authorities, and county programs over a three-year period, benchmarks for determining whether progress is being made toward those goals, and the data that will be used to measure this progress. To increase the ability of the state, area authorities, county programs, private providers, and consumers to successfully implement the goals of the State Plan, DHHS must not adopt or implement policies inconsistent with the state plan without first consulting the Legislative Oversight Committee.

The plan must include specific mechanisms for measuring increased performance in the following areas: access to services, consumer-focused outcomes, individualized planning and supports, promotion of best practices, quality management systems, system efficiency and effectiveness, and prevention and early intervention. Beginning October 1, 2006, and every six months thereafter, the secretary must report to the General Assembly and the Joint Legislative Oversight Committee on MH/DD/SA Services on the state's progress in these performance areas.

Until the 2007 State Plan is issued on July 1, 2007, DHHS must review all state plans issued after July 1, 2001, and produce a single document that contains a cumulative statement of those provisions that remain in force. This cumulative document will constitute the State Plan until July 1, 2007. DHHS must also identify those provisions in G.S. 122C-112.1, prior state plans, and directives or communications by the Division of MH/DD/SA Services that must be adopted as administrative rules to be enforceable and undertake to adopt those rules.

S.L. 2006-66 appropriates $700,000 for the hiring of consultants to conduct the following tasks related to the development of the State Plan:

1. Assist DHHS with the strategic planning necessary to develop the revised State Plan, which must be coordinated with the LME local and regional crisis service plans.
2. Study and make recommendations for increasing the capacity of DHHS to implement mental health system reform successfully and in a manner that maintains strong management functions for area authorities and county programs.
3. Help the Division of MH/DD/SA Services work with LMEs to (a) develop and implement, no later than July 1, 2007, five to ten performance indicators for the management of MH/DD/SA services by LMEs; (b) standardize the utilization management functions and functions related to person-centered plans; and (c) implement other uniform procedures for the management functions of LMEs.
4. Provide technical assistance and oversight to private sector providers and local management entities to ensure that best practices and new services are being delivered with fidelity to the state's service definition model.
5. In accordance with the secretary's duty under new G.S. 122C-112.1(a)(9), provide ongoing and focused technical assistance and oversight to area authorities and county programs in the implementation of their administrative and management functions and the establishment and operation of community-based programs. The State Plan must include a mechanism for monitoring the secretary's success in implementing this duty and the progress of area authorities and county programs in achieving these functions.

6. Assist the Division of MH/DD/SA Services with implementing standard forms, contracts, processes, and procedures (including standardized denial codes and a standard policy regarding the coordination of benefits) to be used by all LMEs when conducting business with other public and private service providers. The independent consultants must consult with area authorities and county programs regarding the development of these forms, contracts, processes, and procedures. Consultants also must balance the need for LMEs to exercise discretion in the discharge of their management responsibilities with the need of private service providers for a uniform system of doing business with public entities.

Local Management Entities

For the first time since the term "local management entity" and its acronym, LME, entered the lexicon of mental health administrators in 2001, the General Assembly has codified both terms in G.S. Chapter 122C. An area authority, a county program, and a consolidated human services agency all perform the same basic functions, though each has a different governance structure and, therefore, a different relationship to the county governments of the counties they serve. S.L. 2006-142 adds new G.S. 122C-3(20b) to define *local management entity* and *LME* as terms that refer collectively to area authorities, county programs, and consolidated human services agencies based on their common functional responsibilities. The terms *area authority*, *county program*, and *consolidated human services agency* retain their statutory meaning and continue to denote the specific and distinct governance and administrative structures available to a county or group of counties for carrying out local management entity functions.

Legislative enactments for 2006, addressed below, affect the service area, function, and contracting authority of LMEs, as well as the allocation and adequacy of state funding to management entities.

Service Area

The geographic area served by an LME is called its "catchment area." The 2001 mental health system reform act directed the secretary of DHHS to develop a catchment area consolidation plan that reduced the number of area authorities and county programs, at that time 39 in number, to "no more than a target of 20" by January 1, 2007. As of July 1, 2006, there were still 30 area authorities and county programs. To force greater consolidation of area authorities and county programs the General Assembly, in a special provision of the 2006 appropriations act, set a minimum size for LME catchment areas. Section 10.32(c) of S.L. 2006-66 amends G.S. 122C-115 to provide that the catchment area of an area authority or county program must contain either a minimum population of 200,000 or a minimum of six counties. In addition, effective July 1, 2007, DHHS must reduce by 10 percent annually the state funding for LME functions to any LME that does not comply with these catchment area requirements.

Functions

Section 4 of S.L. 2006-142 enacts new G.S. 122C-115.4, which states generally that local management entities are responsible for the management and oversight of the public system of MH/DD/SA services at the community level. To that end LMEs must plan, develop, implement, and monitor services within their catchment areas to ensure expected outcomes for consumers of services within available resources. To clarify some aspects of the 2001 mental health system reform act, to account for developments since 2001, and to resolve some of the conflicting policy perspectives between the Legislative Oversight Committee and the Secretary's Office over the proper role of LMEs, the Legislative Oversight Committee recommended and the General Assembly adopted G.S. 122C-115.4(b), which directs LMEs to carry out the following primary functions:

1. Provide access to core services for all citizens. Core services are described at G.S. 122C-2 as (a) screening, triage, and referral services; (b) emergency services; (c) service coordination; and (d) consultation, prevention, and educational services. The new provision emphasizes that the screening, triage, and referral service must be a 24-hour a day, seven-day a week service that includes a uniform portal of entry into care (a standardized process and procedure for ensuring access to public services in accordance with the State Plan).
2. Endorse, monitor, provide technical assistance to, develop the capacity of, and control the quality of services provided by providers. Generally, this is a mandate to ensure available, qualified providers to deliver quality services in the LME's catchment area. Specifically, an LME must endorse a provider (determine that it is qualified under state rules to deliver services) before the provider may provide services to LME clients. The LME must monitor provider performance and service outcomes in accordance with state standards, provide technical assistance to providers, and develop the service capacity of the LME's provider network.
3. Conduct utilization management and utilization review and determine the appropriate level and intensity of services for each consumer. This duty includes the review and approval of the person-centered plan for each consumer who receives state-funded services. For all consumers in the LME's catchment area who receive Medicaid services, the review is concurrent with the review performed by the fiscal agent hired by the state to authorize Medicaid services.
4. Authorize the utilization of state psychiatric hospitals and other state facilities by LME consumers and determine eligibility requests for recipients who receive services under a Community Alternatives Program for the Mentally Retarded/Developmentally Disabled waiver.
5. Coordinate care and manage quality. This function includes the direct monitoring of the effectiveness of person-centered plans and the initiation of and participation in the development of required modifications to the plans for high-risk and high-cost consumers in order to achieve better client outcomes or equivalent outcomes in a more cost-effective manner. Monitoring effectiveness includes reviewing client outcomes data supplied by the provider, making direct contact with consumers, and reviewing consumer charts.
6. Engage in community collaboration and consumer affairs, which includes a process to protect consumer rights, an appeals process, and the provision of support to an effective consumer and family advisory committee.
7. Engage in financial management and accountability for the use of state and local funds and information management for the delivery of publicly funded services.

State authority to remove LME functions. Except as otherwise authorized in G.S. 122C-142.1 and G.S. 122C-125, the secretary may not remove from an LME any function enumerated in the previous paragraph unless all of the following apply:

- The LME fails for a three-month period to achieve a satisfactory outcome on any of the critical performance measures developed by the secretary pursuant to S.L. 2006-142.
- The secretary provides focused technical assistance to the LME in the implementation of the function for at least six months or until the LME achieves a satisfactory outcome on the performance measure, whichever occurs first.
- The LME fails, after receiving technical assistance from the secretary for six months, to achieve or maintain a satisfactory outcome on the critical performance measure.

If the foregoing conditions apply, the secretary must enter into a contract with another LME or agency to implement the function on behalf of the LME from which the function has been removed. Notwithstanding the foregoing conditions, in the case of serious financial mismanagement or serious regulatory noncompliance, the secretary may temporarily remove an LME function after consultation with the Joint Legislative Oversight Committee on MH/DD/SA Services.

Rulemaking on LME functions. To aid in the implementation of the LME functions and the secretary's authority to remove functions from an LME, the Commission for MH/DD/SA Services is directed to adopt rules regarding the following:

- The definition of a high-risk consumer. Until the commission adopts the rule, a *high-risk* consumer means a person who has been assessed as needing emergent crisis services three or more times in the previous twelve months.
- The definition of a high-cost consumer. Until the commission adopts the rule, a *high-cost* consumer means a person whose treatment plan is expected to incur costs in the top 20 percent of expenditures for all consumers in a disability group.
- The notice and procedural requirements for removing one or more LME functions.

Contracts

Contracting out LME functions. S.L. 2006-142 enacts G.S. 122C-115.4(c) to authorize LMEs to contract with a public or private entity for the implementation of primary LME functions, which are set forth in new G.S. 122C-115.4(b). This provision appears to be a clarification, rather than a substantially new authorization, of an LME's authority to enter into contracts for the performance of LME duties. The new provision also clarifies that these contracts are subject to all applicable state and federal laws and regulations, which means that any public or private entity contracting to perform LME functions must meet the same standards and obligations that the LME would have to meet if it were performing the functions itself.

Standardized contracts for client services. Section 1 of S.L. 2006-142 amends G.S. 122C-142 to require area authorities and county programs to use a standard contract, adopted by the secretary of DHHS, when contracting with MH/DD/SA service providers for the provision of MH/DD/SA services to area authority and county program clients. This provision was sought by providers of MH/DD/SA services, particularly those who contract with two or more local management entities, to reduce the variability in contract requirements among local management entities. In addition, the standard contract developed by DHHS must require service providers who contract with a local management entity to give the LME "timely data regarding the clients being served, the services provided, and the client outcomes."

While the new law requires general uniformity in contract language, the local management entity may amend the standard contract language as needed to comply with any court-ordered duty or responsibility. An example of a court-ordered duty would be an involuntary commitment order designating an area authority or county program as the entity responsible for managing and supervising an individual's court-ordered outpatient treatment. Existing state law requires the area authority or county program to contract with other entities for the provision of these involuntary outpatient services. To the extent that the standard DHHS contract does not set forth all terms necessary for the effective execution and administration of contracts for court-ordered outpatient treatment, the area authority or county program is permitted to amend the standard contract language to address matters not addressed in the standard contract but necessary to the discharge of its court-ordered responsibilities.

Section 23 of S.L. 2006-259 (S 1523) amends G.S. 122C-142, as amended by S.L. 2006-142, to provide that an area authority or county program that is operating under a Medicaid waiver may amend the standard contract subject to the approval of the secretary. Currently, Piedmont Behavioral Healthcare is the only LME operating under such a waiver.

Contracting with county government service providers. G.S. 122C-141 requires area authorities and county programs to provide MH/DD/SA services to their clients by contracting with other agencies or institutions for the provision of those services. The area authority or county program may itself provide services directly to clients only if it seeks and obtains the approval of the secretary of DHHS. G.S. 122C-141 authorizes area authorities and county programs to contract with any provider, public or private, that meets the qualifications as defined by rules adopted by the secretary.

Most contracted providers of MH/DD/SA services are private incorporated organizations, but a few are public entities. For example, Rockingham County contracts with the Alamance-Caswell-Rockingham area authority to provide services to the area authority's clients. The Division of MH/DD/SA Services and DHHS became concerned recently about a potential conflict of interest when the five counties served by the New River area authority considered forming a mulicounty provider agency that would contract with the New River area authority to provide MH/DD/SA services to the

area authority's clients. To address those concerns and to clarify the authority of counties to create a multicounty provider agency, the Joint Legislative Oversight Committee on MH/DD/SA Services recommended, and the General Assembly enacted, an amendment to the statutory provisions governing provider contracts. S.L. 2006-142 amends G.S. 122C-141 to provide that if two or more counties enter into an interlocal agreement under Article 20 of G.S. Chapter 160A to be a public provider of MH/DD/SA services, before an LME may enter into a contract with the public provider

- the pubic provider must meet all provider qualifications as defined by rules adopted by the secretary,
- the LME must adopt a conflict of interest policy that applies to all provider contracts, and
- the interlocal agreement must provide that any liabilities of the public provider must be paid from its unobligated surplus funds and that if those funds are not sufficient to satisfy the indebtedness, the remaining indebtedness must be apportioned to the participating counties.

The new legislation prohibits a county that administers MH/DD/SA services through a consolidated human services agency from being a provider of services. Presumably, the rationale for this provision is that when a county administers services through a consolidated human services agency, the governing body for the county and for the LME is the same entity: the board of county commissioners. The contract between an LME and a provider is intended to be created at arm's length, with the LME required to monitor and evaluate the provider's performance. This would be difficult to do if the two parties to the contract are one and the same, the board of county commissioners. (Wake County is the only county operating a consolidated human services agency.)

Finally, the new statutory provisions require the secretary to ensure that there is "fair competition" among providers, meaning that an LME must not unfairly favor public providers, particularly where a provider is also one of the counties it serves, over private providers when negotiating and monitoring contracts. The secretary must study the effect of the amendments to G.S. 122C-141 and report findings and recommendations to the Legislative Oversight Committee by December 1, 2009.

Allocation and Adequacy of State Funds

At the request of LMEs seeking greater flexibility in utilizing state funds, S.L. 2006-142 authorizes LMEs to transfer from one age or disability funding category to a different age or disability funding category up to 15 percent of the funds initially allocated to the age or disability category from which funds are transferred. This authority is granted for a one-year trial period and is set to expire July 1, 2007. Before the transfer is made, the Division of MH/DD/SA Services must verify that it meets applicable federal requirements. LMEs utilizing this authority must publicly document that they have addressed the service needs of the category from which the funds are being transferred before any transfer may occur and submit the documentation to the Division of MH/DD/SA Services and to the Fiscal Research Division within fifteen days of making the transfer.

During fiscal year 2005–06 the secretary of DHHS pursued a policy of removing certain LME functions from particular LMEs, giving those functions to other LMEs who would perform them on behalf of the LMEs from which the functions were removed. This policy included reallocating the state funding for these functions from the LMEs whose functions were removed to the LMEs who were to perform the removed functions. Section 4 of S.L. 2006-142 enacts new G.S. 122C-115.4(b) to clarify that certain LME functions are to remain with each LME. (See "Functions," above.) To restore to each LME the funding necessary to perform these functions, Section 10.32 of S.L. 2006-66 directs the secretary of DHHS to recalculate LME systems management allocations for fiscal year 2006–07 to include funds for each LME to (1) implement 24-hour, seven-days-a-week screening, triage, and referral; and (2) review, monitor and comment on all person-centered plans.

In addition, the secretary must review and revise the LME systems management cost model to provide adequate funds for LMEs to fully implement the functions outlined in new G.S. 122C-115.4(b). The secretary must consult with the Joint Legislative Oversight Committee on MH/DD/SA Services before implementing the revised cost model. Any savings of state appropriations realized from the revised cost model must be reallocated to state-funded MH/DD/SA services. For the 2006–07 fiscal year and until the revised cost model is implemented, DHHS must maintain the 2005–06 level of funding to LMEs for all LME functions, with two exceptions, up to $13,333,481 for

utilization review and $12,156,042 for claims processing. The language of the provision is unclear, but DHHS has interpreted it to mean that these functions may be reduced by the designated maximum amounts.

Area Authorities and County Programs

Area Authority Finance Reports

G.S. 122C-117(c) requires the area director and area authority finance officer to submit quarterly finance reports to each member of each board of county commissioners participating in the area authority. S.L. 2006-412 amends the requirement so that reports are to be submitted to the county finance officer for each participating county, who in turn submits the reports to the board of county commissioners at its next regularly scheduled meeting. In addition, if the report is not submitted within thirty days after each quarter of the fiscal year, the clerk of the board of county commissioners must notify the area director and area finance officer that the report has not been submitted as required. The law also enacts new G.S. 153A-453 to codify the same requirement in Chapter 153A of the General Statutes. G.S. 153A-453 appears to make the requirements of amended G.S. 122C-117(c) applicable to county program directors and finance officers, although conforming changes were not made to G.S. 122C-115.1, which retains for county programs the same finance reporting requirements that applied to area authorities before the amendment to G.S. 122C-117(c).

Area Authority Board and County Program Advisory Committee

S.L. 2006-142 amends G.S. 122C-118.1 to change the composition of the area board, the governing body for the area authority. Before the amendment, at least 50 percent of the members of the area board had to be specified clinical professionals, consumers of services, and family members of consumers, guaranteeing that at least half the board members would be appointed from these constituent groups. Now, no more than 50 percent of board members may be the following representatives:

- a physician who, when possible, is certified as having completed a residency in psychiatry;
- a clinical professional from the field of mental health, developmental disabilities, and substance abuse;
- a family member—or an individual from a citizens' organization composed primarily of consumers or their family members—who represents the interests of persons with mental illness, developmental disabilities, or substance abuse; and
- an openly declared consumer who is mentally ill, developmentally disabled, or in recovery from addiction.

The effect of the amendment is that there appears to be no requirement, as there was previously, that board membership include the foregoing representatives, although the entity authorized to appoint board members (generally, boards of county commissioners or the commissioner members of the area board) must continue to "take into account" citizen participation and representation of the disability groups when making appointments.

The statute has also been amended to require at least two individuals with financial expertise; previously only one was required. The requirements to have a person with expertise in management or business and an individual representing the interests of children remain. The previous version of the statute permitted a board member to concurrently fill more than one required category of membership if the member had the qualifications or attributes of more than one category. This provision has been changed to limit concurrent representation to no more than two categories of membership. Now that the statute does not require clinical, consumer, or family member representation, the provision regarding the concurrent representation of two categories of membership appears to apply only to the categories of financial expertise, business or management expertise, and the representation of children's interests.

Board terms have been shortened from four years to three. (The area board terms of county commissioner members continue to be concurrent with their terms as county commissioners.) Before the enactment of S.L. 2006-142, G.S. 122C-118.1 provided that board members other than commissioner members must not be appointed for more than two consecutive terms. The new law makes the term limit applicable to all board members, including commissioner members. Further, language was added to say that board members serving as of July 1, 2006, may remain on the board for one additional term. The apparent effect of the added language is that a board member serving his or her second term as of July 1, 2006, could be appointed for an additional third term.

The new law codifies an earlier, uncodified act that permits a larger area board for the largest area authorities. Generally, an area board must be comprised of no fewer than eleven and no more than twenty-five members. However, a multicounty area authority consisting of eight or more counties and serving a catchment area with more than 500,000 people may have up to thirty board members. Finally, the statute that sets the compositional requirements for county program advisory committees—G.S. 122C-115.1—is amended to require these committees to adhere fully to the compositional requirements for area boards, described above.

Director and Finance Officer

S.L. 2006-142 amends provisions of G.S. Chapter 122C related to the role and qualifications of the director and finance officer for the area authority and county program. Amendments to G.S. 122C-111 provide that an area director or county program director must, among other things previously specified in that statute, manage the public MH/DD/SA system for the area authority or county program according to the local management entity's business plan adopted pursuant to G.S. 122C-115.2. Pursuant to G.S. 153A-77(e), this duty applies also to the human services director for a consolidated human services agency.

New G.S. 122C-120.1 requires the Office of State Personnel to develop a job classification for the area director and county program director that reflects the skills required of an individual operating a local management entity. The Office of State Personnel must also review the job classifications for area authority and county program finance officers to determine whether they reflect the skills necessary to manage the finances of a local management entity. The State Personnel Commission must adopt a job classification for director, and any new or revised job classification for finance officers, no later than December 31, 2006. These new classifications will apply to any person newly hired on or after January 1, 2007. It is unclear whether G.S. 122C-120.1 applies to the human services director for a consolidated human services agency.

Finally, the new law makes the previously existing statutory qualifications for area directors and multicounty program directors (masters degree, related experience, and management experience) applicable to the program director for a single-county program.

Consumer and Family Advisory Committee

Local Committee

S.L. 2006-142 enacts new G.S. 122C-170, which requires every area authority and county program to establish a Consumer and Family Advisory Committee to advise the area authority or county program on the planning and management of the local public MH/DD/SA service system. Specifically, the Consumer and Family Advisory Committee must do the following:

1. Review, comment on, and monitor the implementation of the local business plan
2. Identify service gaps and underserved populations
3. Make recommendations regarding the service array and monitor the development of additional services

4. Review and comment on the area authority or county program budget
5. Participate in all quality improvement measures and performance indicators
6. Submit to the State Consumer and Family Advisory Committee findings and recommendations regarding ways to improve the delivery of MH/DD/SA services

The director of the area authority or county program must provide sufficient support staff to assist the Consumer and Family Advisory Committee in implementing the foregoing duties. The assistance must include data for the identification of service gaps and underserved populations, training to review and comment on business plans and budgets, procedures to allow participation in quality monitoring, and technical advice on rules of procedure and applicable laws.

The Consumer and Family Advisory Committee must be comprised exclusively of adult consumers of MH/DD/SA services and family members of consumers of services. Each of the three disability groups—people with mental illness, developmental disabilities, or substance abuse—must be represented on the committee, and the committee must represent as closely as possible the racial and ethnic composition of the catchment area. Member terms are for three years, and no member may serve more than two consecutive terms.

The Consumer and Family Advisory Committee must be a self-governing and self-directed organization. Each committee must adopt bylaws that govern the selection and appointment of its members, their terms of service, the number of members, and other procedural matters. At the request of either the Consumer and Family Advisory Committee or the governing board of the area authority or county program, the committee and governing board must execute an agreement that identifies the roles and responsibilities of each party, the channels of communication between the committee and local board, and a process for resolving disputes between the parties.

State Committee

New G.S. 122C-171 establishes the State Consumer and Family Advisory Committee to advise DHHS and the General Assembly on the planning and management of the state's public MH/DD/SA services system. Specifically, the State Consumer and Family Advisory Committee must do the following:

1. Review, comment on, and monitor the implementation of the State Plan for Mental Health, Developmental Disabilities, and Substance Abuse Services
2. Identify service gaps and underserved populations
3. Make recommendations regarding the service array and monitor the development of additional services
4. Review and comment on the state budget for mental health, developmental disabilities, and substance abuse services
5. Participate in all quality improvement measures and performance indicators
6. Receive the findings and recommendations of local Consumer and Family Advisory committees regarding ways to improve the delivery of mental health, developmental disabilities, and substance abuse services
7. Provide technical assistance to local Consumer and Family Advisory committees in implementing their duties

Like the local committees, the State Consumer and Family Advisory Committee must be a self-governing and self-directed organization. However, the secretary must provide sufficient staff to assist the state committee in implementing its duties. The assistance must include data for the identification of service gaps and underserved populations, training to review and comment on the State Plan and departmental budget, procedures to allow participation in quality monitoring, and technical advice on rules of procedure and applicable laws.

Twenty-one members in size, the State Consumer and Family Advisory Committee must be composed exclusively of adult consumers of MH/DD/SA services and family members of consumers of services. Member terms are for three years, and no member may serve more than two consecutive terms. The members must be appointed as follows:

1. Nine by the secretary of DHHS. The secretary's appointments must reflect each of the disability groups.

2. Three by the General Assembly upon the recommendations of the President Pro Tempore of the Senate, one from each region of the state's three regional designations for state-operated institutional facilities (Eastern Region, Central Region, and Western Region).
3. Three by the General Assembly upon the recommendations of the Speaker of the House of Representatives, one from each region of the state's three regional designations for state-operated institutional facilities.
4. Three by the North Carolina Council of Community Programs, one each of whom must come from the three state regions for institutional services.
5. Three by the North Carolina Association of County Commissioners, one each of whom must come from the three state regions for institutional services.

Confidentiality of MH/DD/SA Records

G.S. 7B-302 requires the department of social services to assess every abuse, neglect, and dependency report that falls within the scope of the Juvenile Code. The statute also authorizes the director of social services, or the director's representative, to make a written demand for any information or reports, whether or not confidential, that may in the director's opinion be relevant to the assessment of a report or to the provision of protective services. Upon such a demand, an agency is required to provide access to and copies of confidential information to the extent permitted by federal law. Pursuant to G.S. 122C-54(h), mental health and developmental disabilities service providers must provide access to client records. However, substance abuse programs are prohibited by federal law from providing access to substance abuse records received under G.S. 7B-302.

Subsection (a) of G.S. 7B-302 provides that all information received by the department of social services pursuant to G.S. 7B-302 must be held in the strictest of confidence by the department. S.L. 2006-205 (S 1216) amends G.S. 7B-302 to provide that the department of social services must disclose confidential information to any federal, state, or local governmental entity, or any agent of the entity, that needs confidential information to protect a juvenile from abuse and neglect. Any confidential information disclosed under this provision must remain confidential with the other governmental entity, or its agent, and may be redisclosed only for purposes directly connected with carrying out the governmental entity's or agent's mandated responsibilities.

S.L. 2006-205 also amends another provision affecting access to MH/DD/SA records when the department of social services is assessing a report of abuse, neglect, or dependency or providing protective services. G.S. 7B-3100 directs the Department of Juvenile Justice and Delinquency Prevention to adopt rules designating local agencies that are required "to share with one another, upon request, information that is in their possession that is relevant to any case in which a petition is filed alleging that a juvenile is abused, neglected, dependent, or undisciplined." Like G.S. 7B-302, this statute, and rules adopted by the Department at 28 N.C. Admin. Code 01A .0300, require providers of mental health and developmental disabilities services, but not providers of substance abuse services, to disclose confidential client information when the conditions set forth in the statute are met. One of those conditions is that a petition must be filed alleging that a juvenile is abused, neglected, dependent, undisciplined, or delinquent.

S.L. 2006-205 extends G.S. 7B-3100 to situations in which a juvenile petition has not yet been filed but the department of social services is assessing a report or providing protective services. The amended statute provides that agencies designated by the Department of Juvenile Justice and Delinquency Prevention must share with one another, upon request, and to the extent permitted by federal law and regulations, information in their possession that is relevant to

- any assessment of a report of child abuse, neglect, or dependency by the department of social services,
- the provision or arrangement of protective services in a child abuse, neglect, or dependency case by a local department of social services, or

- any case in which a petition is filed alleging that a juvenile is abused, neglected, dependent, undisciplined, or delinquent.

The requirement to share information continues until the protective services case is closed by the local department of social services, or if a petition is filed, until the juvenile is no longer subject to the jurisdiction of juvenile court.

Joint Legislative Oversight Committee

S.L. 2006-32 (H 2120) enacts G.S. 120-244, which authorizes the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services (Legislative Oversight Committee) to obtain information and data from all state officers, agents, agencies, and departments, while in discharge of its duties, under G.S. 120-19, as if it were a committee of the General Assembly. The provisions of G.S. 120-19.1 through G.S. 120-19.4 will also apply to the proceedings of the Legislative Oversight Committee as if it were a committee of the General Assembly. Any cost of providing information to the Legislative Oversight Committee not covered by G.S. 120-19.3 may be reimbursed by the committee from funds appropriated to it for its continuing study. Article 23 of Chapter 120 of the General Statutes is repealed to abolish the legislative study commission on MH/DD/SA services.

S.L. 2006-32 authorizes the Legislative Oversight Committee to study the following issues and report its findings and recommendations to the Regular Session of the 2007 General Assembly:

1. Mechanisms to allow area authorities and county programs to purchase bed days from the state psychiatric hospitals. The committee must consider options for holding area authorities and county programs accountable for their use of state psychiatric institutions and for ensuring that state institutions have sufficient funding to ensure quality care to patients and a stable and well-qualified workforce. In addition, the committee must consider incentives for increasing community capacity as an alternative to using state psychiatric institutions.
2. Whether implementation of a Medicaid 1915(b) waiver on a statewide or expanded local basis would strengthen the ability of area authorities and county programs to manage the MH/DD/SA services system. As part of the study, the Legislative Oversight Committee must examine the current use of the waiver by one LME, Piedmont Behavioral Healthcare, and particularly the waiver's impact on Piedmont's ability to implement its LME management functions. If the committee determines that a Medicaid 1915(b) waiver would improve the management capacity of area authorities and county programs, it must also examine whether it would be more appropriate to seek a statewide waiver or whether it would be both possible and advisable for additional area authorities and county programs to seek individual waivers.
3. Whether G.S. 122C-147.1 should be amended to modify or repeal the provisions that place funds appropriated by the General Assembly into broad age and disability categories.

A different act, S.L. 2006-248 (H 1723), authorizes the Legislative Oversight Committee to study issues related to mental health parity and, in consultation with DHHS, conduct an analysis of funding for the administration of LMEs.

Drug Treatment Court Study

Section 4 of S.L. 2006-32, as amended by S.L. 2006-187 (H 1848) and S.L. 2006-259 (S 1523), directs the Legislative Research Commission to study drug treatment courts in North Carolina. The study must include the following issues in relation to drug treatment courts: funding mechanisms, target populations, interagency collaboration at the state and local levels, and any other matter that the commission considers appropriate. The commission may report its findings and recommendations to the 2007 Regular Session of the General Assembly.

Licensure of Substance Abuse Facilities

S.L. 2006-142 amends the definition of licensable facilities in G.S. Chapter 122C to remove outpatient substance abuse services. Facilities that provide outpatient substance abuse services will now be treated like facilities that provide outpatient mental health and developmental disabilities services, which are not required to be licensed under G.S. Chapter 122C. The change was sought to make it easier and more expedient for an LME to find or help develop a provider of outpatient substance abuse services when an existing provider ceases doing business with the LME.

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Miscellaneous

During the 2006 legislative session, the General Assembly made changes to a number of miscellaneous subjects, including administrative procedure, identify theft, junk faxes, the lottery, wildlife, and boating. These changes are summarized below.

Administrative Procedure Act

N.C. Register

S.L. 2006-66 (S 1741) authorizes the Office of Administrative Hearings to license the private indexing, marketing, and distribution of the *N.C. Register*.

Special Education Petitions

As part of the program for education of children with disabilities enacted in 2006, S.L. 2006-69 (H 1908) adds a new section to G.S. Chapter 150B, Article 3, the contested case provisions of the Administrative Procedures Act. The new section provides special timelines, procedural safeguards, and judicial qualifications for hearings under new G.S. 115C-109.9 ("any matter relating to the identification, evaluation, or educational placement of a child, or the provision of a free appropriate public education of a child, or a manifestation determination").

Identity Theft

The 2005 General Assembly enacted legislation attempting to protect citizens against identity theft. For state and local governments, the principal provisions of the 2005 act concerned the collection and distribution of Social Security account numbers and other personal identifying information. There were also specific provisions dealing with documents that contained personal identifying information and were filed with and held by registers of deeds and clerks of court. S.L. 2006-173 (H 1248) follows up on the 2005 legislation, modifying and expanding upon its provisions. The act does three things:

1. It extends to documents collected by the Secretary of State the same provisions enacted in 2005 with respect to documents collected by registers of deeds and clerks of court. Thus, persons filing documents may not include any Social Security numbers or other listed identifying information in the documents. In addition, until July 1, 2007, any person whose Social Security number or other identifying information is included on a document already filed with the Secretary of State may require the secretary to redact the number or other information from the document before it is published on the Internet. (The act intends that this information be removed from filed documents generally by June 30, 2007.)
2. It provides that if a state agency or local government experiences a security breach—an unauthorized breach of records that results in the release of personal information—the agency or local government must give notice of the breach to the persons whose personal information was lost. This provision became effective October 1, 2006.
3. It makes clear that personal identifying information in public documents is not public record and must be redacted before the documents are made available to the public. The principal kinds of identifying information include Social Security numbers, bank account numbers, bank card numbers, and driver's license numbers.

Junk Faxes

S.L. 2006-207 (S 1295) enacts a new Article 5 in G.S. Chapter 75 (monopolies, trusts, and consumer protection), addressing unsolicited facsimiles. The new law prohibits the sending of unsolicited facsimiles if either the sender or the recipient is located in North Carolina. The prohibition does not apply when an established business relationship exists between the sender and recipient; however, all faxes must include identifying information of the sender and a toll free number for sending a "do not send" request. The recipient of an unlawful fax may bring an action to enjoin further violations and an action to recover $500 for a first violation, $1,000 for a second violation, and $5,000 for any subsequent violation within two years of the first. The court may award reasonable attorneys' fees to a prevailing party in specified circumstances. In addition, sending an unlawful fax is a violation of G.S. 75-1.1 (unfair or deceptive practices in commerce), which may subject the offender to criminal penalties or an award of treble damages under Article 1 of G.S. Chapter 75.

The Lottery

Lottery Oversight Committee

The Lottery Act (S.L. 2005-344), ratified by the General Assembly in 2005 and signed by the governor, contained a provision pledging that net lottery revenues would not *supplant* existing or projected state revenues for the purposes identified in the Lottery Act, but would *supplement* existing funds. Had this provision become law, there would be no lingering questions as to whether lottery proceeds will significantly increase state funding for the educational purposes designated in the act. However, the 2005 appropriations act (S.L. 2005-276), which became law two weeks before the Lottery Act, provided that if the Lottery Act became law, language prohibiting net lottery revenues from supplanting existing revenues was repealed. Thus, the Lottery Act, as amended, does not address the issue of whether state spending for the purposes set forth in the act will increase as a result of the lottery. The General Assembly in the 2006 session returned again to the issue of whether lottery proceeds would increase spending for the purposes set forth in the act. This time, the legislature did not directly prohibit lottery revenues from supplanting other state education revenues, but instead established a Lottery Oversight Committee charged with studying ways to ensure that existing revenues were not in fact supplanted by lottery proceeds.

S.L. 2006-225 (H 2212) establishes a nine-member Lottery Oversight Committee, administratively located in the General Assembly and charged with four tasks: (1) reviewing expenditures of net lottery

revenues; (2) studying ways to ensure that net proceeds of the lottery will supplement, rather than supplant, existing education funding, (3) receiving and reviewing reports submitted to the General Assembly pursuant to Chapter 18C of the General Statutes; and (4) studying other lottery matters necessary to fulfill the committee's mandate. New G.S. 18C-172 governs the creation of the committee and its membership and duties. It provides that three members each are to be appointed by the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Governor. One of the three appointees made by each of these officeholders must be an educator. Another must be a person trained or experienced in financial management. The appointing officers must strive to ensure racial, gender, and geographical diversity among the membership of the committee. The President Pro Tempore and the Speaker of the House each must designate a committee co-chair.

The committee must meet at least once each quarter upon joint call of the co-chairs. Six members constitute a quorum. All committee action must be by majority vote at a meeting at which a quorum is present. Committee members are appointed for three-year terms to begin on January 1. The committee must report its analysis and any findings and recommendations to the General Assembly by September 15 of each year and may make interim reports regarding the expenditure of net lottery revenues.

Allocation of Unclaimed Prizes

S.L. 2006-225 repeals Section 31.1(ii) of S.L. 2005-276, which required the General Assembly to transfer unclaimed prize money to the Escheat Fund in an amount equal to the principal transferred from the Escheat Fund for scholarships in fiscal years 2003–04, 2004–05, 2005–06, and 2006–07. S.L. 2006-225 also makes a clarifying change to G.S. 18C-132(b) to specify that unclaimed prize money should be handled in accordance with G.S. Chapter 18C rather than in accordance with Article 35A of G.S. Chapter 115C. G.S. 18C-162(c) provides that unclaimed prizes are not considered abandoned property but instead are allocated in equal portions to enhance prize payments and to the Education Lottery Fund.

Withholding of State Income Taxes from Winnings

S.L. 2006-264 (S 602) and S.L. 2006-259 (S 1523) enact identical amendments to G.S. 105-163.2B to require the Lottery Commission to withhold state income taxes from the payment of lottery winnings of at least $600.

Removal of Lottery Commissioners

S.L. 2006-259 amends G.S. 18C-111(a) to provide that members of the Lottery Commission may be removed for cause by the authority that appointed them.

Lottery Fund Revenue

The 2006 appropriations act transfers $425,000 from the State Lottery Fund to the Education Lottery Fund for the 2006–07 fiscal year as required by G.S. 18C-164. These funds are appropriated pursuant to G.S. 18C-164(d) for class size reduction, the prekindergarten program, the public school building capital fund, and scholarships for needy students. S.L. 2006-259 amends G.S. 18C-164(a) to require that the net revenue of the North Carolina State Lottery Fund be transferred four times a year (rather than "periodically") to the Education Lottery Fund.

Defense to Unlawful Sale of Lottery Ticket to a Minor

S.L. 2006-259 amends G.S. 18C-131(e) to clarify that it is a defense for a person who sold a lottery ticket to a minor to show that the purchaser produced a *valid* driver's license (the statute previously required production of "a drivers license") showing the purchaser to be at least eighteen years old and bearing a physical description of the person named on the card that reasonably describes the purchaser.

Technical Corrections

Sections 8(a), (d), (g), and (l) of S.L. 2006-259 make technical corrections to G.S. 18C-130(a) (governing types of lottery games), G.S. 18C-151(e) (requiring lottery contractors to periodically update required disclosures), G.S. 114-19.16 (providing for criminal record checks for prospective Lottery Commission employees and lottery vendors), and Section 12 of S.L. 2005-344 (establishing time for first lottery audits). These changes appear to have no substantive effect.

Wildlife and Boating

Boating Safety and Vessel Titling Changes

Effective January 1, 2007, S.L. 2006-185 (S 948) reorganizes, clarifies, and amends the Boating Safety Act and the Vessel Titling Act, Articles 1 and 4, respectively, of G.S. Chapter 75A. The act extends the offense of boating while impaired in G.S. 75A-10(b1) to cover operating any vessel, not just a motorized vessel. It also enacts new G.S. 75A-16.1 directing the Wildlife Resources Commission to institute and coordinate a statewide course of instruction in boating safety. The act clarifies boating safety requirements by deleting specific safety requirements set by statute and authorizing the commission to adopt safety rules to conform with federal law on boating safety.

S.L. 2005-185 amends G.S. 75A-11 to (1) expand the list of occurrences that must be reported to the Wildlife Resources Commission to include an occurrence that results in a disappearance indicating death or injury and (2) raise the physical damage threshold for reporting accidents from $500 to $2,000. It also requires a report to law enforcement if an occurrence results in a person's death or disappearance from a vessel. The act authorizes law enforcement vessels to use a flashing blue light and siren when engaged in law enforcement or public safety activities and makes it a Class 2 misdemeanor for a vessel to fail to stop when directed to do so by a law enforcement officer. Use of a blue light by any other vessel is a Class 1 misdemeanor. The act requires vessels to slow when passing a law enforcement vessel displaying a flashing blue light; violation is a Class 3 misdemeanor.

S.L. 2006-185 makes several changes to fees in the Boating Safety Act and the Vessel Titling Act: (1) it specifies that a certificate of number for a registered commercial fishing vessel may be renewed free of charge for a one-year period; (2) it increases from $2 to $5 the fee for duplicate certificates of number; (3) it increases from $10 to $20 the fee to issue a transfer certificate of title, making it the same as the fee to issue a new certificate of title; and (4) it deletes the $10 fee for the holder of a certificate of title failing to notify the Wildlife Resources Commission of a change of address.

Under former law, titling a vessel was optional. Effective January 1, 2007, S.L. 2006-185 amends G.S. 75A-34 to require titling of motorized vessels and sailboats fourteen feet or longer and of personal watercraft when the owner is applying for a certificate of number for the first time in North Carolina or when ownership of the vessel is transferred. The act also establishes a mechanism for canceling the certificate of title or certificate of number for destroyed or junked vessels and directs the Wildlife Resources Commission to adopt rules to establish a mechanism by which a person may acquire ownership of an abandoned vessel.

Fishing Licenses

In contrast to 2005, which saw enactment of a major revision of the coastal recreational fishing license system, the 2006 session resulted in only minor changes to fishing license laws. S.L. 2006-254 (S 1242) authorizes the Marine Fisheries Commission to establish gear-specific permits and limits for striped bass in the ocean and to charge up to $10 for a permit.

S.L. 2006-255 (S 1587) expands the authority of the Wildlife Resources Commission to offer personalized licenses for any lifetime licenses (formerly, only lifetime "sportsman" combination licenses could be personalized). The act also provides that G.S. 132-1.10, a 2005 law sometimes referred to as the identity theft protection act for government agencies, governs the disclosure of

personal identifying information obtained by the Wildlife Resources Commission, the Marine Fisheries Commission, and the Division of Marine Fisheries.

S.L. 2006-255 also authorizes the Marine Fisheries Commission to exempt individuals who participate in organized fishing events from the recreational fishing license requirements. Finally, it clarifies that the lifetime unified inland/coastal recreational fishing license is a resident-only license and removes ambiguities regarding the scope of the for hire blanket coastal recreational fishing license and the special landholder and guest fishing licenses.

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Motor Vehicles

Although the 2006 session was a "short" session, the number and extent of the changes in the motor vehicle laws were more typical of a long session. The new laws in this session include the most significant rewrite of the impaired driving laws since 1983, expansion of the seat belt requirement to include back seat passengers, the first statute to regulate the use of cell phones in vehicles, restrictions on the type of identification necessary to obtain a driver's license, and a provision for the use of the driver's license system to help track sex offenders. This chapter does not discuss bills that affect the business of selling or repairing motor vehicles or bills affecting the construction or regulation of the highway system.

Motor vehicle regulation remains a major responsibility of the General Assembly. In 2005 there were 6,899,357 vehicles registered in North Carolina. In 2004, there were 5,214,000 persons aged eighteen or over. It is easy to see why motor vehicle legislation is a staple on legislative agendas.

Driver's Licenses

Social Security Numbers

As concerns about homeland security have grown since the terrorist attacks on September 11, 2001, there have been frequent complaints about the inadequacy of the screening process for obtaining a driver's license. More recently, there have been many complaints about the inability of the driver's license process to screen out people who are in the country illegally.

S.L. 2006-264 (S 602) narrows the range of identification documents an applicant may use to obtain a driver's license in North Carolina. Previously an applicant for a driver's license could use either a Social Security number or a Taxpayer Identification number issued by the Internal Revenue Service (*see* G.S. 20-7). S.L. 2006-264 deletes the authority of the Division of Motor Vehicles (DMV) to rely on the Taxpayer Identification number. Now an applicant must either present a valid Social Security number or a visa issued by the United States Department of Homeland Security, in addition to the required proof of residence in the state (state-issued documents, bank or utility records, etc.). If the license is issued based on a visa, the license may not remain valid any longer than the visa.

Sex Offender Registration

Sex offender registration laws have been enacted in every state and by the federal government. They all address similar issues, but they may vary from state to state. When sex offenders convicted in other states have moved into North Carolina in the past, questions have arisen as to whether the offenders have been adequately notified of their duties to register in this state. That issue was raised in *State v. Bryant*, 163 N.C. App. 478, 594 S.E.2d 202 (2004), in which the North Carolina Court of Appeals concluded that the state's sex offender statute failed to provide notice to out-of-state offenders and was unconstitutional as it applied to those offenders. That decision was reversed by the North Carolina Supreme Court in 2005 (359 N.C. 554, 614 S.E.2d 479). The issue is also addressed in a major revision of the sex offender statutes passed this year, S.L. 2006-247 (H 1896), which requires DMV to notify every person applying for a driver's license or similar documents of the requirement for sex offenders to register (G.S. 20-9.3).

S.L. 2006-247 also prohibits DMV from issuing a license to a person required to register unless the person proves he or she has in fact registered [G.S. 20-9(i)]. To comply with this requirement, DMV must determine if each applicant who has not been a resident of North Carolina for at least six months is required to register, by checking the National Sex Offender Registry. If the registry does not indicate that the person should register, then the person must file an affidavit indicating they do not have to register. If DMV is not able to access the registry at the time the license is issued, it must obtain an affidavit from the applicant and must also search the registry as soon as possible. If the search then reveals that the person is required to register, DMV must revoke the license issued and notify the sheriff in the person's county of residence. A person denied a license because of this requirement may obtain judicial review in superior court of DMV's decision. The judge hearing the matter must "take testimony and examine into the facts of the case and determine whether" the person is entitled to a license. Similar requirements are added for issuance of identification cards by DMV.

Renewal Cycle

G.S. 20-7 puts most drivers on a five-year renewal cycle, keyed to birthdays that end in a zero or a five (twenty-five, thirty, etc.). There are exceptions for drivers under eighteen and over sixty-two who are issued their first license at those ages. S.L. 2006-257 (H 267) changes that cycle to an eight-year cycle for drivers between eighteen and fifty-four. Drivers under eighteen receive licenses that expire on their twenty-first birthdays, and drivers fifty-four and older receive licenses valid for only five years. The act is effective January 1, 2007.

S.L. 2006-257 also requires DMV to stop printing licenses in its driver's license offices. Effective July 1, 2008, DMV must produce the licenses in a central location and mail them to residence addresses. Licenses may not be sent to a post office box. To facilitate this change, DMV will issue temporary permits valid for twenty days when a person qualifies for a license. That twenty-day period is intended to cover the time needed for production and mailing of the license. The temporary permit is not valid for identification purposes. The law is unclear as to how a person who needs the driver's license for identification purposes (such as air travel) will satisfy that need during the time covered by the temporary permit.

Registration

S.L. 2006-135 (H 1399) amends G.S. 20-51 to exempt from the annual vehicle registration process any trailer used in tandem with a licensed motor vehicle if the trailer is used by a farmer to transport vegetables, fruits, greenhouse or nursery plants and flowers, or Christmas trees on the farm or from farm to market. There are similar exemptions for many other agricultural trailers already included in the same statute.

S.L. 2006-209 (S 1373) continues what has become an annual event in the General Assembly—the creation of special license plates for charities, causes, and colleges. This year's version authorizes the creation of plates to honor the following entities and people:

- Carolina Aviation Museum
- Emergency Medical Technician
- Fox Hunting
- Greyhound Friends of North Carolina
- Gold Star Lapel Button
- Kappa Alpha Psi Fraternity
- Leukemia and Lymphoma Society
- Lung Cancer Research
- N.C. Children's Promise
- Prince Hall Mason
- Support Our Troops
- U.S. Equine Rescue League

There are now well over one hundred special license plates. Nearly all the plates have additional fees, and each has a special logo appropriate to the charity, cause, or college. A few are exempted from the requirement that the license plate contain the phrase "First in Flight."

Equipment

Seat Belts

In 1981 the General Assembly required children to be placed in child restraint systems while they were being transported in motor vehicles. In 1985 the General Assembly required front seat passengers in motor vehicles to wear set belts (G.S. 20-135A). S.L. 2006-140 (S 774) amends that statute to also require rear seat occupants of a motor vehicle manufactured with seat belts to have the belt fastened when the vehicle is in forward motion on a highway.

The debate on this issue was led by highway safety advocates and the Child Fatality Task Force. As is the case with almost all similar highway safety issues, it required the legislature to balance the need for individual choice with the societal benefits that result from the use of a safety measure. Advocates offered many statistics. For example, unbelted occupants accounted for 554, or 43 percent, of all motor-vehicle-related fatalities (380 drivers and 174 passengers) in the state in 2003; also, a person who is unrestrained is ten times more likely to suffer a severe injury and twenty times more likely to suffer a fatal injury when compared to people who are belted.

Violation of the new law is an infraction punishable by a $10 penalty, and no court costs are assessed. Only warning tickets may be issued until July 1, 2007. For violations by drivers or front seat passengers, the existing $25 penalty and $75 court cost assessment remain in effect. Vehicles may not be stopped solely for a violation of the rear-seat seat-belt law. People with a fear of being restrained or who have a valid medical reason to not use seat belts are exempted from the law if they follow the exemption procedure and they do not drive a commercial vehicle.

Commercial vehicles have previously been exempted from the seat belt law. S.L. 2006-140 eliminates that exemption and limits the current exemption for property-hauling vehicles to intrastate commerce. It also exempts occupants of motor homes from seat belt requirements if they are not in the front seats of vehicles.

Cell Phones

Distracted drivers are a leading cause of motor vehicle crashes. While there are many kinds of distractions that can affect a driver, cell phone use has been the subject of the most legislative activity around the country. In 2005 thirty-eight states considered legislation regulating some aspect of cell phone use in vehicles and twenty-four states passed laws regulating their use. S.L. 2006-177 (S 1289) is the first North Carolina legislation on this subject.

S.L. 2006-177 prohibits a person under eighteen from using a mobile telephone (or any technology that allows one to use a mobile phone) while the person is operating a motor vehicle that is

in motion on a highway or public vehicular area. Violation of the statute (G.S. 20-137.3), standing alone, is not a basis for seizure of the phone. Violation is an infraction punishable by a $25 penalty. No court costs are allowed and no driver's license or insurance points may be assessed. The law exempts calls to or from the operator's parent, guardian, or spouse and emergency calls to law enforcement, fire departments, or medical personnel.

In addition to the new infraction offense, S.L. 2006-177 also amends the graduated license statute, G.S. 20-11, which requires minors to progress through three stages of restrictions (limiting times and numbers of passengers) as they begin driving. S.L. 2006-177 delays a minor's movement to the next, less restrictive level for at least six months from the date he or she is convicted of the new cell phone offense. (Evidence of the use of a cell phone in violation of the graduated license statute may be introduced in evidence in any proceeding, but is not negligence per se.)

All-Terrain Vehicles

In 2005 the General Assembly enacted a comprehensive set of regulations for all-terrain vehicles that covers their use on and off of streets and highways. S.L. 2006-259 (S 1523) makes a minor change in that law. It allows electric power company workers to be exempt from the requirement that they use federally approved helmet and eye protection gear if they use equipment that is certified by the state labor department for that purpose.

Impaired Driving

Impaired driving is one of the most frequent and publicly debated crimes in North Carolina. In 1983 the General Assembly completely revised the impaired driving statutes in an act known as the Safe Roads Act. Since then, nearly every session has produced changes to the statutes regulating drinking and driving. In the years since 1983, the "per se" level (commonly referred to as the legal limit) has been lowered from .10 to .08; commercial drivers subjected to special, more restrictive rules; and repeat offenders subjected to numerous special restrictions (ignition interlock requirements, lower per se levels, mandatory treatment, forfeiture of vehicles). S.L. 2006-253 (H 1048) is the most comprehensive set of amendments since 1983 to the laws on driving while impaired (DWI).

S.L. 2006-253 originated with a study by the Governor's Task Force on Driving While Impaired. In 2005 the task force reported to the Governor and two bills were introduced incorporating many of its recommendations. Both the House of Representatives (in 2005) and the Senate (in 2006) spent many committee meetings considering the bills. S.L. 2006-253, the result of these efforts, became effective December 1, 2006.

The changes made by S.L. 2006-253 affect impaired driving cases from the point of sale of alcohol (by regulating the sale of kegs of beer) to the restoration of a person's license and his or her parole from prison. They provide specific procedures applicable only to the investigation, prosecution, and trial of impaired driving cases. The overall bill, as described by Sen. Tony Rand, a task force co-chair and sponsor of the Senate version, "goes a long way toward making sure that DWI laws are applied equally around the state" ("Easley Approves Tough New DWI Laws," *Charlotte Observer*, August 22, 2006). Governor Easley, in signing the legislation, stated: "It'll make it more difficult for lawyers to cut deals for clients charged with DWI. There's not going to be a lot of room for wheeling and dealing. We want to send a clear signal that North Carolina is not going to allow people to drink and drive in the state without severe consequences." In task force meetings, in legislative committee discussions, and in press reports, it was frequently mentioned that the legislation was developed in a context in which conviction statistics, as reported by the *Charlotte Observer* in 2004, varied across the state in 2002 and 2003 from a low of 10 percent in some counties to a high of 90 percent in others.

Substantive Offenses

Impaired driving. While there are numerous offenses concerning drinking and driving, the primary offense is impaired driving, as codified in G.S. 20-138.1. S.L. 2006-253 directly addresses the issue of convictions by specifying that the result of a chemical analysis is "deemed sufficient evidence" to prove a person's alcohol concentration for purposes of establishing the person's guilt under the per se laws. The *Charlotte Observer* report found that approximately one-third of all persons charged with impaired driving who had an alcohol concentration (as indicated by a law enforcement breath or blood test) above that amount were not convicted. The task force, and presumably the legislature, wanted that percentage to be reduced. S.L. 2006-253 also adds an additional offense: Driving with any Schedule I controlled substance or its metabolites in one's blood or urine is a per se violation of the impaired driving offense. It also deletes exemptions currently in the law for lawnmowers and bicycles, which means that driving on either is now covered by the impaired driving offense. It also makes similar changes to the per se provisions of the commercial impaired driving statute, G.S. 20-138.2.

Habitual impaired driving. Habitual impaired driving is a felony. It applies to persons convicted of impaired driving who have three previous convictions. For purposes of determining if prior convictions are counted, S.L. 2006-253 extends the look-back period from seven to ten years.

Death or injury caused by impaired driving. Previously there have been several statutes that punish vehicular homicides caused by impaired drivers (felony death by vehicle, manslaughter, or second degree murder), but no felony offenses for an impaired driver causing serious injury. S.L. 2006-253 raises the punishment for felony death by vehicle to a Class E felony, adds additional felonies for causing death, and creates new felonies when serious injuries are involved. The new aggravated felony death by vehicle applies when a person causes a death by driving impaired and, at the time, has a previous conviction of DWI or a related offense. It carries a Class D felony punishment. Repeat felony death by vehicle applies if a person commits a second felony death by vehicle offense. It is punished at the same class as second degree murder, which is Class B2. In addition there are two new crimes that make it a felony for an impaired driver to cause serious injury to another. If it is a person's first offense, it is a Class F felony, and if the person has a previous impaired driving offense, it is a Class E felony.

Driving after notification or failure to appear. S.L. 2006-253 adds two offenses to the driving while license revoked statute—G.S. 20-28. The first makes it an offense to drive on a highway with a revoked license for an impaired driving offense after DMV has sent notification in the mail of the revocation. The second makes it an offense to fail to appear for two years from the date of the charge after being charged with an implied-consent offense such as impaired driving. For each offense, a person's license is revoked.

Driver's License Changes

Commercial DWI. For several years people convicted of the offense of impaired driving in a commercial vehicle have been under the same license revocation rules as a person convicted in a noncommercial vehicle. S.L. 2006-253 limits DMV's authority to revoke a driver's license for conviction of impaired driving in a commercial vehicle to those cases in which the driver's alcohol concentration is .06 or higher. (Holders of commercial driver's licenses—which authorize them to drive very large vehicles—are also subject to special rules applicable only to the authority to drive those commercial vehicles. That law is not changed by S.L. 2006-253.) The effect of this change is that commercial drivers who are convicted with alcohol concentrations that are sufficient to trigger the commercial DWI offense (.04), but are well below the regular DWI offense (.08), may continue to drive noncommercial vehicles. In an example of the extent to which the legislature is seeking to constrain judicial and prosecutorial discretion in these cases, the law specifies that a chemical analysis result is conclusive and the judge may not alter it. Thus, the law enforcement officer's report of the alcohol concentration is conclusive for purposes of establishing the status of the person's license.

DMV hearings. G.S. 20-16.2 provides that a person who refuses to take a breath, blood, or urine test to determine alcohol concentration will have his or her driver's license revoked for one year. The person is entitled to a DMV hearing and then to a review of the matter by the superior court. In a

significant change in procedure, S.L. 2006-253 alters the standard of review of the DMV decision. Currently, the superior court judge will review the matter de novo, which means the matter is heard as though there had been no DMV hearing. S.L. 2006-253 amends G.S. 20-16.2(e) to provide that the hearing in superior court is limited to a determination of whether there is sufficient evidence in the record to support the DMV findings of fact and conclusions and whether the conclusions are consistent with law.

Interlock procedure. All drivers convicted of impaired driving lose their driver's license as a result of the conviction. Those with an alcohol concentration of .16 or more or those who are repeat offenders must install ignition interlock devices in any vehicle they drive as a condition of getting their licenses reinstated. Some drivers who are subject to that requirement have been unable to effectively use the interlock device because of medical problems. In *State v. Benbow*, 169 N.C. App. 613, 610 S.E. 2d 297 (2005), the North Carolina Court of Appeals ruled that judges had no authority to exempt persons from this requirement; the court also invited the legislature to consider whether an exemption for legitimate medical reasons was appropriate. S.L. 2006-253 amends G.S. 20-17.8 to add such a medical exception to the interlock reinstatement requirement. The medical condition must make the person incapable of personally activating the interlock and two physicians must certify the existence of the medical condition. DMV decides whether to grant the exemption based on the medical advice it receives. The DMV administrative decision may be reviewed by the DMV Medical Review Board under G.S. 20-9.

DMV notice of revocation. G.S. 20-48 specifies the procedure that DMV must follow in notifying people that their licenses are revoked. S.L. 2006-253 simplifies the method of proof required for the prosecutor to prove that the notice was sent. Proof of notice is a common issue in the prosecution of driving while license revoked offenses. As amended, G.S. 20-148 allows DMV to include a notation in its records that the notice was given to a particular address for a specified purpose. DMV no longer has to provide a certificate or affidavit of a DMV employee, and it may send "certified" copies by the state computer system or by fax.

Investigation and Detention Changes

S.L. 2006-253 makes significant changes to the statutes regulating investigation of impaired driving and related offenses.

Checkpoints. S.L. 2006-253 rewrites G.S. 20-16.3A, which provides statutory guidance in the conduct of checkpoints used in motor vehicle law enforcement. Checkpoints are useful in detecting impaired drivers and in deterring impaired driving behavior, given their unpredictability. As amended, G.S. 20-16.3A applies to all license and impaired driving checking stations and roadblocks. Previously the statute applied only to impaired driving checks—license checks were not covered by the statute at all. Checking stations operated to determine compliance with motor vehicle law must now be operated pursuant to G.S. 20-16.3A. Checking stations operated for other purposes, such as to gather information about a crime or to apprehend a fugitive are not covered by the statute but must comply with state and federal constitutional provisions regulating governmental searches and seizures.

G.S. 20-16.3A has required agencies conducting checkpoints to have a written policy regulating the use of checkpoints. That policy must now include guidelines for establishing the pattern for a particular checkpoint. The pattern, however, need not be in writing. Locations must be random or statistically indicated, but violation of that requirement is not a basis to suppress evidence. An individual officer is not prevented from patrolling or monitoring a particular location on something other than a random or statistically indicated basis.

Roadside breath tests. G.S. 20-16.3 regulates the use of portable breath-testing devices used by law enforcement officers to make screening decisions about the extent to which a driver has been drinking alcohol. S.L. 2006-253 clarifies the rules under which the results may be used. The test results may be used to show that a person had a positive or negative test result, but specific readings may not be used. The results may be used only for the following purposes: to help determine if reasonable grounds exist to believe the driver had committed an implied consent offense and the driver had consumed alcohol; to help determine (by negative results) if the impairment is caused by something other than alcohol; and to establish that a person has been drinking in cases in which a zero tolerance is

established (zero tolerance statutes make it a crime to drink any alcohol and then drive while that alcohol is in the driver's body).

Law enforcement jurisdiction. S.L. 2006-253 expands law enforcement officers' authority to investigate an implied consent offense to include any location in the state and to authorize officers to seek evidence out of state. This provision will allow officers who serve border counties to seek evidence in impaired driving cases in which the driver lives in another state. It does not give the officer any power in the other state to arrest or to seize property unless the other state confers that power on a North Carolina officer.

Magistrate procedures. S.L. 2006-253 provides detailed procedures magistrates must follow in impaired driving cases, in addition to the general rules applicable to criminal cases. The most significant requires the magistrate to notify any person arrested for an implied consent offense that he or she may have others come to the jail to observe his or her condition. (There is a similar requirement when a person's breath is being tested.) The notice must be in writing and must include procedures that the person observing may follow to actually get access to the person arrested. Typically, by the time the observer arrives, the person is in custody in a jail, where access may be difficult to arrange. Finally, the magistrate must require a person unable to make bond to furnish names and phone numbers of people he or she wishes to contact to assist in that process. The chief district judges, district attorneys, sheriffs, and the Department of Health and Human Services must consult with one another to develop the written access procedure.

Alcohol concentration reports. S.L. 2006-253 requires law enforcement officers and chemical analysts to report alcohol test results, by affidavit, to DMV when the test indicates that a person charged with impaired driving has an alcohol concentration of .16 or higher. DMV, when it receives such an affidavit, is then authorized to require that persons convicted of impaired driving install an ignition interlock device in their vehicles as a condition of restoration of the driver's license. (Conviction of impaired driving carries a penalty of revocation for at least one year).

Trial Procedure and Evidence Changes

S.L. 2006-253 adds a new Article 2D (20-38.1 through -38.7) to G.S. Chapter 20 to set out special trial procedures for implied consent cases handled in district court. The changes are not applicable to the trial of any other kind of case heard in the district court. They deal primarily with the manner in which defense motions to suppress evidence are handled and with the evidence rules followed in those cases. The evidence rules generally apply in both superior and district courts.

Motions. The new law requires that defense motions to suppress or dismiss the charges must generally be made before trial, except for motions to dismiss at the close of the state's or the defendant's case and motions based on new facts not known to the defendant before trial. In a significant departure from the procedure generally followed in implied consent cases, in most cases the district judge cannot render an oral decision. He or she must prepare a written order in each motion. If the judge is inclined to grant the motion, he or she must wait until the state either appeals to superior court or decides not to appeal before making a final ruling. In cases in which that process is followed, the appeal of the motion will also postpone the trial in district court on the charge. If the preliminary ruling on the motion is appealed, the superior court considers the matter de novo. A defendant who loses a pretrial motion may not appeal the decision, but may appeal to superior court if he or she is convicted.

Sentencing in district court. S.L. 2006-253 provides that if a convicted defendant appeals to superior court, any judgment is vacated; if the case is eventually remanded back to district court, a new sentencing hearing must be held, and the sentencing judge must consider any new or pending charges and wait until those charges are disposed of.

Evidence rules. In *State v. Helms*, 348 N.C. 578, 504 S.E. 2d 293 (1998), the North Carolina Supreme Court limited, but did not prohibit, the use of Horizontal Gaze Nystagmus (HGN) test results in state courts. The test measures the point at which the eye recognizes light in peripheral vision and the point where this occurs in persons affected by alcohol consumption. As a result of *State v. Helms*, the use of HGN tests has been restricted in North Carolina. S.L. 2006-253 eases the evidentiary burden imposed by *Helms*. It allows introduction of the test results if offered by a person who has been trained

in the test's administration and interpretation of the test data, and it allows that person to testify about whether the driver is under the influence of an impairing substance and what category of substance caused the impairment. It also allows Drug Recognition Expert (DRE) testimony by personnel trained in the DRE protocols. (DREs are trained in the detection of the effects of drugs on a person). The witness must still qualify as an expert.

S.L. 2006-253 directs judges to take judicial notice (that is, allow in evidence without going through the formal process of introducing witnesses to testify about the matter taken notice of) of various kinds of evidence of governmental records relevant in impaired driving cases, including records relating to the officer's status as a chemical analyst, preventative maintenance records, and so forth.

S.L. 2006-253 also simplifies the procedures used to introduce test results from blood or urine samples taken in impaired driving cases. The results may generally be admitted without a personal appearance by the lab technician to testify about the lab procedures. Finally, it allows testimony of a chemical analyst by affidavit in district court, unless the defendant provides detailed reasons for requiring the analyst's presence. This rule is in contrast to the general practice in which parties may subpoena witnesses more easily.

Sentencing Changes

Many convicted impaired drivers receive fairly short jail sentences and serve them on weekends. The law has not been specific about the method a jailer should use to determine if the amount of time served satisfies the court's order. S.L. 2006-253 specifies that in impaired driving cases a defendant must serve each hour ordered (in some cases defendants were getting credit for an entire day even if they did not remain in the jail the entire day). If the sentence is for forty-eight hours or more, it must be served in minimum increments of forty-eight hours. S.L. 2006-253 also removes the power of judges to satisfy the mandatory sentencing requirements of the impaired driving statute by imposing a period of nonoperation of a motor vehicle; now the judge must require first offenders to either serve jail time or do community service as a probation condition. Finally defendants convicted of impaired driving who are paroled must be sent to a residential treatment facility, be placed on community service parole, or be subject to electronic monitoring during the parole period.

Vehicle Forfeiture

Under current law, if a repeat impaired driving offender drives with a license revoked for impaired driving conduct, the vehicle is seized and, in most cases, forfeited. S.L. 2006-253 extends the coverage of the forfeiture laws to persons charged with impaired driving and who at the time of the offense had neither a valid driver's license nor insurance.

Data Collection Changes

S.L. 2006-253 proposes to make data about impaired driving prosecutions much more detailed and publicly available. The act requires prosecutors to enter detailed explanations in writing any time they take an action to dismiss or reduce an impaired driving or a related charge. Clerks of court have to keep more detailed information about dismissal by a judge. They must keep related records for at least ten years. And the Administrative Office of the Courts (AOC) must provide an annual report to the legislature and must maintain a website on vehicle/alcohol case data. That database must include types of dispositions for the whole state and by county, judge, prosecutor, and defense attorney. The database also must include fines and costs imposed and collected and compliance data for community service, jail, and substance abuse assessment, treatment, and education. Several of these requirements become effective only after the AOC rewrites its criminal information system.

School Bus Passing Violations

In 2005 the General Assembly made it a felony to pass a stopped school bus in violation of the law and willfully injure a person in doing so. That formulation of the offense made it very difficult to prove a violation. Typically the violation is willfully committed, but the injury that results is not. S.L. 2006-259 (S 1523) rewrites that offense to require the bus passing violation to be willful, not the injury itself.

S.L. 2006-160 (H 2880) also amends the school bus passing law to prohibit judges from entering prayer for judgment continued orders in those cases. Prayers for judgment continued are entered by judges after a determination that a person is guilty in order to postpone the entry of a judgment and sentence in the case. In some cases the postponement is temporary. In most traffic cases, the postponement is indefinite and effectively resolves the case without the person receiving a conviction. In those cases court costs are assessed, but unless a person receives more than one such order, there are no insurance or driver's license consequences. Impaired driving is the only other motor vehicle offense in which judges are prohibited from issuing prayer for judgment continued orders.

Insurance

Insurance coverage or its equivalent in other kinds of financial responsibility for liability is a requirement for vehicle registration in North Carolina. S.L. 2006-213 (S 881) modifies the rules applicable to people who let that insurance coverage lapse. S.L. 2006-213 replaces a rule that required a mandatory thirty-day suspension of the vehicle registration with a graduated sanctioning procedure. When DMV is notified that the vehicle owner no longer has insurance, DMV must notify the owner by letter. If the owner does not respond within ten days, the vehicle registration is revoked until the owner responds. If the owner responds and demonstrates that there was no lapse in coverage, the DMV rescinds any revocation orders. If the owner responds and demonstrates that he or she now has coverage and that there were no accidents involving the vehicle while it was uninsured, the owner must pay a penalty (ranging from $50 to $150, depending on the owner's previous record), but there is no registration revocation. If the owner does not have insurance at the time of the response or if there was an uninsured accident in the vehicle, the owner's registration is revoked, and the same penalty is assessed. The period of revocation is thirty days if there was an uninsured accident or until the owner obtains insurance in all other situations. This new procedure becomes effective July 1, 2008.

S.L. 2006-264 (S 602) waives the normal penalties that apply for lapses in auto liability insurance coverage for any person who was deployed as a member of the United States Armed Forces outside of the continental United States for a total of forty-five or more days at the time of the notice of the lapse in insurance. In addition, no insurance points under the Safe Driver Incentive Plan are assessed for a violation for which the monetary penalty or restoration fee is waived. The law also provides that the person has an affirmative defense to any criminal charge based upon the failure to return any registration card or registration plate to DMV. Upon reregistration the person receives the necessary registration cards or plate without costs and is permitted to transfer the vehicle's registration immediately to his or her spouse, child, or spouse's child.

Local Acts

Three local acts continued trends from recent years. S.L. 2006-27 (S 1328) and S.L. 2006-149 (H 2027) allow the city of Saluda and the towns of Benson, Bladenboro, Caswell Beach, Chadbourn, Faison, and Tabor City to allow and regulate golf cart use on municipal streets. In recent years several other local governments have received legislative authority to do the same thing. Most of the towns may allow use of golf carts, but the local ordinance may require registration (and charge a fee), require certain equipment (such as seat belts or rear view mirror and reflectors), limit loads and hours of operation, and, in some cases, specify who may operate the golf carts.

S.L. 2006-25 (H 2273) allows the use of all-terrain vehicles by law enforcement officers in the town of Highlands and by law enforcement officers and municipal and county employees in the towns of Cramerton and Dallas and in Currituck County. Legislation passed in 2005 prohibited the operation of all-terrain vehicles on streets and highways, so this exception was necessary to allow law enforcement and other governmental officials to use these vehicles on highways. S.L. 2006-264 (S 602) also amends the local acts authorizing law enforcement officers to use all-terrain vehicles to require that the vehicles be motorized.

James C. Drennan

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Public Employment

In the area of public employment law, the 2006 session of the General Assembly was most notable for increasing the state minimum wage from $5.15 per hour to $6.15 per hour, effective January 1, 2007, and for increasing from five to twenty years the service requirement before state employees are eligible for state-paid retiree health benefits. In contrast to previous years, the General Assembly passed relatively little legislation affecting local government employees.

State Employees

Salary

Pursuant to the Current Operations and Capital Improvements Appropriations Act of 2006, S.L. 2006-66 (S 1471), the Governor's annual salary will increase to $130,629, while the annual salaries of the members of the council of state will increase to $115,289. The salaries of appointed state department heads will increase to $112,637. Other executive, legislative, and judicial branch officials also received salary increases.

The General Assembly also increased the salaries of all permanent, full-time State Personnel Act (SPA) employees by 5.5 percent. The salaries of all non-elected employees of the General Assembly were also increased by 5.5 percent.

Community college faculty and professional staff supported by state funds will receive a 6 percent salary increase, as well as a one-time 2 percent bonus. The appropriations act also raised the minimum salaries for each of the education-level categories of full-time community college faculty. All other community college employees supported by state funds will receive a salary increase of 5.5 percent.

For all University of North Carolina faculty and exempt (EPA) employees supported by state funds, the General Assembly authorized aggregate average increases of 6 percent. For teaching employees of the North Carolina School of Science and Mathematics, the General Assembly authorized aggregate average increases of 8 percent.

State Employee Retirement System Increases and Changes

The appropriations act provided a 3 percent cost-of-living retirement allowance increase for retirees in the Teachers' and State Employees' Retirement System (TSERS), the Judicial Retirement System (JRS), and the Legislative Retirement System (LRS). It also adjusted the employer contribution rates for the various state retirement programs.

The appropriations act transferred the membership and retirement contributions of North Carolina Utilities Commission members serving on or after September 1, 2005, from TSERS to JRS.

The 2005 appropriations act amended G.S. 135-1(20), the definition of retirement as it applies to TSERS, to preclude TSERS members from rendering any services, whether on a part-time, temporary, substitute, or contractor basis, during the six months immediately following the member's effective date of retirement. The 2006 appropriations act extended the exemption for the University of North Carolina Phased Retirement Program until the earlier of June 30, 2010, or twelve months after the Internal Revenue Service issues phased retirement regulations.

In S.L. 2006-172 (H 853) the General Assembly amended G.S. 135-5 by adding new subsection (ooo) allowing University of North Carolina employees who participate in TSERS after participating in the Optional Retirement Program (ORP) to purchase creditable service for the period during which they worked for the University system while enrolled in ORP. Employees must complete five years of TSERS membership service before they may exercise this option.

State Law Enforcement Retirement

S.L. 2006-141 (H 2651) amends G.S. 143-166.30(h) to allow state law enforcement officers to make Roth after-tax contributions to the Law Enforcement Officers Supplemental Retirement Income Plan. Such contributions and their earnings will not be transferable to TSERS, however.

State Disability Income Plan

Under G.S. Chapter 135, Article 6 (Disability Income Plan), a member of TSERS or the Optional Retirement Program (ORP) who has been receiving short-term disability benefits may participate in a "trial rehabilitation," in which the member is given an opportunity to attempt to return to work and will not be required to undergo another waiting period before disability benefits resume if the attempt is unsuccessful. In S.L. 2006-74 (S 1738) the General Assembly amended G.S. 135-101(20) and G.S. 135-106 to provide for a similar trial rehabilitation period for a member who has been receiving long-term disability benefits. Under this act, an employee may return to service for a total period of up to thirty-six months without penalty, regardless of whether the inability to continue in service is due to the same incapacity or a different incapacity.

State Health Plan

The most significant change to the Teachers' and State Employees' Comprehensive Major Medical Plan (the State Health Plan) was the increase in the number of years of service necessary before an employee becomes entitled to coverage under the State Health Plan in retirement. S.L. 2006-174 (S 837) amends G.S. 135-40.2 so that state employees and teachers (including local board of education employees and community college faculty) first hired on or after October 1, 2006, will be eligible to have their State Health Plan retiree premiums fully paid for by the state only if they have completed twenty years of service. For employees first hired before October 1, 2006, the eligibility requirement was five years of service. The act provides that the state will pay 50 percent of the State Health Plan retiree premium for employees first hired on or after October 1, 2006, who have completed only ten years of service at retirement.

In S.L. 2006-249 (H 1059) the General Assembly authorized the State Health Plan to cover over-the-counter medications as recommended by the plan's pharmacy and therapeutics committee and to adopt incentive programs encouraging plan members to adopt healthy lifestyles. This act also amends G.S. 135-39.5B(b) to clarify that members electing any optional hospital and medical benefits

programs offered under the auspices of the State Health Plan that do not include a pharmacy benefit will be covered by the State Health Plan pharmacy benefit.

In contrast to previous legislative sessions, the General Assembly made only one change to the procedures covered under the plan. S.L. 2006-249 amends G.S. 135-40.6A(b) by adding surgically implanted bone-anchored hearing aids to the list of procedures requiring prior medical approvals.

Immigration Status Verification of New Employees

In S.L. 2006-259 (S 1523) the General Assembly enacted new G.S. 126-7.1(f) requiring that state agencies, departments, institutions, universities, community colleges, and local boards of education verify the citizenship or right-to-work status of each person hired after January 1, 2007, through the Basic Pilot Program of the United States Department of Homeland Security. It is not clear if the new requirement applies to the instructional and research staff of the University of North Carolina, employees of UNC Health Care, community college employees, and employees of local boards of education. These employees are exempt from Article 2 of G.S. Chapter 126, to which the new provision was added.

Career Banding of SPA Employees

In Section 22.15A of S.L. 2006-66, the appropriations act, the General Assembly suspended any further implementation of career banding for SPA employees pending a review of the State Personnel Act by a legislative study commission. Career-banded classifications approved by the State Personnel Commission on or before June 15, 2006, may be continued with certain restrictions.

Exemption of Certain Department of Cultural Resources Employees from the State Personnel Act

S.L. 2006-204 (H 2762) enacts new G.S. 143B-54 to exempt the following employees from certain enumerated provisions of the State Personnel Act:

- The director and associate directors of the North Carolina Museum of History
- Program chiefs and curators
- Regional history museum administrators and curators
- Members of the North Carolina Symphony
- The director, associate directors, and curators of Tryon Palace
- The director, associate directors, and curators of the Transportation Museum
- The director and associate directors of the North Carolina Arts Council
- The director, associate directors, and curators of the Division of State Historic Sites

Study Commissions on Issues Affecting State Employees

In addition to authorizing the Legislative Research Commission to study certain more general state and local government employee issues, S.L. 2006-248 (H 1723), the Studies Act of 2006, created three study commissions focused on specific public employment issues: the House Select Study Commission on a Mandatory Cost-of-Living Increase for Retirees of the Teachers' and State Employees' Retirement System (Part X of the act); the Study Commission on State Disability Income Plan and Other Related Plans (Part XVII of the act); and the Compensation of State Elected and Appointed Officials Study Commission (Part XXII of the act). In addition, in Section 42 of the act, the General Assembly amended Section 5.1 of S.L. 2004-161 to extend the session by which the study commission on the State Personnel Act is to make an interim report from the 2005 General Assembly to the 2006 General Assembly, and the session by which it is to make its final report, from the 2006 General Assembly to the 2007 General Assembly.

Local Government Employees

Local Governmental Employees' Retirement System

S.L. 2006-64 (H 1237) increases the membership of the Board of Trustees of the Local Governmental Employees' Retirement System (LGERS) by four; all four of the new members are to be members of local government. The act amends G.S. 128-28(c) to provide that the seven local government appointees to the board are to be chosen by the Governor in the following manner:

- One mayor or member of the governing board of a municipality participating in LGERS
- One county commissioner
- One local government law enforcement officer
- One county manager
- One city or town manager from a municipality participating in LGERS
- One current local government employee who is not exempt from the Fair Labor Standards Act
- One retired local government employee who during the period of employment was not exempt from the Fair Labor Standards Act

This act also amends G.S. 128-28(f) to require that a majority of affirmative votes in attendance at a meeting will be necessary for a decision to be made by the trustees.

Local Government Law Enforcement Retirement

S.L. 2006-29 (H 447) amends G.S. 128-26(l), part of the act establishing the Local Governmental Employees' Retirement System (LGERS), to authorize local government law enforcement officers to purchase LGERS service credit for periods of employer-approved leaves of absence during which the officers are receiving workers' compensation benefits due to serious bodily injury incurred in the line of duty as a result of an intentional or unlawful act of another. The employer that granted the leave of absence will pay the employer percentage rate of contribution, and the employee's contribution is reduced by the amount paid by the employer. The act allows, but does not require, the employer to pay all or part of the employee cost of the service credit purchased.

In addition, S.L. 2006-141 (H 2651) amends G.S. 143-166.50(c) to allow local government law enforcement officers to make Roth after-tax contributions to the Law Enforcement Officers Supplemental Retirement Income Plan. Such contributions and their earnings will not be transferable to LGERS, however.

Other Employment Legislation

Minimum Wage

S.L. 2006-114 (H 2174) amends G.S. 95-25.3(a) to raise the minimum wage by one dollar to $6.15 an hour, effective January 1, 2007.

Amendments to the Identity Theft Protection Act of 2005

S.L. 2006-173 (H 1248) enacts a number of changes to those provisions of the Identity Theft Protection Act of 2005 that apply to state and local governments, but only one change affects public employee personnel records. Section 2 amends G.S. 132-1.10(b)(5) (part of the Public Records Act) by clarifying that identifying information about a person is confidential and not a public record, but that a record that has had identifying information removed or redacted is a public record that must be disclosed to the public. Thus, a time sheet that contains a Social Security number or other protected or personally identifiable information about the employee may be disclosed after that confidential information is redacted.

Employment Security Commission Procedures

S.L. 2006-242 (H 2885) amends G.S. 96-15(b)(2), which sets forth the procedure by which employers may protest a terminated employee's claims for unemployment benefits, in three ways. First, it shortens the time period by which an employer must protest an unemployment insurance claim by an employee from fifteen to ten days. Second, it requires that notice of the filing of a claim must be sent contemporaneously to the employer by fax, if a fax number is on file. Finally, it adds a requirement that an employer must receive both written notice of appeal rights and protest forms and that the forms must include a section referencing the rules and instructions for appeals.

North Carolina Occupational Health and Safety Act Penalties

S.L. 2006-39 (H 126) amends G.S. 95-138(a) to provide that the commissioner of labor must assess a penalty of up to $7,000 for a serious violation of the Occupational Health and Safety Act (OSHA) or for a violation of OSHA's posting requirements. Prior to this amendment, those penalties were discretionary. The act also adds a provision allowing for the discretionary assessment of penalties of up to $7,000 for violations adjudged nonserious.

Public School Employees

The General Assembly's 2006 legislation affecting public school employees is discussed in Chapter 10, "Elementary and Secondary Education."

Diane M. Juffras

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Public Purchasing and Contracting

North Carolina's local school systems are under pressure to build new schools quickly and to minimize the costs of new construction. The most significant legislation in the public contracting area this year, summarized below, provides flexibility for local school units in the financing and construction of school facilities. The legislature has authorized schools to contract with private developers to finance, construct, operate, and maintain school facilities using a capital lease arrangement that allows schools to pay for the new facilities over time. Though the legislation applies only to local school units, cities and counties will likely follow with interest local school projects undertaken using this new approach and may be expected to request similar authority if the projects are successful.

This chapter also summarizes several other changes to the state's construction contract bidding and licensing laws, as well as changes affecting state Department of Transportation contracts.

School Capital Lease Authority

Billed as a "public/private partnership" for schools, the capital lease legislation [S.L. 2006-232 (S 2009)] adds new provisions in G.S. Chapter 115C allowing local school administrative units to enter into capital leases of real or personal property for school buildings or school facilities. The new provisions, codified in G.S. 115C-531 and G.S. 115C-532, address the financing, bidding, and property issues in capital lease projects.

Under G.S. 115C-531(a), a capital lease may be used for projects involving existing buildings or for construction of new schools. The lease may be for a period of up to forty years (including renewal periods) from the date the local school unit expects to take occupancy of the property that is the subject of the lease. Projects constructed under the capital lease statute are exempt from the provisions of G.S. 115C-521(c) and (d), which include requirements that school building projects be under the control of the local school administrative unit and that they be built on property owned in fee simple by the administrative unit. Capital lease projects under the new statute are considered continuing contracts for

capital outlay under G.S. 115C-441(c1) and require approval by the board of county commissioners. The statute provides, however, that capital leases are not a pledge of the taxing power or the full faith and credit of the local board of education or the board of county commissioners. As is the case for installment purchase contracts under existing G.S. 160A-20 and G.S. 115C-528, the law prohibits nonsubstitution clauses in capital lease agreements and deficiency judgments in any action for breach of the contractual obligation under a capital lease entered into under this section. The statute requires Local Government Commission approval if the contract falls within specified provisions of G.S. 159-148 that apply when the contract is for a period of five years or more (including renewals) and obligates the unit for more than $500,000 over the full term of the contract.

The new legislation also authorizes a "build-to-suit" capital lease governed by G.S. 115C-532, under which a private developer may be responsible for the construction, operation, and management of the school facility. The statute requires the local board of education to adopt a resolution approving the use of a build-to-suit capital lease upon ten days' notice. The statute sets forth specific findings that the board must make in the resolution and specific information that must be included in the notice of the meeting at which the resolution will be considered. A nonexclusive list of additional services that may be included in a build-to-suit capital lease agreement is set forth in G.S. 115C-532(h).

Local boards of education are authorized to enter into "predevelopment agreements" under G.S. 115C-532(f) in advance of a build-to-suit capital lease. These agreements must be approved by the board of county commissioners and may include provisions for site selection, acquisition and preparation, and building programming and design.

Construction, repair, or renovation work undertaken by a private developer for a capital lease project is exempt from the bidding requirements in Article 8 of G.S. Chapter 143 unless the project is estimated to cost $300,000 or more, in which case the statute requires the private developer to solicit bids from prime contractors for construction or repair work and to comply with the minority participation requirements that apply to public projects under G.S. 143-128.2. The private developer may also use a construction manager at risk, who would be subject to the same requirements for bidding and minority participation. Existing requirements for the selection and use of licensed architects and engineers, as well as for state review of design and specifications, apply to capital lease projects. The local board of education may require the private developer to provide a performance and payment bond for construction work and may require a bond or "other appropriate guarantee" to cover any other guarantees, products, or services to be provided by the private developer. A private developer must provide a letter of credit in an amount not less than 5 percent of the total cost of improvements for the benefit of those who supply material or labor to the project.

The applicability of the lien laws to capital lease projects on property owned by a private developer was the subject of significant discussion during the legislative process. As amended by the technical corrections act [S.L. 2006-259 (S 1523) Section 54(a)], the pertinent provision in the new law, G.S. 115C-531(i), states that the lien laws apply to private property interests in a capital lease project.

The authority provided in these statutes became effective July 18, 2006, and expires July 1, 2011.

Other Changes Affecting Public Contracting Procedures

Guaranteed Energy Savings Contracts

State law provides specific contract and financing authority as well as procurement procedures for performance contracts, under which a contractor guarantees energy savings in an amount equal to the financed cost of energy saving improvements. [*See* G.S. Chapter 143, Article 3B, Part 2.] These laws were amended by S.L. 2006-190 (S 402) to include in the scope of authorized contracts measures designed to conserve water or "other utilities" or to capture lost revenue. Specific improvements may include faucets with automatic or metered shut-off valves, leak detection equipment, water meters, water recycling equipment, and wastewater recovery systems. [G.S. 143-64.17(i).] "Savings" may now include reduction in water costs, stormwater or other utility fees, and other utility or operating costs,

including increased water meter accuracy and captured lost revenues. The effect of these changes is to expand the types of improvements that may be implemented and financed through performance contracts under the authority and procedures established in these statutes.

The legislation also increases the maximum term for a contract under the statute from twelve to twenty years and increases the maximum aggregate principal amount payable by the state under financing contracts entered into under the performance contracting authority from $50 million to $100 million. [G.S. 142-63.]

Reciprocal Preference for Architectural, Engineering, Surveying, and Construction Management at Risk Contracts

State law [G.S. 143-64.31(a)] requires public agencies at the state and local level to use a qualification-based process, rather than a bid process, for selecting architects, engineers, surveyors, or construction managers at risk. (The use of construction managers at risk by North Carolina public agencies is governed by G.S. 143-128.1.) Though public agencies may exempt themselves from this process under G.S. 143-64.31, the process is otherwise considered to be mandatory.

S.L. 2006-210 (S 522) creates a "reciprocal preference" for North Carolina firms whose selection is governed by G.S. 143-64.31(a). The provision grants a preference to a resident firm over a nonresident firm "in the same manner, on the same basis, and to the extent that a preference is granted in awarding contracts for these services by the other state to its resident firms over firms resident in [North Carolina]." [G.S. 143-64.31(a1).] The statute defines *resident firm* as one that has paid North Carolina unemployment or income taxes and whose principal place of business is located in North Carolina.

A similar provision was previously included in the procurement laws that govern state agencies [*see* G.S. 143-59(b)].

Contracting for Engineering Services for Public Water Systems

Legislation amending G.S. 130A-317(d) clarifies that local governments may contract for engineering services to develop plans for construction or alteration of public water systems as required in that statute. [S.L. 2006-238 (H 1099).]

Local Exemptions from Bidding Requirements

As is typically the case each session, several local governments received exemptions from construction bidding requirements for particular projects. Under S.L. 2006-94 (H 2526), Clay County received authority to use the design-build method of construction for an indoor recreational facility, a sheriff's office building, and a county administration building. A Stokes County local act, S.L. 2006-50 (H 2343), authorizes the use of the design-build method for an emergency medical services station. The Fayetteville Public Works Commission obtained an exemption from the limitation in G.S. 143-135 (restricting the size of projects that can be constructed using the unit's own forces) for water and sewer line projects to serve newly annexed areas. The act, S.L. 2006-48 (H 2040), became effective June 30, 2006, and expires January 1, 2012.

Contractor Licensing Changes

The legislature made several minor changes in the laws governing contractor licensing. S.L. 2006-241 (H 2882) amends G.S. 87-10(c) to increase—from thirty to ninety days—the window of time during which an entity may continue to be licensed after an individual who took the licensing exam on behalf of the entity leaves. The act also makes conforming changes in the licensing laws to clarify the authority of a plumbing, heating, or electrical contractor to act as a prime contractor on a project under the conditions set forth in G.S. 87-1.1.

State Department of Transportation Contracts

A new statute, G.S. 136-66.8 [S.L. 2006-135 (H 1399)] authorizes local governments to enter into agreements with the state Department of Transportation to expedite transportation projects currently programmed in the Transportation Improvement Plan. Under agreements entered into under this statute, the local government is required to fund 100 percent of each project at current prices and will be reimbursed an appropriate share of funds at the amount provided for in the plan when the project is later funded from state and federal sources.

S.L. 2006-261 (H 1827) makes several changes in the licensing requirements for state transportation projects. A new statute, G.S. 136-28.14, creates an exemption from the contractor licensing requirements for (1) routine maintenance and repair of pavements, bridges, roadside vegetation and plantings, drainage systems, concrete sidewalks, curbs, gutters, and rest areas; and (2) installation and maintenance of pavement markings and markers, ground mounted signs, guardrails, fencing, and roadside vegetation and plantings. Another new statute, G.S. 87-1.2, incorporates this exemption into the chapter governing contractor licensing.

The state laws governing disadvantaged minority- and women-owned business participation in highway projects are substantially revised by S.L. 2006-261 (H 1827), Section 4. The changes remove from G.S. 136-28.4 the fixed statutory percentage goal for participation by specific groups and replace it with a more flexible requirement for regular analysis of data regarding availability and utilization of contractors and narrow tailoring of program components as warranted by these data. The statute now provides for the establishment of annual aspirational goals and specifies that contracts must be awarded on a nondiscriminatory basis. The law also establishes a Joint Legislative Commission on the Department of Transportation Disadvantaged Minority-Owned and Women-Owned Business Program as set forth in G.S. Chapter 120, Article 30. The commission will be responsible for monitoring the implementation and assessing the effectiveness of the program under G.S. 136-28.4 and for making recommendations to the legislature for improvements to the program.

Frayda S. Bluestein

22

Registers of Deeds, Land Records, and Notaries

The 2006 General Assembly's amendments to the statutes governing the institutions involved in real estate transactions mostly were responses to issues raised about the substantial changes made to these laws in 2005. A number of "technical revisions" governing the procedures for registering real estate instruments were made that will make registering some types of instruments easier and will clarify some of the details of the 2005 changes. Extensive amendments to the notary laws address requirements for notary attestation and make further changes to notary qualification and the rules for performance of notarial acts.

Real Estate Instrument Registration

In essence the 2005 changes narrowed registers' responsibilities for reviewing instruments presented for registration and authorized simplified methods for registering satisfactions of security instruments. The 2006 legislation makes further changes to these procedures.

Satisfaction Rescission

The 2005 legislation authorized anyone who erroneously records a satisfaction instrument to record a document of rescission that identifies the erroneous satisfaction or affidavit and states that the error was made, that the secured obligation remains unsatisfied, and that the security instrument remains in force. G.S. 45-36.6. S.L. 2006-264 (S 602) adds a requirement unintentionally omitted from the 2005 legislation that these instruments be acknowledged as a condition to registration, effective October 1, 2006.

Corrections to Recorded Documents

The following provision was added to the registration statutes in 2005: "Any document previously recorded or any certified copy of any document previously recorded may be rerecorded, regardless of whether it is being rerecorded pursuant to G.S. 47-36.1 [pertaining to correction of minor errors by explanation]." G.S. 47-14(a). This language indicates that a document need not be reviewed for compliance with recording requirements if it is the same document previously recorded or a certified copy of that document. Two "technical corrections" bills, S.L. 2006-259 (S 1523) and S.L. 2006-264, were enacted that affect register responsibilities with respect to altered instruments. Effective July 27, 2006, two changes were made to G.S. 47-14(a). First, registers are no longer required to verify the notary's certificate when registering previously recorded documents or certified copies of previously recorded documents. The statute now states: "Any document previously recorded or any certified copy of any document previously recorded may be rerecorded, regardless of whether it has been changed or altered, or it is being rerecorded pursuant to G.S. 47-36.1." Second, G.S. 47-14(a) has been amended to state that the register of deeds is not required to verify "upon presentation of the original document for re-recording, whether the original document has been changed or altered."

Thus revised G.S. 47-14(a) makes clear that if someone presents an instrument as a previously recorded document or a certified copy of a previously recorded document, the register is not responsible for checking the document to see if any changes or alterations have been made, and the register does not verify the acknowledgment or proof on such an instrument. The register needs only to see that the instrument apparently has been previously recorded or is a certified copy of an instrument previously recorded. The statute gives no guidance about how much a document can differ from a previously recorded document if the register notices the difference. Registers may interpret the requirement as prohibiting the addition or deletion of pages, in which case the presented document would not be considered to be the same document previously recorded for purposes of this statute. Before these amendments were made, if a previously recorded document included any changes it could be recorded only if it was the original instrument accompanied by a statement of explanation signed by the original signatories or someone stating that he or she was the drafting attorney. A marked-up previously recorded instrument may now be rerecorded without verification and without a statement of explanation. It may also be recorded with a statement of explanation on previously recorded pages that is signed by an unauthorized party or not signed at all, as the register will not be making determinations about what markings on previously recorded documents constitute acceptable or unacceptable changes or alterations. But if an additional page is attached to a rerecording, a register may determine that it must comply with the statement of explanation requirements, including presentation of the original instrument (not a certified copy) and the specified signatures.

Notary Act Changes

A number of changes to the notary laws took effect on October 1, 2006, except that, as specified below, some changes govern notarial acts that have already occurred.

Curative and Validation Provisions

Some of the changes to the notary laws made by S.L. 2005-391, effective December 1, 2005, created more stringent requirements for the attestation of important legal instruments, including those involved in real estate transactions. These requirements were intended to promote careful notarial practices, but they also raised concerns within the real estate transaction community that important legal instruments could be subjected to challenge based on technical defects. The 2006 changes removed some of the technical requirements and provided that certain technical defects are not bases for invalidating an instrument. For example, the requirements for a notary seal image now expressly state that noncompliance is a violation of the statutes governing notarial duties but does not affect the notarial certificate's legal sufficiency. G.S. 10B-37(f). S.L. 2006-199 (S 1375) amended G.S. 10B-68 to provide that certificates made on or after December 1, 2005 (the effective date of S.L. 2005-391),

will not be deemed invalid because of "[t]echnical defects, errors, or omissions," which include notary seal image issues as well as such things as "the absence of the legible appearance of the notary's name exactly as shown on the notary's commission." G.S. 10B-68(c). G.S. 47-41.2 now provides that "technical defects, errors, or omissions in a form of probate or other notarial certificate" are not grounds for invalidating the registration of a real estate instrument with a register of deeds, nor are they grounds for a register to refuse to register an instrument. The register's verification requirements set by the 2005 legislation remain in force, except as described above for changes to previously recorded instruments. A curative statute was added to provide that a state agency's use of a pre-October 1, 2006, form is sufficient if the form complied with the law in effect at the time the form was issued. G.S. 10B-69. The revisions make clear that erroneous statements of commission expiration dates do not invalidate instruments if the notary was, in fact, commissioned at the time of the act. G.S. 10B-67. The 2006 legislation also cures defects in notary commissioning or recommissioning if the commissioning in question is approved by the Department of the Secretary of State. G.S. 10B-68(b).

Refinements in Notary Procedure

S.L. 2006-59 (H 1432) made a subtle change in the notary's obligation with respect to the demeanor of the subject of an acknowledgment, oath, or affirmation. The 2005 law could be interpreted as imposing an affirmative obligation on the notary to assess the subject's demeanor, whereas the revised law prohibits a notary from continuing with the notarial act if a problem is apparent. Now, when a notary completes a certificate, the notary is certifying that the subject did not appear in the notary's judgment "to be incompetent, lacking in understanding of the nature and consequences of the transaction requiring the notarial act, or acting involuntarily, under duress, or undue influence." G.S. 10B-40(a2). Express references to an act being "voluntary" have been eliminated from the definition of acknowledgment, G.S. 10B-3(1)(c)(i), and from the basic form of acknowledgment certificate, G.S. 10B-41(a).

The relationship of a subscribing witness to the transaction for which the witness is verifying or proving a signature has been changed from requiring the witness not to be a named party and to have no interest in the transaction to requiring the witness to be someone who is not a party to or a beneficiary of the transaction. G.S. 10B-3(28)(c). The prohibited involvement in a transaction by a notary is clarified to mean that the notary may not be a party to or a beneficiary of the record, but being named as a trustee in a deed of trust, a drafter, a person to whom a registered document is to be returned, or an attorney to a party to the record is not a disqualification by itself. G.S. 10B-20(c)(5).

If the subject of a notarial act does not present the required documentary evidence of identity, a notary may rely on the identification of the subject by a "credible witness." The 2006 revisions eliminated the requirement that the credible witness must be "unaffected by the record of transaction," instead requiring that the notary believe the credible witness "to be honest and reliable for the purpose of confirming to the notary the identity of another individual" and believe that the credible witness "is not a party to or beneficiary of the transaction." G.S. 10B-3(5).

S.L. 2006-59 provides that the detailed notary seal dimension and border requirements prescribed by the 2005 legislation apply to seals for notaries who are commissioned or recommissioned on or after October 1, 2006. G.S. 10B-37(c). These and other requirements that took effect October 1, 2005, caught many notaries by surprise and raised questions about the validity of instruments notarized with seals that did not conform to the new law. The 2006 revisions provide, however, that a notarial certificate is valid even if the seal does not conform to statutory requirements. In addition, the 2006 changes no longer expressly prohibit graphics on the seal. Another change in the seal law allows an expiration date to be included with the seal in handwritten or typed form as well as imprinted on the seal itself. G.S. 10B-37(d).

The 2005 legislation contained an error in which the definition of "official seal" in G.S. 10B-36 was mistakenly repeated for the definition of "official signature" in G.S. 10B-35. The definition of "official signature" has been changed to state that the signature must be in ink exactly as shown on the notary's commission. G.S. 10B-20(b)(1); G.S. 10B-35. Previously *signature*—not just the notary's official signature—was defined to mean a signature by hand, but the 2006 legislation deletes the broader definition of "signature" in general [formerly G.S. 10B-3(25)]. This deletion can be interpreted

to mean that the signatures being notarized do not necessarily have to be made by hand, and signatures by stamp or other methods may be permissible under other law if the notary witnesses the signature or the signature is confirmed in the notary's presence by the signatory.

The required components for acknowledgments, verifications or proofs, and oaths and affirmations in general (that is, for certificates the form of which has not otherwise been specified) have been amended to eliminate a requirement that the certificate state either that the notary had personal knowledge of the subject's identity or state the nature of the identification on which the notary relied. G.S. 10B-40(b), (c), (d). Certificates for oaths and affirmations need not identify the state and county in which the oath or affirmation occurred. G.S. 10B-40(d). The 2005 legislation required the notary's name to be typed or legibly printed near the notary's signature. Previous law had allowed use of the embossed name in the seal. The 2006 revisions provide that the name may appear typed or printed, in the seal, or elsewhere in the certificate. G.S. 10B-20(b)(2).

A new simple form is provided for use by a *nonsubscribing witness,* someone who verifies or proves a signature but is not signing the instrument. G.S. 10B-42.1. A number of other revisions have been made to the standard certificate form. The legislation makes clear that various forms of certificates used in real estate and corporate transactions may be modified for use by entities and representatives in other capacities. G.S. 47-31.1; G.S. 47-38; G.S. 47-41.01; G.S. 47-41.02. Notaries are expressly authorized to assume that a person signing in a representative or fiduciary capacity has the proper authority and is so acting. G.S. 10B-40(h). The certificate may but is not required to include reference to this capacity and authority. G.S. 10B-40(h).

The 2006 revisions delete reference to a *jurat* as a separate notarial act, instead defining the term to mean a form of certificate used for an oath or affirmation. G.S. 10B-3(8); G.S. 10B-20(a). These revisions also provide that a notary may take an oath or affirmation without completing a jurat. G.S. 10B-23(a).

G.S. 10B-20(g) has been revised to reflect that North Carolina recognizes notarial acts by persons authorized by federal law or regulation to perform notarial acts for persons serving with the armed forces or their spouses or dependents.

Notary Qualification and Discipline

The 2006 revisions make clear that neither a public official's recommendation nor a notary instructor's signature is required for an application for recommission and that these applicants are not required to be high school graduates or to have completed the notary course. G.S. 10B-11(b)(1), (2). Applicants for recommissioning who have been continuously commissioned in North Carolina since July 10, 1991, and have never been disciplined are not required to take the exam otherwise required of nonattorney applicants for recommissioning. G.S. 10B-11(b)(3).

A number of technical revisions were made to the provisions regarding enforcement and penalties. They make clear that it is a Class 1 misdemeanor to violate any restrictions imposed on a notary by the Secretary of State. G.S. 10B-60(b)(2).

Charles Szypszak

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Senior Citizens

The 2006 legislative session was relatively quiet with respect to laws affecting government programs for senior citizens, long-term care, and state and local government retirees. Legislative study committees, however, have been authorized to study several issues affecting senior citizens, including automatic cost-of-living increases for retired teachers and state employees and the property tax exemption for elderly homeowners.

Government Programs for Senior Citizens

Home and Community-Based Long-Term Care Services

S.L. 2006-110 (S 1279) directs the Department of Health and Human Services (DHHS) to collaborate with long-term care advocates and providers of home and community-based long-term care services to review the North Carolina Institutional Bias Study Report and to submit its recommendations regarding ways to address the biases identified in that report to the North Carolina Study Commission on Aging by October 15, 2006.

Adult Day Services

S.L. 2006-108 (S 1278) requires the DHHS Division of Aging and Adult Services (DAAS) and the DHHS Division of Medical Assistance (DMA) to provide education, and training if necessary, to ensure that Community Alternatives Program case managers are aware of adult day health services and to ensure that adult day health services are considered in all situations in which those services are appropriate. S.L. 2006-108 also requires DAAS to report to the North Carolina Study Commission on Aging no later than July 30, 2006, with respect to the foregoing requirement and on the status of the Partners in Caregiving Study recommendations. A copy of the report is available at www.dhhs.state.nc.us/aging/adcresources.htm.

Long-Term Care Ombudsman Program

Section 13B of S.L. 2006-221 (S 198) requires DHHS to use funds appropriated for long-term care quality improvement to support eight regional long-term care ombudsman positions in area agencies on aging and to use $100,000 of these funds for a contract for the quality improvement program.

Medicaid and State-County Special Assistance

Legislation affecting North Carolina's Medicaid and State-County Special Assistance programs is summarized in Chapter 24, "Social Services."

Property Tax Exemption for Elderly Homeowners

Section 2.1 of S.L. 2006-248 (H 1723) authorizes the Legislative Study Commission to study issues related to the property tax exemption for elderly and disabled homeowners (G.S. 105-277.1).

Long-Term Care

Home Care Agency Licenses

In order to give DHHS the time necessary to adopt new home care rules, Section 2 of S.L. 2006-194 (S 1280) prohibits DHHS, beginning January 1, 2007, from issuing any licenses for new home care agencies that intend to offer in-home aide services. This prohibition, however, does not apply to certified home health agencies that intend to offer in-home aide services or to agencies that need a new license for an existing home care agency that is being acquired.

Special Licenses for Long-Term Care Providers

S.L. 2006-104 (S 1277) enacts a new Article 5 of G.S. Chapter 131E establishing a North Carolina New Organizational Vision Award (NC NOVA) special licensure designation for adult care homes, nursing homes, and home care agencies. This special licensure designation will be awarded to long-term care providers that have been determined, through written and on-site review by an independent review organization, to have met a comprehensive set of workplace-related interventions intended to improve the recruitment and retention, quality, and job satisfaction of direct care staff and the care provided to long-term care clients and residents. The act directs DHHS to adopt rules to implement the NC NOVA program in accordance with the criteria and protocols developed by the NC NOVA Partner Team, which includes representatives from twelve specified organizations.

Adult Care Home Quality Improvement Consultation Program

S.L. 2005-276 required DHHS to submit a progress report on the adult care home quality improvement consultation program to the North Carolina Study Commission on Aging and the legislative health and human services appropriations committees by April 1, 2006. Section 10.1 of S.L. 2006-66 (S 1741) changes the deadline for submitting this report to January 1, 2007.

No-Fault Compensation for Injuries in Long-Term Care Facilities

Section 18 of S.L. 2006-248 authorizes the Commissioner of Insurance, the North Carolina Industrial Commission, and DHHS to study the utility, efficacy, and advisability of creating a system of no-fault compensation for injuries resulting from the regular and ordinary course of care provided at nursing homes, homes for the elderly, other long-term care facilities, and assisted living facilities.

Geriatric Care Providers

Section 3.2 of S.L. 2006-248 authorizes the Joint Legislative Health Care Oversight Committee to study methods to increase the number of geriatric care providers in North Carolina.

Retired State and Local Government Employees

Teachers' and State Employees' Retirement System

Cost-of-living increase for retired teachers and state employees. S.L. 2006-66 provides a 3 percent cost-of-living increase for retired teachers and state employees covered by the Teachers' and State Employees' Retirement System (TSERS).

Part X of S.L. 2006-248 establishes the House Select Study Commission on a Mandatory Cost-of-Living Increase for retirees of TSERS. Members of the study commission will be members of the state House of Representatives, appointed by the Speaker of the House. The committee will study the cost and feasibility of an automatic cost-of-living increase for retirees of TSERS and must submit a report of its findings and recommendations on or before the convening of the 2007 General Assembly.

Funding of the Teachers' and State Employees' Retirement Fund. In state fiscal year 2000–2001, Governor Easley withheld approximately $130 million in state contributions to TSERS due to an $850 million shortfall in the state budget. The General Assembly subsequently appropriated $90 million to repay, in part, these withheld contributions and S.L. 2006-66 appropriates an additional $30 million toward repayment of these withheld contributions. (In September 2006, a superior court judge held that the Governor's withholding of state contributions was unconstitutional, but did not direct the General Assembly to repay the withheld contributions.)

Purchase of creditable service. S.L. 2006-172 (H 853) amends G.S. 135-5 to allow the purchase of creditable service under TSERS for periods of service under the Optional Retirement Program for state institutions of higher learning.

Optional Retirement Program. Effective July 1, 2007, S.L. 2006-172 also amends G.S. 135-5.1 to include the North Carolina School of Science and Mathematics under the University of North Carolina Optional Retirement Program.

State Health Plan coverage for future TSERS retirees. S.L. 2006-174 (S 837) amends G.S. 135-40.2(a)(2) to provide that noncontributory coverage of a TSERS retiree under the State Health Plan will be conditioned on the retiree's having at least twenty years of retirement service credit if the retiree is first hired as a state employee or teacher on or after October 1, 2006. The act also amends G.S. 135-40.2 to (1) provide that the state will pay 50 percent of the plan's noncontributory premium if a retiree has at least ten, but less than twenty, years of retirement service and the retiree is first hired as a state employee or teacher on or after October 1, 2006, and (2) that a retiree who has less than ten years of retirement service and who is first hired as a state employee or teacher on or after October 1, 2006, may be covered under the State Health Plan on a contributory basis only.

Local Government Employees Retirement System

S.L. 2006-64 (H 1237) amends G.S. 128-28(c) to revise the membership of the Local Government Employees' Retirement System (LGERS) Board. Under the amended statute, the LGERS Board will consist of fourteen members: seven members of the TSERS Board and seven members appointed by the Governor. The seven members of the TSERS Board who will serve on the LGERS Board include the following: the state treasurer, the superintendent of public instruction, the two members of the TSERS Board appointed by the General Assembly, and the three members of the TSERS Board who are appointed by the Governor and are not members of the teaching profession or state employees. The seven members of the LGERS Board appointed by the Governor must include a mayor or member of the governing body of a city or town that participates in the LGERS, a county commissioner of a county that participates in the LGERS, a law enforcement officer employed by an employer that participates in the LGERS, a county manager of a county that participates in the LGERS, a city or

town manager of a city or town that participates in the LGERS, an active local government employee who is not exempt from the Fair Labor Standards Act, and a retired local government employee who was not exempt from the Fair Labor Standards Act.

John L. Saxon

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Social Services

The General Assembly expanded the juvenile permanency mediation program, clarified the rules regarding school residency requirements for children who are the subjects of juvenile court proceedings, temporarily capped the fiscal responsibility of North Carolina counties for Medicaid costs, rewrote the rules that penalize Medicaid applicants and recipients who transfer assets for less than fair market value, and authorized a number of studies of subjects related to social services.

Child Protective Services

Confidential Information

S.L. 2006–205 (S 1216) rewrites G.S. 7B-302(a) to add a requirement that a social services department disclose confidential information to any federal, state, or local government entity (or its agent) that needs the information to protect a child from abuse or neglect. It also specifies that the governmental entity to which social services discloses the confidential information may redisclose it only for purposes directly connected with that entity's mandated responsibilities.

County social services departments and many other state and local agencies in North Carolina already are mandated to share confidential information about possibly abused, neglected, or dependent children in circumstances described in G.S. 7B-3100 and rules issued by the Department of Juvenile Justice and Delinquency Prevention pursuant to that section. (*See* 28 N.C. Admin. Code 01A .0301 and .0302.) S.L. 2006–205 rewrites G.S. 7B-3100(a) to expand the time frame within which the information sharing must occur. Instead of applying only between the time a juvenile petition is filed and the time the court stops exercising jurisdiction, the duty now arises when a social services department is responding to a report of abuse, neglect, or dependency (by conducting an assessment or providing or arranging for protective services) and extends until the court's jurisdiction ends or the department of social services closes its protective services case.

These changes became effective August 8, 2006.

Permanency Mediation

Three district court districts in the State—District 26 (Mecklenburg County), District 27A (Gaston County), and District 28 (Buncombe County)—have established local programs to provide mediation services in juvenile cases involving abuse, neglect, dependency, or termination of parental rights. Section 4 of S.L. 2006–187 (H 1848) requires the Administrative Office of the Courts (AOC) to establish, in phases, local district programs to provide uniform permanency mediation services statewide.

The act requires the AOC to promulgate policies and regulations for administration of the program but also sets out a number of specific program requirements relating to attendance, confidentiality, and the effect of mediated agreements. These provisions are described more fully in Chapter 4, "Children and Juvenile Law."

School Admissions

When the court places a child in foster care, with a relative, or in a group home or other facility, special rules apply regarding the assignment of the child to a particular public school. S.L. 2006-65 (H 1074) rewrites G.S. 115C-366 and repeals G.S. 115C-366.2 to consolidate and clarify those rules.

One new provision allows a child who is not a domiciliary of a local school administrative unit to attend school in that location without paying tuition if the child is living with an adult who is domiciled there because the student's parent or legal guardian relinquished physical custody and control of the student based on the recommendation of a county department of social services or the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services. The adult with whom the child lives must assume responsibility for making educational decisions on the child's behalf.

The act applies beginning with the 2006–07 school year. S.L. 2006-65 is discussed in more detail in Chapter 4, "Children and Juvenile Law." and Chapter 10, "Elementary and Secondary Education."

Medicaid

Medicaid Funding

County funding of Medicaid services. North Carolina generally requires counties to pay 15 percent of the nonfederal share of Medicaid services provided to county residents (or about 5.2 percent of the total cost of Medicaid services). In state fiscal year 2004–05, North Carolina counties spent approximately $427 million for Medicaid services for county residents.

Section 10.9E of the 2006 appropriations act (S.L. 2006-66, S 1714) appropriates $27.4 million in nonrecurring state funding to offset part of the counties' fiscal responsibility for Medicaid services and limit county spending for Medicaid services to the amount paid by counties in state fiscal year 2005–06. These funds will be distributed to counties to the extent that their expenditures for Medicaid services for state fiscal year 2006–07 exceed their expenditures for Medicaid services for state fiscal year 2005–06. If county expenditures for Medicaid services for state fiscal year 2006–07 exceed the amount of county expenditures for Medicaid services for state fiscal year 2005–06 plus the one-time state funding, counties will be required to pay 15 percent of the amount by which the nonfederal share of payments for Medicaid services exceeds county expenditures for Medicaid services for state fiscal year 2005–06 plus the one-time state funding. For purposes of this section, payments for Medicaid services include Medicare Part D "claw back" payments. The Department of Health and Human Services (DHHS) must make a monthly report to the General Assembly's Fiscal Research Division regarding each county's portion of the nonfederal share of Medicaid payments, excluding administrative costs.

Medicaid trust fund. Section 10.7 of S.L. 2006-66 allocates $53 million in "disproportionate share hospital payments" and contributions received under G.S. 143-23.2 for Medicaid programs, including $3 million to replace reduced state General Fund appropriations for Medicaid. Section 10.7 of S.L. 2006-66 also authorizes DHHS to use $5,004,504 of the Medicaid trust fund to implement the

Medicaid Management Information System and to use other unappropriated funds in the Medicaid Trust Fund to fund audit issues between the federal government and DHHS with respect to disproportionate share hospital payments for fiscal years 1997 through 2002.

Medicaid Transfer of Assets Penalty

Since 1980, federal law has allowed, and later required, as a condition of receiving funding for state Medicaid programs, that states adopt rules that disqualify individuals from receiving certain types of Medicaid services if they, or their spouses or others acting on their behalf, transfer certain types of property, resources, or assets for less than fair market value. The Deficit Reduction Act of 2005 (Pub. Law 109-171) revised the federal requirements governing Medicaid's "transfer of assets" rules.

Section 10.4 of S.L. 2006-66, as amended by Section 8 of S.L. 2006-221 (S 198), repeals North Carolina's prior transfer of assets rule (G.S. 108A-58) and enacts a new statute, G.S. 108A-58.1, that incorporates the transfer of assets requirements contained in the federal Medicaid law.

In the case of transfers of assets that occur on or after February 8, 2006, the new transfer of assets rule generally establishes a "lookback" date that is sixty months before an individual applies for Medicaid (or, in the case of an institutionalized individual, the date he or she applies for or receives Medicaid while he or she is institutionalized) and provides that the penalty period begins on the date an asset is transferred for less than fair market value or the date on which the individual who is subject to the penalty would otherwise have become eligible for Medicaid services, whichever is later.

The new law includes provisions that specify the institutionalized and noninstitutionalized Medicaid applicants or recipients who are subject to the transfer of assets rule and the nursing facility, home health, personal care, long-term care, and other Medicaid services to which the rule applies. The new law expressly exempts from the transfer of assets rule persons who are eligible for Medicaid based on their receipt of State-County Special Assistance. The new law also incorporates additional exceptions contained in federal law and requires DHHS to waive the transfer of assets penalty if imposition of the penalty would result in undue hardship.

Medicaid Liens, Estate Recovery, and Third Party Liability Rules

Medicaid estate recovery and liens. Section 10.9B of S.L. 2006-66 delays until July 1, 2007, the effective date of the statutory changes to the state's Medicaid estate recovery program enacted by S.L. 2005-276 (amending G.S. 108A-70.5 and enacting G.S. 108A-70.6 through 108A-70.9).

Third party liability claims and required data sharing by private health insurers. Effective January 1, 2007, Section 10.8 of S.L. 2006-66, as amended by Section 9 of S.L. 2006-221, enacts a new statute, G.S. 108A-55.4, that requires private health insurers to provide to the state's Medicaid program specified information regarding Medicaid applicants or recipients who are covered by a health insurance policy and to accept the state's right to payment under the Medicaid "third party liability" laws (G.S. 108A-57, 108A-59, and 108A-70(b)).

Medicaid Eligibility, Services, and Payment Rates

Medicaid eligibility of Medicare beneficiaries. Section 10.6 of S.L. 2006-66 amends G.S. 108A-55.1 to require a Medicaid recipient who qualifies for prescription drug coverage under Medicare Part D to enroll in Medicare Part D unless the Medicaid recipient has creditable prescription drug coverage as defined by the federal Medicare law.

Medicaid Ticket to Work. Section 10.9 of S.L. 2006-66 delays until July 1, 2007, the effective date of the Medicaid Ticket to Work program established under G.S. 108A-54.1, requires DHHS to develop a plan for implementing the program, and requires DHHS to provide an implementation and fiscal impact report on the program to the Fiscal Research Division and the legislative health and human services appropriations committees by March 1, 2007.

Medicaid coverage policies. Section 10.4 of S.L. 2006-66 codifies, in new G.S. 108A-54.2, the requirements regarding the development or amendment of Medicaid coverage policies that were enacted by Section 10.11(2) of S.L. 2005-276. The newly codified provisions require DHHS (1) to

consult with and seek the advice of the North Carolina Medical Society's Physician Advisory Group, relevant professional associations or societies representing providers who are affected by Medicaid coverage policies, and other organizations when DHHS develops or amends Medicaid coverage policies; (2) to provide advance notice to all Medicaid providers of proposed new or amended Medicaid coverage policies; (3) to accept oral and written comments regarding proposed new or amended Medicaid coverage policies; and (4) to provide an additional notice and opportunity for comment to all Medicaid providers if a proposed Medicaid coverage policy is modified after the first comment period.

Increases in Medicaid provider payments. S.L. 2006-66 appropriates $12 million in recurring funding for inflationary increases in payments to Medicaid providers. Section 10.3A of S.L. 2006-66 requires the Secretary of Health and Human Services to develop a plan to allocate these funds among groups of Medicaid providers in accordance with the interim report of a study of Medicaid provider rates and to present the plan to and consult with the Joint Legislative Commission on Governmental Operations before submitting the plan to the Centers for Medicare and Medicaid Services no later than December 15, 2006. Section 10.11 of S.L. 2006-66 requires DHHS to develop a proposal for an equitable standard for providing inflationary increases and other cost-related increases to Medicaid service providers and to submit its recommendations to the Fiscal Research Division and the legislative health and human services appropriations committees by March 1, 2007. Section 10.11 of S.L. 2006-66 also requires the DHHS Division of Medical Assistance and the DHHS Office of Internal Auditor to study the reimbursement system for skilled nursing facilities, to develop recommendations regarding rebasing the payment rates for the 2006–07 fiscal year, and to report their recommendations to the Fiscal Research Division and the legislative health and human services appropriations committees by November 1, 2006.

Pharmacy management services. Section 10.9D of S.L. 2006-66, as amended by Section 13A of S.L. 2006-221, requires DHHS to study strategies for assisting pharmacists in providing pharmacy management services to Medicaid recipients who are enrolled in Medicare Part D, to assess the impact of the Deficit Reduction Act of 2005 on the payment for generic drugs under the Medicaid program, and to report its findings and recommendations to the Fiscal Research Division and the legislative health and human services appropriations committees by February 1, 2007.

Prescription drug dispensing fee. Section 10.9D of S.L. 2006-66 directs DHHS to supplement the Medicaid dispensing fee for prescription drugs if a decrease in the average manufacturer's price of prescription drugs during the period January 1, 2007, through June 30, 2007, results in estimated savings to the Medicaid program. The supplemental payment may not exceed the estimated average savings minus the administrative cost of implementing the supplemental payment. Implementation of the supplemental fee is contingent upon federal approval of an amendment to the state Medicaid plan, if approval is required. The supplemental fee may not be implemented before January 1, 2007, or after June 30, 2007.

Prescription drug dispensing cost. Section 44 of S.L. 2006-248 (H 1723) requires DHHS to determine the cost of dispensing a Medicaid prescription in the state by either (1) conducting a survey of pharmacy providers that participate in the state's Medicaid program or (2) using a recently conducted national survey of a statistically relevant sample of pharmacies. The act requires the department to report its findings to the Senate Appropriations Subcommittee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by March 1, 2007.

Dental administrative services. Section 10.9A of S.L. 2006-66 directs the DHHS Division of Medical Assistance to study the costs and benefits of implementing a carve-out of dental administrative services provided by third-party administrators for Medicaid and North Carolina Health Choice recipients and to report its findings and recommendations to the Fiscal Research Division and the legislative health and human services appropriations committees by March 1, 2007.

Payments for ocular prosthesis. S.L. 2006-198 (H 2037) clarifies the qualifications that an ocular prosthetist must have in order to be reimbursed by Medicaid.

Telemonitoring equipment in home care services. S.L. 2006-194 (S 1280) requires the Division of Medical Assistance to implement a pilot program for the use of telemonitoring equipment in home- and community-based services, to provide remuneration to home care agencies and other providers that

participate in the program, and to include a representative number of older adults in the program. S.L. 2006-194 also requires that the division's findings and recommendations regarding the cost-effectiveness of telemonitoring and the benefits to individuals and providers be reported to the Study Commission on Aging by August 1, 2007.

Long-term care partnership program. Section 10.10 of S.L. 2006-66 requires DHHS to develop a long-term care partnership program under the authority of 42 U.S.C. § 1396p(c) to reduce future Medicaid long-term care costs by delaying or eliminating dependence on Medicaid. The proposed program must be submitted to the Fiscal Research Division and the legislative health and human services appropriations committees for review and approval before it is submitted for federal approval.

Community Alternatives Program for Disabled Adults. S.L. 2006-109 (S 1276) directs DHHS to examine the Community Alternatives Program for Disabled Adults in response to issues identified in the Medicaid Institutional Bias Study. The department must make an interim report by August 30, 2006, and a final report by August 30, 2007, to the North Carolina Study Commission on Aging.

Community Care of NC. Section 10.7A(a) of S.L. 2006-66 amends Section 10.17(a) of S.L. 2005-276 to allow DHHS, in expanding the scope of the Community Care of NC care management model, to authorize one or more pilot projects to control costs and improve quality of care for aged, blind, and disabled Medicaid recipients.

Office of Rural Health and Community Care. Section 10.7A(b) of S.L. 2006-66 amends Section 10.14 of S.L. 2005-276 to allow DHHS to use funds appropriated for Medicaid cost-containment activities to provide grants through the Office of Rural Health and Community Care to plan, develop, and implement cost-containment programs.

State–County Special Assistance

Special Assistance and Personal Care Services Rates

Effective July 1, 2007, Section 10.9F of S.L. 2006-66 increases the maximum Special Assistance payment rate for adult care home residents to $1,148 per month. Section 10.9F also requires DHHS to recommend rates for the Special Assistance and Adult Care Home Personal Services programs using appropriate cost modeling methodology and cost reports submitted by adult care homes, to ensure that the standard for cost reporting for these programs is the same as that for other residential service providers and to assure coordination of the rates for these programs with the DHHS Division of Medical Assistance, the Division of Aging and Adult Services, and the Office of the Controller.

Special Assistance In-Home Services Program

S.L. 2006-156 (H 2576) authorizes DHHS to increase the maximum number of assignments to the Special Assistance in-home program to 1,500 persons.

Studies

Legislative Research Commission

Section 2 of S.L. 2006-248 authorizes the Legislative Research Commission to study a variety of subjects, including those listed below.

- Post-Adoption Contact (This study may evaluate the need to establish laws for post-adoption contacts or communication between an adopted child and a birth relative. Senate Bill 209, which would have made specific statutory changes relating to post-adoption contacts, did not pass.)
- Treatment Services and Funding for Drug Treatment Courts
- Trafficking of Persons (This study, originally proposed by House Joint Resolution 1461, may include identifying programs that provide services to victims of trafficking and developing

recommendations about methods of providing coordinated support and assistance to victims of trafficking.)
- System of Care Common Identifiers
- The Homestead Exemption
- Impact of Undocumented Immigrants (The study may assess the impact of undocumented immigrants in relation to social services systems, health care, education, criminal justice, corrections, and other issues specified in the act.)

The commission may report its findings and recommendations to the 2007 session of the General Assembly.

State Fair Housing Study

Section 33 of S.L. 2006-248 requires the North Carolina Human Relations Commission to study whether the State Fair Housing Act should be amended to make it an unlawful discriminatory housing practice to refuse to enter into a residential real estate transaction with a person based upon the fact that the person receives public assistance due to age or physical or mental disability. The act directs the commission to review other states' laws related to housing discrimination and determine the extent to which those laws protect certain forms of public assistance. The commission must consult with representatives of the residential real estate and residential rental community and must report any findings and recommendations to the 2007 General Assembly.

Child Care Studies

Sections 26 and 56 of S.L. 2006-248 create the Smart Start and Child Care Funding Study Commission and the Legislative Study Commission on Day Care and Related Programs. These are described in more detail in Chapter 4, "Children and Juvenile Law."

Miscellaneous

Housing

The General Assembly established more specific target income requirements that public housing authorities must apply in renting property and selecting tenants. S.L. 2006-219 (H 767) rewrites G.S. 157-29(b), effective August 8, 2006, to (1) create a basic targeting requirement that not fewer than 40 percent of families admitted to a public housing program from an authority's waiting list have incomes at or below 30 percent of the area median income, (2) establish a targeting requirement that not fewer than 75 percent of families admitted to an authority's tenant-based voucher program from its waiting list have incomes at or below 30 percent of the area median income, and (3) address the relationship between these two target requirements.

Assault on Handicapped Person

S.L. 2006-179 (S 488) amends G.S. 14-32.1(f) to make the crime of simple assault or battery on a handicapped person a Class A1, instead of Class 1, misdemeanor. The change applies to offenses committed on or after December 1, 2006.

Janet Mason

John L. Saxon

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State Government Ethics and Lobbying

One of the most significant pieces of legislation of the 2006 session was the State Government Ethics Act [S.L. 2006-201 (H 1843)]. The act makes the following major changes: (1) It codifies and expands Executive Order No. 1, which established certain ethical standards and disclosure requirements applicable to the executive branch of state government. (2) It revises the Legislative Ethics Act, which established ethical standards for members of the General Assembly, to make it consistent with the State Ethics Commission's responsibilities with respect to the General Assembly. (3) It makes further revisions to S.L. 2005-456, an expansion of the State Lobbying Act enacted in 2005. What follows is a discussion of the events leading to the adoption of the State Government Ethics Act and a summary of its key components.

The Lottery's Progeny

The enactment of the State Government Ethics Act in 2006 arose from the legislative activity leading up to the adoption of the state lottery in 2005. Immediately following the ratification of the State Lottery Act, the nine-member Lottery Commission was appointed. However, once the membership of the commission was announced, controversy arose over Commissioner Kevin Geddings, appointed by the Speaker of the House of Representatives. Although he was initially touted as the commission member "most familiar" with lotteries, soon after his appointment local media reported that Mr. Geddings had performed consulting work for Scientific Games, one of two vendors vying for the lottery contract, and had been paid $24,500 by the company in 2005. It was also reported that Mr. Geddings failed to disclose the payments received from Scientific Games on a statement of financial interest he filed with the North Carolina Board of Ethics. Amid the controversy over his ties to the lottery industry and his financial disclosures, Mr. Geddings eventually resigned from the Lottery Commission. As events unfolded, the lobbying activities of Meredith Norris, a former member of Speaker James B. Black's legislative staff and his campaign's unpaid political director, were brought into question. It was alleged that Ms. Norris acted as a lobbyist on behalf of Scientific Games but

failed to register as a lobbyist for that company. Finally, information concerning Michael Deckers's receipt of "blank payee" campaign contributions and his personal use of campaign contributions raised campaign finance concerns.

These unfolding events spotlighted several weaknesses in North Carolina's ethics and lobbying laws. Specifically, executive ethics was regulated by Executive Order No. 1, issued initially in 1977 by Governor James B. Hunt Jr. and reissued by subsequent governors, traditionally the first order announced by each administration. However, there was no statute that dealt specifically with executive branch ethics. Moreover, the Board of Ethics did not have the authority to impose civil or criminal penalties for violations of Executive Order No. 1. The only penalty available was removal from office. Once an official was no longer in office, the Ethics Board had no further power. Finally, the board's jurisdiction over officials serving on the myriad state boards was inconsistent, as it applied only to gubernatorial appointees or appointees of certain officials who elected to be covered by the Executive Order.

With respect to the regulation of the relationship between lobbyists and state officials and lawmakers, public interest groups and the media expressed concerns about the fact that North Carolina did not regulate so-called "goodwill" lobbying and did not place any restrictions on the goodwill gifts, trips, and dinners that could be accepted by public officials from lobbyists. In addition, there were increasing concerns about the manner in which campaign contributions and campaign spending were regulated.

Effective December 5, 2005, Speaker Black established the House Select Committee on Ethics and Governmental Reform, co-chaired by Representatives Joe Hackney and Julia C. Howard. Initially, the Select Committee was asked to determine whether the effective date of portions of S.L. 2005-456 (Amend Lobbying Laws) should be accelerated. The committee was also asked to consider whether Executive Order No. 1 should be codified and expanded to include all appointees to executive boards and commissions and to include penalties for misstatements on financial disclosures filed by executive officials. The Select Committee's charge was revised on February 20, 2006, to also include the involvement of lobbyists in political campaigns, the content of financial disclosures made by legislators, whether ethics training for legislators and legislative employees should be mandatory, the regulation of post-campaign spending of contributions, and the use of blank-payee checks.

The House Select Committee met six times beginning in January 2006. It accepted testimony from many stakeholders, including the North Carolina Board of Ethics, the North Carolina Board of Transportation, the Secretary of State, the Attorney General, the Commissioner of Insurance, lobbyists, the Director of the Wisconsin Ethics Board, and representatives from a number of public interest groups, including Democracy North Carolina, the North Carolina Coalition for Lobbying Reform, and North Carolina Fair Share. The Select Committee also formed three subcommittees to develop proposed legislation. Following the convening of the General Assembly on May 9, 2006, a total of ten bills were introduced. Upon the General Assembly's adjournment sine die on July 28, 2006, several of those bills had passed. S.L. 2006-201 (H 1843), titled the State Government Ethics Act, recodifies and expands the Legislative Ethics Act, G.S. Chapter 120, Article 32, and incorporates the provisions of H 1844, Executive Branch Ethics Act, and H 1849, Lobbying Reforms 2006. What follows is a discussion of the two chapters of the General Statutes enacted by S.L. 2006-201, Chapter 138A (State Government Ethics Act) and Chapter 120C (Lobbying).

State Government Ethics Act—G.S. Chapter 138A

Scope

The State Government Ethics Act divides public officials into different categories. The obligations imposed by the act vary according to each category. The two major categories are legislative employees and "covered persons." The State Ethics Board is required to periodically publish a list of the names and positions of all legislative employees and covered persons as well as all boards subject to the act.

Legislative employees include General Assembly employees and officers as well as consultants and counsel to General Assembly committees and commissions who are paid by state funds. A *covered person* is defined as a legislator, a judicial officer, or a public servant.

A *legislator* is a person elected, appointed, or serving as a member or presiding officer of the General Assembly. For purposes of the obligations imposed by G.S. Chapter 138A, the Lieutenant Governor is considered a legislator when presiding over the Senate and a public servant for all other purposes. A *judicial officer* is a person elected, appointed, or serving as a justice or judge, a district attorney, or a clerk of court. The term *public servant* includes all of the following:

- Individuals elected or serving as constitutional officers (the council of state)
- State department heads, chief deputies and administrators of all constitutional officers and department heads, and confidential assistants and secretaries of those department heads, deputies, and administrators
- Employees of the Office of the Governor
- Exempt policy-making employees as designated by the Governor and members of the council of state in accordance with the State Personnel Act, and confidential secretaries to those individuals
- Judicial employees (the director and assistant director of the Administrative Office of the Courts and Judicial Department employees who earn $60,000 or more, as designated by the Chief Justice)
- Voting members of nonadvisory boards created by statute or executive order, including ex officio members
- Voting members of the UNC Board of Governors, the president and vice presidents of the University of North Carolina, and the chancellors, vice chancellors, and voting members of the boards of trustees of UNC constituent institutions
- Voting members of the State Board of Community Colleges, the president and chief financial officer of the Community College System Office, the president, chief financial officer, and chief administrative officer of each community college, and the voting members of each board of trustees of those colleges
- Members of the State Ethics Commission
- Contractors working in a position classified as a public servant

State Ethics Commission

Article 2 of G.S. Chapter 138A creates the eight-member State Ethics Commission composed of four members appointed by the Governor and four members appointed by the General Assembly, two recommended by the Speaker of the House of Representatives and two recommended by the President Pro Tempore of the Senate. The commission is required to annually publish its advisory opinions and to publish a newsletter containing policies, procedures, opinions, and interpretive bulletins. The commission is specifically exempted from the rulemaking requirements of the Administrative Procedures Act. Articles 2 and 3 of G.S. 138A establish the commission's duties administering the following provisions.

Statements of Economic Interest

Article 3 of G.S. Chapter 138A requires that all covered persons file Statements of Economic Interest with the Ethics Commission. However, the following public servants are exempt from this requirement if their annual compensation is less than $60,000:

- Employees of the Office of Governor
- Confidential assistants and secretaries of state constitutional officers, principal state department heads, and chief deputies and administrative assistants
- Policy-making employees designated as exempt and their confidential secretaries
- Employees or appointees the Governor designates as public servants under the State Government Ethics Act

The Statement of Economic Interest must be filed before the appointment, election, or employment of a covered person, and no later than March 15 of each year thereafter. However, individuals newly appointed by new members of the council of state during the first sixty days of the member's term may file a Statement of Economic Interest within thirty days after appointment or employment. Candidates for offices covered by G.S. Chapter 138A are required to file Statements of Economic Interest upon filing their notices of candidacy. The Statement of Economic Interest must include a sworn certification that the statement is true, correct, and complete to the best of the person's knowledge.

G.S. 138A-24 requires the commission to prepare a written evaluation of each Statement of Economic Interest. The commission may authorize the executive director and staff of the commission to evaluate Statements of Economic Interest on behalf of the commission. G.S. 138A-23 provides that the Statement of Economic Interest and the commission's evaluations of those statements become public records upon the appointment or employment of the public servant. G.S. 138A-24 delineates the required content of the Statement of Economic Interest.

G.S. 138A-25 imposes a penalty of $250 for a covered person's failure to file a complete Statement of Economic Interest. Failure to file may also subject a person to disciplinary action, including removal from his or her position. In addition, it is a Class 1 misdemeanor for a person to knowingly conceal or fail to disclose information required on a Statement of Economic Interest and a Class H felony for a person to knowingly provide false information.

Ethics Complaints

G.S. 138A-12 authorizes the commission to receive and investigate complaints alleging unethical conduct by covered persons and legislative employees. In addition to investigating complaints alleging a violation of G.S. Chapter 138A, the commission is charged with considering complaints alleging violations of the Legislative Ethics Act, alleged criminal law violations by a covered person in the performance of official duties, and alleged violations of G.S. 126-14, prohibiting the coercion of certain state employees and applicants into supporting a particular political candidate. However, the act specifically requires the Ethics Commission to refer alleged violations of the Code of Judicial Conduct to the Judicial Standards Commission without investigation.

The procedure for processing ethics complaints is as follows:

1. Filing. A complaint must be filed with the commission within two years after the date the complainant knew or should have known of the conduct at issue. The complaint must be sworn, identify the person filing it and the person against whom it is filed, and include a concise statement of the violation asserted and the specific facts indicating that a violation of G.S. Chapter 138A or 120 has occurred. The commission must send a copy of the complaint to the covered person or legislative employee who is the subject of the complaint and to that person's employing entity with thirty days after it is filed.
2. Dismissal. The commission may dismiss any complaint that is untimely, fails to allege a violation of G.S. Chapter 138A or 120, or fails to allege facts sufficient to establish such a violation. The commission is also authorized to dismiss a complaint that is frivolous or brought in bad faith, duplicative of an earlier complaint, or more appropriately handled by other agencies or authorities, such as law enforcement agencies.
3. Preliminary inquiry. If a complaint is not dismissed, the commission is required to initiate an inquiry within sixty days after it is filed to determine if there is reason to believe that a violation has occurred or may occur. For complaints submitted against a public servant, if the commission determines that it has jurisdiction to consider the complaint and that there is probable cause to conclude that a violation has occurred or may occur, the commission will proceed with a hearing on the complaint. If probable cause is found for a complaint against another person, it is referred as follows: complaints against legislators, to the Legislative Ethics Committee; complaints against judicial officers, to the Judicial Standards Commission or other listed judicial authority; complaints against legislative employees, to the employer.
4. Commission hearing. During a hearing at which the commission considers a complaint brought against a public servant, the commission may consider testimony and exhibits,

including those presented by the public servant and commission staff. Violations must be proven by clear and convincing evidence.

5. Disposition. If the commission finds that a violation occurred, it may issue a private admonishment, refer the matter to the employing entity for appropriate action, or both. If requested by the employing entity, the commission may recommend appropriate sanctions or issue rulings as appropriate.

At all times in the process until sanctions are issued, complaint records are confidential unless the covered person requests that the records be made public. Upon the issuance of sanctions, the complaint, the response, and the commission's report to the employing entity are made public.

Advisory Opinions

G.S. 138A-13 requires the commission to issue written advisory opinions concerning the interpretation of G.S. Chapter 138A at the request of a public servant or a legislative employee, his or her supervisor, or an agency ethics liaison. The commission is also required to issue recommended advisory opinions to the Legislative Ethics Committee upon the request of a legislator. Reliance upon a written advisory opinion will immunize a public servant or legislative employee against investigation on the same matter by the commission or any adverse employment action by the person's employer. Moreover, until acted upon by the Legislative Ethics Committee, a written advisory opinion from the commission will immunize the legislator from investigation by the commission and any adverse action by the house of which the legislator is a member. The section on advisory opinions does not apply to judicial officers. G.S. 138A-13 requires that the request for an advisory opinion be in writing and relate to actual or reasonably anticipated circumstances.

G.S. 138A-13(c) also authorizes the commission's staff to issue advisory opinions pursuant to procedures adopted by the commission. The commission is required to publish its advisory opinions, along with advisory opinions issued by the Legislative Ethics Committee, at least annually. However, the commission must edit the opinions as necessary to protect the identity of persons requesting opinions.

Ethics Education

G.S. 138A-14 requires that within six months of employment, election, or appointment and every two years thereafter, a public servant and his or her immediate staff must participate in an ethics presentation approved by the commission. Legislators and legislative employees must also participate in an ethics presentation within three months after their election, appointment, or employment. Although the commission is required to offer refresher ethics training programs to legislators and legislative employees, there is no requirement that those individuals attend the refresher programs. Moreover, although lobbyists are encouraged to attend ethics programs, their attendance is not mandated.

Ethical Standards

Article 4 of G.S. Chapter 138A establishes the following standards of ethics that are applicable to different categories of public officials, as explained in detail below.

Use of position for private gain. G.S. 138A-31 prohibits a covered person or a legislative employee from using a public position in an official or legislative action that will result in financial benefit to that person or to a member of the person's extended family or a business with which the covered person or legislative employee is associated. The prohibition specifically excludes financial benefits provided on the same level as benefits offered to other state citizens and benefits that are so insignificant or speculative that they would not compromise a person's judgment.

The *extended family* includes the person's spouse, lineal descendant or ascendant, or sibling; the spouse's lineal descendant or sibling; and the spouse of any of these persons. A *business with which the person is associated* is a for-profit business (1) that employs the person or a member of the person's immediate family (spouse and family members living in the household); (2) in which the

person is a director, officer, partner, or proprietor; or (3) of which the person has a specified ownership interest. Notably, nonprofit businesses are not included in the term "business with which associated."

G.S. 138A-31 prohibits a covered person (but not a legislative employee) from using state funds for any advertisement or public service announcement that includes the name, picture, or voice of the covered person, with the following exceptions: (1) Internet advertisements and announcements and (2) announcements made during emergencies if the announcement is necessary to the covered person's official functions.

G.S. 138A-31 also prohibits a covered person (but not a legislative employee) from using his or her official position in nongovernmental advertising, with the following exceptions:

- Political advertising, news stories, or news articles
- The mention of the person's position in a directory or biographical listing
- Charitable solicitations for certain nonprofit business entities
- Disclosure of the person's position to an existing or prospective customer or supplier when the disclosure is material

Gift ban. G.S. 138A-32 prohibits the acceptance of certain gifts by public officials. The gift ban is one of the most significant new rules in the State Government Ethics Act. It is also one of the most complicated, due to the numerous exceptions and the fact that the restrictions vary depending on the recipient's position and the donor's status as a lobbyist or lobbyist principal.

G.S. 138A-3(15) defines *gifts* as "anything of monetary value given or received without valuable consideration" by or from a lobbyist, a lobbyist principal, or certain persons doing business with a public servant's employer. It is important to note that there is no de minimis exception to the definition of gift. However, the definition specifically excludes the following:

- Items for which the recipient paid full value
- Loans made on the same terms as are available to the general public
- Contracts or commercial relationships in the normal course of business and not for lobbying purposes
- Certain academic or athletic scholarships
- Campaign contributions that otherwise comply with state law

G.S. 138A-32(g) requires that prohibited gifts be declined. If the gift is initially accepted, the recipient must return it, pay fair market value for it, or immediately upon receipt donate it "to charity" or to the state.

G.S. 138A-32 imposes restrictions relating to five categories of gifts: quid pro quo gifts, charitable contributions, honorariums, gifts from lobbyists and lobbyists' principals, and gifts from interested parties. A covered person or a legislative employee is prohibited from accepting any quid pro quo gifts—that is, gifts specifically given in return for the person being influenced in his or her official duties. A covered person (but not a legislative employee) is prohibited from soliciting charitable contributions from subordinate state employees. The prohibition does not cover generic solicitations sent to all members of a class of employees or service as an honorary head of the State Employees Combined Campaign.

G.S. 138A-32(h) prohibits a covered person (including a judicial officer) or a legislative employee from accepting honorariums from outside entities if the person is attending the event on work time, the person is reimbursed by the state for meeting expenses, or the activity is related to the person's official job duties. The provision specifically permits acceptance of honorariums that do not meet these conditions and states that such honorariums do not constitute gifts.

A public servant, a legislator, or a legislative employee (but not a judicial officer) is prohibited from directly or indirectly accepting any gifts from a lobbyist or a lobbyist's principal. G.S. 120C-303 in turn prohibits a lobbyist or lobbyist principal from directly or indirectly giving a gift to a public servant, legislator, or legislative employee. A public servant (but not a legislator, a legislative employee, or a judicial officer) is also prohibited from directly or indirectly accepting any gifts from any person who (1) is doing or seeking to do business with the public servant's employing entity, (2) is conducting a business that is regulated or controlled by the employing entity, or (3) has a financial interest that may be substantially affected, to a greater degree than the general public, by the manner in which the public servant performs his or her duties.

G.S. 138A-32(e) exempts the following gifts from the gift ban (the exemptions do not apply if a gift is a quid pro quo gift):

- Food and beverage for immediate consumption at public events. Public events are defined differently for legislators and legislative employees than for public servants.
- Food, beverages, registration fees, travel expenses, and entertainment received by a covered person or legislative employee for attendance at certain educational meetings or meetings of legislative organizations if (1) the expenditures are made by a lobbyist's principal; (2) the food, beverages, and entertainment are provided to all attendees or a defined group of at least ten attendees; and (3) the entertainment is incidental to the primary purpose of the meeting.
- A plaque or similar "nonmonetary memento" recognizing individual services in a field or specialty or to a charitable cause.
- Gifts accepted on behalf of the state and for the state's benefit.
- Anything generally made available to the general public or all other state employees by lobbyists or lobbyists' principals.
- Gifts from extended family or members of the same household.
- Gifts given to a public servant that are associated with industry recruitment or the promotion of international trade or tourism, if the gifts are reported electronically to the Ethics Commission within a specified time period and tangible gifts are given to the Department of Commerce.
- Certain gifts under $100 in value that are given to a public servant while on a trade mission in another country.

A final exception, added during the last few days of the 2006 session, exempts gifts provided "as part of a business, civic, religious, fraternal, personal, or commercial relationship unrelated to the person's public service or position" if one could reasonably conclude the gift was not given for the purpose of lobbying.

G.S. 138A-32(f) provides that an otherwise prohibited gift received by a public servant will be considered to have been given to the state (and therefore not subject to the gift ban) if the gift would constitute "an expense appropriate for reimbursement" by the employer of the public servant if it had been purchased by the public servant and the public servant's employer approved the public servant's receipt of the items on behalf of the state.

Confidential information. G.S. 138A-34 prohibits a public servant or legislative employee (but not a legislator or a judicial officer) from using or disclosing nonpublic information obtained in the course of the person's position for the financial benefit of the person, the person's extended family, or a person or business with which the person is associated. G.S. 138A-34 also prohibits the improper use or disclosure of confidential information.

Conflict of interest in official actions. G.S. 138A-36 and G.S. 138A-37 prohibit both public servants and legislators from participating in official actions in which they have an economic interest, but the standards applicable to a public servant are more stringent. G.S. 138A-38 provides a number of exceptions to the participation restrictions, including when (1) the covered person has received a written advisory opinion from the State Ethics Commission or the Legislative Ethics Committee authorizing the participation, (2) the employing entity determines that there is not a conflict, or (3) the public servant is the only person with legal authority to take the action and the conflict is disclosed in writing.

G.S. 138A-36 prohibits a public servant from participating in an official action if (1) the public servant, a member of the public servant's extended family, or a business with which the public servant is associated has an economic interest in the action or it is "reasonably foreseeable" that they would benefit from the action, and (2) that interest would "impair the public servant's independence of judgment" or it could be reasonably inferred that the benefit would influence the public servant's participation in that action. If a conflict exists, the public servant must abstain from taking any verbal or written action in connection with the official action.

In addition, G.S. 138A-36(c) provides that if the public servant's impartiality "might reasonably be questioned due to a familial, personal, or financial relationship with a participant in a proceeding," the public servant must remove himself or herself from the proceeding as necessary to protect the public interest. If it is unclear to the public servant whether removal is necessary, the person presiding

over the proceeding is given the discretion to determine whether the public servant may participate. The presiding officer's determination may be challenged through a complaint to the State Ethics Commission.

G.S. 138A-37 prohibits a legislator's participation in a legislative action if (1) the legislator, the legislator's extended family, or an associated business has an economic interest in the action or may benefit from the action and (2) following a consideration of whether the legislator's judgment would be influenced and the need for the legislator's particular contribution, the legislator concludes that there is an economic interest that would impair the legislator's judgment.

Disqualifying interests. G.S. 138A-39 provides that if the State Ethics Commission determines that a public servant has an interest that would disqualify the public servant from serving in an official capacity, the public servant must eliminate the interest or resign from the public position. Such a decision by the commission is considered a final decision under the contested case provisions of the Administrative Procedure Act, G.S. Chapter 150B.

Nepotism. G.S. 138A-40 prohibits a covered person or a legislative employee from influencing an extended family member's employment or advancement to a state office or a position supervised by a public servant (except for certain General Assembly positions). State agencies may adopt more stringent ethics guidelines. Current examples of guidelines include those adopted by the Department of Transportation and the State Lottery Commission.

Lobbying—G.S. Chapter 120C

During the 2005 Session, the General Assembly enacted substantial lobbying reforms in S.L. 2005-456, which amended Article 9A of G.S. Chapter 120 (Legislative Branch Lobbying) and enacted new Article 4C of G.S. Chapter 147 (Executive Branch Lobbying), effective January 1, 2007. House Bill 1849, filed on the first day of the 2006 Session, combined the legislative and executive lobbying provisions into a single act and made several substantive changes to those provisions. As the session progressed, the provisions of House Bill 1849 were further revised and incorporated into S.L. 2006-201, the State Government Ethics Act.

Scope

New Chapter 120C of the General Statutes regulates *lobbying*, which is defined as influencing or attempting to influence legislative or executive action through (1) direct communication or activities with designated individuals or their immediate families or (2) the development of goodwill "through communications or activities, including the building of relationships," with designated individuals or their immediate families. A *designated individual* is a legislator, a legislative employee, or a public servant. *Lobbying* does not include contacts that are part of a business, civic, religious, fraternal, personal, or commercial relationship that is not connected to legislative or executive action.

A *lobbyist* is defined generally as a person who is employed or compensated to lobby, although an employee who spends less than 5 percent of his or her job duties lobbying in any thirty-day period is not considered a lobbyist. G.S. 120C-700 specifically exempts certain individuals from G.S. Chapter 120C, including the following:

- An individual expressing a personal opinion and not acting as a lobbyist
- An individual who appears before a committee, board, or other collective body that includes a designated individual at the group's invitation and who does not engage in further lobbying activities on that matter
- State, federal, and local officials whose actions are solely related to their public duties, except that officials designated as lobbying liaison personnel are not exempt from the requirements of G.S. Chapter 120C
- Members of a recognized news medium engaged in the gathering and publication of news
- Designated individuals acting in their official capacities

- A person who is responding to inquiries from a designated individual and does not conduct further lobbying activities
- A political committee or its employee or service provider

Article 5 of G.S. Chapter 120C creates a category of lobbyists called liaison personnel. *Liaison personnel* are state employees whose principal duties include lobbying for legislative action (but not executive action) on behalf of various state departments, boards, divisions, and units of government, including constituent institutions of the University of North Carolina. Each entity is limited to two liaison personnel. Liaison personnel are exempt from G.S. Chapter 120C, except they must register as lobbyists and file quarterly expenditure reports. They are also subject to G.S. Chapter 120C's gift restrictions. Article 5 includes a general prohibition against the University of North Carolina or its constituent institutions, and those institutions' liaison personnel, from giving athletic tickets to designated individuals for the purpose of lobbying.

Regulations

The requirements of G.S. Chapter 120C fall into four major categories: lobbyist registration, reporting of lobbying expenditures, lobbyist activity restrictions (including gift restrictions), and education. Initially, House Bill 1849 placed responsibility for enforcement of all of those provisions with the Secretary of State. However, during the final hours of the 2006 Session, the conference committee substitute transferred responsibility for lobbying education, advisory opinions, and enforcement of the lobbyist activity restrictions to the State Ethics Commission.

Registration and reporting. The lobbying registration requirements are included in Article 2 of G.S. Chapter 120C. G.S. 120C-200 requires that within one business day of engaging in lobbying, a lobbyist must file a separate registration statement for each principal the lobbyist represents. A lobbyist's principal is required to file a form authorizing a lobbyist to represent the principal. G.S. 120C-201 and 120C-207 set forth a single registration procedure for both executive and legislative lobbyists and for each lobbyist's principal. G.S. 120C-220 requires the Secretary of State to make registrations available in an electronic, searchable format and make lists of legislative lobbyists available in the State Legislative Library and to each designated person.

Article 2 imposes a fee of $100 per each lobbyist or principal registration. G.S. 120C-207(b) requires that the Secretary of State adopt rules allowing waiver or reduction of fees for organizations granted nonprofit status.

G.S. 120C-215 creates a new registration and reporting requirement for *solicitors*, defined as persons who are not lobbyists but who have incurred more than $3,000 during any ninety-day period for solicitation of others. *Solicitation of others* is defined as contacting a designated individual in order to influence legislative or executive action. The definition specifically includes contacts through mass media, Internet, mail, telephone, and direct communications.

Article 4 of G.S. Chapter 120C imposes expenditure reporting requirements. G.S. 120C-402 requires lobbyists to file quarterly reports when the legislature is not in session and monthly reports when the legislature is in session. The reports must include (1) reportable expenditures made for the purpose of lobbying, (2) solicitations of others costing more than $3,000, (3) reportable expenditures reimbursed to a lobbyist by the lobbyist's principal, and (4) all reportable expenditures for gifts that are given under the exceptions to the gift ban set forth in G.S. 138A-32(e). *Reportable expenditures* are generally defined as contracts with designated individuals and their immediate family members and any expenditure of more than $10 in value per designated individual per calendar day. Lobbyists' principals are required to file quarterly reports that include the same information as lobbyists' reports as well as details of the compensation paid to lobbyists.

Solicitors are also required to file quarterly reports that detail reportable expenditures made for the purpose of lobbying during the reporting period and solicitations of others with an aggregate cost of more than $3,000. Finally, Article 8 of G.S. Chapter 120 requires a person to report expenditures of more than $200 in a calendar quarter made to a designated individual for the purpose of lobbying, even if the person making the expenditures is not a lobbyist.

All expenditure reports filed with the Secretary of State are open to public inspection. The Secretary of State is responsible for systematically reviewing lobbying registrations and reports and is

authorized to conduct investigations of alleged violations of the registration and reporting requirements of G.S. Chapter 120. The Secretary of State may impose civil fines of up to $5,000 per violation of these provisions.

Lobbying restrictions. Article 2 of G.S. Chapter 120C requires a lobbyist to identify himself or herself as a lobbyist and disclose the identity of the principal before lobbying a designated individual. Article 3, enforceable by the State Ethics Commission, contains the following prohibitions:

- G.S. 120C-300 prohibits a lobbyist's compensation from being dependent on the result or outcome of legislative or executive action.
- G.S. 120C-301 prohibits any person from attempting to influence the actions of a designated individual by promising financial support of the individual's candidacy or in opposition to that candidacy.
- G.S. 120C-302 prohibits lobbyists (but not lobbyists' principals) from (1) making a contribution to a candidate or campaign committee when the candidate is a legislator or public servant (members of the council of state), or (2) collecting or delivering contributions from multiple contributors to that candidate or campaign committee (bundling). These contribution restrictions do not apply if the lobbyist is making a contribution to the lobbyist's own campaign committee.
- G.S. 120C-303 prohibits lobbyists and lobbyists' principals from directly or indirectly giving a gift to a designated individual, subject to the exceptions provided to the gift ban in the State Government Ethics Act.
- G.S. 120C-304(a)–(c) prohibit current and former members of the General Assembly, the Governor, a member of the council of state, or a head of a principal state department from being employed as a legislative lobbyist within six months after separation from employment or leaving office.
- G.S. 120C-304(d) prohibits a lobbyist from serving as a campaign treasurer or an assistant campaign treasurer for a political committee of a candidate for General Assembly, Governor, or council of state. G.S. 120C-304(e) also provides that a lobbyist is ineligible for appointment to any state body with regulatory authority over a person that the lobbyist currently represents or has represented within a certain time period.
- G.S. 120C-305 prohibits a designated individual or that person's immediate family from using the cash or credit of a lobbyist unless the lobbyist is present.

G.S. 120-601(a) authorizes the Ethics Commission to investigate complaints of violations of Article 3 of G.S. Chapter 120C. It is a Class 1 misdemeanor to willfully violate Article 3. In addition, a lobbyist convicted of violating G.S. Chapter 120C will be banned from acting as a lobbyist for two years. The Ethics Commission is also authorized to levy civil fines of up to $5,000 per violation.

Lobbying education program. G.S. 120C-103 requires that the Ethics Commission implement a lobbying education program. All designated individuals must participate in a lobbying presentation approved by the commission within six months of the person's election, appointment, or hiring, and every two years thereafter. Those programs must also be made available to lobbyists and their principals.

Rules and Advisory Opinions

G.S. 120C-101 requires that the Ethics Commission and the Secretary of State adopt any rules necessary to interpret and implement G.S. Chapter 120. Although the commission is specifically exempted from the rulemaking requirements of G.S. Chapter 150B, it must follow the procedures set out in G.S. 120C-101(c) before adopting a rule under G.S. Chapter 120C. G.S. 120C-102 requires the Ethics Commission to issue advisory opinions interpreting G.S. Chapter 120 in response to written requests that describe real or reasonably anticipated circumstances. Commission staff is also authorized to issue advisory opinions under procedures adopted by the commission.

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State Taxation

The General Assembly made numerous tax changes in 2006, including broad-based tax reductions, major changes to economic development incentives, a restructuring of the taxes on video programming services, and a multitude of more narrowly targeted tax reductions and incentives. The 2006 session also saw new attempts to close business tax loopholes as well as a host of tax administration adjustments.

Tax Reductions

Phaseout of Temporary Sales Tax and Income Tax

After several years of delays, the General Assembly began the process of phasing out the temporary additional one-half percent state sales tax and the temporary additional one-half percent income tax on upper-income individuals. Section 24.12 of the Appropriations Act of 2006, S.L. 2006-66 (S 1741), reduces the state sales tax rate from 4.5 percent to 4.25 percent effective December 1, 2006, and then to 4 percent effective July 1, 2007. The rate was originally increased from 4 to 4.5 percent in 2001 with a sunset date of July 1, 2003, but the sunset date was extended for two years in 2003 and for two more years in 2005. The 2006 change begins the phased sunset before the General Assembly has another chance to extend it.

Section 24.2 of S.L. 2006-66 provides for an earlier sunset in the higher income tax rate on individuals with state taxable income above $120,000 and married couples filing jointly with income above $200,000. The tax rate on these taxpayers will fall from 8.25 to 8 percent for the 2007 tax year and will be further reduced for the 2008 tax year to 7.75 percent, the same rate that applies to individuals with state taxable income above $60,000 and married couples filing jointly with income above $100,000. The extra one-half percent income tax was enacted in 2001 with a 2004 sunset; the sunset was extended to 2006 in 2003 and to 2008 in 2005. Perhaps because 2006 was an election year, the General Assembly characterized its accelerated sunset of the higher tax on individuals in the highest income brackets as an early reduction in the "rate applicable to most small businesses."

Motor Fuel Tax Cap

In a year that saw substantial increases in the price of oil and the price of gas at the pump, the General Assembly chose to place a temporary cap on the motor fuel excise tax rate. The motor fuel tax rate in G.S. 105-449.80 consists of two components: a flat rate of 17.5 cents per gallon plus a variable rate equal to the greater of 3.5 cents per gallon or 7 percent of the average wholesale price of motor fuel during a six-month base period. The variable rate for the period of January 1, 2006, through June 30, 2006, was 12.4 cents per gallon. Section 24.3 of S.L. 2006-66 provides that from July 1, 2006, through June 30, 2007, the variable component of the motor fuel tax rate may not exceed 12.4 cents. The General Assembly decided that the General Fund would bear the risk of any revenue reduction that may result from the cap on the motor fuel tax, which supports the Highway Fund and the Highway Trust Fund. Section 2.2(g) of S.L. 2006-66 reserves $22.9 million in the General Fund to reimburse the Highway Fund and the Highway Trust Fund for any revenue lost due to the motor fuel tax rate cap.

Manufacturing Electricity Sales Tax Reduction

Section 24.19 of S.L. 2006-66 reduces the state sales tax from 2.83 percent to 2.6 percent on electricity sold for use in manufacturing, effective July 1, 2007. To qualify for the 2.6 percent rate, the electricity must be separately metered. Electricity that is not separately metered is taxed at 3 percent.

Targeted Exemptions

S.L. 2006-19 (H 1938) exempts commercial logging machinery and related items from the sales tax and the equivalent privilege tax, effective July 1, 2006. The exemption applies to the following items if sold to a commercial logger: commercial logging machinery, attachments and repair parts for the machinery, lubricants applied to the machinery, and fuel to operate the machinery. These items were previously taxed at 1 percent, with an $80 maximum tax per article.[1] Commercial logging machinery is machinery used to harvest raw forest products for transport to first market. Examples of commercial logging machinery include log skidders, log carts, tree shears, feller bunchers, winches, chainsaws, tractors, axes, and mallets used to cut and transport timber to a wood products manufacturer.

S.L. 2006-216 (H 143) exempts the following activities from the 3 percent gross receipts privilege tax on amusements: all farm-related exhibitions, shows, attractions, and amusements offered on land used for bona fide farm purposes as defined in G.S. 153A-340. The exemption would apply to hayrides, animal exhibitions, farm pond fishing, cornfield mazes, and other similar attractions. G.S. 153A-340 defines bona fide farm purposes as the production of marketable agricultural products and activities related or incidental to production of these products. Examples of marketable agricultural products are crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, and poultry. The exemption was made retroactive to January 1, 1999, presumably to release the tax on a specific taxpayer.

Economic Development Tax Changes

The General Assembly was very active in the economic development arena in 2006. It enacted a major new system of tax credits for new and expanding businesses to replace the Bill Lee Act effective January 1, 2007. The General Assembly also enacted new or bigger incentives for a host of specific projects and industries: (1) private rehabilitation of certain historic facilities; (2) expenditures by movie, television, and radio production companies; (3) financial services and securities companies that invest at least $50 million; (4) motorsports racing teams and facilities; and (5) a $250 million facility to

1. The tax was originally a sales and use tax but was converted to an equivalent privilege tax effective January 1, 2006, in a technical adjustment designed to retain the tax without violating the requirements of the Streamlined Sales and Use Tax Agreement.

be constructed for use by an Internet service provider or Web search portal. Finally, the General Assembly granted retroactive tax benefits for an economic development district in Johnston County and a thread mill in Gaston County. These economic development tax changes are discussed in detail in Chapter 8, "Economic and Community Development."

Sales Tax

Video Programming Services

One of the most significant acts of the 2006 session was the Video Service Competition Act, S.L. 2006-151 (H 2047). Effective January 1, 2007, it provides for equal taxation of video programming services without regard to how the services are delivered and it replaces locally negotiated franchises of cable service provided over a cable system with a state-issued franchise.

Local governments had the authority under federal and state law to award franchises for cable television services and impose cable franchise taxes on cable providers of up to 5 percent of gross receipts. S.L. 2006-151 replaces the local cable television franchising system with a statewide video service franchising scheme and eliminates the authority of local governments to grant new, or renew existing, cable franchises and assess and collect cable franchise taxes. It replaces local revenues from the cable franchise taxes with a new distribution of shared state sales tax collections on telecommunications services, video programming services, and direct-to-home satellite services. The act also modifies the law governing public access (PEG) channels. The franchising, revenue distribution, and PEG changes are described in more detail in Chapter 15, "Local Government and Local Finance."

North Carolina began taxing communication services when the technologies enabling the services were distinct technologies and the providers of the services were separate taxpayers. Over the past several years, the technology used to provide these services has converged so that the line between the services is no longer distinct. The tax system that had evolved imposed a 7 percent sales tax on telecommunication services and on direct-to-home satellite service. Municipalities received a share of the tax on telecommunications but not on satellite service. Cable television services were also subject to a 7 percent sales tax but with a credit for any local franchise taxes paid on the service. Digital audio radio service was subject to a 4.5 percent state sales tax and a 2.5 percent local sales tax.

S.L. 2006-151 equalizes the taxes on video programming services by applying the state 7 percent sales tax to all video programming services, repealing the local authority to impose a franchise tax on cable services, and repealing the sales tax credit allowed to cable companies for local franchise taxes paid. The act preserves the local government revenue stream by distributing part of the sales tax revenues from telecommunications and video programming services to the counties and cities.

Video programming is defined as programming provided by, or generally considered comparable to programming provided by, a television broadcast station, regardless of the method of delivery. The term includes cable services offered over private rights-of-way as well as those offered over public rights-of-way. The 7 percent state sales tax applies to gross receipts derived from providing video programming to a subscriber in this state effective January 1, 2007. Although the term "video programming" includes broadcast services, the provision of these services would not be taxed unless the provider sells the service to subscribers and thus realizes gross receipts from the provision of the services.

Railway Cars

Section 24.13 of S.L. 2006-66 provides utility companies with the same refund for a portion of sales and uses taxes paid on purchases of railway cars and accessories that is currently available to interstate carriers for the same purchases. The formula for calculating the refund is based on the number of miles that the taxpayer operated the railway cars in the state as compared to the total miles, both inside and outside the state. Section 24.13 also establishes a special sourcing rule for periodic

payments by utilities for lease or rental of certain railway cars. The general rule for a railway car is that all periodic payments are sourced based on the location of receipt or delivery of the car if it is used in interstate commerce; if it is not used in interstate commerce, the second and subsequent payments are sourced based on the location of the car for the period covered by each payment. Section 24.13 provides that for utility company railway cars all payments will be sourced based on the location of delivery or receipt whether or not the car is used in interstate commerce.

Alcohol

G.S. 105-164.14 allows a variety of taxpayers sales and use tax refunds on certain purchases if qualifying requirements are met. Section 24A.1 of S.L. 2006-66 provides that purchases of alcoholic beverages may not qualify for a refund. An alcoholic beverage is one that contains at least 0.5 percent alcohol by volume, such as malt beverages, unfortified wine, fortified wine, spirituous liquor, and mixed beverages.

Administrative Changes

S.L. 2006-33 (H 1915) makes three administrative changes to the sales tax law: it incorporates several definitions from the Streamlined Sales Tax Agreement into North Carolina law, changes the tax payment requirements for semi-monthly sales taxpayers, and allows a credit for sales tax paid on tangible personal property that is added to a modular home and sold with the modular home.

Sections 1 through 8 of the act modify the definitions that apply to telecommunications services for sales and use tax purposes, effective January 1, 2007. The changes were made to adopt the definitions in the Streamlined Sales Tax Agreement (SSTA). The SSTA is part of an effort by states, with input from local governments and the private sector, to simplify and modernize sales and use tax collection and administration. The goal of the project is to enhance collection of sales and use taxes on interstate transactions. The project, which began in March 2000, is intended to achieve sufficient simplification and uniformity to encourage sellers to voluntarily collect tax on sales to participating states even if the seller does not have nexus there.

The definition changes are mainly technical and conforming. The change in the definition of *telecommunications service* will, however, result in Universal Service Fund surcharges and paging service charges becoming part of the sales price and therefore subject to tax.

S.L. 2006-33 makes a conforming change to the requirements for a certified automated system that a taxpayer may use to collect sales and use taxes for all states under the SSTA. A *certified automated system* is a software program certified by the Secretary of Revenue as being able to correctly determine the applicable state and local sales tax rate. The act deletes a condition that is not part of the SSTA.

S.L. 2006-33 also simplifies tax filing for retailers that are liable for at least $10,000 a month of sales tax, electric utility tax, or piped natural gas excise tax. The act replaces the semimonthly payment schedule with a single monthly payment that includes a prepayment of the next month's liability. On the twentieth of each month, the taxpayer pays any amount remaining due for the preceding month and 65 percent of the amount estimated to be due for the current month. The new schedule will be simpler and eliminates the need for underpayment penalties because taxpayers will have more time to gather data before filing a return.

Tax Credits

In addition to the economic development tax credit changes discussed in Chapter 8, "Economic and Community Development," the 2006 General Assembly enacted some new tax credits and modified several existing tax credits. Section 24.4 of S.L. 2006-66 enacts a new tax credit for small businesses that provide employee health insurance, effective beginning with the 2007 tax year. The credit is allowed to a taxpayer that employs no more than twenty-five full-time employees and provides health insurance for all of its employees who work at least thirty hours a week. The taxpayer

is considered to provide health insurance for an employee if the taxpayer pays at least half of the premiums for basic health care coverage for the employee or if the employee has existing coverage that provides benefits equivalent to basic health care coverage. The amount of the credit is the first $250 of annual cost to the taxpayer of providing health insurance for each employee with an annual salary of no more than $40,000. The credit is in addition to the income tax deduction a taxpayer may take for providing health insurance for employees. The credit may be taken against either income tax or franchise tax and is limited to 50 percent of the taxpayer's tax liability. Any unused portion of the credit may be carried forward for five years. The new credit is set to expire January 1, 2009.

The income tax credits in G.S. 105-151.12 and G.S. 105-130.34 are allowed to individual and corporate taxpayers that make a qualified donation of an interest in North Carolina real property that is useful for conservation purposes. In S.L. 2001-335, the General Assembly corrected and clarified the general law governing allocation of partnerships' tax credits, so that any dollar amount limitation on a credit applies to the total credit allowed to a partnership. The limited amount is then allocated among the partners on a proportional basis. Before this change, the limit applied separately to each partner. The 2001 act delayed this dollar amount limitation until 2005 for partnerships that are allowed a credit for real property donations. In 2004, the limitation was further delayed until 2006. Section 24.15 of S.L. 2006-66 postpones for one more year, until 2007, the imposition of the dollar amount limitation on partners taking this credit.

Section 9 of S.L. 2006-18 (H 1892) conforms the amount of the credit for child care and certain employment-related expenses to the amount allowed for the corresponding federal credit, effective beginning with the 2006 tax year. North Carolina allows an income tax credit to a taxpayer who is eligible for the federal credit for child-care and employment-related expenses. The amount of each credit is based on a percentage of the expenses, up to a maximum amount. For the state credit, the maximum amount of expenses was $2,400 when there is one qualifying individual in the household and $4,800 when there is more than one qualifying individual. Until 2003, these maximum amounts were the same as the federal maximum amounts. In 2003, the federal maximums increased to $3,000 and $6,000, respectively. Section 9 increases the state maximums to the federal amounts. It also clarifies that the amount of expenses used in calculating the credit may not include any expenses excluded from gross income.

S.L. 2006-66 expands tax credit incentives for certain renewable fuel businesses. Section 24.7 extends from January 1, 2008, to January 1, 2011, the sunset on the credits for constructing renewable fuel production facilities and constructing renewable fuel dispensing facilities. Section 24.7, as amended by Section 19.5 of S.L. 2006-259 (S 1523), also creates a more generous credit if the taxpayer invests at least $400 million in three separate facilities over a five-year period. The details of the enhanced credit are apparently tailored to fit a specific project. A taxpayer may not claim both credits with respect to the same facility. Section 24.8 of S.L. 2006-66 enacts a new tax credit for providers of 100 percent (not blended) biodiesel that produce at least 100,000 gallons of biodiesel during the taxable year. The amount of the credit is equal to the per gallon motor fuel tax paid by the producer on the biodiesel, not to exceed $500,000 a year. The credit may be claimed against income tax or franchise tax, is limited to 50 percent of the amount of tax liability against which it is claimed, and has a carryforward period of five years. The credit sunsets January 1, 2010.

The Division of Marine Fisheries of the Department of Environment and Natural Resources operates a voluntary oyster shell donation program. In addition, the division purchases oyster shells in very large quantities from shucking houses at a negotiated price of 50 cents per bushel. Recycled oyster shells can be used for landscaping, to manufacture nutritional supplements, and to be placed in sanctuaries or estuaries for restoration of oyster populations. Beginning October 1, 2009, oyster shells may not be disposed of in landfills.

Section 24.18 of S.L. 2006-66 enacts a nonrefundable income tax credit of $1 per bushel of oyster shells donated to the Division of Marine Fisheries. The credit may be carried forward for five years. The taxpayer may not claim a deduction for any oyster shells for which the credit is claimed. The credit is effective beginning with the 2006 tax year and is set to expire in 2011.

Corporate and Business Taxes

Royalty Income

In 2001 the General Assembly enacted G.S. 105-130.7A, which restates that a company's receipts from royalty payments for the use of trademarks in North Carolina are income from doing business in North Carolina and provides adjustments to assure full and fair accountability of this income in relationship to where it is actually earned. Effective beginning with the 2006 tax year, Section 24A.3 of S.L. 2006-66 expands G.S. 105-130.7A to include royalties for the use of patents and copyrights in North Carolina. In cases where the recipient of the North Carolina royalty income is unrelated to the payer, the recipient is required to pay tax on the income to North Carolina. In cases where the recipient and the payer are related, they have an option on how the income is reported to North Carolina. Either the payer can deduct the North Carolina royalty payments on its North Carolina return and the recipient can include them on its North Carolina return, or the payer can add them to its North Carolina income and the recipient can deduct them on its North Carolina return. Section 10 of S.L. 2006-196 (S 1891) further amends G.S. 105-130.7A to clarify that the payer is not required to add royalties to its North Carolina income if the related recipient is a foreign corporation that paid an equivalent tax on the royalties to a country that has a tax treaty with the United States.

Franchise Tax

The franchise tax is levied on S Corporations and C Corporations for the privilege of doing business in North Carolina. The tax rate is $1.50 per $1,000 of value of the greatest of (1) apportioned net book value of the corporation, (2) 55 percent of appraised value of real and tangible personal property in the state, or (3) total actual investment in tangible property in the state. The General Assembly enacted S.L. 2001-327 to close a franchise tax loophole whereby a corporation, subject to North Carolina franchise tax, could set up a single-member limited liability company (LLC), transfer assets to the LLC in a tax-free transfer, and avoid paying taxes on the transferred assets because LLCs were not subject to the franchise tax. The 2001 law evolved into G.S. 105-114.1 as the General Assembly wrestled with further loopholes and problems with the law in 2002 and 2004.

Effective beginning with the 2007 tax year, Section 24A.2 of S.L. 2006-66 further amends G.S. 105-114.1 and the franchise tax law to close another loophole in the franchise tax. In general, G.S. 105-114.1 requires a corporation to pay franchise tax on the assets of an LLC that it controls. The income tax law provides that an LLC may be disregarded and treated as a division of its parent; an out-of-state parent company of a North Carolina LLC is thus considered to own property in North Carolina and therefore has nexus, subjecting it to income and franchise tax, including the attribution rules of G.S. 105-114.1. The loophole addressed by S.L. 2006-66 arises if an out-of-state parent of a North Carolina corporation converts the corporation to an LLC but has it elect to file income taxes as a C Corporation. The North Carolina LLC is not required to pay franchise taxes on its assets and, if it elects to file income taxes as a C Corporation, no nexus is created for the out-of-state parent, so the parent cannot be required to pay franchise tax under G.S. 105-114.1. S.L. 2006-66 closes this loophole by providing that an LLC that elects to file income taxes as a C Corporation is also treated as a C Corporation for purposes of the franchise tax.

Section 9 of S.L. 2006-196 makes a conforming change to the definition of *holding company* for franchise tax purposes, in order to recognize that LLCs have voting capital interests rather than voting stock. The maximum franchise tax on holding companies, which may be corporations or LLCs, is $75,000 a year.

Effective beginning with the 2007 tax year, Part I of S.L. 2006-95 (S 1283) clarifies the treatment of deferred tax assets in the computation of the franchise tax capital base. The act amends G.S. 105-122(b) to provide that deferred tax liabilities may be reduced, but not below zero, by their corresponding deferred tax assets. The act also reorganizes and modernizes the language of the statute.

S Corporations

S.L. 2006-17 (H 1898) provides that corporate income tax adjustments do not apply to S Corporations, effective beginning with the 2007 tax year. The act amends the S Corporation Income Tax Act and the Individual Income Tax Act to provide that an individual's pro rata share of income from an S Corporation is subject only to individual income tax adjustments, rather than to both individual and corporate income tax adjustments. The act also makes a conforming change to require shareholders to add to North Carolina taxable income the amount of the federal built-in gains tax that the shareholder was allowed to deduct for federal tax purposes to offset the amount of the federal built-in gains tax imposed on the S Corporation. Because North Carolina does not impose a built-in gains tax on the S Corporation, no offsetting deduction is needed for the shareholder.

Individual Income Tax

In addition to starting the phase-down of the additional one-half percent income tax on upper-income individuals, S.L. 2006-66 makes two changes to the individual income tax. Effective beginning with the 2006 tax year, Section 24.11 allows a married couple the option of filing jointly if the couple files a federal joint return and if one spouse is a nonresident with no income from North Carolina. Because North Carolina does not have jurisdiction over the nonresident spouse, the law can permit but not require a joint return. If each spouse is either a resident or has North Carolina income, a married couple that files a federal joint return is required to file a joint North Carolina return.

Section 24.12 of S.L. 2006-66, as amended by Section 27 of S.L. 2006-198, allows certain individuals to deduct amounts contributed to an account in the Parental Savings Trust Fund. To qualify for the income tax deduction, the individual must have adjusted gross income below $60,000 ($100,000 for married couples filing jointly). For the 2006 tax year, the amount of the deduction is capped at $750 for single filers and $1,500 for married couples filing jointly. Beginning in the 2007 tax year, the caps are $2,000 and $4,000, respectively. The deduction is repealed beginning in 2011. The Parental Savings Trust Fund is a qualified tuition program under Section 529 of the Internal Revenue Code. Distributions from qualified tuition programs are excludable from taxable income to the extent the distributions are used to pay for qualified higher education expenses. The Parental Savings Trust Fund deduction allowed by Section 24.12 must be added back to taxable income if the amount is withdrawn from the fund but not used to pay for qualified higher education expenses of the designated beneficiary, unless the withdrawal was made because of the death or permanent disability of the beneficiary.

Tax Administration

Internal Revenue Code Reference Update

North Carolina's tax law tracks many provisions of the federal Internal Revenue Code by reference to the code.[2] The General Assembly determines each year whether to update its reference to the Internal Revenue Code.[3] Updating the Internal Revenue Code reference makes recent amendments

2. North Carolina first began referencing the Internal Revenue Code in 1967, the year it changed its taxation of corporate income to a percentage of federal taxable income.

3. The North Carolina Constitution imposes an obstacle to a statute that automatically adopts any changes in federal tax law. Article V, Section 2(1) of the constitution provides in pertinent part that the "power of taxation . . . shall never be surrendered, suspended, or contracted away." Relying on this provision, the North Carolina court decisions on delegation of legislative power to administrative agencies, and an analysis of the few federal cases on this issue, the Attorney General's Office concluded in a memorandum issued in 1977 to the director of the Tax Research Division of the Department of Revenue that a "statute which adopts by reference future amendments to the Internal Revenue Code would . . . be invalidated as an unconstitutional delegation of legislative power."

to the code applicable to the state to the extent that state law tracks federal law. The General Assembly's decision on whether to conform to federal changes is based on the fiscal, practical, and policy implications of the federal changes and is normally enacted in the following year, rather than in the same year the federal changes are made. Under North Carolina law prior to the enactment of S.L. 2006-18, the reference date to the code was January 1, 2005. Section 1 of S.L. 2006-18 changes the reference date to January 1, 2006. Updating the reference date to January 1, 2006, incorporates the federal changes to the code enacted during 2005. As required by the North Carolina Constitution, the act delays until January 1, 2006, the incorporation of any federal changes that would increase North Carolina taxable income retroactively for an earlier tax year.

There were four major pieces of federal legislation that amended the Internal Revenue Code in 2005: the Energy Tax Incentive Act of 2005 (P.L. 109-58); the Safe, Accountable, Flexible, Efficient (SAFE) Transportation Equity Act of 2005 (P.L. 109-59); the Katrina Emergency Tax Relief Act of 2005 (P.L. 109-73); and the Gulf Opportunity Zone Act of 2005 (P.L. 109-135). The tax changes made by the SAFE Transportation Equity Act have little impact on North Carolina taxes. The remaining three federal acts, however, made numerous changes that will affect North Carolina taxes for individuals, businesses, and other entities; those changes are described in detail in *2006 Finance Law Changes,* written by the legislature's tax staff and available on the Web at www.ncleg.net/LegislativePublications/.

Motor Fuel Tax Administration

S.L. 2006-162 (H 1963) makes a number of changes to the laws governing administration of the motor fuel tax. Section 12(c) repeals provisions that formerly required that civil penalties collected for violations of the motor fuel tax laws and the motor carrier laws be credited to the Highway Fund. Instead, the proceeds of these penalties are credited to the Civil Penalty and Forfeiture Fund as required by *North Carolina School Boards Assn. v. Moore*, 359 N.C. 474, 614 S.E.2d. 504 (2005). In the *Moore* case, the North Carolina Supreme Court held that the penalties assessed under G.S. Chapter 105 are imposed as a monetary payment for a taxpayer's noncompliance with a mandate of the Revenue Act, that they are punitive in nature, and that they are therefore subject to Article IX, Section 7, of the North Carolina Constitution, which requires civil penalties to be remitted to the Civil Penalty and Forfeiture Fund for use by the schools.

Section 13 of S.L. 2006-162 extends the authority of the Department of Revenue to cross-match information relating to motor fuel, so that it may now monitor intrastate movement of fuel in addition to fuel moving in or out of North Carolina. Effective July 1, 2007, the section provides that anyone who transports fuel must be licensed as a transporter and that all transporters must file informational returns on all movements of motor fuel.

Effective January 1, 2007, Section 14 of the act repeals the authority of licensed distributors and importers to use exempt cards at the terminal rack to remove fuel without paying tax. Instead, they will be able to obtain a monthly refund on any sales of fuel to exempt entities (the federal government, the state, local boards of education, charter schools, community colleges, counties, municipalities, and airports). This change conforms North Carolina law to the laws of the surrounding states that do not allow untaxed gasoline or undyed fuel to leave their terminals without the imposition of the tax. Effective January 1, 2007, Section 15 provides a common due date of the twenty-second day of the month for all motor fuel tax and informational returns.

Additional Gross Premiums Taxes on Fire and Lightning Coverage

Under prior law, G.S. 105-228.5(d)(3) imposed an additional statewide tax of 1.33 percent on gross premiums on insurance contracts that provide fire and lightning coverage, other than marine and automobile policies. G.S. 105-228.5(d)(4) imposes an additional local fire and lightning tax at 0.5 percent, which applies only to coverage within fire districts but has no exception for marine or automobile policies. Effective January 1, 2006, S.L. 2006-196 temporarily revises the statewide fire and lightning tax so that the percentage of gross premiums subject to the tax varies according to the type of insurance policy, as follows: (1) fire loss—100 percent; (2) nonliability portion of commercial

multiple peril—100 percent, liability portion—0 percent; (3) homeowner's—50 percent; (4) farm owner's—30 percent. These percentages are consistent with how the tax had been administered before 2006.

Effective January 1, 2008, S.L. 2006-196 repeals the statewide and local fire and lightning taxes and replaces them with a simpler and broader tax that applies to property coverage. The tax rate is 0.85 percent applied to 100 percent of premiums for property coverage and 10 percent of premiums for automobile physical damage. S.L. 2006-196 also changes the way the tax proceeds are distributed, effective January 1, 2008. The act directs the Revenue Laws Study Committee to study the rewrite of the fire and lightning tax and the distribution of its net proceeds.

Other Technical and Administrative Changes

S.L. 2006-18 reduces from two years to six months the period of time in which a taxpayer must report a federal change. Taxpayers are required to report federal changes because North Carolina estate, gift, and income taxes are, to varying degrees, based on amounts determined with respect to federal law. The six-month deadline provided by this act conforms to the Multistate Tax Commission's model uniform statute for reporting federal changes, which is intended to bring uniformity to this issue among the states.

S.L. 2006-18 conforms the state filing date to the federal filing date for income tax returns of nonresident aliens, effective beginning with the 2006 tax year. Federal income tax returns for nonresident aliens are due June 15 for calendar year taxpayers. Under prior law, the North Carolina income tax return for a calendar year taxpayer would be due March 15 (corporations) or April 15 (individuals). Because the North Carolina return is based on the federal return, these dates created a compliance burden for nonresident aliens. S.L. 2006-18 makes the filing date the same as the federal date.

S.L. 2006-162 makes numerous technical, clarifying, and administrative changes to the revenue laws and related statutes. These changes are described in detail in *2006 Finance Law Changes*, written by the legislature's tax staff and available on the Web at www.ncleg.net/LegislativePublications/.

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