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Editor's Preface

The 2002 edition of *North Carolina Legislation* is the thirty-ninth periodic summary of legislation published by the UNC Chapel Hill School of Government's Institute of Government. From 1955 through 1973 these summaries were published in a special issue of *Popular Government*. Since 1974 the summary has been published annually as a separate publication.

North Carolina Legislation 2002 is a comprehensive summary of legislation enacted by the North Carolina General Assembly. It is intended to cover all legislation of interest and importance to state and local government officials. The book is organized by subject matter and divided into twenty-three chapters. In some instances, to provide different emphases or points of view, the same legislation is discussed in more than one chapter. With two exceptions, School of Government faculty members with expertise in the particular fields wrote each chapter in this book. The two exceptions are Chapter 12, "Information Technology," which was written in part by staff members of the North Carolina League of Municipalities and the North Carolina Association of County Commissioners, and Chapter 23, "State Taxation," which was written by members of the General Assembly's professional staff.

The text of all bills discussed in this book may be viewed on the Internet at the General Assembly's Web site: http://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 fiscal impact of the bill.

While comprehensive, this book does not summarize every legislative enactment of the 2002 General Assembly. For example, some important topics that do not have a substantial impact on state or local governments, such as business regulation or insurance, are not discussed at all. Local legislation of importance to a single jurisdiction often is given only brief coverage. Readers who need information on public bills not covered in this book may wish to consult *Summaries of Substantive Ratified Legislation, 2002 General Assembly,* which contains brief summaries of all public laws enacted during the 2002 session. That compilation in published by the General Assembly's Research Division and is posted on the Internet at the General Assembly's Web site. A list of General Statutes affected by 2002 legislation, prepared by the General Assembly's Bill Drafting Division, is also online at the same site.

The Institute of Government also publishes two separate reports, *Final Disposition of Bills* and the *Index of Legislation,* that provide additional information with respect to public and private bills considered in 2002. These publications can be purchased through the Institute's Publications Sales Office (telephone: 919.966.4119; e-mail: sales@iogmail.iog.unc.edu).

Each day that the General Assembly is in session, the Institute's Legislative Reporting Service publishes the *Daily Bulletin*. It includes summaries written by Institute of Government faculty members of every bill and resolution introduced in the state House and Senate, summaries of all amendments and committee substitutes adopted by the House and Senate, and a daily report of all action taken on the floor of both chambers relative to legislation. The *Daily Bulletin* is available by paid subscription, with delivery via U.S. mail, fax, or e-mail. For information on subscriptions, contact the Institute's Publications Sales Office (telephone: 919. 966.4119; e-mail: sales@iogmail.iog.unc.edu).

Throughout this book, references to legislation enacted during the 2002 legislative session are cited by the Session Law number of the act (for example S.L. 2002-126), followed by a parenthetical reference to the number of the Senate or House bill (for example S 1115) that was enacted. As a general matter, the effective date of new legislation is not noted if it is prior to 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).

William A. Campbell

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The General Assembly

After protracted deliberations, the 2002 General Assembly enacted the bill to modify the state budget and a number of other significant pieces of legislation. But it may be that nothing the General Assembly did will have as much impact on the future of policy and politics in the state as what the courts did to the General Assembly in imposing redrawn House and Senate legislative districts.

Extra Session—Legislative Redistricting

The 2001 General Assembly adopted new legislative districts for the House and Senate to reflect population changes reported in the 2000 census, as required by Article II, sections 3 and 5, of the North Carolina Constitution. These districts were challenged as unconstitutional by several Republican legislators and other members of the Republican Party, in a suit filed in the Superior Court of Johnston County. Superior Court Judge Knox V. Jenkins Jr. held the districts to be unconstitutional, and the North Carolina Supreme Court affirmed this decision in Stephenson v. Bartlett, 355 N.C. 354, 562 S.E.2d 377, decided April 30, 2002.

On May 7, 2002, Governor Easley called an extra session of the General Assembly for the purpose of adopting new redistricting plans, and the extra session convened on May 14, 2002. Both the House and Senate plans were adopted by May 21, 2002. The redistricting plans were again challenged in court, and this time Judge Jenkins rejected the General Assembly's plans and imposed his own, which were used in the November 5, 2002, elections. As of this writing, the North Carolina Supreme Court has not ruled on the validity of the plans drawn by Judge Jenkins. The extra session adjourned on November 26, 2002. Chapter 7, "Elections," contains a comprehensive discussion of the General Assembly's redistricting plans and the litigation over those plans.

Overview of the 2002 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 for several months, and then adjourning *sine die*. Prior to 1974, legislative sessions in even-numbered years of the biennium were special 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 1973–1974 biennium, the General Assembly adopted the practice of holding annual sessions. The General Assembly convenes in January of odd-numbered years. In these "long sessions," which generally run through mid-summer, 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 midsummer. In the short session, the General Assembly considers adjustments for the second year of the biennial and generally deals with bills that have passed one house and with a limited number of additional noncontroversial matters. Legally, the short session is a continuation of the long session.

Although the 2002 session was a relatively long one—convening on May 28 and adjourning on October 4—it was not the lengthiest short session; the 1998 session holds that record. Table 1-1 shows the length of the 2002 regular session as compared to the length of the short sessions of the last ten years. There were significantly fewer Senate legislative days than House legislative days in 2002 because, beginning in August, the Senate did not hold a session every day. Instead, the Senate convened only when there was a substantial amount of business to take up or for a pro forma session every third day to meet the requirement of G.S. 120-3.1 for payment of subsistence and travel allowances. Many Senators, however, declined to accept payment of their per diem expenses during that period.

Table 1-1. Length of Legislative Sessions

Year	1992	1994	1996	1998	2000	2002
Date Convened	May 26	May 24	May 13	May 11	May 8	May 28
Date Adjourned	July 25	July 17	June 21	Oct. 29	July 13	Oct. 4
Senate Legislative Days	41	35	25	101	40	69
House Legislative Days	42	35	27	100	40	77

The 2001 adjournment resolution provided that bills on the following matters could be considered in the 2002 session:

- bills directly affecting the budget for fiscal year 2002–2003, provided the bill was introduced by June 13, 2002;
- bills introduced in 2001 that passed third reading in the house of introduction and were not unfavorably disposed of in the other house;
- bills implementing recommendations of study commissions, commissions directed to report to the General Assembly, the House Ethics Committee, or the Joint Legislative Ethics Committee, provided the bill was introduced by June 5, 2002;
- noncontroversial local bills, provided the bill was introduced by June 12, 2002;
- bills making appointments;
- bills authorized for introduction by a two-thirds vote of both houses;
- bills affecting state or local pension or retirement programs, provided the bill was introduced by June 12, 2002;
- bills proposing constitutional amendments; and
- resolutions regarding state government reorganization, memorial resolutions, resolutions disapproving administrative rules, and adjournment resolutions.

In the 2002 regular session, 706 bills were introduced. Of these, 190 were enacted as session laws, 18 as joint resolutions, 8 as House resolutions, and 1 as a Senate resolution. One bill was vetoed. These numbers are generally consistent with those of previous short sessions, although this

was the only short session in the past ten years in which more local bills than public bills became law. Table 1-2 compares the number of introductions and enactments in 2002 with those of short sessions for the past ten years.

Table 1-2. Statistical Analysis of Legislative Short Sessions

Year	1992	1994	1996	1998	2000	2002
Bills & Resolutions Introduced	683	1,062	911	1,036	760	706
Senate	311	427	442	516	383	368
House	372	635	469	520	377	336
Session Laws Enacted	282	220	222	229	191	190
Public Laws	166	116	113	135	118	80
Local Laws	116	104	109	94	73	110
Bills Vetoed	NA	NA	NA	0	0	1

Major Legislation Enacted in 2002

Among the major items of legislation enacted in the 2002 regular session are the following, each of which is discussed in detail in other chapters, as indicated:

- **Budget modifications.** S.L. 2002-126 modifies the 2002–2003 state budget, making reductions of $464 million (Chapter 2).
- **Address confidentiality program.** S.L. 2002-171 establishes an address confidentiality program for victims of domestic violence, stalking, and sex offenses (Chapter 5).
- **Incentives program.** S.L. 2002-172 establishes a new incentives program to recruit businesses to the state (Chapter 4).
- **Appellate judgeships—public campaign financing and nonpartisan races.** S.L. 2002-158 provides for public financing of appellate judgeship election campaigns and makes those races nonpartisan beginning in 2004 (Chapters 5 and 7).
- **Sales tax authority.** S.L. 2002-123 allows local governments to enact an additional 0.5 percent sales tax effective December 1, 2002 (Chapter 15).
- **Bioterrorism.** S.L. 2002-179 establishes a bioterrorism preparedness program (Chapter 10).
- **Diabetes care plans**. S.L. 2002-103 requires the state to adopt guidelines for the development and implementation of individualized care plans for schoolchildren with diabetes (Chapter 8).
- **Toll roads.** S.L. 2002-133 provides for the establishment of as many as three toll roads in the state (Chapter 14).
- **Utilities regulation.** S.L. 2002-4 provides for the adoption of a regulatory program to require electric utilities to reduce their emissions of certain air pollutants (Chapter 9).

Significant Bills That Failed to Pass

The 2002 General Assembly failed to enact a number of bills that were introduced to deal with issues viewed by many legislators and citizens as significant problems facing the state. Among those bills were the following:

- S 94 (proposed constitutional amendment), setting time limits on the length of legislative sessions and four-year terms for legislators—passed the Senate but failed second reading in the House;
- S 2, mandating an advisory referendum on the question of a state-sponsored lottery—passed the Senate but failed second reading in the House;

- H 1507, H 1531, H 1547, H 1601, H 1606, S 1192, and S 1314, increasing the tax on cigarettes (currently five cents per package, the third lowest cigarette tax in the nation)—no bill received a vote on the floor of either chamber;
- S 1008, banning video poker—passed the Senate, postponed indefinitely in the House;
- H 62 and H 74, regulating the use of cellular telephones while driving—both bills postponed indefinitely in the House; and
- H 1608, revising payday lending regulations—postponed indefinitely in the House.

Governor's First Veto

Article II, section 22, of the North Carolina Constitution was amended in 1997 to authorize the Governor to veto bills passed by the General Assembly and to establish a procedure for the Governor and General Assembly to follow should the Governor exercise this authority. Governor Easley became the first Governor to exercise the veto authority when he vetoed S 1283, the appointments bill, on November 3, 2002. In the bill, the Speaker of the House and the President Pro Tempore of the Senate made appointments to various boards and commissions. Governor Easley, in his veto message, cited the following reasons for vetoing the bill: two of the appointees were deceased, at least five appointees were not qualified for the positions to which they were appointed, and six appointments made by the bill must be made by the Governor.

Since the General Assembly had adjourned *sine die* on October 4, the constitution presented the Governor with two options. One, he could do nothing, in which case the bill would become law over his veto on the fortieth day after October 4 (the day of adjournment). Or, two, he could reconvene the 2002 regular session for the sole purpose of reconsidering S 1283. The latter choice had to be exercised before the fortieth day after adjournment. The North Carolina Constitution makes available a third possibility: if a majority of the members of both houses sign a statement—dated no earlier than thirty days after adjournment—that no reconvened session is necessary, the Governor is not required to call a reconvened session to consider the vetoed bill, and the veto stands. In the case of S 1283, however, this possibility could not be implemented due to practical considerations. The General Assembly adjourned October 4, 2002; the Governor vetoed S 1283 on November 3, 2002, but did not announce the veto until November 6, 2002; the general election was held on November 5, 2002, with Republicans apparently gaining a majority of votes in the House (although there were numerous recounts); and the forty-day period in which the Governor could call the General Assembly into session expired November 14, 2002. Given this chronology, it was virtually impossible for anyone to obtain the signatures of a majority of the members of both houses before the November 14 deadline.

Governor Easley chose the second option and by a proclamation dated November 11, 2002, reconvened the 2002 regular session on November 13, 2002, to reconsider S 1283. The Senate referred the bill to the Rules Committee, thereby effectively sustaining the Governor's veto.

The Legislative Institution

Membership Changes

When the General Assembly convened in extra session on May 14, 2002, Shelly M. Willingham was sworn in to complete the term of Representative Milton F. Fitch Jr. (D-Wilson), who resigned to accept a superior court judgeship. Representative Larry T. Justus (R-Henderson) died between the adjournment on October 4 and the reconvened session on November 13. Carolyn Justus, Representative Justus's widow, was sworn in to complete his term.

New Oversight Committee

S.L. 2002-126 (S 1115) amends G.S. Chapter 120 to create a new Joint Legislative Oversight Committee on Capital Improvements, composed of eight Senators appointed by the President Pro Tempore and eight Representatives appointed by the Speaker of the House. The committee is charged with examining, on a continuing basis, capital improvements approved and undertaken for state facilities and institutions. It is to oversee implementation of the Capital Improvements Planning Act and to consider the state six-year capital improvement plan developed pursuant to G.S. 143-34.45.

Convening in 2003

The next regular session of the General Assembly will convene at noon on January 29, 2003. Members of that General Assembly were elected at the November 5, 2002, general election.

William A. Campbell

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The State Budget

The major purpose of short sessions of the General Assembly held in even-numbered years is to make mid-biennium adjustments to the state budget. This year's work on the budget was the most difficult since the Great Depression. Before the General Assembly convened on May 28, the state faced a revenue shortfall for the 2001–2002 fiscal year of $1.6 billion; as of May 1, 2002, state tax collections were down 6 percent from the previous year; and on August, 19, 2002, while the legislature was in the midst of budget deliberations, Moody's Investor Service, a credit rating agency, downgraded the state's credit rating from AAA to Aa1. As a result of this dire financial situation—and the differing views about how to deal with it—the General Assembly was unable to adopt the budget adjustment act until September 20, nearly three months into the fiscal year, making North Carolina the forty-ninth state to adopt a budget for the current fiscal year.

The Budget Process

The bill that was to become the budget modification act, S 1115, was filed in the Senate on May 28, 2002, the day the 2002 session convened. It passed third reading in the Senate on June 19, 2002, and was sent to the House. The House passed its version of the bill, which was quite different from the Senate's, on August 13, 2002. Senate and House conferees were appointed on August 14 and 15 to work out the differences between the two versions, and the House and Senate adopted the conference report on September 20, 2002. The ratified bill was entitled "The Current Operations, Capital Improvements, and Finance Act of 2002." Governor Easley signed the ratified bill on September 30, 2002, and the act was chaptered as S.L. 2002-126.

The 2001 Session of the General Assembly had appropriated $14,780,657,357 for current operations from the state's General Fund for the 2001–2003 biennium. Clearly, the legislature would have to substantially reduce this amount because of the predicted shortfall in tax revenue for the 2002–2003 fiscal year. Thus the 2002 session faced three difficult issues. First, how would these reductions be made? Second, how much would the reductions be? Finally, would a revised budget include new taxes to increase revenues? In its final product, the General Assembly (1) reduced the current operations appropriation from the General Fund by $463,954,969 (S.L. 2002-126, Section 2.1); (2) appropriated one-time revenues totaling $800,000,000 from such sources as the Highway Trust Fund and the Tobacco Trust Account [S.L. 2002-126, Sections 2.2(g) and (h)];

(3) increased significantly the fees charged by many state agencies, including the courts and the Secretary of State (S.L. 2002-126, Part XXIX-A); and (4) authorized counties to levy an additional 0.5 percent sales tax, effective December 1, 2002, and in turn withheld $333,000,000 in reimbursements to local governments it was obligated to make in compensation for the earlier repeal of various taxes, such as the intangibles tax [S.L. 2002-123 (S 1292)]. As has become its standard practice, the General Assembly included within the budget bill many provisions (referred to as "special provisions") that have nothing to do with appropriations but rather make substantive changes in other areas of state law. These provisions are discussed in the appropriate chapters that follow.

Budget Highlights

The following are some of the highlights of the modified 2002–2003 budget:

- Step pay increases for public school teachers averaging 1.84 percent
- No pay increases for state employees other than public school teachers and administrators
- Cost-of-living increase for retirees in the Teachers' and State Employees' Retirement System and the Local Governmental Employees' Retirement System of 1.4 percent but no employer contribution to the retirement systems for 2002–2003
- Funding of More at Four preschool initiative at $28.1 million
- Funding of the first grade class size reduction initiative at $26.8 million
- Tuition increases at the constituent institutions of The University of North Carolina of 8 percent for in-state students and 12 percent for out-of-state students
- Tuition increases at the community colleges of $3.25 a semester hour for in-state students and $17.50 a semester hour for out-of-state students
- In the Department of Correction, closing of the IMPACT boot camps, the Blue Ridge and Henderson Correctional Centers, and the Rowan Diagnostic Center, and elimination of twenty-four positions in the prison chaplain program

The 2002–2003 Budget

General Fund Budget Availability

The state budget is supported by four major sources of funding: (1) the General Fund; (2) the Highway Fund and Highway Trust Fund; (3) federal funds (including matching funds, categorical grants, and block grants); and (4) other receipts (such as tuition payments to universities and community colleges and fees collected by state agencies). Appropriations from the General Fund support virtually all state government programs and services other than highway construction and maintenance. Table 2-1 shows the revenues available in the General Fund as calculated by the General Assembly in S.L. 2002-126. (Items in parentheses indicate reductions in the associated categories.)

Table 2-1. 2002–2003 General Fund Budget Availability

Beginning Unreserved Credit Balance	$ 25,000,000
Revenues Based on Existing Tax Structure	12,793,950,000
Nontax Revenues	
Investment income	115,300,000
Judicial fees	111,300,000
Disproportionate share	107,000,000
Insurance	46,600,000
Other nontax revenues	98,900,000

Appropriations from the General Fund

The functional allocation of operating funds remains similar to past years. The 2002–2003 operating budget provides $8.33 billion for education (58 percent), $3.6 billion for health and human services (25 percent), $1.5 billion for justice and public safety (10 percent), $246 million for reserves and debt service (1.7 percent), $314 million for general government (2.2 percent) and $339 million for natural and economic resources (2.3 percent).

Table 2-2 sets out the specific revisions S.L. 2002-126 makes in the 2002–2003 budget. Reductions are shown in parentheses.

Table 2-2. 2002–2003 General Fund Appropriation Adjustments

EDUCATION	
Community Colleges System Office	$ 26,085,931
Department of Public Instruction	(27,635,053)
University of North Carolina—Board of Governors	
Appalachian State University	(2,594,849)
East Carolina University	
Academic Affairs	(3,780,292)
Health Affairs	(1,326,263)
Elizabeth City State University	(636,905)
Fayetteville State University	(904,051)
NC Agricultural and Technical University	(1,794,345)
North Carolina Central University	(1,372,196)
North Carolina School of the Arts	(864,283)
North Carolina State University	
Academic Affairs	(8,298,776)
Agricultural Extension	(1,077,848)
Agricultural Research	(1,361,284)
University of North Carolina at Asheville	(811,533)
University of North Carolina at Chapel Hill	
Academic Affairs	(6,068,562)
Health Affairs	(4,816,196)
Area Health Education Centers	(1,326,559)
University of North Carolina at Charlotte	(3,197,696)
University of North Carolina at Greensboro	(2,790,399)
University of North Carolina at Pembroke	(713,835)
University of North Carolina at Wilmington	(1,916,521)
Western Carolina University	(1,744,797)
Winston-Salem State University	(1,077,326)
General Administration	(2,463,801)
University Institutional Programs	39,815,922
Related Educational Programs	(17,896,363)
North Carolina School of Science and Mathematics	(36,334)
UNC Hospitals at Chapel Hill	(1,168,629)
Total	$ **(30,223,721)**

HEALTH AND HUMAN SERVICES	
Department of Health and Human Services	
Office of the Secretary	$ 19,776,228
Division of Aging	(926,000)
Division of Blind Services/Deaf/HH	(643,013)
Division of Child Development	(7,228,035)
Division of Education Services	(4,104,503)
Division of Facility Services	(748,170)
Division of Medical Assistance	(29,633,097)
Division of Mental Health	(7,707,015)
N.C. Health Choice	7,571,036
Division of Public Health	(6,595,770)
Division of Social Services	(14,183,025)
Division of Vocational Rehabilitation Services	(3,230,105)
Total	$ **(47,651,469)**
NATURAL AND ECONOMIC RESOURCES	
Department of Agriculture and Consumer Services	$ (4,822,458)
Department of Commerce	
Commerce	(10,350,110)
Commerce State-Aid	5,085,000
NC Biotechnology Center	(627,047)
Rural Economic Development Center	(423,851)
Department of Environment and Natural Resources	
Environment and Natural Resources	(9,904,113)
Clean Water Management Trust Fund	(3,500,000)
Office of the Governor—Housing Finance Agency	(540,600)
Department of Labor	(951,725)
JUSTICE AND PUBLIC SAFETY	
Department of Correction	(50,910,108)
Department of Crime Control and Public Safety	(713,318)
Judicial Department	(10,828,966)
Judicial Department—Indigent Defense	8,419,130
Department of Justice	(2,847,391)
Department of Juvenile Justice and Delinquency Prevention	(13,569,384)
GENERAL GOVERNMENT	
Department of Administration	(5,620,309)
Office of Administrative Hearings	(233,742)
Department of State Auditor	(795,965)
Office of State Controller	(1,101,040)
Department of Cultural Resources	
Cultural Resources	(3,610,213)
Roanoke Island Commission	(151,222)
State Board of Elections	209,622
General Assembly	(2,654,234)
Office of the Governor	
Office of the Governor	(504,595)
Office of State Budget and Management	(300,057)
Reserve for Special Appropriations	100,000
Department of Insurance	
Insurance	(1,882,104)
Insurance—Volunteer Safety Workers' Compensation	(2,500,000)

Office of Lieutenant Governor	(53,280)
Department of Revenue	(2,384,400)
Rules Review Commission	(9,981)
Department of Secretary of State	(345,281)
Department of State Treasurer	
State Treasurer	671,618
Retirement for Fire and Rescue Squad Workers	(5,248,601)
TRANSPORTATION	
Department of Transportation	(2,490,841)
RESERVES, ADJUSTMENTS, AND DEBT SERVICE	
Reserve for 2001 compensation increases	(4,247,868)
Reserve for State Health Plan	(12,621,872)
Reserve for legislative, judicial, and teachers' and state employees' retirement rate adjustment	(144,525,000)
Reserve for teachers/principals step increase	51,937,267
Reserve for asst./deputy clerks/magistrates step increase	1,980,700
Reserve for employee severance compensation	5,000,000
Contingency and emergency	0
Reserve for salary adjustments	0
Implementation of recommendations of Governor's Efficiency Commission	(25,000,000)
Reserve for management flexibility	(41,500,000)
Reserve for information technology rate adjustment	(3,414,318)
Mental Health, Developmental Disabilities, and Substance Abuse Services Trust Fund	8,000,000
Ruth M. Easterling Trust Fund for Children with Special Needs	1,000,000
Reserve to implement Health Insurance Portability and Accountability Act	2,000,000
Debt service	
General debt service	(97,750,000)
Federal reimbursement	0
Total Current Operations—General Fund	**$ (463,954,969)**

The Highway Fund and Highway Trust Fund

The Highway Fund is funded by the motor fuels tax and other revenue related to motor vehicles. It provides funding for most of the operations of the state Department of Transportation. The Highway Trust Fund is funded by a portion of the per-gallon motor fuels tax and other dedicated revenues. It funds the special program of highway construction authorized by the 1989 General Assembly.

Table 2-3 sets out the funding provided for the 2002–2003 fiscal year.

Table 2-3. 2002–2003 Highway and Highway Trust Fund Appropriations

HIGHWAY FUND	
Administration	$(90,000)
Operations	0
Construction and maintenance	
Construction	
Primary construction	0
Secondary construction	(1,887,000)
Urban construction	7,000,000
Access and public service roads	0

Contingency construction	5,000,000
Spot safety construction	0
State funds to match federal highway aid	0
State maintenance	13,551,179
Ferry operations	0
Capital improvements	0
State aid to municipalities	(1,887,000)
State aid for public transportation and railroads	14,350,000
Occupational and Safety Health Administration—state	0
Governor's Highway Safety Program	0
Division of Motor Vehicles	0
Reserves and transfers	(6,039,551)
Total Highway Fund	**$ 29,997,628**
HIGHWAY TRUST FUND	
Intrastate system	$ (159,218,286)
Secondary roads	(18,065,569)
Urban loops	(64,381,244)
Aid to municipalities	(16,705,712)
Program administration	(4,073,189)
Transfer to General Fund	205,000,000
Total Highway Trust Fund	**$ (57,444,000)**

Capital Improvements

The relatively little money in the General Fund allocated for capital improvements was appropriated to the Department of Environment and Natural Resources (DENR). For 2002–2003, $31,158,000 was appropriated for DENR water resource projects, and of that amount, $20,100,000 would be used for deepening the Wilmington harbor.

Miscellaneous Provisions

Two of the budget modification act's miscellaneous provisions have important implications for the interpretation of budget items. Section 31.2(a) provides that the Joint Conference Committee Report on the Continuation, Expansion, and Capital Budgets, dated September 18, 2002, shall be considered a part of the act and shall be used to construe the act. Section 31.3 provides that, except for statutory changes and other provisions clearly intending to have effects beyond the 2002–2003 fiscal year, the act's provisions apply only to funds appropriated for, and activities occurring during, the 2002–2003 fiscal year.

Both the budget modification act, S.L. 2002-126, and the accompanying conference committee report can be found on the General Assembly's Web site at www.ncga.state.nc.us/homePage.pl.

William A. Campbell

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Children and Families/ Juvenile Law

The 2002 General Assembly made very few changes in the Juvenile Code or other laws relating to children and families. It did, however, follow the lead of a number of other states in creating an Amber Alert system to expedite the dissemination of information regarding abducted children.

In addition, the General Assembly made several changes to assist victims of domestic violence. Those changes are procedural in nature and are discussed in Chapter 5, "Courts and Civil Procedure."

Juvenile Justice and Delinquency Prevention

Destruction of Juvenile Court Records

S.L. 2002-159 (S 1217) rewrites G.S. 7B-3000(g) to provide that the Administrative Office of the Courts (not the Department of Juvenile Justice and Delinquency Prevention) is authorized to adopt rules relating to the destruction of court records in cases involving undisciplined or delinquent juveniles.

Department of Juvenile Justice and Delinquency Prevention

The state's budget crisis resulted in substantial cuts for the Department of Juvenile Justice and Delinquency Prevention (DJJDP). Under S.L. 2002-126 (S 1115), appropriations to the department included

- more than $1.4 million in TANF Block Grant funds, designated for support and statewide expansion of the Support Our Students Program with a focus on low-income communities in unserved areas;
- TANF funds in the amount of $550,000, designated for grants to Boys and Girls Clubs;
- $448,660 for Juvenile Crime Prevention Councils, to be allocated by DJJDP for the continuation of teen court programs that received direct state appropriations from DJJDP in 2001–2002.

HIV/AIDS Education

Under section 5.1.(t) of S.L. 2002-126, DJJDP, like several other departments, is required to incorporate developmentally appropriate HIV/AIDS education, awareness, and outreach information into its programs.

Juvenile Facilities

S.L. 2002-126 authorizes DJJDP to use funds available in 2002–2003 to establish or reestablish youth development center beds, reestablish one multipurpose group home, and convert up to fifty beds in one Eckerd Wilderness Camp to secure confinement beds for use as a youth development center. If the department determines that it needs additional youth development center beds, the act directs it to consider reestablishing beds at Samarkand Manor Youth Development Center.

S.L. 2002-126 requires DJJDP to consult with the Joint Legislative Commission on Governmental Operations and the Corrections, Crime Control, and Juvenile Justice Oversight Committee before

- converting any Eckerd Wilderness Camp beds to secure confinement beds,
- establishing a bed capacity level greater than 730 beds, or
- reestablishing the multipurpose group home authorized by the act.

S.L. 2002-126 authorizes DJJDP to initiate the planning and design of a new 300- to 500-bed youth development center using funds allocated to the Department of Administration for that purpose. By February 15, 2003, DJJDP must report on its progress in the planning and design phase and provide a preliminary report on how its plan for a new center will ensure effective security and programming while achieving staffing efficiencies.

Out-of-Home Placements

Tracking Placements

In 2001 the General Assembly created the Comprehensive Treatment Services Program (sec. 21.60 of S.L. 2001-424) to provide treatment and services for children who are at risk for institutionalization or other out-of-home placement. S.L. 2002-164 (S 163) amends the 2001 law to require that the program information reported by the Department of Health and Human Services (DHHS) include a method of identifying and tracking children placed outside the family unit in group homes or therapeutic foster care home settings. The department must report that information by April 1, 2003, to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

Department of Health and Human Services Rules

S.L. 2002-164 rewrites G.S. 143B-139.1 and G.S. 150B-21.1 to give the Secretary of Health and Human Services authority to adopt and enforce rules governing

- the placement of individuals in licensable facilities located outside the individual's community and providers' ability to return the individual to the individual's community as soon as possible without detriment to the individual or the community;
- the monitoring of mental health, developmental disability, and substance abuse services;
- communication procedures between an area authority or county program, the local department of social services, the local education authority, and the criminal justice agency, if involved, regarding the placement of the individual outside the individual's community and the transfer of the individual's records in accordance with law; and
- the enrollment and revocation of enrollment of Medicaid providers who have been previously sanctioned by the department.

Placements under the Juvenile Code

Effective October 23, 2002, S.L. 2002-164 amends four sections of the Juvenile Code to require the court to consider, in placing a juvenile in out-of-home care, whether it is in the juvenile's best interest to remain in the juvenile's community of residence. This new requirement will come into play under

1. G.S. 7B-505, when the court orders nonsecure custody for a juvenile who is alleged to be abused, neglected, or dependent.
2. G.S. 7B-903(a)(2)c., when the court orders out-of-home care as a disposition in an abuse, neglect, or dependency proceeding.
3. G.S. 7B-2502, when the court orders out-of-home care as part of a disposition that includes evaluation or treatment of an undisciplined or delinquent juvenile.
4. G.S. 7B-2503, when the court orders out-of-home care as part of a disposition for an undisciplined juvenile.

Children with Special Needs

S.L. 2002-126 appropriates $1 million to establish the Ruth M. Easterling Trust Fund for Children with Special Needs. The fund may be used to provide respite services for adoptive children, foster children, and special needs children who are at risk for out-of-home placement; to provide special needs children with necessary special mobility equipment and surgery to repair congenital abnormalities; and to provide training to parents and caregivers of special needs children. The Secretary of Health and Human Services must adopt rules to implement this new program and must submit a report regarding use of the trust fund to the Senate Appropriations Committee on Health and Human Services and the House Appropriations Subcommittee on Health and Human Services by March 1, 2003.

Adoption

S.L. 2002-159 rewrites G.S. 48-2-601 to provide that if an issue of fact, an equitable defense, or a request for equitable relief is raised before the clerk in an adoption proceeding, the clerk must transfer the proceeding to the district court under G.S. 1-301.2. This is not a change in the law; it repeats in the adoption chapter a requirement that exists already under G.S. 1-301.2.

Child Alert Notification System (Amber Alert)

Section 18.7 of S.L. 2002-126 adds new G.S. 143B-499.7 establishing in the North Carolina Center for Missing Persons a new North Carolina Child Alert Notification System (NC CAN) to provide a statewide system for rapid dissemination of information regarding abducted children. The criteria for dissemination of information through the system are:

1. the child is twelve years of age or younger,
2. the child is believed to have been abducted,
3. the child is believed to be in danger of injury or death,
4. the abduction is not known or suspected to be by a parent of the child,
5. the child is not a runaway or voluntarily missing, and
6. the abduction has been reported to and investigated by a law enforcement agency.

The system may decide, on a case-by-case basis, to disseminate information (1) on children ages thirteen to seventeen, if all of the above criteria except number 1 are met; and (2) on children whose abduction is known or suspected to be by a parent, if the child is believed to be in danger of injury or death.

S.L. 2002-126 requires the Center for Missing Persons to adopt guidelines and develop procedures for implementing the system; provide education and training to encourage media participation in the system; work with the Department of Justice to develop training materials for law enforcement, broadcasters, and community interest groups; consult with the Department of Transportation and develop a procedure for using overhead permanent changeable message signs to provide information on abducted children; and consult with the Division of Emergency Management in the Department of Crime Control and Public Safety to develop a procedure for using the Emergency Alert System to provide information on abducted children.

Youth Advocacy and Involvement Office

Although it appeared for a brief period as though the Youth Advocacy and Involvement Office would be abolished, the office will continue in the Department of Administration through June 30, 2003. S.L. 2002-126 requires the Secretary of Administration to present to the chairs of the Joint Appropriations Subcommittee on General Government, by January 31, 2003, a plan or recommendation for reorganizing the office. The recommendation may call for the office and its functions to be maintained within the Department of Administration or transferred to another agency or a nonprofit organization.

Marriage

Solemnization

S.L. 2002-159 corrects an error that occurred during the 2001 session when the language in G.S. 51-1 requiring an officiant to declare the persons husband and wife was inadvertently dropped from the statute. The act restores that language and also provides that any otherwise valid marriage that occurred during the time the language was not in the statute is not invalid on the basis that there was no formal declaration that the persons were husband and wife.

Special Provisions Allowing Judges to Officiate

S.L. 2002-115 (H 1581) amends G.S. 51-1 to (1) authorize resident or emergency superior court judges to perform marriage ceremonies between November 25, 2002, and December 1, 2002; and (2) authorize district court judges to perform marriage ceremonies between September 19, 2002, and September 22, 2002.

License

G.S. 51-8 refers to the kinds of evidence a register of deeds may require when making a determination of whether two people are authorized to marry (for example, certified copies of birth certificates). S.L. 2002-159 deletes that section's reference to "birth registration cards provided for in G.S. 130-73," which was an outdated reference.

Equitable Distribution

In 1997 the General Assembly created a new classification of property subject to distribution by the court when spouses separate and divorce. The new classification, divisible property, was created to give courts more authority to deal with changes in the financial conditions of the parties that occur between the time of separation and the time of the equitable distribution trial. *See* G.S. 50-20(b)(4). While, to a limited degree, the 1997 amendments addressed changes in the marital debt of the parties during separation by permitting a court to divide increases in debt between the parties, the amendments did not address the difficult issue of how to account for payments of marital debt made by one party during separation. Section 33.5 of the technical corrections act, S.L. 2002-159, addresses that issue by amending the definition of divisible property. Effective October 11, 2002, divisible property includes decreases in marital debt. This amendment requires the court to identify and value all payments made by one spouse after separation and to account for those payments in the final distribution of property.

Cheryl Howell

Janet Mason

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Community Development and Housing

The debate surrounding modifications to the William S. Lee Quality Jobs and Business and Expansion Act (the Bill Lee Act) and the enactment of other economic development initiatives dominated the last days of the 2002 session. Even so, the session yielded little legislation in the areas of community development and affordable housing.

Community Development

Expanding the Bill Lee Act

Enacted in 1996, the Bill Lee Act is a package of state tax incentives given primarily in the form of tax credits for job creation, worker training, and investment in machinery and equipment, real property, and research and development. Counties are divided into five economic distress tiers based on unemployment rates, per capita income, and population growth. For many of the credits, the lower the tier of the county, the more favorable the incentive.

The General Assembly has sought to bolster or better target the Bill Lee Act in every session since its original enactment. This year's changes to the Bill Lee Act are found in S.L. 2002-172 (H 1734) and address the following areas of concern:

- Machinery and equipment. To better focus the benefits of the Bill Lee Act toward the most distressed counties, the General Assembly reduced the amount of the machinery and equipment credit in tier three, four, and five counties from 7 percent of the cost of the machinery and equipment in excess of the applicable threshold to 6, 5, and 4 percent, respectively. In addition, the purchase amount threshold for tier four counties was increased from $500,000 to $1,000,000, and in tier five counties, from $1,000,000 to $2,000,000.
- Development zones. In 1998 the General Assembly amended the Bill Lee Act to provide additional incentives for businesses that locate to or make expansions within economically distressed zones in urban areas. A business located in one of these development zones could (1) claim a maximum worker training credit of $1,000 (rather than $500), (2) claim an additional $4,000 credit per new job created, and (3) claim the same amount for investing in machinery and equipment as if the zone were located in a tier one county. Although the intent was to target and qualify only relatively small municipal areas for these credits, some large nonmetropolitan areas that were not distressed could, at times, qualifiy as development zones under the initial criteria. In 1999 the General Assembly closed these loopholes and, in this session, attempted to further clarify its definition of a *development zone*. S.L. 2002-172 provides that such a zone includes all of a parcel of land located partially within the zone if
    - at least 50 percent of the parcel is located within the zone,
    - the parcel existed under common ownership prior to the previous decennial federal census, and
    - The parcel is made up of multiple tracts of tax parcels of land surrounded by a continuous perimeter boundary.
- Wage standards. Under prior law the wage standard was 100 percent of the average weekly wage in tier one counties and development zones and 110 percent in the other tiers. The jobs included in calculating the wage standard vary depending on the particular credit. As further incentive for businesses to locate in the most economically distressed counties, S.L 2002-172 eliminates the wage standard in tier one and two counties and state development zones. By eliminating the wage standard in tiers one and two, the new law also increases the number of taxpayers qualified to take the worker training credit.

  S.L. 2002-172 also makes the wage standard test applicable to a taxpayer's taxable year rather than the calendar year. A wage standard based on a calendar year had been difficult to compute for companies that have alternative tax years.
- Overdue tax debts. S.L. 2002-172 provides that taxpayers are ineligible for a credit under the Bill Lee Act if they have any overdue tax debt.

Job Development Investment Grant Program

In S.L. 2002-172 The General Assembly created a new economic development tool through which grants could be awarded to new and expanding businesses in North Carolina. Through the Job Development Investment Grant Program, a business can now qualify for a cash grant based on the amount of income tax withheld from the new jobs it created as part of a qualifying project. The program sets out the minimum number of jobs a project must create to be eligible. For projects located in tiers one through three, the project must create at least ten new full-time positions. For projects located in tiers four and five, the project must create at least twenty new full-time positions. If the project is located in more than one location, the tier designation of the location in the highest tier area determines the minimum number of new jobs that must be created in order for the project to qualify for the grant.

Some of the program requirements are tied to the Bill Lee Act in various ways. First, as in the Bill Lee Act, to be eligible for the program a business must offer health insurance with all full-time jobs associated with a particular project. Second, the average wage of all jobs at the location for which the grant is sought must meet the Bill Lee wage standards. Third, the business must have no Occupational Safety and Health Act citations for willful serious violations or for failing to abate any serious violations that have become final orders within the previous three years. The project must also satisfy other conditions that are not found in the Bill Lee Act: (1) the project must result in new net employment in the state, (2) the project must strengthen the state's economy, (3) the project must be consistent with state economic development goals, (4) the grant must be necessary to secure the project for the state, and (5) the total benefits of the project must outweigh the costs.

Grant decisions will be made by an Economic Investment Committee, which will consist of the Secretary of Commerce, the Secretary of Revenue, the Director of the Office of State Budget and Management, and two members appointed by the General Assembly, one upon recommendation of the Speaker of the House and the other upon recommendation of the President Pro Tempore of the Senate. The members of the committee appointed by the General Assembly may not be General Assembly members. The committee may not enter into more than fifteen agreements or commit more than $10 million in grants in any calendar year.

Proceedings of the new committee are subject to the open meetings and public records laws. However, the committee is exempt from the rule-making process. Instead, G.S. 143B-437, as enacted by S.L. 2002-172, requires it to publish its proposed grant-making criteria on the Department of Commerce Web site at least fifteen business days prior to the adoption of these criteria or any amendments to them. Although the committee may add to them at a later date, the following conditions must apply:

- The amounts of any grants may not be less than 10 percent or more than 75 percent of the withholdings associated with the new jobs created by the project.
- The terms of grants may never exceed twelve years.
- The percentage used to determine the amount of a grant will be reduced by one-fourth for any eligible positions located in a tier four or five area.
- Unless the committee makes a specific determination that a grant should be calculated based on eligible positions created in any one year during the term of the agreement, the amount of the grant must be calculated based on eligible positions created during the first two years of the agreement.
- In the absence of an explicit finding otherwise, the total amount of all grants provided by the state may not exceed 75 percent of the withholding of all eligible positions.
- The amount of a grant associated with any specific position may not exceed $6,500 in a year.

The state Attorney General will review the terms of all proposed agreements and must personally sign each agreement.

S.L. 2002-172 requires the Economic Investment Committee to monitor grantee businesses and to amend or terminate agreements if businesses fail to meet the terms of the agreement or the requirements of the program. If such a failure extends over a period of two consecutive years, the committee is required to both terminate the agreement and recapture any associated grant funds made in previous years. Moreover, a business with an overdue tax debt may not receive an annual disbursement of the grant as long as the overdue tax debt has not been satisfied or otherwise resolved.

There are no restrictions on the use of grant funds by businesses participating in the program.

Changes to the Industrial Development Fund

The Industrial Development Fund provides assistance to local governments for infrastructure improvements to better enable them to attract new business. Previously, the fund and its utility account could be used only for construction of and improvements to water, sewer, gas, and

electricity lines and equipment. In S.L 2002-172 the General Assembly expanded the purposes for which these funds could be used to include telecommunications and high-speed broadband lines and equipment.

Under prior law the fund's utility account could be used to assist only those local governments located in tiers one and two. S.L. 2002-172 expands the focus of this account by allowing local governments in tier three to use these funds as well.

Study Provisions

S.L. 2002-172 requires the Revenue Laws Study Committee to study the use, effectiveness, and cost of the Job Development Investment Grant Program, the Bill Lee Act, incentives for the film industry, and the Industrial Recruitment Competitive Fund. The committee may provide an iterim report to the 2004 Regular Session of the General Assembly. A final report is due by March 15, 2005.

Film Industry Incentives

The General Assembly amended the Film Industry Development Account in S.L. 2002-172 to require a minimum expenditure of $1 million in North Carolina before a project is considered eligible for a grant.

Planning for Biopharmaceutical Training

S.L. 2002-172 authorizes the State Board of Community Colleges, the Board of Governors of The University of North Carolina, and the North Carolina Biotechnology Center to initiate planning and development of a new biopharmaceutical/bioprocess manufacturing training center to be centrally located with related facilities placed regionally at community colleges.

Affordable Housing

Low Income Housing Tax Credits

The development of affordable rental housing in North Carolina is primarily facilitated through the syndication of the federal and state tax credit given to private equity investors. Both the federal and state credits are awarded to projects through a competitive process conducted by the North Carolina Housing Finance Agency (HFA). The new state tax credit is different from the federal tax crdit and the state credit in effect prior to 2003 in that it is not an investment. There is no sale of the credit, no limited partner equity, nor any of the other features of a tax-shelter investment. S.L. 2002-87 (S 1416) amends G.S. 105-129.42(c) to change the basis for credit allocations from the economic distress tier designations to a standard of household income and housing affordability established by the HFA. The credit will now be 30 percent of a project's basis in low-income counties, 20 percent in moderate-income counties, and 10 percent in high-income counties. S.L. 2002-87 also removes the basis requirement for credit allocations approved in S.L. 2001-431. As a result, the program no longer limits the developer's allocation of the state credit to the investor's adjusted basis in the development entity. The credit is also now directly available to developers.

Minimum Housing Changes

Continuing a trend of giving local governments flexibility to address the problem of unsafe or abandoned housing and commercial buildings, S.L. 2002-118 (S 1312) amends G.S. 160A-426 to

grant authority to Durham, Fayetteville, Hope Mills, and Spring Lake to declare residential buildings in community development target areas unsafe and to demolish those buildings. The bill also grants authority to Whiteville to deal with abandoned structures in the same manner as municipalities in counties with populations in excess of 71,000 according to the previous federal census.

Anita R. Brown-Graham

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Courts and Civil Procedure

The 2002 General Assembly neither considered nor enacted many changes affecting the court system. The most significant legislation, S.L. 2002-158 (S 1054), changed the method of election for appellate court judges and provided public financing for their election campaigns. Another significant bill, S 712, would have submitted to the voters a constitutional amendment changing the district court judges' terms to eight years. The bill passed the Senate and was sent to the floor by a House committee, but it was never voted on by the full House. Therefore, district judges remain the only judges serving four-year terms; all other judges serve eight-year terms. Yet another bill, S 887, would have authorized clerks of court and magistrates to hear infraction and Class 3 misdemeanor cases (unless the person pleads guilty, those cases must now be heard by district court judges). The bill, which was supported by the State Judicial Council, passed the Senate and a House committee, but it was not approved by the full House.

Other significant legislative actions involved the court system's budget. The courts' budget, like the budgets of all state agencies, was reduced in some significant ways. Court costs and fees were raised in almost all categories.

Appellate Courts' Elections

Public Financing

In 2002, North Carolina became the first state to pass a public financing measure for judicial election campaigns. The measure, S.L. 2002-158 (S 1054), provides public financing for contested primaries and general elections for the North Carolina Supreme Court and Court of Appeals, beginning with the 2004 elections. These changes are discussed in more detail in Chapter 7, "Elections."

Under the new law, candidates may elect not to participate in public financing. The law requires those who do elect to participate to raise a specified amount in campaign funds from at least 350 contributors. The amount is keyed to the filing fee, which is currently 1 percent of the

base salary for the office being sought. A participating candidate must raise at least thirty times the filing fee. At current salary levels, that amount is slightly more than $30,000. The candidate may not raise more than twice that amount, and the maximum contribution that may be received from any individual toward the qualifying amount is $500.

The amounts allocated to candidates vary based on the office sought. Court of appeals candidates receive 125 times the filing fee for contested general elections (around $137,000 at current salary levels), and supreme court candidates receive 175 times the filing fee (around $200,000 at current salary levels). The candidates do not receive any funds for primaries unless a candidate who elects not to participate in public financing spends more than the maximum amount that participating candidates are allowed to raise. In that case, "rescue funds" are provided to the participating candidates. Rescue funds are also provided to candidates in general elections if they are competing against nonparticipating candidates who spend more than the maximum public contributions paid to participating candidates.

The public funds come from two principal sources—lawyers who contribute an additional $50 when they pay their business license tax, and funds designated by individual taxpayers on their tax returns. Each taxpayer may designate $3 to go to the fund; the designation does not affect the taxpayer's tax bill.

S.L. 2002-158 also prohibits individual contributions of more than $1000 for nonparticipating candidates, except by candidates' close family members, who may contribute $2000 each.

Nonpartisan Elections

Superior court elections were switched from partisan to nonpartisan in the 1998 election. District court elections became nonpartisan in the 2002 elections. S.L. 2002-158 makes the appellate races nonpartisan, beginning in the 2004 elections. In the Judicial Department, only the clerk of court and the district attorney now run in partisan elections.

S.L. 2002-158 directs the State Board of Elections to publish a Judicial Voter Guide for appellate court races. The guide must explain the functions of the appellate courts, describe the relevant elections laws, and contain specified information about each candidate.
The Judicial Voter Guide is to be distributed to as many voters as possible, either through mailing to all residences or by some other method that is similarly effective at reaching voters.

Before they can be enforced, all the changes in elections law must be reviewed for compliance with the Voting Rights Act of 1965, either by the United States Department of Justice or by a federal court in the District of Columbia.

Court Budget Matters

The budget approved for the Judicial Department by the 2001 legislature was $305.5 million. The final budget approved in the 2002 appropriations act, S. L. 2002-126 (S 1115), was $294.6 million. As is reported in more detail in Chapter 2, "The State Budget," this was a very difficult year for those writing the state's budget, and reductions were widespread.

The final cuts in the courts' budget were not as severe as those included in the version of the budget that passed the Senate. Among the Senate items not included in the final budget was a proposal to eliminate the retirement system that has been in place for judges, clerks, and district attorneys; under the Senate proposal, all future benefits would have accrued under the Teachers' and State Employees' Retirement System.

The most significant reductions in the courts' budget include:

- The exclusion of collection cases (action on accounts) from the court-ordered arbitration program in G.S. 7A-37.1, and a reduction in staff to reflect that workload decrease.
- A requirement that the Administrative Office of the Courts eliminate five magistrate positions, effective January 1, 2003. No county with fewer than five magistrates may lose a magistrate.

- An 80 percent reduction in the budgeted funds for payment of retired judges, and a prohibition on the use of retired judges in the appellate courts. This reduction may not necessarily result in an 80 percent reduction in the use of retired judges, since other funds may be used to pay those judges as well, but a significant reduction is very likely given the other pressures on the judicial budget. According to statements made by the Director of the Administrative Office of the Courts, this reduction reflects both a need to cut costs and a feeling that the court system has not been using the current full-time judges as effectively as it should have.
- Elimination of one continuing education conference for judges, clerks of court, and district attorneys. In addition, wherever possible, conferences are to be conducted by instructors who are state employees and are to be held in state-owned facilities.
- Suspension of "automatic rotation" of superior court judges until July 2003. Two specific constitutional provisions in Article IV, section 11, of the North Carolina Constitution suggest, however, that the power of the legislature to restrict rotation of superior court judges is limited. The first provides that the Chief Justice of the Supreme Court "shall make assignments of Judges of the Superior Court." The second provides that "[t]he principle of rotating Superior Court Judges among the various districts is a salutary one and shall be observed."
- Transfer of the Sentencing Services Program to the Office of Indigent Defense Services for administrative oversight. The program was also cut by 33 percent to reflect a narrower focus. The Office of Indigent Defense Services is to report to the legislature by January 1, 2003, recommendations for making the program's focus consistent with the resources available under its reduced budget.
- Authorization of the establishment of a public defender's office in Defender District 21 (Forsyth County). Responsibility for establishing the office lies with the Office of Indigent Defense Services.

In one of the rare increases in funding, the Office of Indigent Defense Services received an additional $4.9 million to pay attorney fees owed by that office for fiscal year 2001–2002. The fees were not paid in that year due to insufficient funds.

Court costs were increased in many areas. The most significant increases are

- a $10 increase in the General Court of Justice fee;
- the doubling of the fee paid by persons serving community service sentences (from $100 to $200);
- the partial elimination of the exemption from court costs for those charged with seat belt or motorcycle helmet violations (they must pay $50 in costs);
- an expunction fee of $65;
- an increase in the monthly fee for probation supervision, from $20 to $30;
- an appointment fee of $50 for all persons who have lawyers appointed for them because they are indigent; and
- a minimum criminal district court fee (the most common fee) of $100.

The fees will generate more than $15 million in new revenue.

Finally, no court officials received cost-of-living raises. This was the second consecutive year in which judges received no raises. Magistrates, deputy clerks, and assistant clerks will receive any step increases to which they are entitled under their statutory pay plans.

Bioterrorism

In light of the terrorist attacks on the World Trade Center and the Pentagon, the legislature enacted a wide-ranging bioterrorism bill, S.L. 2002-179 (H 1508). This bill (discussed in more detail in Chapter 10, "Health") has some provisions that impact the courts directly.

S.L. 2002-179 gives the State Health Director and local health directors significant power to quarantine people and animals affected by chemical, biological, or nuclear agents and to restrict

access by others to any contaminated areas. It allows those officials to require persons to submit to tests, to require the evacuation of affected areas, and to implement other necessary measures to protect the public's health. This power exists so long as the relevant officials determine that a public health threat exists, that all other reasonable means to correct the problem have been exercised, and that no less-restrictive means are available. For this purpose, a public health threat exists when there is a situation that is likely to cause an immediate risk of loss of human life, serious injury or illness, or serious adverse health effects. This power to restrict movement or access may be exercised without court approval for ten days. After ten days, the health officials must file an action in superior court to gain approval for additional thirty-day periods of restricted access or movement. Any person affected by such an order may institute an action in superior court to review the health officials' determination.

Civil Procedure

Only one minor change was made to the Rules of Civil Procedure. S.L. 2002-171 (H 1402) establishes the Address Confidentiality Program for relocated victims of domestic violence, sexual abuse, and stalking. Under the program, the Attorney General assigns the program participant a substitute address to prevent the victim's assailants or potential assailants from finding the victim through public records. The Attorney General forwards first class, certified, or registered mail received at the substitute address to the actual address of the participant. The new law accounts for the additional time necessary for forwarding such mail by amending G.S. 1A-1, Rule 6, to provide that when a person participating in the Address Confidentiality Program has a legal right to act within a prescribed period of ten days or less after the service of a notice or other paper upon the program participant and the notice or paper is served by mail, the participant has an additional five days to act.

Matters of Interest to Clerks of Court

Execution and Judicial Sales

In 2001, the General Assembly enacted legislation conforming judicial and execution sales of real property to foreclosures by creating a procedure for rolling upset bids rather than resales after upset bids are filed. That legislation merely incorporated the language from the foreclosure statute into the judicial and execution sales statutes. One provision stated that if no upset bid is filed within ten days after the report of sale or within ten days after the filing of the last upset bid, "the rights of the parties are fixed." Although that provision was necessary in foreclosure sales because the statute does not provide for the clerk to confirm a foreclosure sale, it created a conflict in judicial and execution sales, which do require confirmation by the clerk. The long-standing body of law holds that the rights of the parties are fixed upon the clerk's confirming the sale. Thus, for judicial and execution sales, the law fixed the rights of the parties at two separate times. S.L. 2002-28 (H 1513) removes the language fixing the rights ten days after the sale or last upset bid so that the clerk's order of confirmation fixes the rights of the parties.

Decedent's Estates

G.S. 28A-22-9 allows a personal representative who holds property that is due to known but unlocated devisees to deliver the property to the clerk of court immediately before filing the final accounting in the decedent's estate. S.L. 2002-62 (H 1538) shortens the time that the clerk must hold the devisee's share before escheating it. Rather than holding the property for five years as previously required, the clerk must now hold the property for only one year after the filing of the final account.

Under G.S. 28A-13-1(c), a personal representative must file a proceeding before the clerk to take custody and control over real property, and under G.S. 28A-15-1(c), the personal representative must file a special proceeding to petition to sell, lease, or mortgage real property. In 2001 the General Assembly attempted to add provisions to both statutes making it clear that if a special proceeding under one of the statutes was filed, the personal representative could also petition for the other action in that same proceeding. However, the enacted legislation stated that a person who filed a petition for custody and control could seek custody and control in the same proceeding and one who filed a petition to sell real property could seek to sell property in the same proceeding. Sections 8 and 9 of S.L. 2002-159 (S 1217) correct that error; the law now makes it clear that a personal representative who has filed a special proceeding for custody and control may petition in that same proceeding to sell, lease, or mortgage the property, and vice versa.

A bill that would have allowed personal representatives to take possession of and sell real property without an order from the clerk did not pass. However, S.L. 2002-180 (S 98) directs the General Statutes Commission to study the issue. It also directs the commission to study whether North Carolina should provide a method for the distribution of property that comes into an estate after the estate is closed without having to reopen the estate.

Assessment Liens and Foreclosures in Planned Communities

S.L. 2002-112 (S 1154) clarifies a provision regarding the application of the Planned Communities Act to communities created before January 1, 1999. It amends G.S. 47F-1-102 to make certain provisions of the law, including the provisions regarding assessments for common expenses and liens for assessments, apply to all planned communities, no matter when created, without the requirement that the planned community amend its declaration. Prior law had included that provision, but it was not as clearly written as the amendment. Planned communities created before or after January 1, 1999, can use the provisions of G.S. 47F-3-116 allowing the filing of a claim of lien in the clerk's office for any unpaid assessment that is overdue for thirty days or longer. The procedure for foreclosing the lien is the same as that for foreclosures under power of sale in Chapter 45 of the General Statutes. However, a lien pursuant to G.S. 47F-3-116 applies only to events and circumstances occurring on or after January 1, 1999, and may not be used to collect assessments due before that date.

Adoptions

Section 12 of S.L. 2002-159 incorporates into the adoption law (G.S. 48-2-601) the general law on appeals from clerks that is found in G.S. 1-301.2. That law requires a clerk to transfer an adoption proceeding to district court if an issue of fact, an equitable defense, or a request for equitable relief is raised before the clerk.

Domestic Violence

The 2002 General Assembly enacted two bills dealing with domestic violence. Both bills were recommended by the Domestic Violence Commission.

Approval of Abuser Treatment Programs

G.S. 50B-3 allows the judge, in issuing a civil domestic violence protective order, to require a party to attend and complete an abuser treatment program approved by the Department of Administration. G.S. 15A-1343 sets out a similar provision as a condition for probation of a defendant who is responsible for acts of domestic violence. S.L. 2002-105 (H 1534) transfers the power for approving abuser treatment programs from the Department of Administration to the Domestic Violence Commission and specifically authorizes the commission to adopt rules, subject

to the Administrative Procedure Act, for the approval of abuser treatment programs. The rules must establish a consistent level of performance from program providers and ensure that approved programs enhance the safety of victims and hold those who perpetrate acts of domestic violence responsible for their acts.

Address Confidentiality Program

Victims of domestic violence, sexual assault, or stalking often relocate to hide from their assailants only to be found at the new location through public documents, such as school registration or court records. Effective January 1, 2003, S.L. 2002-171 (H 1402) enacts new Chapter 15C of the General Statutes to establish the Address Confidentiality Program for victims of domestic violence, sexual offense, and stalking. The program enables victims who relocate to register with the Attorney General's Office and be given a substitute address that can be used in any public documents, thereby keeping the victim's actual physical location confidential. The statute sets out the requirements for application to the program and provides that upon the filing of a properly completed application, the Attorney General's Office shall issue the applicant an Address Confidentiality Program authorization card, which is valid for four years and can be renewed. The program participant can then show the authorization card to personnel at a state agency (defined to include state and local agencies), who must accept the address designation by the Attorney General as the participant's address when creating a new public record. For example, the substitute address can be used on a court pleading or on an application for services from a county department of social services. The statute requires the participant to notify the Attorney General of a name change or a change of address or telephone number. It also provides a civil penalty of $500 for falsely attesting in an application to the program that disclosure of the applicant's address would endanger the applicant's safety. The Attorney General must terminate participation in the program if the participant fails to notify the Attorney General of an address or name change, the participant submits false information in the program application, or mail forwarded by the Attorney General is returned as undeliverable

Address use by certain agencies. Several agencies are required to use the program participant's actual address rather than the substitute address on the authorization card for certain purposes. Boards of elections must use the participant's actual address for all election-related purposes, and local school units must use the actual address for any purposes related to admission or assignment. The tax office may not use the substitute address for purposes of listing, levying, and collecting property taxes on motor vehicles and real property, and registers of deeds may not use the substitute address on recorded documents or land registrations. However, the records of those agencies (with the exception of non-motor vehicle tax records in the tax collectors' and assessors' offices and land records in the office of the register of deeds) are not public records, nor are the records in the Attorney General's office of the participant's actual address and telephone number available to the public. The new law makes it a Class 1 misdemeanor for any person to knowingly and intentionally obtain or disclose information in violation of the statute.

Extension of time to act for participants. Whenever state law provides a program participant a legal right to act within a prescribed period of ten days or less after service of a notice or other paper upon the program participant and the participant is served with the notice or other paper by mail, the participant is granted an additional five days to act. S.L. 2002-171 also makes this change to Rule 6 of the Rules of Civil Procedure regarding service by mail.

Performing Marriages

S.L. 2002-115 (H 1581) continues the practice of the last five years in which the General Assembly has passed general legislation to meet the requests of specific judges who wish to perform marriage ceremonies for family members or friends, without giving overall authority to judges to perform marriages. The first such bill, enacted in 1998, authorized "district court judges,

who were formerly assistant district attorneys in the Thirteenth Judicial District" to perform marriages during a one-year period. In 2000, superior court judges could perform weddings during a two and one-half month period. In 2001, two bills were enacted: one bill authorized emergency superior court judges to perform marriages during a four-day period and district court judges to perform marriages during a different four-day period, and the second bill authorized regular resident superior court judges to perform marriages during a ten-day period. This year, the General Assembly authorized superior court judges to perform marriages during a specified week and district court judges to perform marriages during a different, four-day period.

In 2001, when the General Assembly rewrote provisions of the marriage law, the legislation inadvertently removed language requiring the minister or magistrate performing the marriage to declare the persons husband and wife. Section 7 of S.L. 2002-159 (S 1217), the technical corrections bill, reinstates the former language and ratifies marriages performed between October 1, 2001 (the effective date of the 2001 law), and October 11, 2002 (the effective date of S.L. 2002-115), if the minister or magistrate failed to declare the couple husband and wife.

Magistrates' Jurisdiction

S.L. 2002-159 (S 1217), the technical corrections bill, amends G.S. 7A-273(2) to allow the Conference of Chief District Court Judges to add the littering crime found in G.S. 14-399(c1) to the waiver list so that persons charged with that offense can waive appearance and trial and plead guilty before a magistrate or clerk of court. Formerly, only littering offenses under G.S. 14-399(c) could be added to the list. G.S. 14-399(c) prohibits a person from intentionally or recklessly littering on any public property or private property in an amount not exceeding fifteen pounds and not for commercial purposes. G.S. 14-399(c1) prohibits littering in the same amount but eliminates the requirement that the littering be done intentionally or recklessly. Violations of G.S. 14-399(c1) are classified as infractions, while violations of G.S. 14-399(c) are classified as misdemeanors. The Conference of Chief District Court Judges did not add G.S. 14-399(c1) to the waiver list for 2003 but may revisit the issue for 2004. Thus, the only littering offense that is subject to waiver of trial before a magistrate or clerk continues to be G.S. 14-399(c).

Senate Bill 887, which would have expanded the authority of magistrates and clerks to hear and decide infractions and Class 3 misdemeanors, did not pass. However, the bill had the approval of the Judicial Council and is likely to be reintroduced in the 2003 session.

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Criminal Law and Procedure

The 2002 legislative session resulted in no major changes in the areas of criminal law and procedure. This chapter summarizes the legislative changes affecting criminal offenses, criminal procedure, victim assistance, law enforcement, sentencing and corrections, and sex offender registration.

Criminal Offenses

Incest

Prior to the enactment of S.L. 2002-119 (H 1276), individuals who were charged with and convicted of incest where punished less severely than individuals who were charged with and convicted of statutory rape. When the incest was between a grandparent and grandchild, parent and child, stepchild, or adopted child, or brother and sister, it was punished as a Class F felony. When the incest was between an uncle and niece or aunt and nephew, it was punished as a Class 1 misdemeanor. Statutory rape carries harsher punishments. It is punished as a Class B1 felony when (1) the defendant is at least twelve years old and the victim is less than thirteen years old and at least four years younger than the defendant or (2) the defendant is at least six years older than the victim and the victim is thirteen, fourteen, or fifteen years old. Statutory rape is punished as a Class C felony when the defendant is more than four but less than six years older than the victim and the victim is thirteen, fourteen, or fifteen years old. S.L. 2002-119 purports to eliminate a "loophole" created by the disparity between the punishments for incest and statutory rape. Previously, however, whenever the age requirements were satisfied individuals who engaged in sexual intercourse with children to whom they were related could have been charged with statutory rape and if convicted, subject to the harsher punishments applicable to that offense. By increasing the punishments for incest to bring them in line with those for statutory rape, the new law merely eliminates the possibility that individuals who have sexual intercourse with children

who are related to them can be charged with incest and, if convicted, receive a lesser punishment than if they were charged with and convicted of statutory rape.

Effective for offenses committed on or after December 1, 2002, the new law repeals G.S. 14-179 (incest between uncle and niece and nephew and aunt) and amends G.S. 14-178 (incest between certain near relatives), renaming it "Incest." Under the amended provision, a person commits incest if he or she engages in sexual intercourse with his or her grandparent or grandchild, parent, child, stepchild or legally adopted child, brother or sister of whole or half blood, or uncle, aunt, nephew, or niece. Punishments for incest are increased as follows:

- A person is guilty of a Class B1 felony if the person commits incest against a child under thirteen years old and the person is at least twelve years old and at least four years older than the child when the incest occurs *or* the person commits incest against a child who is thirteen, fourteen, or fifteen years old and the person is at least six years older than the child when the incest occurs.
- A person is guilty of a Class C felony if the person commits incest against a child who is thirteen, fourteen, or fifteen years old and the person is more than four but less than six years older than the child when the incest occurs.
- In all other cases of incest, the parties are guilty of a Class F felony.

Finally, S.L. 2002-119 adds a new provision stating that no child under the age of sixteen is liable for incest if the other person is at least four years older when the incest occurs.

Rape and Sex Offenses

Section 2 of the technical corrections act, S.L. 2002-159 (S 1217), replaces the term "mentally defective" as used in G.S. 14-27.3 (second-degree rape), G.S. 14-27.5 (second-degree sexual offense), and G.S. 14-27.1 (article definitions) with the term "mentally disabled." It makes the same change in G.S. 15-144.1 (essentials for bill of rape) and G.S. 15-144.2 (essentials for bill of sex offense). The amendments were effective December 1, 2002, and apply to offenses committed on or after that date.

Tax Fraud and Related Offenses

Filing false tax documents. G.S. 105-236(9a) provides that any person who willfully aids, assists in, procures, counsels, or advises the preparation, presentation, or filing of false tax documents is guilty of a Class H felony. S.L. 2002-106 (S 1218) amends that provision, increasing the punishments when the defendant is an income tax preparer. It provides that if the person who commits the offense is

- an income tax return preparer and the amount of taxes fraudulently evaded on returns filed in one year is $100,000 or more, the person is guilty of a Class C felony.
- an income tax return preparer and the amount of taxes fraudulently evaded on returns filed in one year is less than $100,000, the person is guilty of a Class F felony.
- not an income tax return preparer, the person is guilty of a Class H felony.

Although certain exceptions apply, an income tax return preparer is defined in G.S. 105-228.90(b)(4) as any person who prepares for compensation, or who employs others to prepare for compensation, any tax return or refund claim.

The statutory changes took effect on December 1, 2002, and apply to acts committed on or after that date.

Failure to remit funds. S.L. 2002-106 creates a new subsection in G.S. 105-236 making it a Class F felony to receive money from a taxpayer with the understanding that the money is to be remitted to the Secretary of Revenue to pay taxes and willfully fail to remit the funds. The new subsection became effective December 1, 2002, and applies to acts committed on or after that date.

Disclosure of tax information. S.L. 2002-106 adds an exception to G.S. 105-259(b), the provision prohibiting a state officer, employee, or agent from disclosing tax information acquired during employment. The new exception allows for disclosures to law enforcement agencies of

information concerning the commission of an offense discovered by the Department of Revenue during a criminal investigation of a taxpayer. The new disclosure exception became effective September 6, 2002.

Government Computer Offenses

Unlawful access to government computers. Article 60 of Chapter 14 of the General Statutes pertains to computer-related crime. This article describes offenses for, among other things, unlawfully accessing and damaging computers. S.L. 2002-157 (H 1501) creates a new section in Article 60 that provides for harsher penalties for unlawful access to government computers. New G.S. 14-454.1 makes it a Class F felony to willfully access or cause to be accessed any government computer for the purpose of

- devising or executing any scheme or artifice to defraud or
- obtaining property or services by means of false or fraudulent pretenses, representations, or promises.

The new provision makes it a Class H felony to willfully and without authorization access or cause to be accessed any government computer for any other purpose. Punishment for the same acts with regard to computers other than those owned, operated, or used by a government entity is set forth in G.S. 14-454, and these offenses remain Class G felonies or Class 1 misdemeanors, depending on the dollar amounts of damage caused. The new law also makes it a Class 1 misdemeanor to willfully and without authorization access or cause to be accessed any educational testing material or academic or vocational testing scores or grades that are in a government computer. Apparently, however, such access was already punished as a Class 1 misdemeanor under G.S. 14-454(b).

Definitions. The new law defines *government computer* to mean any computer, computer program, computer system, computer network, or any part thereof, that is owned, operated, or used by any state or local government entity. The phrase *access or cause to be accessed* is defined, as in G.S. 14-454, to include introducing, directly or indirectly, a computer program (including a self-replicating or self-propagating computer program) into a computer, computer program, system, or network.

Damaging a government computer. S.L. 2002-157 amends G.S. 14-455 (damaging computers, computer programs, systems, networks, or resources), adding a new subsection making it a Class F felony to willfully and without authorization alter, damage, or destroy a government computer. Equivalent acts committed with regard to computers other than those owned, operated, or used by a government entity remain Class G felonies or Class 1 misdemeanors, depending on the dollar amounts of damage caused.

Denying government computer services. Denial of computer services to authorized users is prohibited under G.S. 14-456 and punished as a Class 1 misdemeanor. S.L. 2002-157 adds new G.S. 14-456.1 making it a Class H felony to willfully and without authorization deny or cause the denial of government computer services. *Government computer service* means any service provided or performed by a government computer. Like G.S. 14-456, the new provision expressly applies to a denial of service effectuated by introducing, directly or indirectly, a computer program (including a self-replicating or self-propagating computer program) into a computer, computer program, system, or network.

Exceptions. S.L. 2002-157 creates new G.S. 14-453.1, which specifically provides that Article 60 does not apply to or prohibit

- any terms or conditions in a contract or license related to a computer, computer network, software, computer system, database, or telecommunication device; or
- any software or hardware designed to allow a computer, computer network, software, computer system, database, information, or telecommunication service to operate in the ordinary course of a lawful business or that is designed to allow an owner or authorized holder of information to protect data, information, or rights in it.

Jurisdiction. S.L. 2002-157 adds a new jurisdictional provision in G.S. 14-453.2 providing that any offense under Article 60 committed through electronic communication may be deemed to have been committed either where the communication was originally sent or where it was originally received in this state.

Effective date. S.L. 2002-157 became effective December 1, 2002, and applies to offenses committed on or after that date.

Defrauding Drug and Alcohol Screening Tests

Effective for acts committed on or after December 1, 2002, S.L. 2002-183 (S 910) creates several new offenses pertaining to defrauding drug and alcohol screening tests. New G.S. 14-401.20 makes it unlawful to

- sell, give away, distribute, or market urine or transport urine into North Carolina with the intent that it be used to defraud drug or alcohol screening tests;
- attempt to foil or defeat such tests by providing substitutes for or spiking urine or other bodily fluid samples or advertising sample substitutions or other spiking devices or measures;
- adulterate urine or other bodily fluid samples with the intent to defraud drug or alcohol screening tests;
- possess substances intended to be used to adulterate urine or other bodily fluid samples for the purpose of defrauding drug or alcohol tests; or
- sell substances with the intent that they be used to adulterate urine or other bodily fluid samples for the purpose of defrauding drug or alcohol tests.

First offenses are punished as Class 1 misdemeanors. Second or subsequent offenses are punished as Class I felonies.

Fraudulent Financial Transactions

Forgery. G.S. 14-119(a) prohibits only the making, forging, or counterfeiting of instruments or securities with intent to injure or defraud. Violation is a Class I felony. S.L. 2002-175 (H 1100) amends G.S. 14-119(a) to prohibit possession of counterfeit instruments as well, providing that it is a Class I felony to forge or counterfeit any instrument or possess any counterfeit instrument with the intent to injure or defraud any person, financial institution, or government unit. A new subsection in G.S. 14-119 creates a Class G felony for transporting or possessing five or more counterfeit instruments with the intent to injure or defraud any person, financial institution, or government unit. Finally, the new law amends the definitions of terms used to describe these offenses as follows:

- *Counterfeit* is defined to mean to "manufacture, copy, reproduce, or forge an instrument that purports to be genuine, but is not, because it has been falsely copied, reproduced, forged, manufactured, embossed, encoded, duplicated, or altered."
- *Financial institution* now specifically includes both foreign and domestic institutions.
- *Governmental unit* is amended to include foreign jurisdictions.
- *Instrument* is amended to include currency.

Financial transaction card theft. G.S. 14-113.9 criminalizes financial transaction card theft. S.L. 2002-175 adds a new subsection to G.S. 14-113.9 providing that a person is guilty of financial transaction card theft when he or she, with intent to defraud,

- uses a scanning device to access, read, obtain, memorize, or store information encoded on another person's financial transaction card or
- receives the encoded information from such a card.

The term *scanning device* is defined to include scanners, readers, or any other devices used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on financial transaction cards.

Financial identity fraud. Article 19C in Chapter 14 of the General Statutes pertains to financial identity fraud. G.S. 14-113.20, the first section in Article 19C, provides that it is a felony for someone to

- knowingly obtain, possess, or use another person's identifying information without that person's consent
- with the intent to fraudulently represent that he or she is that other person
- for the purposes of making financial or credit transactions in the person's name or avoiding legal consequences.

S.L. 2002-175 amends this provision by

- making it applicable whether the person to whom the identifying information belongs is living or dead;
- removing the requirement that the perpetrator act without the victim's consent;
- expanding the criminal intent to include the intent to obtain anything of value, benefit, or advantage; and
- including within the meaning of *identifying information*
  - biometric data,
  - fingerprints,
  - passwords, and
  - parent's legal surname prior to marriage.

S.L. 2002-175 also creates new G.S. 14-113.20A entitled "Trafficking in Stolen Identities." This section makes it unlawful to sell, transfer, or purchase the identifying information of another person with the intent to commit financial identity fraud, or to assist another person in committing financial identity fraud. Violation is a felony, punishable as provided in G.S. 14-113.22 (*see* below). The exceptions that pertain to G.S. 114-113.20 apply to the new offense as well.

Punishment for Article 19C offenses is spelled out in G.S. 14-113.22. S.L. 2002-175 amends these provisions in several ways.

- Previously, violation of G.S. 14-113.20 (financial identity fraud) was punished as a Class H felony unless the victim suffered arrest, detention, or conviction as a result of the offense, in which case the offense was considered a Class G felony. Under the S.L. 2002-175 amendments, all such violations are now punished as Class G felonies unless one of two exceptions applies. The offense becomes a Class F felony if (1) the victim suffers arrest, detention, or conviction as a proximate result of the offense or (2) the person is in possession of the identifying information pertaining to three or more separate people.
- A violation of the new offense created in G.S. 14-113.20A for trafficking in stolen identities is punished as a Class E felony.
- Pursuant to Article 81C of Chapter 15A of the General Statutes (restitution), courts may now order a person convicted under G.S. 14-113.20 (financial identity fraud) or G.S. 14-113.20A (trafficking in stolen identities) to pay restitution for financial loss caused by the violation.

Civil action. Finally, S.L. 2002-175 amends Article 43 of Chapter 1 of the General Statutes (civil procedure; nuisance and other wrongs) by adding new G.S. 1-539.2C providing that any person whose property or person is injured by reason of an act made unlawful by Article 19C may sue for civil damages and an injunction. If the identifying information of a deceased person is used in violation of Article 19C, the deceased person's estate may sue.

Effective date. The provisions of S.L. 2002-175 became effective December 1, 2002, and apply to offenses committed on or after that date.

Regulatory Offenses

Emissions violations. S.L. 2002-4 (S 1078) adds a new section to Article 21B of G.S. Chapter 143 imposing limits on the emission of certain pollutants from coal-fired generating units. Effective June 20, 2002, this law, which is discussed in more detail in Chapter 9, ("Environment and Natural Resources"), creates the following new criminal offenses for violation of its emissions limitations.

- Any person who negligently violates any classification, standard, or limitation in the new section shall be guilty of a Class 2 misdemeanor and may be subject to a fine not to exceed $15,000 per day of violation, provided that the fine shall not exceed a cumulative total of $200,000 for each period of thirty days during which the violation continues.
- Any person who knowingly and willfully violates the new emissions limitations shall be guilty of a Class H felony and may be subject to a fine not to exceed $100,000 per day of violation, provided that the fine shall not exceed a cumulative total of $500,000 for each period of thirty days during which the violation continues.
- Any person who knowingly violates the new emissions limitations and who knows at that time that he or she thereby places another person in imminent danger of death or serious bodily injury shall be guilty of a Class C felony and may be subject to a fine not to exceed $250,000 per day of violation, provided that the fine shall not exceed a cumulative total of $1,000,000 for each period of thirty days during which the violation continues.

Cigarette sales. Effective January 1, 2003, S.L. 2002-145 (H 348) amends G.S. 14-401.18, which prohibits the sale of certain packages of cigarettes. S.L. 2002-145 creates a new Class A1 misdemeanor applicable to any person selling or holding for sale a package of cigarettes that violates federal laws governing the submission of ingredient information to federal authorities pursuant to 15 U.S.C. §1335a, federal laws governing the import of certain cigarettes pursuant to 19 U.S.C. §§1681 and 1681b, or any other provision of federal law or regulation.

Criminal disclosure under new address confidentiality program. S.L. 2002-171 (H 1402) creates new G.S. Chapter 15C establishing a program in the Attorney General's office to protect the confidentiality of the addresses of victims of domestic violence, sexual offense, or stalking. Under S.L. 2002-171 any person who makes a disclosure in violation of the new provisions is guilty of a Class 1 misdemeanor and shall be assessed a fine not to exceed $2,500. This new legislation is discussed in further detail in Chapter 5, "Courts and Civil Procedure."

Pitt County Hunting

S.L. 2002-142 (H 1651) provides that in Pitt County it is unlawful to

- hunt with a firearm from, on, or across the right-of-way of any public road or highway.
- hunt while under the influence of an impairing substance.
- hunt with a firearm within three hundred feet of any residence or occupied building without the permission of the owner or lessee of the land.
- hunt or discharge a firearm on or across posted land without the permission of the owner or lessee of the land.
- release dogs or allow them to run on posted land without the permission of the owner or lessee of the land.

Violations are punishable as Class 3 misdemeanors and, notwithstanding G.S. 15A-1340.23 (punishments according to prior conviction level and punishment limits for each class of offense), offenders are subject to a fine of up to $250. A second or subsequent violation involving hunting while under the influence is punishable by a fine of at least $250 and a twelve-month loss of hunting privileges.

The new statute is enforceable by law enforcement officers of the Wildlife Resources Commission, sheriffs and deputy sheriffs, and other peace officers with general subject matter jurisdiction. It was effective November 1, 2002, and applies to offenses committed on or after that date.

Criminal Procedure

Criminal Process

Electronic repository. S.L. 2002-64 (H 1583) directs the Administrative Office of the Courts (AOC) to create an electronic repository for criminal process, making possible the creation, signing, issuing, entering, filing, and retaining of criminal process in electronic form. The electronic repository must include capabilities for the tracking of criminal process, remote access to criminal process, and the printing of electronic criminal process on paper. Although this law becomes effective January 1, 2003, the provisions regarding the electronic repository cannot be implemented until the repository is in operation. Currently, no such system exists. Once the repository is in place, any criminal process may be created, signed, issued, and filed in electronic form and retained within it. In addition, any criminal process originally created in paper form may be filed in electronic form and entered in the repository. When electronic criminal process from the repository is printed on paper, the paper copy will have the same effect as the original. Thus, for example, a law enforcement officer will be able to validly serve a person with a copy of any electronic criminal process printed from the repository. Service of a printed copy of electronic process in the repository must be accomplished according to several rules. First, service must occur within twenty-four hours after the process was printed. Second, the date, time, and place of service must be entered into the electronic repository. Finally, if service is not made within twenty-four hours of the printing of the process, that fact must be recorded in the electronic repository and the paper copies must be destroyed (although the process may be reprinted at a later time).

Facsimile transmissions constitute originals. Effective January 1, 2003, S.L. 2002-64 provides that a signed document printed through a facsimile machine constitutes an original. The law defines the term *document* to include any pleading, criminal process, subpoena, complaint, motion, application, notice, affidavit, commission, waiver, consent, dismissal, order, judgment, or other writing intended, in a criminal or contempt proceeding, to authorize or require an action, to record a decision, or to communicate or record information. The definition does not include search warrants. When the law becomes effective, defendants may be validly served with faxed copies of any criminal process.

Electronic signatures. S.L. 2002-64 defines *signature* as any symbol executed with the intent to authenticate a document. It provides that a document may be signed "by the use of any manual, mechanical or electronic means that causes the individual's signature to appear in or on the document." The new law thus clarifies that as long as a document contains a printed "signature," it need not be signed by hand.

Recall of process. S.L. 2002-64 provides for the recall of criminal process, other than a citation, that has not been served on a defendant. Under the new law, a warrant or criminal summons must be recalled by the judicial official who issued it if the official determines that there was no probable cause supporting its issuance. The new statute also provides that an order for arrest may be recalled for good cause by any judicial official of the trial division in which it was issued. *Good cause* is defined to include, without limitation, the fact that

- a copy of the process has been served on the defendant; or
- all charges on which the process is based have been disposed; or
- the person named as the defendant in the process is not the person who committed the charged offense; or
- it has been determined that grounds for the issuance of an order for arrest did not exist, no longer exist, or have been satisfied.

The disposition of all charges on which the process is based automatically recalls that process. The new law also provides for a means to recall both paper and electronic criminal process.

Bioterrorism Preparedness

Effective October 1, 2002, S.L. 2002-179 (H 1508) adds new Article 22 to G.S. Chapter 130A entitled "A Terrorist Incident Using Nuclear, Biological, or Chemical Agents." The new law gives

the State Health Director broad authority to respond to a suspected terrorist attack, including, among other things, the authority to limit the movement of contaminated persons or animals and to limit access to certain areas. The scope of this new authority and other aspects of the law are discussed in greater detail in Chapter 10, "Health." Only those aspects of the law that affect criminal procedure are discussed here.

Detention in designated area. Section 14 of S.L. 2002-179 amends G.S. 15A-401(b) to allow law enforcement officers to detain a person arrested for violating an order limiting freedom of movement or access in an area designated by the State Health Director or local health director. The person may be detained within the area until the initial appearance.

Pretrial release. Section 15 of S.L. 2002-179 creates new G.S. 15A-534.5 providing that if a judicial official conducting an initial appearance finds by clear and convincing evidence that a person arrested for violating an order limiting freedom of movement or access poses a threat to the health and safety of others, the judicial official shall deny pretrial release and shall order the person to be confined within an area or facility designated by that judicial official. The pretrial confinement ends when a judicial official determines that the confined person does not pose a threat to the health and safety of others. Such a determination shall be made only after the State Health Director or local health director has made recommendations to the court.

Criminal History Background Checks

Effective October 9, 2002, S.L. 2002-147 (H 1638) authorizes the Department of Justice to provide criminal record checks to certain state and local agencies, divisions, boards, commissions, and units, such as the Alcohol Law Enforcement Division and the boards of law and dental examiners.

Assistance Program for Victims of Rape and Sex Offenses

Part 3A of Article 11 of Chapter 143B of the General Statutes establishes an assistance program for victims of rape and sex offenses. In compliance with the Federal Violence Against Women Act, Section 18.6 of the state appropriations act, S.L. 2002-126 (S 1115), makes several changes to this program. First, the eligibility requirements are amended to provide that sexual assault or attempted sexual assault victims are eligible for program assistance if the sexual assault or the attempted sexual assault is reported to a law enforcement officer within five days of occurrence or if a forensic medical examination is performed within five days of the assault or attempted assault. The term *sexual assault* includes first- and second-degree rape, first- and second-degree sexual offense, and statutory rape. The Secretary of Crime Control and Public Safety may waive either of the five-day requirements for good cause.

The effect of these changes is to expand coverage of the program by including statutory rape victims and by extending the time limits for reporting of offenses. Consistent with this amendment, the state appropriations act also deletes the subsection stating that program assistance would not be provided unless the rape or offense was reported within seventy-two hours of occurrence.

Section 18.6 of S.L. 2002-126 also amends program provisions regarding eligible expenses, amount of assistance given, and payment. This section was effective December 1, 2002.

Law Enforcement

DENR special peace officers. G.S. 160A-288 allows the head of any law enforcement agency temporarily to provide assistance to another agency in enforcing state law. S.L. 2002-111 (S 1262) creates new G.S. 113-28.2A providing that special peace officers employed by the Department of Environment and Natural Resources are officers of a "law enforcement agency" for

purposes of G.S. 160A-288 and that the department has the same authority as a city or county governing body to approve cooperation between law enforcement agencies under that section.

North Carolina Child Alert Notification System. Section 18.7 of the appropriations act, S.L. 2002-126, establishes the North Carolina Child Alert Notification System [NC CAN (Amber Alert)] within the North Carolina Center for Missing Persons. NC CAN is to provide a statewide system for the rapid dissemination of information regarding abducted children. Section 18.7 also amends G.S. 143B-499.1 (dissemination of missing persons data by law enforcement agencies) to require that if a missing person report involves a child and meets the criteria established pursuant to NC CAN, the law enforcement agency shall notify the Center for Missing Persons as soon as possible of the relevant data about the missing child.

Sentencing and Corrections

Offender Supervision Compact; Transfer of Convicted Foreign Nationals

Effective October 23, 2002, S.L. 2002-166 (H 1641) authorizes the Governor to execute, on behalf of North Carolina and with any other state, the revised Interstate Compact for the Supervision of Adult Offenders. Effective one year later, S.L. 2002-166 repeals Article 4A of G.S. Chapter 148 (out-of-state parolee supervision), the prior compact. Finally, effective January 1, 2003, S.L. 2002-166 allows North Carolina to transfer convicted foreign nationals pursuant to a treaty between the United States and a foreign country.

IMPACT Program

Effective August 15, 2002, section 17.18 of the appropriations act, S.L. 2002-126, terminated the IMPACT boot camp program.

Reimbursement for Transferred Safekeepers

G.S. 162-39 governs the transfer of prisoners when necessary to ensure public safety, to avoid a breach of the peace, or to provide sufficient and adequate housing for prisoners. Previously, when a prisoner was transferred to a unit of the state prison system, the county from which the prisoner was transferred was not required to reimburse the state for maintaining the prisoner if he or she was a resident of another state or county at the time he or she committed the crime for which imprisoned. Section 17.1 of the appropriations act, S.L. 2002-126, removes this exception, requiring counties transferring safekeepers to reimburse the Department of Correction regardless of the prisoner's residency.

Electronic Monitoring Costs

Section 17.10 of S.L. 2002-126 creates new G.S. 148-10.3 stipulating that the costs of providing electronic monitoring of pretrial or sentenced offenders shall be reimbursed to the Department of Correction by the state or local agency requesting the service.

Sex Offender Registration—Academic and Educational Employment Status

S.L. 2002-147 amends provisions in the sex offender registration laws to conform them to federal requirements. Specifically, these amendments

- require additional information regarding academic and educational employment status to be obtained on registration forms;

- provide that persons required to register report changes in academic or educational employment status;
- make it a Class F felony to fail to inform the registering sheriff of changes in academic or educational employment status; and
- require the Division of Criminal Statistics to notify, among others, law enforcement units at institutions of higher education of reported changes in academic or educational employment status.

The new law became effective October 9, 2002, and applies to persons convicted on or after that date of an offense requiring them to register as a sex offender.

Studies

S.L. 2002-180 (S 98), the 2002 Studies Bill, authorizes the Legislative Research Commission to study

- how federal law affects the distribution of national criminal history record check information requested by nursing homes, home care agencies, adult care homes, assisted living facilities, and area mental health, developmental disabilities, and substance abuse services authorities. The study also will address the problems federal restrictions pose for effective and efficient implementation of state-required criminal record checks.
- jail safety standards.

S.L. 2002-180 also establishes the House Select Study Committee on Video Gaming Machines. This committee will study

- the federal and state regulation of video gaming machines.
- the problems associated with the operation of video gaming machines in North Carolina.
- the difficulties associated with the enforcement of state video gaming laws.
- the most appropriate law enforcement agency to enforce state video gaming laws.
- the effect of the decision in *Helton v. Good*, 208 F. Supp. 2d 597 (W.D.N.C. 2002), on state video gaming laws.
- the potential impact a ban on video gaming machines would have on the casino operations of the Eastern Band of the Cherokee Indians.
- the feasibility of levying a fee on video gaming machines and using the revenue to enforce current state video gaming laws.

Jessica Smith

7

Elections

In 2002 the General Assembly convened an extra session to redraw district lines for the state House and Senate, and, in an historic move, to postpone the 2002 primaries from May to September. During the regular session, the lawmakers also passed legislation providing for the nonpartisan election of appellate judges and created a wide-ranging public financing plan for appellate judge races.

Redistricting

Every ten years after the federal census, the state legislature must undertake the politically grueling task of redrawing district lines for the United States House of Representatives, the state Senate, and the state House of Representatives. It does so by passing statutes delineating the district lines. These statutes then face two tests. First, in accordance with the federal Voting Rights Act of 1965, all laws affecting elections—including redistricting statutes—must be submitted to the U. S. Department of Justice for review. If the Department of Justice, in the words of the Voting Rights Act, "interposes an objection" to a redistricting statute, then that statute and its districts cannot go into effect. The statute has not, in common terminology, been "precleared." In the early 1990s, the redistricting acts pertaining to North Carolina's Congressional seats were not precleared and the General Assembly was required to redraw the associated district lines. In 2001, however, all the statutes setting the district lines for the U. S. House of Representatives, the state Senate, and the state House of Representatives received the necessary Department of Justice preclearance, passing this Voting Rights Act test.

The second test involves lawsuits challenging the constitutionality of one or more of the redistricting statutes. While such lawsuits are not a certainty, in recent times they have become more likely. In the 1990s federal courts found North Carolina's Congressional districts to be in violation of the United States Constitution and voided them. In 2002, however, the lawsuit challenging the constitutionality of the new districts pertained to the state House and state Senate (rather than Congressional) districts and was based on provisions of the North Carolina (rather than the federal) Constitution.

Judge-Drawn Districts for 2002

On April 30, 2002, the North Carolina Supreme Court struck down both the state House and state Senate districts and returned the lawsuit to the superior court for further action. The superior court judge handling the case gave the General Assembly the first opportunity to redraw the districts.

The General Assembly convened an extra session for that purpose. In May it passed S.L. 2002-1 Extra Session (H 4), setting new state House and state Senate districts. On May 31 the superior court judge rejected those districts and issued his own maps with new district lines. The North Carolina Supreme Court agreed to hear an appeal of the superior court judge's action, but not before the 2002 election. Thus the districts drawn by the superior court judge were the ones used in that election.

Delay of the 2002 Primaries

Normally in even-numbered years, North Carolina holds elections for federal, state, and county offices. The primary is in May, the second primary in any race (when it is necessary) is in June, and the general election is in November. Because of the April 30 supreme court action striking down the state House and state Senate districts, the May primaries for those offices could not be held. The State Board of Elections decided to postpone all primaries for all offices so that all the primary elections could be held on the same date.

In its redistricting extra session, the General Assembly enacted S.L 2002-21 Extra Session (S 2), setting the primary date for all elections for September 10, 2002. That date was so near the date of the November general election that the legislature eliminated the second primary altogether, providing that the candidate receiving a plurality of votes in the primary would be the nominated candidate. Both measures—scheduling the primary for September and eliminating the second primary—were effective for the 2002 elections only. S.L. 2002-21 Extra Session also created a new filing period so that candidates for the state House and state Senate could file notices of candidacy in the new districts.

Delay of Constitutional Amendment Vote

By action in an earlier session, the General Assembly had set a statewide referendum on a highly technical constitutional amendment concerning the procedures by which government-owned land could be transferred to the State Nature and Historic Preserve for the primary election date in 2002. In S.L. 2002-3 Extra Session (H 3) the legislature postponed the referendum until the November 2002 general election.

Nonpartisan Appellate Judge 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 did the same thing for district court judge elections. Effective with the 2004 elections, S.L. 2002-158 (S 1054) does likewise for elections of judges to the North Carolina Supreme Court and the North Carolina Court of Appeals.

Public Financing of Appellate Judge Elections

S.L. 2002-158 affects appellate judge elections in two ways. First, it makes these elections nonpartisan, as described above. Second, it creates the North Carolina Public Campaign Financing Fund and provides for public financing of campaign costs incurred by appellate judge candidates who choose to participate.

Participation

An individual who wishes to become a candidate for the North Carolina Supreme Court or the North Carolina Court of Appeals may choose whether to participate in public financing through the fund. To participate, the individual must not have raised or spent more than $10,000 for campaign expenditures after January 1 in the year before the election. He or she must file a notice of intent to participate and obtain contributions from at least 350 registered voters as a demonstration of support. The total of these contributions must equal at least thirty times the filing fee for the office (currently, a total of $33,000 for court of appeals judgeships and $34,500 for supreme court judgeships) and no more than sixty times the filing fee ($66,000 and $69,000, respectively). These contributions are in addition to any the candidate may have received (below the $10,000 threshold, of course) before filing the notice of intent.

A candidate may revoke his or her decision to participate within the time constraints set by the act.

Limited Spending through the Primary

Up through the primary, a participating candidate may spend no more than the maximum qualifying amount of contributions ($66,000 and $69,000 for court of appeals and supreme court, respectively), plus any funds up to $10,000 collected before filing the notice of intent. After filing the notice of intent, candidates may contribute up to $1,000 of their own money and may accept up to $1,000 each from their spouses, parents, children, brothers, or sisters, as long as the maximum qualifying amount is not exceeded. These funds may be expended for campaign-related purposes only.

As discussed below, under certain conditions rescue funds may be made available to participating candidates, permitting them to spend more than the maximum qualifying amount.

Nonparticipation

A candidate who chooses not to participate is not bound by the rules detailed above and will receive no money from the fund.

Receipt of Fund Money

Up through the primary, a participating candidate receives no money from the fund (except possibly rescue funds, as described below). Before the primary he or she may make expenditures from (1) the qualifying funds raised, only up to the maximum qualifying amount (as described above); (2) any of the amount up to $10,000 raised before filing the notice of intent; and (3) any rescue funds provided.

A participating candidate will receive fund money after the primary and up to a contested general election. A court of appeals candidate will receive 125 times the filing fee (currently, a total of $137,500) and a supreme court candidate, 175 times the filing fee (currently, a total of $201,300). No funds are provided for uncontested elections. If the amount of money in the fund is insufficient to fully subsidize all participating candidates at these amounts, then each candidate will receive a pro rata share. Participating candidates may not make campaign expenditures from any sources other than fund receipts.

Rescue Funds for the Primary

The participating candidate receives no money from the fund up through the primary unless a "trigger" for rescue funds is released. In other words, *rescue funds* can become available when

1. An opponent's campaign expenditures or contributions exceed a certain amount. Any nonparticipating candidate in an election contest with a participating candidate must notify the State Board of Elections within twenty-four hours when the total amount of

campaign expenditures made or campaign funds contributed or borrowed exceeds 80 percent of the maximum qualifying amounts described above (currently $66,000 and $69,000 for court of appeals and supreme court, respectively). Afterward he or she must report all subsequent expenditures and contributions regularly and frequently according to a schedule set by the board. If those expenditures and contributions exceed the maximum qualifying amount, the fund will give the participating candidate an amount equal to the excess, up to twice the maximum qualifying amount.

2. Campaign expenditures made by entities other than candidates exceed a certain amount. Any entity making independent expenditures in support of a nonparticipating candidate or in opposition to a participating candidate must report its expenditures when they reach 50 percent of the maximum qualifying amounts. When the total of all expenditures by all such entities exceeds the maximum qualifying amounts, rescue funds will be made available to the participating candidate.

Rescue Funds for the General Election

The participating candidate receives money from the fund for the general election, up to the amounts described above (currently, $137,500 for court of appeals races and $201,300 for supreme court races). When the expenditures and contributions made by a nonparticipating candidate or the expenditures made by a noncandidate entity exceed these amounts, rescue funds are released for the general election. In that case, a participating candidate will receive from the fund an amount equal to the excess, up to twice the amounts candidates are normally eligible to receive from the fund for the general election ($137,500 and $201,300, as discussed above).

Administration

The North Carolina Public Campaign Financing Fund is to be administered by the State Board of Elections, which is to adopt rules and issue opinions to ensure the fund's effective administration. The Executive Director of the State Board of Elections will make initial decisions regarding qualifications, certification of participating candidates, and distribution of money from the fund, and appeals may be taken to the board for hearing.

The statute also creates an Advisory Council for the Public Campaign Financing Fund. The council will provide guidance to the State Board of Elections and will evaluate and report on the administration of the fund every two years.

The statute provides civil penalties for violations of the fund's provisions.

Voter Guide

S.L. 2002-158 directs the State Board of Elections to publish a Judicial Voter Guide, which will contain information concerning all court of appeals and supreme court candidates. This information will be supplied by the candidates themselves in a format provided by the board. The guide will also explain the functions of the appellate courts, the laws governing the election of appellate judges, the purpose and operation of the fund, and the laws concerning voter registration.

Fund Sources

The Campaign Financing Fund will have several sources for its money.

1. Tax payment allocations. Individual taxpayers will have the option of checking a box on their income tax returns allotting to the fund $3 of the tax that they otherwise owe. Tax liability will remain the same regardless of the option chosen. An old entity called the North Carolina Candidates' Financing Fund, which had employed a similar (but rarely used) check-off option, is abolished.

2. Attorney contributions. Attorneys paying their annual privilege license taxes will be given the opportunity to donate an extra $50 to the fund. This donation will not be mandatory.
3. Voluntary donations.

Limitations on Contributions to Candidates

G.S. 163-278.13 generally provides that no one may contribute more than $4,000 to an election candidate. S.L. 2002-158 adds new G.S. 163-278.13(e2), which reduces these amounts for court of appeals and supreme court candidates to $1,000. Exceptions are provided for candidates' parents, children, brothers, and sisters, who may contribute up to $2,000 each. (Once a candidate has filed a notice of intent to become a participating candidate, this family limit is $1,000.) In addition, if a nonparticipating candidate in one of these races has an opponent who is participating in the fund, the nonparticipating candidate may not accept contributions in the final twenty-one days before the general election.

Miscellaneous

S.L. 2002-159 (S 1217) provides a number of relatively minor changes to the elections statutes.

New Parties on Ballots

The elections statutes provide for the creation of new political parties through a petition process. Once the State Board of Elections certifies a new party, the party is eligible to have its candidates on the ballot. For the new party to remain certified, its candidates must receive certain minimum percentages of votes, which are specified in the statutes. If the candidates fail to receive those percentages, the party is decertified and must repeat the petition process if it is to again have its candidates appear on the ballot.

G.S. 163-98 has provided that in the first general election after the new party is certified, the party is entitled to have its candidates appear on ballots for state and national, but not local, offices. S.L. 2002-159 incorporates the holding of a fourteen-year-old federal court decision, providing that the new party's candidates may appear on ballots for local office as well.

Verification of Certain Petitions

One of the responsibilities that county boards of elections generally shoulder is that of verifying the signatures on various petitions related to elections. This is an appropriate responsibility for boards of elections because usually the verifications concern whether petition signatures are actually those of properly registered voters. The statutes provide, however, that in some limited circumstances petitions are to be signed by a certain proportion of "resident freeholders" rather than registered voters. S.L. 2002-159 amends two of these statutes—G.S. 130A-48, concerning petitions for incorporation of sanitary districts, and G.S. 69-25.1, concerning petitions for creating fire protection districts—to clarify that in these cases the responsibility for verifying the petitions falls to the county tax office rather than to the board of elections.

Campaign Contributions by Credit Card; Account Numbers

G.S. 163-278.14 provides that contributions in excess of $100 may not be in the form of cash but must be made by check, draft, or money order. S.L. 2002-159 amends the statute to make clear that contributions may also be made by credit card and that the associated credit card numbers are not public record. A companion amendment, to G.S. 163-278.7(b), clarifies that campaign

treasurers may keep account numbers related to campaign donations confidential, except as necessary for an audit or investigation. However, disclosure of these numbers does not subject the treasurer to a lawsuit unless such disclosure is the result of gross negligence, wanton conduct, or intentional wrongdoing.

Incorporation of Political Committees

The campaign finance statutes generally prohibit corporations from making campaign contributions. Sometimes groups organized as political committees (which may make campaign contributions) wish to organize as corporations to protect their members from certain kinds of liability unrelated to elections. S.L. 2002-159 amends G.S. 163-278.19 to permit such organizations, as long as the incorporating committee clearly states in its incorporation documents that the only purpose for which the corporation can be organized is "to accept contributions and make expenditures to influence elections as a political committee." Having done so the corporation may then apply to the State Board of Elections for certification as a political committee.

Confidentiality of Voted Ballots

S.L. 2002-159 amends G.S. 163-165.1, clarifying that voted ballots are to be treated as confidential. No one other than elections officials performing their duties may have access to voted ballots except by court order or order of the appropriate elections board in connection with an election protest or investigation of alleged elections wrongdoing.

Precinct Changes

The ongoing legislative districts lawsuit necessitates keeping current voting precincts in place in case new districts must be drawn. To address this need, S.L. 2002-159 amends G.S. 163-132.3 to effect a moratorium on precinct boundary changes. The statute does provide for changing current districts that do not conform to the 2000 census block boundaries.

Absentee Ballot Requests

Previously the statutes have not required any particular format for absentee ballot requests, and some independent entities, including political parties, have devised their own request forms. S.L. 2002-159 adds new G.S. 163-230.2 to specify that a request for an absentee ballot must be either written entirely by the requester personally or be on a form generated by the county board of elections and signed by the requester. Provision is made for a requester who cannot meet these requirements because of illiteracy or disability. G.S. 230.1 is amended to conform to this change.

On-Line Voting Commission Study

S.L. 2002-180 (S 98) creates a nineteen-member On-Line Voting Commission Study to examine the state of technology with regard to

- on-line voting,
- other states' experiences with on-line voting,
- the comprehensibility of the on-line voting process to the average voter,
- the disparity of access to the Internet,
- privacy and security concerns, and
- the potential cost of an on-line voting system.

The commission is to report to the 2003 General Assembly.

Address Confidentiality

S.L. 2002-171 (H 1402) creates a government-wide Address Confidentiality Program to permit government agencies to respond to requests for public records without disclosing the location of a victim of domestic violence, sexual offense, or stalking. It allows the state Attorney General to provide, for the use of government agencies generally, a substitute address for a person participating in the program. A special provision of the statute, new G.S. 15C-8(e), directs county boards of elections to use a program participant's actual address for all election-related purposes and to keep the address confidential [as already provided for in the elections law, at G.S. 163-82.10(d)]. Use of the participant's actual address on letters placed in the mail by the elections board is not a breach of the Address Confidentiality Program. The substitute address provided by the Attorney General is not to be used for voter registration or verification purposes.

Robert P. Joyce

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Elementary and Secondary Education

In 2002 the biggest changes in education policy came from the federal government, not from traditional state policymakers. The new federal No Child Left Behind Act[1] had state education officials, local policymakers, and educators scrambling to address the act's many mandates. Across the nation, education leaders were enmeshed in the first steps of implementing the act. At the same time, North Carolina state and local officials were waiting for state courts to fully resolve a myriad of issues related to providing a "sound basic education" to all students.[2] With these issues swirling around, it may have been a relief to educators that 2002 was a year in which the General Assembly made few substantive changes to the state's school statutes. Instead, its most significant actions were in protecting elementary and secondary schools from deep budget cuts and appropriating new funds for ABCs Program bonuses, assistance teams for low-performing schools, and class-size reduction for first grades.

Financial Issues

Reduction of County Appropriations

Annually, each county board of commissioners adopts a budget appropriating funds to all the local school administrative units in its jurisdiction. Under G.S. 159-13(9), a county may not

1. For more information on the Act of Jan. 8, 2002, Pub. L. No. 107-110, 115 Stat. 1425, *see* www.nclb.gov maintained by the U.S. Department of Education, with links to the legislation and regulations, and www.ncpublicschools.org/esea, which has information about implementation of the act in North Carolina (last visited November 1, 2002).

2. Leandro v. State of North Carolina, 346 N.C. 336, 468 S.E.2d 543 (1997). For the North Carolina Supreme Court and the subsequent *Hoke County v. State of North Carolina* trial court rulings, *see* www.ncforum.org and click on school finance decisions (last visited Nov. 1, 2002).

reduce its appropriations to a school unit after the county budget ordinance is adopted unless (1) the local board of education agrees to the reduction or (2) a general reduction in county expenditures is required because of "prevailing economic conditions." In 2001–2002, school appropriations were cut in several counties because of economic conditions.

Section 6.7(a) of S.L. 2002-126 (S 1115), which amends G.S. 159-13(9), does not limit a county's authority to cut school appropriations, but it does add procedural requirements that must be satisfied before funds are reduced. The county board of commissioners must hold a public meeting at which the school board has an opportunity to present information about the reduction's impact. In addition, the commissioners must vote publicly on the decision to reduce appropriations to a school unit.

Payments to Charter Schools

A charter school is a public school that operates under a charter from the State Board of Education (State Board) and that is free from many of the requirements imposed on traditional public schools. G.S. 115C-238.29H(b) provides that the local school administrative unit of a child attending a charter school must transfer to the charter school an amount equal to that unit's per pupil local current expense appropriation for the fiscal year. Between 1997 and 1999, a charter school in Asheville received equal per pupil shares of Buncombe County's annual appropriation to the school board's local current expense fund but did not receive per pupil shares of revenues collected from the supplemental school tax or from fines or forfeitures. The charter school sued the Asheville Board of Education, claiming that the school was entitled to an equal per pupil share of those revenues.

The superior court ordered the school board to include the funds from supplemental taxes, penalties, fines, and forfeitures in the calculation of per pupil local current expense appropriation. It also ordered the board to pay the charter school the difference between the per pupil local current expense appropriation actually transferred by the board and the amount that would have been transferred had all revenue sources been included in the payments for the 1997–1999 school years. The North Carolina Court of Appeals court affirmed the trial court's decision and ruled that these revenues are indeed part of the "per pupil local current expense appropriation." [3]

Perhaps in recognition of the hardship that a full immediate payment of these funds would place on the school board, Section 91.1 of S.L. 2002-159 (S 1217) provides that nothing in the General Statutes or in any local act entitles any charter school to recover, prior to July 1, 2003, any retroactive funds from penalties, fines, forfeitures, or supplemental school taxes. Presumably this provision merely postpones payment to the charter school until fiscal year 2003–2004, unless the North Carolina Supreme Court reverses the ruling.

Payment for Students in Group Homes

When a child with special needs is placed in or assigned to a group home, foster home, or other similar facility pursuant to state and federal law, G.S. 115C-140.1 provides that the cost of providing a free appropriate public education is the responsibility of the local board of education in which the facility is located. S.L. 2002-164 (S 163) amends this statute as it applies to children who are in a facility located in a school administrative unit other than the unit in which they are domiciled. Under the amendment, the local school administrative unit in which a child is domiciled must transfer to the local school unit in which the facility is located the portion of the actual local cost of educating that child for the fiscal year that is not covered by state and federal funding. The State Board must provide a local school unit an opportunity to request funds from the Group Homes Program for Children with Disabilities if a child assigned to that unit was not in the unit's April headcount of exceptional children for the preceding school year. This opportunity

3. Francine Delany New School For Children, Inc. v. Asheville City Board of Education, 150 N.C. App. 338, 563 S.E.2d 92 (2002).

must be available even if the local school unit received Group Homes Program funds for that child for a portion of the preceding school year.

Appropriations

The revised budget for fiscal year 2002–2003, S.L. 2002-126, appropriates $5.89 billion to the Department of Public Instruction (DPI). This amount includes new appropriations of $101 million for ABCs Program bonuses and $26 million for reductions in class size as well as administrative costs and the continuation budget.

Department of Public Instruction Reorganization

Section 7.13 of S.L. 2002-126 directs the Office of State Budget and Management to issue a Request for Proposals to analyze the structure and operation of the DPI. The analysis is to identify potential efficiencies and savings in DPI's operations. The State Board may reorganize the department, create a new associate superintendent position, and transfer funds within the DPI budget to implement the reorganization.

Local Education Agency Flexibility

Because of budget problems, General Fund appropriations for school units were reduced. Under Section 7.26 of S.L. 2002-126, the State Board is responsible for determining the amount of the reduction for each school unit on the basis of average daily membership. Subsequently, each school unit must identify specific cuts and report its choices to the DPI. The General Assembly urged local school administrators to make every effort to protect funds that directly impact classroom services or services for students at risk or children with special needs. A school board that makes cuts in these services must submit a statement of the anticipated impact of the reductions to the DPI.

Student Issues

Dropout Rate

The dropout rate in North Carolina is a serious problem and an ongoing concern of legislators, educators, parents, and others. S.L. 2002-178 (S 1275) is designed to produce better data on the dropout rate as well as better information on issues related to it. The act

- amends G.S. 115C-12 to direct the State Board to develop a statewide plan to improve the state's tracking of dropout data;
- requires the State Board to change the accountability system for high schools created under the School-Based Management and Accountability Program so as to reward high schools that reduce dropout rates and improve graduation rates;
- requires the State Board, in cooperation with the State Board of Community Colleges, to identify technical high schools and career centers and make recommendations to strengthen concurrent enrollment opportunities with community colleges;
- requires the State Board to study the relationship between academic rigor and reduction of the dropout rate;
- requires the State Board to adopt a policy that requires kindergarten-through-eighth-grade teachers to take three renewal credits in reading methods courses during each five-year license renewal cycle;
- amends G.S. 115C-47 to encourage local boards of education to adopt policies that require superintendents to assign to core academic courses in grades seven through nine

teachers with at least four years of teaching experience who have received, within the last three years, an overall rating of at least above standard on a formal evaluation; and
- requires the Joint Legislative Education Oversight Committee to study whether raising the compulsory attendance age will reduce the dropout rate and increase the high school graduation rate.

Individual Diabetes Care Plans

Children with diabetes may need special attention and assistance at school. S.L. 2002-103 (S 911), as amended by section 63 of S.L. 2002-159 (S 1217), adds G.S. 115C-12(31), which requires the State Board to adopt guidelines for the development and implementation of individual diabetes care plans. The guidelines must include

- procedures for developing an individual care plan when requested by a student's parent or guardian;
- procedures for regular review of the plan;
- information on the required components of a diabetes care plan, including staff responsibilities and staff development, an emergency care plan, and the extent to which a student is able to participate in his or her diabetes care and management; and
- information and staff development that must be available to school personnel.

The information in the individual care plans must meet or exceed the American Diabetes Association's recommendations for the management of children with diabetes in the school and day care settings. (For further information about these recommendations, *see* www.diabetes.org [checked November 2, 2002]).

The State Board is responsible for updating these guidelines and disseminating them to local school units. G.S. 115C-47(42) requires local boards of education to begin implementing the guidelines in the 2003–2004 school year.

State Board of Education

State Board Takeover

Under the School-Based Management and Accountability Program, the State Board annually sets performance standards for each school. The State Board then categorizes schools according to their performance relative to the standard. One such category is *low-performing schools*, which G.S. 115C-105.37 defines as schools that fail to meet the minimum growth standards defined by the State Board and in which a majority of students are performing below grade level. G.S. 115C-105.38 authorizes the State Board to assign an assistance team to any low-performing school or to any other school that requests a team and that the State Board determines would benefit from such a team.

S.L. 2002-178 amends G.S. 115C-105.38 to require an assistance team to report to the State Board if a school and its local board of education are not responsive to the team's recommendations. The local board then must have an opportunity to respond to the team's report. If the State Board confirms that the school and the local board have failed to take appropriate steps to improve student performance, the State Board must assume all powers and duties previously conferred on the school board and school; the State Board shall have general control and supervision of all matters pertaining to that school until student performance at the school meets or exceeds the standards set for it. This strict requirement is softened by a provision allowing the State Board to delegate back to that local board or school any powers and duties it considers appropriate, even before the school board or school meets or exceeds those standards.

Curriculum Review

The core academic areas in the curriculum are reading, writing, mathematics, science, history, geography, and civics. Under former law, the State Board was required every five years to develop and implement an ongoing process to align state programs and support materials with revised academic content standards for each core academic area. Section 7.15 of S.L. 2002-126 amends G.S. 115C-12(9a) to require this alignment "on a regular basis."

Testing

Notification of Field Testing

Before new statewide tests are administered, they are field-tested in selected schools. Section 7.30 of S.L. 2002-126 amends G.S. 115C-174.12 to require the State Board to establish policies and guidelines to minimize the frequency of field testing at any individual school. These policies must reflect standard testing practices to ensure reliability and validity of the sample testing. The results of the field tests must be used in the final design of each test. The State Board's policies must require the Superintendent of Public Instruction to notify local boards by October 1 of (1) any field tests that will be administered at their schools during the year, (2) the schools at which the tests will be administered, and (3) the specific tests that will be administered at each school.

High School Exit Examination

The federal No Child Left Behind Act requires that all public schools students be tested at the elementary and secondary levels. The high school exit examination the State Board has been working on pursuant to Section 8.27(f) of S.L. 1997-443 may not meet the federal requirements. Section 7.21 of S.L. 2002-126 directs the State Board to review the federal requirements before completing development of the exit examination. The State Board must consider whether revisions to the state's testing program and to the School-Based Management and Accountability Program are necessary to comply with federal law.

Fairness in Testing

Section 7.17 of S.L. 2002-126 requires the previously authorized study of fairness in testing to consider the extent to which the state tests assist schools to comply with the federal No Child Left Behind Act, the ABCs Program model, and the *Leandro* rulings.

Sample Test to Validate K–2 Assessment

Although students take many standardized tests during their school years, educators are often reluctant to test very young students. However, some testing of students in the lower grades is required for the state to receive federal funds as part of the Reading First Grant. Section 7.44 of S.L. 2002-126 allows the DPI to administer a standardized reading test in a one-time, one-year-only pilot study of the comparative predictive validity of the reading assessment instrument used in kindergarten through second-grade classes. The measure may be administered to a maximum of 5 percent of students in the eligible public schools, including charter schools. Results may not be used to evaluate, promote, or retain any student.

Improving Student Performance

Intervention Strategies for Continually Low-Performing Schools

In 2001 the General Assembly authorized special measures designed to improve student performance at schools that are continually identified as low-performing under the ABCs Program. Section 7.32 of S.L. 2002-126 amends Section 29.5 of S.L. 2001-424 to authorize the State Board to implement intervention strategies for such schools during the 2002–2003 school year. These strategies include decreasing class sizes and extending teachers' contracts for five additional staff development and five additional instructional days.

High-Priority School Program Waiver

The measures enacted by the General Assembly to help "high-priority" schools may be difficult for some school systems to implement. Section 7.28 of S.L. 2002-126 amends Section 29.6(c) of S.L. 2001-424 to allow a local board of education to request a waiver for any high-priority school within the administrative unit that the board determines will be unable to implement the required class-size limitation and other initiatives for the 2002–2003 school year. The Superintendent of Public Instruction may grant the waiver if (1) the Superintendent finds that the school is making efforts comparable to those required for high-priority schools and (2) the students' educational progress is satisfactory.

First-Grade Class Size

Section 7.25 of S.L. 2002-126 sets the class-size allotment for first grade for the 2002–2003 school year at one teacher for every eighteen students. The average class size for first grade in a school administrative unit may not exceed twenty-one students, and the maximum class size for any individual class is twenty-four students.

Business and Education Technology Alliance

Section 7.27 of S.L. 2002-126 creates the State Board of Education's Business and Education Technology Alliance. This twenty-seven-member alliance is designed to ensure that the effective use of technology is built into the public school system in order to prepare "a globally competitive workforce and citizenry for the 21st century." Among other responsibilities, the alliance must advise the State Board on development of

- a vision of the technologically literate citizen in 2005;
- a technology infrastructure, delivery, and support system that provides equity and access to all segments of the population in North Carolina;
- professional development programs for teachers to successfully implement and use technology in teaching all public school students; and
- a funding and accountability system to ensure statewide access and equity.

Federal and private funds, but not state funds, may be used to support the alliance.

Studies

Vocational Education Tests

Section 7.33 of S.L. 2002-126 authorizes the Joint Legislative Education Oversight Committee to study the extent to which the results of standardized tests are used in grading students in vocational education classes. The committee may also examine whether appropriate grading weight is assigned to the assessment of actual skill performance and knowledge.

Instructional Supplies

Section 7.9(b) of S.L. 2002-126 directs the Joint Legislative Education Oversight Committee to study the viability of the state contracting with on-line school supply vendors to allow teachers free access to a specific amount of school supplies, textbooks, tests, and other classroom-related materials. The committee is to determine whether establishing an on-line credit account for each teacher is a cost-effective and efficient way to meet teachers' supply needs.

Accountability of School Administrative Units

S.L. 2002-178 (S 1275) requires the Joint Legislative Education Oversight Committee to study the fiscal and instructional accountability of local school administrative units. The committee must

- evaluate the fiscal management and instructional leadership provided by local school units;
- analyze whether school units are utilizing their funding and resources in a proper, strategic manner with regard to at-risk children;
- evaluate the state fiscal controls available to ensure that local allocation of funding and resources is cost-effective and appropriately focused on enhancing educational leadership, teaching the standard course of study, and improving student learning;
- analyze state and local procedures for identifying superintendents, principals, and teachers who need additional training or assistance in order to implement a strategic and cost-effective instructional program that meets the needs of all children so that they obtain a sound basic education;
- identify current and possible actions the state may take to correct ineffective instructional leadership or teaching in a school or school system; and
- ensure that the state has available to it fair and efficient procedures for removing ineffective superintendents, principals, or teachers and replacing them with competent ones.

Local Board Flexibility

Section 8.3 of S.L. 2002-180 (S 98) authorizes the Joint Legislative Education Oversight Committee to study local flexibility for school systems. The study is to consider whether local boards have the fiscal and administrative flexibility they need to operate the public schools efficiently and effectively.

Charter School Bus Accidents

Claims against traditional public school employees for accidents involving school buses or school transportation service vehicles are heard and defended under the Tort Claims Act, Article 31 of G.S. Chapter 143. S.L. 2002-180 authorizes the Legislative Research Commission to study whether the Tort Claims Act should also cover charter school bus accidents.

Miscellaneous

The Address Confidentiality Program

S.L. 2002-171 (H 1402) establishes the Address Confidentiality Program, G.S. Chapter 15C, in the Office of the Attorney General to protect a relocated victim of domestic violence, sexual offense, or stalking by preventing the victim's assailants or potential assailants from finding the victim's address through public records. Under the program, if the Attorney General receives a proper application from an adult or a parent or guardian acting on behalf of a minor who resides

with the applicant, that person becomes a program participant. The Attorney General then designates a substitute address for the participant and also acts as his or her agent for purposes of service of process and receiving and forwarding first-class mail or certified or registered mail. (For detailed discussions of the program, *see* Chapter 5, "Courts and Civil Procedure," and Chapter 6, "Criminal Law and Procedure.")

A local school board or other public agency that receives a current and valid Address Confidentiality Program authorization card must use the substitute address as the adult or child's address when creating a new public record and for purposes of student records created under G.S. Chapter 115C. An amendment to G.S. 115C-402 provides that the actual address and telephone number of a student who is a participant in the program or a student with a parent who is a participant must be kept confidential from the public and may be disclosed only as provided in the Address Confidentiality Program. However, for any purpose related to a student's school admission or assignment, G.S. 15C-8(i) requires a local school unit to use the program participant's actual address, not the substitute address. A corresponding amendment to G.S. 115C-366 provides that the substitute address shall not be used for admission or assignment purposes.

Persons with Disabilities Protection Act

In addition to federal laws protecting persons with disabilities and the provisions in G.S. Chapter 115C relating to children with special needs, school boards must comply with the Persons with Disabilities Act, G.S. Chapter 168A. S.L. 2002-163 (S 866) amends G.S. 168A-3 to define "undue hardship" as a significant difficulty or expense and list factors to be considered in determining whether a particular accommodation for a person with a disability is an undue hardship. New G.S. 168A-10.1 requires the North Carolina Office on the Americans with Disabilities Act to adopt rules for dispute resolution procedures to use when requests for accommodations are denied.

North Carolina Council on the Holocaust

Section 10.10D of S.L. 2002-126 transfers the North Carolina Council on the Holocaust from the Department of Health and Human Services to the DPI. The council is responsible for developing a program of education and observance of the Holocaust.

Purchasing and Contracting

Alternative Bidding Methods

S.L. 2002-107 (H 1170) authorizes use of the reverse auction bidding method for purchase contracts and authorizes public agencies to receive formal bids electronically for most types of purchase contracts. These changes are codified in G.S. 143-129.9. (For a more detailed description of S.L. 2002-107, *see* Chapter 20, "Purchasing and Contracting.")

Competitive Items in Construction Specifications

S.L. 2002-107 (S 1170), as amended by Section 64(c) of S.L. 2002-159 (S 1217), revises the law governing the use of competitive specifications for materials used in public construction contracts. G.S. 133-3 now authorizes the use of one or more preferred brands as an alternate to the base bid "in limited circumstances." (For a more detailed description of these changes, *see* Chapter 20, "Purchasing and Contracting.")

Criminal Laws Affecting Schools

Defrauding Drug and Alcohol Tests

All school boards require drug-testing of students and employees under certain circumstances. School officials may require a student or employee to have a drug test when they have reasonable suspicion that the student or employee is using drugs. In addition, employees in certain safety-sensitive positions may be tested on a random basis, and the U.S. Supreme Court recently ruled that public schools may conduct random drug tests of students participating in athletics and other extracurricular activities.[4] Some school boards require job applicants to undergo drug-testing. S.L. 2002-183 (S 910) adds new G.S. 14-401.20 to make it unlawful for a person to defraud a drug or alcohol screening test. A first offense is a Class 1 misdemeanor, and any subsequent offense is a Class I felony. (For a more detailed description of S.L. 2002-183, *see* Chapter 6, "Criminal Law and Procedure.")

Computer Access and Damage

S.L. 2002-157 (H 1501) amends Article 60 of G.S. Chapter 14. New G.S. 14-454.1 provides that any person who willfully and without authorization directly or indirectly accesses or causes to be accessed any educational testing material or academic or vocational testing scores or grades in a government computer is guilty of a Class 1 misdemeanor. G.S. 14-455(a1) makes it a Class F felony for a person to willfully and without authorization alter, damage, or destroy a government computer. (For a more detailed discussion of S.L. 2002-157, *see* Chapter 6, "Criminal Law and Procedure.")

Failed Bills

Revenue

Several bills that would have increased revenue devoted to public schools did not pass. They include S 1507, which would have increased cigarette taxes for the benefit of public education at all levels, and S 1531, which would have increased taxes on cigarettes, with the proceeds to be used for teacher salaries, class-size reductions, and the More at Four pilot program for at-risk four-year-olds. S 1466 would have raised the tax on soft drinks, with the proceeds going to the State Board and used to provide breakfast without charge to all kindergarten and first-grade students. In addition, H 1676, S 93, and S 2, which would have created a referendum on a state lottery for education, all failed. S 1463, the Public School Bond Act authorizing a vote on the state's authority to issue $6.2 billion in general obligation bonds for public school facilities, failed as well.

Disaggregating Student Performance Data

S 1387 would have required schools to disaggregate student performance data by racial and ethnic subgroups and by sex. To meet its annual performance standard (and for employees to receive ABCs Program bonuses), a school would have had to meet its performance standard for all students and for each subgroup of students. Although this bill failed, the No Child Left Behind Act requires individual schools to disaggregate data on the basis of economic background, race and ethnicity, English proficiency, and disability and to demonstrate appropriate progress for each subgroup as well as for the student body as a whole.

4. Board of Educ. of Indep. School Dist. No 92 v. Earls, 122 S. Ct. 2559 (2002).

School Employment: Pay

Salaries

S.L. 2002-126 (S 1115) establishes the 2002–2003 salary scales for teachers and school-based administrators. The teachers' salary schedule ranges from $25,250 for a ten-month year for new teachers holding an "A" certificate to $55,910 for teachers with twenty-nine or more years of experience, an "M" certificate, and national certification. For school-based administrators (meaning principals and assistant principals), the ten-month pay ranges from $32,226 for a beginning assistant principal to $74,920 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 and are paid proportionately higher salaries.

These schedules are identical to those in place for the 2001–2002 school year. Thus teachers and administrators paid on that salary schedule in both years receive a small salary increase in 2002–2003 by virtue of moving one step up in the schedule's experience ranks.

Deductions for Association Payments

G.S. 143-3.3(g) permits employees of the state, community colleges, and school boards to authorize deductions from their pay to be paid to employee associations. S.L. 2002-126 amends that statute to specify that if the association in question has at least forty thousand members—the majority of whom are public school teachers—a public school employee may authorize the deduction to be designated for "dues and voluntary contributions," making it clear that the deduction need not be used solely for the payment of dues.

Provisions allowing members of public employee retirement systems to authorize deductions from their retirement benefits have been found in Article 1 of G.S. Chapter 135 (retirement system for teachers and state employees) and in Article 3 of G.S. Chapter 128 (retirement system for counties, cities, and towns). S.L. 2002-126 adds similar provisions to the legislative retirement system with new G.S. 120-4.32 and to the judicial retirement system with new G.S. 135-75.

Conversion of Excess Leave

S.L. 2002-126 replaces G.S. 115C-302.1(c1) and (c2) with a new G.S. 115C-3-2.1(c3). The old statutes provided that a teacher who had more than thirty days of accumulated annual vacation leave on June 30 could elect to have some or all of the excess converted to sick leave (which may accumulate without limit) or to be paid for some or all of the excess. The new statute simply provides that the accumulated vacation leave will be converted to sick leave.

Salary Studies Reports

The budget act passed in 2001 (S.L. 2001-424) directed the Joint Legislative Education Oversight Committee to study the salaries of food service workers and custodians, as well as salary differentials among instructional support personnel, and to report its findings and recommendations to the 2002 session. S.L. 2002-126 delays the reporting requirement to the 2003 session.

ABCs Incentives

S.L. 2002-126 directs the State Board to provide incentive funding for schools that met or exceeded expected levels of improvement in student performance during the 2001–2002 school year in accordance with the ABCs of Public Education Program. The awards are set at the following levels: for schools exceeding expectations, up to $1,500 for each teacher and other certified personnel and $500 for each teacher assistant; for schools meeting expectations, $750 and $375, respectively.

Use of Mentor Pay Funds

S.L. 2002-126 directs that state funds appropriated for mentor pay be used only to provide mentors for employees in state-funded positions who are either (1) newly certified teachers in their first two years of teaching or (2) entry-level instructional support personnel who have not previously been teachers and who are in their first year of employment as instructional support personnel.

School Employment: Licensure

Suspension of Portfolio Requirement

For several years, the State Board has required teachers in their early years of teaching to participate in an initial licensure program by which they move from the initial license through a series of steps to a continuing license. As part of that program, initially licensed teachers were required to assemble a set of materials related to their teaching, termed a "portfolio," which was reviewed as part of their progress toward a continuing license. In Section 7.18 of S.L. 2002-126, the General Assembly directed the State Board to suspend the portfolio requirement for teachers who would otherwise have been required to submit one between August 1, 2002, and June 30, 2004.

Modifications to Licensure Process

The same section directs the State Board to contract with an outside consultant to study and propose modifications to the current initial licensure, continuing licensure, and relicensure programs to ensure high standards, support for teachers, and high retention rates. Among other tasks, the consultant is specifically directed to examine the portfolios previously submitted and to identify the elements most troublesome to teachers, schools, and school systems.

The State Board is to use the study's findings to make recommendations to improve the administration and implementation of the licensure programs and, among other things, to resolve the issues surrounding the portfolio process. In evaluating the study's findings, the State Board is to enlist the assistance of the Southern Regional Education Board and to utilize the federal No Child Left Behind State Grants for Improving Teacher Quality, to the extent possible, to cover the costs of the consultant and the study.

After reviewing the study's findings and the recommendations of the State Board, the Joint Legislative Education Oversight Committee is to make recommendations to the General Assembly about changes to laws or policies affecting licensure.

Alternative Entry for Nonlicensed Teachers

In 1998, in recognition of the growing shortage of licensed teachers, the General Assembly enacted G.S. 115C-296.1, by which schools may hire as teachers individuals who have not received teacher education in a regular teacher preparation program and who have no teaching experience. By the terms of the 1998 statute, this "alternative entry" program for teachers was to expire on September 1, 2002. Section 7.24 of S.L. 2002-126 delays that expiration date to September 1, 2006.

School Nurse Licensure

Section 7.41 of S.L. 2002-126 adds a new G.S. 115C-315(d1), providing that school nurses employed prior to July 1, 1998, are not required to be nationally certified to continue employment, and that those who are not so certified are to be paid according to the noncertified nurse salary range set by the State Board.

Reading Credits

Section 5 of S.L. 2002-178 (S 1275) directs the State Board of Education to adopt a policy that requires kindergarten through eighth-grade teachers to take three renewal credits in reading methods courses during each five-year license renewal cycle. It also directs the University of North Carolina Board of Governors to study whether to require at least two reading methods courses for all elementary education majors and at least one for all middle-grades majors.

School Employment: Retired Teachers

Evaluation of Returning Retired Teachers

In recent years it has become increasingly common for retired teachers to return to active teaching under provisions that allow them to be paid as teachers while continuing to draw their retirement benefits. Teachers who do this are taking advantage of a special provision in G.S. 135-3(8)(c). That section generally allows retired members of the Teachers' and State Employees' Retirement System to return to employment and be paid while drawing their retirement benefits as long as they are not paid more than 50 percent of the amount they were earning at the time of retirement. The special provision waives the 50-percent limit for retired teachers who return to teaching.

G.S. 115C-325(a5) has provided that a retired teacher returning under this special provision does not have tenure as a teacher and cannot gain tenure but in other respects is to be treated as a probationary teacher. Section 7.38 of S.L. 2002-126 amends that statute to clarify that the performance of a returned retired teacher who has attained tenure before retirement is to be evaluated according to the policies the school system applies to its tenured teachers.

Licensure of Retired Teachers

Section 7.39 of S.L. 2002-126 amends G.S. 115C-296(b) to provide that the license a teacher holds when he or she retires remains effective for five years after retirement.

School Employment: Conditions of Employment

Job Sharing

S.L 2002-174 (S 1443) adds a new G.S. 115C-302.2, founded on the premise that "elimination of administrative and fiscal limitations on job-sharing arrangements would make teaching an attractive option for well-qualified classroom teachers who do not wish to work full time." To that end, the statute creates the new status of "classroom teacher in a job-sharing position," defined as a person who is employed for a half work-week, is paid on the teacher salary schedule, spends at least 70 percent of that half-time in the classroom, and shares the position with another person who meets all these criteria. The statute directs the State Board to develop rules under which such a person would receive paid holidays, annual vacation leave, sick leave, and personal leave on a pro rata basis. The statute also amends G.S. 135-1, 135-4(b), and 135-40.2 to provide that the "classroom teacher in a job-sharing position" will participate in the Teachers' and State Employees' Retirement System and the state health coverage on a pro rata basis. These changes will become effective January 1, 2003.

Personnel Records

G.S. 115C-319 specifies that personnel records of school employees are confidential and not available for public inspection, except for certain specified elements. Section 7.36 of S.L 2002-

126 (S 1115) amends the statute to specify that the provisions of the statute do not prevent local boards of education from disclosing the certification status and other information about employees as required by the federal No Child Left Behind legislation.

Also, the Address Confidentiality Program, discussed above and more fully in Chapters 5 and 6, removes from public inspection information that would otherwise be open in the personnel records of covered victims of domestic violence, sexual offense, or stalking.

Interpreters and Transliterators

S.L. 2002-182 (H 1313), discussed in Chapter 10, "Health," adds a new G.S. Chapter 90D, the Interpreter and Transliterator Licensure Act. The act also amends G.S. 115C-110, adding a provision that each interpreter or transliterator employed by a school system to provide services to hearing-impaired students must annually complete fifteen hours of job-related training that has been approved by the school system.

Foreign Exchange Teachers

S.L. 2002-110 (H 1724) adds new provisions to G.S. 115C-325 clarifying the status of teachers from other countries who come to North Carolina to teach in programs under the auspices of the U.S. Department of State. Under the new provisions, such individuals are not eligible to acquire tenure but are eligible for personal leave, annual vacation leave, and sick leave if employed with the expectation of at least six full consecutive monthly pay periods for at least 20 hours a week. G.S. 135-1(25) is amended to clarify that these individuals are not participants in the Teachers' and State Employees' Retirement System.

Parental Leave

S.L. 2002-159 (S 1217) adds a new G.S. 115C-336.1 specifying that a school employee may use annual leave or leave without pay to care for a newborn child or a newly adopted child or foster child. A school employee may also use up to thirty days of sick leave to care for an adopted child. The leave may be for consecutive workdays during the first 12 months after the birth or adoption, unless the employee and school board agree otherwise. There is a corresponding amendment to G.S. 115C-302.1(j).

Extra Vacation Days

Section 28.3A of S.L. 2002-126 (S 1115), as subsequently amended by S.L. 2002-159 (S 1217), makes a one-time allocation of ten extra vacation days to employees of local boards of education. Employees who are employed on a twelve-month basis receive the full ten days. Employees who are employed on an eleven- or ten-month basis receive a prorated share. The extra days are to be accounted for separately and may be carried over indefinitely.

Teachers and principals who are paid on the relevant salary schedules do not get the ten extra vacation days, except those who, with twenty-nine or more years of service, are at the top of their salary schedule and therefore received no salary increase this year.

School Employment: Studies

Job Sharing

S.L 2002-174 (S 1443) directs the Legislative Research Commission to study issues related to employee benefits for public school employees, community college employees, and state

employees in part-time and job-sharing positions and to study the need to facilitate job sharing. (*See* discussion above on the new public schools job-sharing law.)

Coordination of Central Office Duties between Systems

S.L 2002-126 (S 1115), in Section 7.19, directs the State Board to study whether local school systems can effectively coordinate their central office operations and functions.

Duties of School Counselors

Section 7.37 of S.L 2002-126 (S 1115) directs the Joint Legislative Education Oversight Committee to study the duties of school counselors and consider ways of providing them with adequate time to carry out a proper counseling program. The study is to determine, in particular, the amount of time counselors currently spend on test-coordination activities related to the ABCs Program.

Recruitment and Retention of Teachers

Section 8.2 of S.L 2002-180 (S 98) authorizes the Joint Legislative Education Oversight Committee to study ways to improve the recruitment and retention of teachers, including weighting the salary schedule to increase first-year salaries, developing alternative licensure procedures, and other measures.

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Environment and Natural Resources

The 2002 Session of the General Assembly enacted several important laws pertaining to environmental and natural resources.

- The most heralded piece of environmental legislation, the Clean Smokestacks Bill, was enacted very early in the session. A group of stakeholders produced a funding compromise that shifted the bill's costs in a manner that satisfied the electric utilities and their large industrial customers, both of whom had opposed the bill in 2001.
- A bill governing the recording of land use restrictions at partially cleaned petroleum underground storage tank sites passed after many months of debate and drafting.
- Despite more lengthy debate and numerous other drafts, a bill to allow pre-permit construction of facilities that would generate air pollution failed.
- The Coastal Area Management Act continued to receive a great deal of legislative scrutiny in the details of its application. The scrutiny included one of the first times the legislature has used the veto provisions in the Administrative Procedures Act to nullify a rule without also setting out a way to achieve a compromise on the subject of the rule making.
- Water quantity issues were much in the news, as the most serious drought in the state's recorded history continued through the session, but all proposed legislation in response to the drought was greatly diluted by the close.
- Despite the large budget deficit faced by legislators, the 2002 session succeeded in retaining most of the moneys in the Clean Water Management Trust Fund.

Agriculture

Animal Waste Management

S.L. 2002-176 (H 1537) extends through September 2003 the pilot program in Brunswick, Columbus, and Jones Counties in which the Department of Environment and Natural Resources (DENR) Division of Soil and Water Conservation, rather than the DENR Division of Water Quality, manages hog farm inspections. S.L. 2002-176 also requires that the DENR reports concerning the pilot program compare the cost of conducting operations reviews and inspections under the Division of Soil and Water Conservation pilot program to the cost of doing so under the Division of Water Quality program.

Soil and Water Conservation

In S.L. 2002-176 the General Assembly exercises its constitutional and statutory power to allow the office of member of the Soil and Water Conservation Commission to be held concurrently with any other elected or appointed office. This enactment reinforces the general statutory provision in G.S. 128-1.1 that contemplates the same result for all public offices.

Many of the early Public Law 566 dams and structures are at least fifty years old and may need rehabilitation or repair. S.L. 2002-176 authorizes the Soil and Water Conservation Commission to make grants of up to 50 percent of the cost of rehabilitating and improving these structures, if funds are available.

Farmland Preservation Trust Fund

Section 11.6 of S.L. 2002-126 (S 1115), the budget bill, limits the use of Farmland Trust Fund appropriations to the purchase of perpetual agricultural conservation easements that may not be reconveyed.

Off-Road Vehicles

S.L. 2002-150 (S 589) allows off-road vehicles used in agricultural quarantine procedures to be operated on highways.

Tobacco Escrow Statute

S.L. 2002-145 (H 348) seeks to improve compliance with tobacco escrow arrangements that require nonparticipating tobacco manufacturers to contribute specified amounts to an escrow fund, beginning in 1999. The statute authorizes the Attorney General to impose specified civil penalties on manufacturers that do not meet the act's disclosure requirements and declares that cigarettes found to be in violation of various packaging requirements can be seized as contraband.

Air Quality

Clean Fuels

While most attention was paid to the Clean Smokestacks bill, which will improve air quality by regulating large stationary sources of pollution, the legislature also took a step in the other direction for mobile sources of pollution by delaying the implementation of low-sulfur gasoline. S.L. 1999-328 had required that by January 1, 2004, the gasoline in the state have a reduced average sulfur content of thirty parts per million. S.L. 2002-75 (H 1308) delays this requirement

until 2006. In the two-year interim period, gasoline that meets federal requirements under tier 2 standards is allowed.

Clean Smokestacks

Large coal-fired electrical generating facilities have become the state's major stationary sources of nitrogen oxide (NO_x) and sulfur dioxide (SO_2) emissions. These facilities were grandfathered by the federal Clean Air Act and thus had previously avoided having to install NO_x and SO_2 pollution control equipment. The most celebrated environmental bill of the session, S.L. 2002-4 (S 1078), the Clean Smokestacks Bill, limits the emissions of these pollutants from such facilities in North Carolina. This bill was originally introduced in 2001. It failed to pass when major industrial customers of the state's electric power utilities objected to the rate increases necessary to fund the bill's pollution reduction requirements. In 2002 legislators quickly reached consensus on a new bill that addresses the customers' concerns by (1) funding provisions that distribute pollution control costs to the rate base as a whole, (2) accelerating amortization of pollution control costs, and (3) not requiring utilities that install the pollution control equipment to reduce rates. The bill caps overall electric utility emissions, allowing the utilities to distribute the pollution reductions among their facilities as they see fit. The reductions must begin by January 1, 2007, and be fully in place by January 1, 2013. The legislation authorizes transfer of emissions trading credits under the federal program for SO_2 to be transferred to the state. By the time the reductions are completely implemented, NO_x and SO_2 emissions are expected to be reduced by as much as 70 percent.

Because it is increasingly apparent that air emissions are the major cause of mercury contamination in state waters and because of the role carbon dioxide (CO_2) plays in global warming, S.L. 2002-4 requires DENR to study how the NO_x and SO_2 reductions mandated in the bill affect mercury and CO_2 emissions.

Municipal Waste Combustion

S.L. 2002-24 (H 1584) extends the date for air quality compliance by small municipal waste combustion units to December 1, 2004.

Coastal Resources

Beach Nourishment and Shoreline Hardening

S.L. 2002-126, the budget bill, prohibits the permanent removal of beach quality material dredged from navigational channels within the active nearshore, beach, or inlet shoal systems and requires that this material be placed on the beach or in a shallow active nearshore area where environmentally acceptable and compatible with beach use. The budget bill also directs the Coastal Resources Commission to allow the use of riprap in the construction of groins in estuarine and public trust waters on the same basis that wood is allowed.

Swimming Pool Rules

S.L. 2002-116 (H 1540) nullifies a Coastal Resources Commission rule-making proceeding that would have disallowed the construction of swimming pools in ocean hazard areas. The legislation also expressly authorizes a city or county to order the removal of a swimming pool under its existing public health nuisance authority. This bill represents one of the first times the legislature formally disapproved a state agency rule without subsequently setting up a means to resolve the policy problem that led to the original rule-making proceeding.

Office Location

A provision requiring the office of the DENR Division of Coastal Management to be moved to the coast was included in the budget bill passed by the Senate but was deleted in conference.

Variances

S.L. 2002-68 (H 1544) changes the legal requirements for obtaining a variance from Coastal Resources Commission rules. The changes eliminate the possibility of claiming "practical difficulties" instead of "unnecessary hardships" in petitions and require that such hardships not be the result of petitioner action rather than simply being unanticipated. The changes were made, at least in part, in response to the North Carolina Court of Appeals opinion in *Williams v. DENR*, 144 N.C. App. 479, 548 S.E.2d 793 (2001).

Environmental Finance

Dam and Reservoir Rehabilitation

S.L. 2002-176 (H 1537) authorizes the Soil and Water Commission to make grants of up to 50 percent of the cost of rehabilitation and improvement of dams and reservoirs built with federal funding under the Watershed Protection and Flood Prevention Act of 1954, as amended.

Dedicated Funds

S.L. 2002-126 appropriates $66.5 million to the Clean Water Management Trust Fund for the 2002–2003 fiscal year, a reduction of $3.5 million from 2001–2002. The House version of the budget had reduced Clean Water Management Trust funding for the period to $40 million. S.L. 2002-176 gives the Eastern Band of Cherokee Indians in North Carolina access to the Clean Water Management Trust Fund.

S.L. 2002-155 (S 1252) makes changes in the Conservation Grant Fund in G.S. 113A-232 that, among other things, require DENR to retain a property interest in conservation property it conveys to ensure that the property is utilized for conservation purposes.

Electronics Recycling Advance Recovery Fee

House Bill 1565 and Senate Bill 1255 were introduced to create an advance recovery fee for electronic equipment, modeled on the White Goods and Scrap Tire Fee Programs. The proposed fee would have paid local governments to conduct electronics recycling programs, which are prohibitively expensive for most local government units to operate using only general revenues or present waste disposal fees. The advance recovery fee legislation was the focus of a stakeholder negotiation that proceeded throughout the session, but no consensus or legislative action emerged.

Land Conservation/Use-Value Tax Program

S.L. 2002-184 (S 1161) enacted many changes to the Present-Use Value Tax Program. One of these is designed to ease the effects of conservation status on properties qualifying for use-value taxation. The legislation allows property that is subject to a conservation easement and that would qualify for the conservation tax credit in G.S. 105-130.34 to remain qualified for use-value taxation even if it does not meet the use-value program's production or income requirements. It also extends an existing study commission charged with reviewing and proposing reforms to the use-value program.

PCB Landfill Detoxification

Section 12.6(a) of S.L. 2002-126 authorizes DENR to use $2.5 million from the Inactive Sites Fund and $500,000 from water quality permit fees to complete the detoxification of the PCB landfill in Warren County.

Scrap Tire Cleanup Fund

S.L. 2002-10 (H 1578) removes the sunset on the Scrap Tire Disposal Tax. S.L. 2002-126, section 12.5(a) (S 1115), the budget bill, allows DENR to use the Scrap Tire Cleanup Fund to maintain a position that provides regulatory assistance to local government in dealing with scrap tires.

Tax Credits

S.L. 2002-104 (S 1253) limits the special property classification and property tax exclusion granted to animal waste management systems to those systems determined by the Environmental Management System to

- eliminate discharges to water,
- substantially eliminate atmospheric emissions of ammonia,
- substantially eliminate odor detectable beyond property boundaries,
- substantially eliminate the release of disease-transmitting vectors and pathogens, and
- substantially eliminate nutrient and heavy metal contamination of soil and groundwater.

Water Supply Funding for Droughts

S.L. 2002-176 allows the Secretary of DENR to authorize use of the Emergency Water Supply Revolving Loan Account for drought emergencies and to transfer funds into the Emergency Account from the General Water Supply Revolving Loan and Grant Account in the event of a drought emergency.

Environmental Health

Institutional Sanitary Rules

S.L. 2002-160 (H 1777) delays until March 1, 2003, the effective date of a number of institutional sanitation rules adopted by the Commission for Health Services and approved by the Rules Review Commission on October 18 and November 15, 2001. The statute directs the Division of Environmental Health to field-test these rules with the assistance of local health departments to determine (1) what costs facilities will incur as they implement the new rules, (2) whether lower sanitation grades will result from the new rules, and (3) whether the new rules will duplicate or conflict with other applicable rules.

Radiation Protection

S.L. 2002-70 (S 1251) merges the Division of Radiation Protection into the DENR Division of Environmental Health.

Food and Lodging Fees

S.L. 2002-126, the budget bill, makes the following changes in regulatory fees for food and lodging establishments:

- It increases the annual fee for regulated food and lodging establishments from $25 to $50. It also authorizes the Legislative Research Commission to study whether this $50 fee adequately supports state and local food, lodging, and institutional sanitation programs and requires the commission to report its findings no later than the convening of the 2004 Regular Session.
- It authorizes a new state fee of $200 for plan review of prototype franchised or chain food facilities and a new fee of $200 for plan review by local health departments of other food establishments.

Forestry

S.L. 2002-132 (H 1623) adds Brunswick County to the list of eighteen eastern counties that are classified as high hazard counties under the open burning laws because of the special problems the typical organic soils of these counties pose for forest fire control.

Growth/Planning

Toll Roads

S.L. 2002-133 (H 644) creates the North Carolina Turnpike Authority, an agency authorized to build and operate three toll roads in the state, using the power of eminent domain. The Turnpike Authority will be located administratively within the Department of Transportation but is directed to act independently for most purposes, an arrangement similar to the relationship between the Wildlife Resources Commission and DENR. Governance of the agency is placed in a nine-member board (two members are appointed by the President Pro Tempore of the Senate and two by the Speaker of the House, four members are appointed by the Governor, and one member is appointed by the Secretary of Transportation). One of the toll roads is to be located in Mecklenburg County, another must be outside Mecklenburg County, and the third is not restricted as to location. The new agency is also authorized to study and begin preliminary design work on three additional projects. The statute prohibits the authority from converting any segment of the nontolled state highway system to a toll facility.

Transit

In early 2002 a new type of two-wheeled mobility device was introduced in a major nationwide marketing campaign under the mysterious code name of "Ginger" (the device is now known by its trade name, "Segway"). S.L. 2002-98 (S 1114) permits the use, without vehicle registration, of these "electric self-balancing nontandem two-wheeled" transit devices at maximum speeds of 15 mph, both on streets with posted speed limits of 25 mph or less and on sidewalks and bicycle paths.

Marine Fisheries Licensing

S.L. 2002-15 (H 1557) extends the moratorium on new shellfish leases in Core Sound for another year. The moratorium has been in place since 1995.

House Bill 1121, another legislative attempt to establish a coastal recreational fishing license, was introduced but not passed.

Natural and Protected Areas

S.L. 1999-268 authorized a statewide referendum on a constitutional amendment allowing dedication of property into the State Nature and Historic Preserve by bill instead of by joint resolution. S.L. 2001-217 scheduled the referendum for the "next statewide primary." The 2002 primaries, however, were delayed as a result of the redistricting dispute. S.L. 2002-3 Extra Session (H 3) moved the referendum to the fall general election. The referendum subsequently passed.

Two other bills make changes in the State Parks System. S.L. 2002-149 (S 1211) removes Boone's Cave State Natural Area from the system and makes modifications to the Mount Jefferson State Natural Area. S.L. 2002-89 (H 1545) adds Elk Knob State Natural Area and Beech Creek Bog State Natural Area to the State Parks System.

Permitting

A hotly debated bill, S 1037, would have allowed construction or modification of new facilities that would ultimately require an air permit before the permit was issued. An amendment in the House limited this allowable construction to grading and peripheral buildings. The bill passed both chambers, but Senate conferees were unwilling to accept the limitations in the House amendment, and the bill thus failed to emerge from conference.

Scrap Tires

The scrap tire tax, levied by G.S. 105-187.16, was to expire on June 30, 2002. S.L. 2002-10 (H 1578) removed this sunset provision and did not replace it with another expiration date.

S.L. 2002-126 made two significant amendments to G.S. 130A-309.63, which governs expenditures from the Scrap Tire Disposal Account. New subsection (b)(3) authorizes DENR to use revenue from the account to support a position to assist local governments with the development and implementation of scrap tire management programs, and new subsection (b)(4) specifies that DENR may only use the remaining revenue in the account to clean up scrap tire sites it determines are a nuisance and only if no other funds are available for the cleanup.

Superfund and Inactive Sites Cleanup

Petroleum Discharges and Land Use Restrictions

S.L. 2002-90 (H 1575) clarifies requirements for recording land-use restrictions at leaking underground storage tank sites. Occasionally the party responsible for cleaning up such a site is someone other than the person who owns the property. Questions had arisen as to whether prior statutory language required non-owner responsible parties to record land use restrictions despite the fact that the parties lacked legal interests in the property. S.L. 2002-90 (H 1575) clarifies that responsible parties are required only to *record* a notice of land use restrictions; the Secretary of DENR *imposes* the restrictions. The legislation also clarifies that responsible parties are required to record this notice even in the absence of agreement from the landowner. In addition, the legislation subjects persons responsible for recording these notices to the civil and injunctive enforcement provisions of the underground storage tank program. The legislation is effective retroactively to September 1, 2001.

Risk-Based Cleanup Standards

House Bill 1009, a bill to establish consistent risk-based cleanup standards across several DENR programs, was debated at length in the 2001 session and reintroduced in the 2002 session, but failed to pass.

Voluntary Cleanup Enforcement Authority and Permit Waivers

S.L. 2002-154 (H 1564) extends civil penalty authority of up to $25,000 per day to violations of voluntary remedial action orders taken under the state Inactive Hazardous Sites program. This enhanced enforcement was designed to allay concerns about the increasing use of private contractors and the essentially privatized oversight of cleanups under the state's registered environmental consultant program. The legislation also expands the types of cleanups that may receive waivers from environmental permits to include cleanups conducted under designated state statutes.

Water Resources

Roanoke River Basin Bi-State Commission and Advisory Committee

S.L 2002-177 (S 204) establishes the Roanoke River Basin Bi-State Commission and the Roanoke River Basin Advisory Committee. This nonregulatory commission, to be composed of nine members each from North Carolina and Virginia, is to provide guidance and make recommendations on water and other natural resource issues pertaining to the Roanoke River Basin. North Carolina's commission delegation will include six members of the General Assembly, who will also serve on the Roanoke River Basin Advisory Committee, and three nonlegislators appointed by the Governor to represent different geographic areas within the basin. The Advisory Committee is a twenty-one-person body of North Carolinians who are appointed in large part by the regional councils of government within the basin.

Water Conservation

In 2002 North Carolina was in the fourth year of its worst drought on record. The legislature responded with S.L. 2002-167 (H 1215), a subtle redirection of existing state water supply planning efforts. The legislation grants additional authority to the Environmental Management Commission to create water conservation and reuse rules and directs that "current and future water conservation" and "water reuse" be addressed by mandatory local and state water supply plans. The Environmental Management Commission is directed to include within its rules minimum water conservation and reuse standards and practices for all major classes of water users, other than facilities that generate electricity. The bill as originally introduced would have authorized these rules to be in effect permanently, but as enacted the legislation restricts them to periods of drought and water emergencies. This rule making is required to be completed in time for the 2005 Regular Session of the General Assembly legislative rules review.

S.L. 2002-167 also creates a goal for state agencies, including the courts and the university system, to reduce water consumption by 10 percent, legislatively endorsing an executive order issued during the summer of 2002. The act also directs DENR to study water conservation and reuse and submit an interim report by March 2003 and a final report by February 2004 to the Environmental Review Commission and the Environmental Management Commission.

Water and Sewer Authorities

S.L. 2002-76 (H 148) amends the Water and Sewer Authorities Law to allow water and sewer authorities formed by three or more political jurisdictions to include more than two nonprofit

water corporations in their organization. Previously, no more than two nonprofits could be included in the organization.

Utilities and Energy

Telecommunications

The Utilities Law (G.S. Chapter 62) authorizes the Utilities Commission to develop and encourage universally available telephone service at reasonable rates. S.L. 2002-14 (S 641) authorizes the commission, in defining *universal service*, to consider evolving trends in telecommunications and consumer need to access high-speed communications networks, the Internet, and other resources that provide social benefits at reasonable cost.

S.L. 2002-16 (H 1521) adopts a number of amendments to conform mobile telecommunications services in the state to the Federal Mobile Telecommunications Sourcing Act. It sets forth detailed sourcing principles for

- flat rates,
- call-by-call service,
- postpaid calling service,
- mobile service,
- prepaid calling service, and
- private service.

Electric Power

S.L. 2002-120 (H 1490) provides that an electric company that collects the franchise or privilege license tax and remits it to the Secretary of Revenue is not subject to any additional franchise or privilege license taxes imposed by a city or county.

Railroads

S.L. 2002-78 (S 759) limits to $200 million the liability of railroad companies (including a state-owned railroad company), regional transportation authorities, and cities and counties for claims arising from single accidents or incidents related to passenger rail service.

Green Power

S.L. 2002-167, the water conservation legislation, also directs the Utilities Commission to identify the following in an ongoing study entitled "Green Power and Public Benefit Fund Voluntary Check-Off Programs":

- funding mechanisms other than voluntary purchases of green power blocks that would stimulate green power production,
- incentives for and barriers to green power production,
- ways to promote the purchase of green power, and
- concerns about the impact of green power production on environmental quality.

The report is due to the Commission on the Future of Electric Service in North Carolina and the Environmental Review Commission by March 15, 2003.

Energy

S.L. 2002-12 (S 1111) makes block grant appropriations totaling $19.8 million for low-income energy services for fiscal year 2002–2003. These appropriations include

- $8.1 million for energy assistance;

- $5.8 million for crisis intervention;
- $2.7 million for weatherization;
- $39,765 for Indian Affairs;
- $1.3 million for heating and air conditioning repair and replacement; and
- $2 million for administration.

S.L. 2002-161 (H 623) extends the guaranteed energy savings contracts law (G.S. Chapter 183, Part 2, Article 3B) so that it includes state government as well as local governments. It also includes a new State Energy Conservation Finance Act that is applicable to state government units.

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Health

This year the General Assembly enacted significant changes to North Carolina's health care laws in two different bills: the annual budget bill and the landmark bioterrorism bill. In response to the state's severe financial crisis, the budget bill eliminates or reduces a number of public health programs, services, and contracts. The bioterrorism bill, enacted in the final days of the legislative session, expands the authority of the State Health Director to take action when faced with a public health threat that may have been caused by a terrorist incident involving nuclear, biological, or chemical agents. The law also makes several other important changes in the state's public health and health-related laws.

Budget

Public Health

The budget bill, S.L. 2002-126 (S 1115), makes significant budget cuts throughout the Department of Health and Human Services (DHHS). It entirely eliminates several programs and contracts within the Division of Public Health (DPH) and significantly reduces others. Some of the most significant cutbacks affecting the public health system include:

- Elimination of $1 million in recurring aid-to-county funds.
- Reduction of over $2 million in recurring funds for the Developmental Evaluation Centers (DEC). The budget bill includes instructions to DHHS regarding how the reduction should be implemented. Specifically, DHHS must not close any individual DEC and must first try to accommodate the reductions through administrative expenses.
- Elimination of more than 12 positions within DPH, including 5 public health consultant positions, 3 Oral Health Section positions, and 3.45 positions in the Women's and Children's Health Section.
- Elimination of funding for the Prescription Drug Access Program and the Prescription Drug Assistance Program (*but see* the discussion below under the heading "Health and Wellness Trust Fund Commission" regarding new authority for a prescription assistance program).

- Reduction or elimination of funding for a number of contracts with outside entities that provide various types of public health services, including contracts for T-cell testing of HIV patients, contracts with dysplasia clinics, and contracts with hospital systems across the state for pediatric and prenatal services.
- Reduction of funding for several DPH offices and sections, including the Office of Minority Health, the Oral Health Section, and the Women's and Children's Health Section.

While the budget bill includes millions of dollars in cuts, it also includes almost $3.5 million in new or additional funding for several public health activities and programs. Among other things, the legislation provides

- $750,000 in nonrecurring funds for Healthy Carolinians,
- $600,000 in nonrecurring funds for an initiative intended to prevent blindness,
- $615,000 in nonrecurring funds to support an initiative intended to reduce out-of-wedlock births,
- $570,000 in nonrecurring funds for the Adolescent Pregnancy Prevention program,
- $300,000 in nonrecurring funds to promote the use of folic acid to prevent birth defects,
- $250,000 in nonrecurring funds for the Healthy Start Foundation, and
- additional nonrecurring funds for several other DPH projects including the Osteoporosis Task Force, the Asthma Education Program, and the "Strike Out Stroke" initiative.

The budget bill also includes a number of substantive requirements affecting public health laws and programs. For example, last year the budget bill (S.L. 2001-424) authorized the AIDS Drug Assistance Program (ADAP) to expand eligibility for the program under certain circumstances. This year the budget bill eliminates this expansion authority and directs DHHS to develop a plan for managing costs and expanding participation in the program. Among other things, the 2002 budget bill also

- directs the Legislative Services Office to contract with an independent consultant to conduct a cost analysis of the services provided by the State Laboratory,
- requires DHHS to conduct an assessment of the current DECs and make recommendations for their future operations,
- revises the requirements governing the Heart Disease and Stroke Prevention Task Force in order to continue the work of the task force indefinitely, and
- revises certain requirements for reports related to the Newborn Hearing Screening Program, the Early Intervention Program, the intensive home visiting program, and other programs within DPH.

Environmental Health

Under current law, the Department of Environment and Natural Resources (DENR) is authorized to regulate the sanitation of certain types of establishments, including most restaurants, hotels, and motels. DENR is also authorized to collect certain annual fees from the establishments it regulates. A special provision in the budget bill amends the current fee structure to permit fees to be charged for the review of plans for food establishments. The law specifically authorizes DENR to charge a fee to review plans for any prototype franchised or chain food establishments and authorizes local health departments to charge a fee to review plans already reviewed by DENR for other types of food establishments. Fees collected by the state may be used to support state sanitation programs, and fees collected by local health departments may be used to support local sanitation programs.

Medicaid

Medicaid is a state and federally funded entitlement program that provides payment for health care services for people with low incomes. A detailed discussion of the provisions of S.L. 2002-126 affecting the Medicaid program is included in Chapter 22, "Social Services."

One particularly interesting provision of the budget bill relates to the Medicaid prescription drug benefit. In May 2002, DHHS announced that it planned to implement a preferred drug list for the Medicaid program. The agency (working in consultation with other experts) would have determined a benchmark price for each approved drug. For all drugs that cost more than the benchmark price, the agency would have negotiated with the pharmaceutical manufacturers to receive a supplemental rebate to bring the cost of the drug down to the benchmark price. The budget bill, however, specifically prohibits DHHS from requiring supplemental rebates from manufacturers. The technical corrections bill [S.L. 2002-159 (S 1217)], passed later in the session, provides that DHHS can neither require nor request these supplemental rebates.

Health Choice (State Children's Health Insurance Program)

North Carolina Health Choice is the state program that provides health insurance for children who would otherwise be uninsured because their family incomes are too high for the children to qualify for Medicaid but too low for the family to afford private insurance. To obtain federal funding to pay part of the program's costs, DHHS was required several years ago to submit a program plan to the U.S. Department of Health and Human Services (U.S. DHHS). This year the budget bill authorizes DHHS to revise the plan initially submitted to U.S. DHHS to reflect legislative and other changes to the Health Choice program. The bill also makes one technical change to the program requirements. Subject to certain limitations, prescription drug providers (such as pharmacists) had been permitted to set their own dispensing fees for prescriptions provided to Health Choice enrollees. The budget bill removes this authority by establishing specific dispensing fees for both generic and brand-name drugs.

Health Insurance Portability and Accountability Act (HIPAA)

The Health Insurance Portability and Accountability Act (HIPAA) is a federal law that—among other things—requires health plans, health information clearinghouses, and health care providers to standardize their electronic transactions of health care information and to protect the privacy and security of that information. In the budget bill, the legislature established the Reserve for HIPAA Compliance and appropriated $2 million to it for the 2002-2003 fiscal year. In a special provision of the bill, the legislature provided that any of these funds that are unexpended and unencumbered at the end of the fiscal year should remain in the reserve rather than reverting to the General Fund.

To implement HIPAA, last year's budget bill authorized the creation of several time-limited positions in the DHHS Division of Information Research Management (DIRM). This year the budget bill still permits the creation of these time-limited positions but does not require them to be located in DIRM. A separate provision in the act requires the Governor or the Governor's designee to coordinate the state's HIPAA implementation efforts. The University of North Carolina System and the Teachers' and State Employees' Comprehensive Major Medical Plan are both authorized to initiate HIPAA implementation efforts and to report on such efforts bimonthly to the Governor.

Health and Wellness Trust Fund Commission

The Health and Wellness Trust Fund Commission was created during the 2000 legislative session to oversee the distribution of a portion of the funds that North Carolina received in the tobacco settlement (S.L. 2000-147). A special provision in this year's budget authorizes the commission to spend up to $3 million to develop and implement a Senior Prescription Drug Access Program. The program would be available to senior (sixty-five and older) and low-income citizens. It would offer assistance in accessing public and private prescription drug assistance programs and in understanding drug coverage options and make available pharmacist evaluators to review prescriptions and provide prescription drug counseling (seniors only). In a separate budget bill provision, the legislature eliminated the DHHS Prescription Drug Assistance Program and expressed its intent that the program developed by the Health and Wellness Trust Fund

Commission would include funding to provide for the transition of benefits from the former DHHS program to the new commission program.

Credentialing

The budget bill includes a special provision that amends existing law relating to insurers' credentialing of network providers. The provision specifies that when a new health care practitioner joins a practice that participates in a network, that practitioner shall be included in the network on the date that the insurer approves his or her credentialing application.

Other Requirements for DHHS

Several other special provisions in the budget bill require DHHS to implement new programs or make changes in existing functions or programs:

- The budget bill provides $1 million in nonrecurring funds to establish the Ruth M. Easterling Trust Fund for Children with Special Needs and directs DHHS to adopt rules to implement the trust fund. The fund is intended to provide respite services for children at risk for out-of-home placement (such as foster children), pay for services and equipment for children with special needs when there is no other payment source, and provide training to parents and caregivers of children with special needs.
- Last year the budget bill (S.L. 2001-424) established eligibility levels for state programs, other than Medicaid, that offer medical care to North Carolina citizens. This year's budget bill revises the eligibility level for adults fifty-five years of age or older who qualify for services through the Division of Services for the Blind, Independent Living Rehabilitation Program. The qualification level is now 200 percent of the federal poverty guidelines.
- The budget bill amends existing school nurse certification requirements to provide that school nurses employed in the public schools prior to July 1, 1998, are not required to be nationally certified. Nurses who are not certified by one of two national organizations will continue to be paid based on the noncertified nurse salary range.
- The budget bill requires DHHS to conduct an assessment of the Rural Health Loan Repayment Incentive Program.

Public Health

Bioterrorism

In the fall of 2001, the state's public health system faced a new challenge: the threat of bioterrorism. Last year the General Assembly enacted several bills related to bioterrorism that were fairly limited in scope—one bill, for example, established a biological agents registry. This year the legislature enacted a much more comprehensive bioterrorism bill, S.L. 2002-179 (H 1508), which expands the legal authority of the State Health Director in certain circumstances and makes several other significant changes to current law.

State Health Director authority. S.L. 2002-179 establishes new Article 22 in G.S. Chapter 130A authorizing the State Health Director to take several actions if he or she suspects that a public health threat may exist and that the threat may have been caused by a terrorist incident involving nuclear, biological, or chemical agents. The law defines a *public health threat* as any situation likely to cause an immediate risk to human life, an immediate risk of serious physical injury or illness, or an immediate risk of serious adverse health effects. If a public health threat may exist, all other reasonable means for correcting the problem have been exhausted, and no less restrictive alternatives are available, the State Health Director is authorized to take any or all of the following actions:

- require any person or animal to submit to examinations and tests to determine possible exposure to a nuclear, biological, or chemical agent;
- test real or personal property for the presence of any such agent;
- evacuate property or land to investigate suspected contamination;
- limit the freedom of movement or action of a person or animal that is contaminated with, or is reasonably suspected of being contaminated with, any such agent (but only if the agent may be conveyed to other persons or animals);
- limit access by any person or animal to an area or facility that is housing persons or animals whose movements or actions have been limited; or
- limit access by any person or animal to an area or facility that is contaminated with, or is reasonably suspected of being contaminated with, a nuclear, biological, or chemical agent.

With respect to livestock or poultry, before limiting freedom of movement or access the State Health Director is required to consult with the State Veterinarian in the Department of Agriculture and Consumer Services. In addition, both the State Health Director and the Secretary of Crime Control and Public Safety are subject by law to certain notification requirements if either reasonably suspects that a public health threat caused by a terrorist incident exists.

Inasmuch as S.L. 2002-179 significantly expands the authority of the State Health Director, it also includes several protections for individuals potentially affected by limits to the freedom of movement or access—specifically, several important new due process protections. For example, the State Health Director may limit the freedom of movement or access of a person or animal for only ten calendar days. Any person substantially affected by the limitation is permitted to bring an action in superior court in either Wake County or the county in which the limitation is imposed. Specific guidelines apply to the superior court action; for example, a hearing must be held within seventy-two hours of the action and the person bringing the action has the right to be represented by counsel. In order to extend the ten-day period for additional periods of thirty days each, the State Health Director must bring an action in superior court requesting an extension. It appears that the ten-day limit and the other due process protections do not apply when the director has imposed a limitation on the freedom of action, as the sections discussing the various protections specifically mention the curtailment of only the freedoms of movement and access.

In addition to the new authority described above, S.L. 2002-179 also authorizes the State Health Director to order any action to abate a public health threat that may exist because of the contamination of property caused by a terrorist incident. If the person in control of the property was not responsible for the creation of the threat, he or she will not be held liable for the abatement costs.

S.L. 2002-179 specifies that the state's tort claims protections and procedures (G.S. Ch. 143, Art. 31) apply to negligent acts committed by any officer, employee, involuntary servant, or agent of the state acting under the authority granted to the State Health Director in new Article 22 of G.S. Chapter 130A.

Detention authority. S.L. 2002-179 includes two provisions regarding the detention of an individual arrested for violating an order issued under one of the circumstances described above or for violating a quarantine or isolation order under G.S. 130A-145. One provision authorizes law enforcement officers to detain an arrested individual in an area designated by the state or local health director until the individual's initial judicial appearance. This new authority is significant because it may not be appropriate to detain an individual in a jail if he or she could transmit an illness to another person. Another provision authorizes a judicial official to deny the person pretrial release if the official determines by clear and convincing evidence that the individual poses a threat to the health and safety of others. In such a circumstance, the judicial official must designate the location for the pretrial detention (after receiving recommendations from the state or local health director).

Reporting requirements and access to health information. Under existing law, health care providers and others are required to report certain types of health information, such as regards communicable diseases and conditions, to public health officials (G.S. 130A-135 through 130A-139)

and the state and local health directors have the authority to review patient records under certain circumstances (G.S. 130A-144). S.L. 2002-179 expands the legal authority for health care providers and others to voluntarily share health information with state and local authorities and also expands the authority of the State Health Director to require various types of reporting.

The new law permits, but does not require, any health care provider, person in charge of a health care facility (such as a hospital, home health agency, or ambulatory surgical facility), or unit of state or local government to report any events to the State Health Director or a local health director that may indicate the existence of a case or outbreak of an illness, condition, or health hazard that may have been caused by a terrorist incident involving nuclear, biological, or chemical agents. For example, if a hospital emergency room treats several patients with symptoms that could be related to the use of a biological agent (such as anthrax) in a short period of time, the person in charge of the hospital may report this unusual trend to the state or local health director. A person making such a report must, to the extent practicable, avoid disclosing personally identifiable health information. Upon receiving such a report, however, the State Health Director and the local health director are authorized to access any records containing confidential health information that relate to the report (including identifiable health information). Persons disclosing or failing to disclose information under this new authority are immune from civil or criminal liability as long as they were acting in good faith, without malice, and without actual knowledge that a condition or illness was caused by a weapon of mass destruction.

S.L. 2002-179 also authorizes the State Health Director to issue a temporary order requiring health care providers to report health-related information when necessary to aid in the investigation or surveillance of an illness, condition, or health hazard that may have been caused by a terrorist incident. The temporary order may be effective for up to ninety days. If a longer reporting period is necessary to protect the public health, the Commission for Health Services is authorized to adopt rules to require reporting for a longer period of time. Upon receiving the described report, the state and local health directors may access any records containing confidential health information that relate to the report. Any person who makes a report required by such a temporary order (or by Commission for Health Services rules) or provides access to confidential information as required by the new law is immune from civil and criminal liability for such disclosures.

The law specifically provides that the state and local health directors are required to protect all confidential health information received under this new grant of authority. They may only disclose the information in limited circumstances, such as when the disclosure is made pursuant to another provision of law or is made to another public health agency or to a court or law enforcement official for the purposes of enforcing this new law. Additional confidentiality protections apply to the information after it is disclosed to a court or law enforcement official.

Emergency Department Data Pilot Program. S.L. 2002-179 directs the State Health Director to develop a voluntary pilot program to provide for the reporting of emergency department data to assist in public health surveillance. Hospitals and urgent care centers have the option of participating in the pilot program. If a facility elects to participate, it must provide any emergency department data required by the program. Once the State Health Director receives the emergency department data, he or she must remove a specific list of direct identifiers from it, including names, addresses, telephone numbers, and account numbers.

Quarantine and isolation authority. Previously, the terms *communicable condition*, *communicable disease*, *outbreak*, *isolation authority*, and *quarantine authority* were defined in G.S. 130A-133. The new law deletes this section and moves the definitions to G.S. 130A-2. With one exception, the definitions of the terms remain unchanged. Notably, the definition of *quarantine authority* now includes the authority to issue orders limiting access by a person or animal to an area or facility that may be contaminated.

Currently under GS 130A-145 the state and local health directors can exercise quarantine and isolation authority. S.L. 2002-179 revises this authority in several respects. First, the statute prohibits any person from entering quarantine or isolation premises unless authorized by the state or local health director (but the law does not restrict access of health care, law enforcement, or emergency medical services personnel to these areas as necessary to carry out their duties).

Second, the statute requires the state or local health director to consult with the State Veterinarian before applying quarantine or isolation authority to livestock or poultry. Finally, the law provides individuals with new due process protections in quarantine and isolation situations. These protections are similar to those included in the new authority granted to the State Health Director with respect to suspected terrorist incidents (*see* discussion under "State Health Director authority," above).

Revised imminent hazard authority. The term *imminent hazard* is defined in G.S. 130A-2 as a situation that, if no immediate action is taken, 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.

Under current law, DHHS or a local health director has the authority to enter onto any property to take action necessary to abate an imminent hazard and to impose a lien on the property for any costs incurred in abating the hazard. S.L. 2002-179 amends this authority to provide DHHS personnel or local health directors with the option of either entering onto the property to abate the hazard themselves or ordering the person in control of the property to do so. DHHS or the local health director retains the authority to impose a lien on the property for the costs of the abatement. The person subject to the lien, however, is now permitted to defeat it by showing that he or she was not responsible for the creation of the hazard.

Confidentiality of records related to communicable diseases and conditions. G.S. 130A-143 provides substantial confidentiality protections for information that identifies a person with a communicable disease or condition. S.L. 2002-179 amends this section to allow the release of information about a person with a communicable disease or condition to certain public officials (such as public health and law enforcement officials) who are investigating a terrorist incident. The new law imposes restrictions on any further disclosure of the communicable disease or condition information by these officials.

Waiver of licensing requirements. Current law (G.S. Ch. 90, Art. 1) imposes certain licensing requirements on physicians and authorizes the North Carolina Medical Board to regulate licensing activities. S.L. 2002-179 authorizes the board to waive the statutory licensing requirements in certain emergency circumstances. This would permit, for example, physicians from other states or retired physicians to make their services available in an emergency.

Regional response teams. Under existing law, North Carolina's regional response teams are charged with establishing systems for responding to emergencies involving hazardous materials (G.S. Ch. 166A, Art. 2). S.L. 2002-179 includes several provisions revising the authority of the regional response teams to include emergencies resulting from terrorist incidents.

Emergency Operations Plan. S.L. 2002-179 amends G.S. 166A-5 to direct the State Emergency Management Program, in coordination with the State Health Director, to amend the North Carolina Emergency Operations Plan to address certain public health matters such as immunization procedures.

Dental Health

S.L. 2002-37 (S 861) includes several provisions related to the licensure of dentists and dental hygienists (*see* discussion below under "Health Care Providers"). The law also adds a new section to the public health statutes (G.S. Ch. 130A) related to the state's dental public health program. The new section directs the dental public health program to

- Encourage the expansion of educational and training programs for dental professionals. These training programs are targeted toward underserved populations throughout the state, focusing particularly on rural and low-income areas.
- Promote and encourage the recruitment of private dental professionals to work in these rural and low-income areas.

Environmental Health

Several administrative regulations relating to sanitation standards in hospitals, nursing homes, rest homes, and other institutions were expected to become effective in the fall of 2002. In S.L 2002-160 (H 1777), the legislature delayed the effective date of these rules until March 1, 2003, and directed the Division of Environmental Health (DEH) of DENR to field-test the rules by conducting trial inspections in a sample of the regulated facilities over a five-month period. Based on the results of the field test, DEH is expected to review the regulations to determine if any revisions are necessary and make recommendations to the Commission for Health Services. The law authorizes the commission to further delay the effective date of the sanitation rules if necessary. The law also requires DEH to provide training to staff of facilities regulated by the sanitation rules.

The legislature also enacted S.L. 2002-70 (S 1251), which directs DENR to make an organizational change by transferring the functions of the DENR Division of Radiation Protection to a new section within DEH.

Finally, as part of the technical corrections bill (S.L. 2002-159), the legislature made a minor change to the law governing sanitary districts. Under current law the Commission for Health Services is authorized to establish sanitary districts empowered to—among other things—acquire and operate sewage collection, treatment, and disposal systems. Under G.S. 130A-48, specific procedures must be followed in order for a sanitary district to be incorporated. S.L. 2002-159 amends these procedures to provide the county tax office with specific responsibilities relative to incorporating a new district, such as confirming the location of property held by each person petitioning for incorporation.

Public Health Studies

The Studies Act of 2002, S.L. 2002-180 (S 98), requires DHHS to study potential means for the state to coordinate and facilitate public access to free and discount senior citizen prescription drug programs. The budget bill (S.L. 2002-126) authorizes the Legislative Research Commission to study whether the annual fees charged to food service and lodging facilities and state-regulated institutions are sufficient or whether these fees should be increased in order to improve the state and local food, lodging, and institution sanitation programs and activities.

Emergency Medical Services

Last year the legislature enacted S.L. 2001-220, which included stringent new confidentiality provisions applicable to certain medical records and patient-identifiable information maintained by DHHS or emergency medical services (EMS) providers. The law included a relatively restrictive list of circumstances in which DHHS and EMS providers could release medical records. This year, in S.L. 2002-179, the legislature significantly relaxed the EMS confidentiality law by amending it to permit DHHS and EMS providers to release such medical records when the release is made pursuant to any other law.

Health Insurance

Patients' Bill of Rights

Last year the legislature enacted landmark managed care reform legislation, S.L. 2001-446, commonly referred to as the Patients' Bill of Rights. Among other things, the bill established a binding procedure for independent external review of coverage decisions that are adverse to insured persons. This year the legislature enacted S.L. 2002-187 (H 760), which makes a few technical changes to the external review provisions. One of the original provisions requires the

Department of Insurance, upon receipt of a request for external review, to notify the insured person and the health care provider as to whether the request is complete and whether it has been accepted for review. After such notification the insured person has seven days to submit additional documentation to be considered in the review. S.L. 2002-187 revises this requirement to provide that the insured person has seven days from the receipt of the notice rather than seven days from the date of the notice. An accompanying revision provides that an insured person is presumed to have received a notice two days after it is mailed.

Another section of the Patients' Bill of Rights established the Managed Care Patient Assistance Program, which offers information and assistance to individuals enrolled in managed care plans. S.L. 2002-159 adds a new subsection to G.S. 143-730 providing that health information in the program's possession is confidential and not public record.

Health Insurance Portability and Accountability Act

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) is a federal law that—among other things—requires most health plans to extend certain protections to insured persons. For example, the law restricts the circumstances in which most health plans can place limitations or exclusions on insurance coverage of preexisting conditions. Not all health plans or benefits are subject to HIPAA; the law specifically excludes a category of plans that provide what it terms "excepted benefits." Over the last several years, North Carolina has enacted state laws that parallel the HIPAA requirements (G.S. Ch. 58, Art. 68). This year the legislature made a few technical amendments to the state law requirements in S.L. 2002-187. One such amendment revises the list of excepted benefits under state law to include short-term limited-duration health insurance policies, which are also excepted benefits under federal law.

Health Care Facilities

Certificates of Need

In many instances, if a person plans to offer or develop a new institutional health service, such as a new long-term care facility, that person must obtain a certificate of need from DHHS (G. S. Ch. 131E, Art. 9). The law specifically exempts certain types of institutional health services from the certificate of need requirements. One of the exemptions is for persons contracting to provide inpatient chemical dependency or substance abuse services to inmates of the Department of Correction. S.L. 2002-159 revises this exemption to provide that it is only applicable to the construction and operation of a new facility providing chemical dependency or substance abuse services solely to inmates. The revisions also stipulate that if the facility provides services to both inmates and the general public, the exemption only applies to the portion of the facility providing services to inmates.

Health Care Facilities Studies

The Studies Act of 2002, S.L. 2002-180, authorizes the Legislative Research Commission to study specific issues related to criminal history record checks of employees of nursing homes, home health care agencies, adult care homes, assisted living facilities, and mental health, developmental disabilities, and substance abuse authorities. The Studies Act also establishes a Statewide Emergency Preparedness Study Commission. The commission is to study the delivery of emergency medical services in the state, focusing particularly on the availability and delivery of trauma care. Finally, the Studies Act requires DHHS, in consultation with the Department of Insurance, to study ways to establish a group health insurance purchasing arrangement for employees of long-term care facilities.

Other Health Care Facilities Laws

S.L 2002-160 authorizes the Medical Care Commission to adopt temporary and permanent rules to amend regulations governing licensing of family care homes and homes for the aged and infirm. The law requires the commission to take certain procedural steps prior to adopting any rules, such as consulting with persons who might be interested in the subject matter of any temporary rule and holding at least one public hearing related to the proposed rule.

Health Care Providers

Credentialing Information

S.L. 2002-187 provides that any information in the possession of the Commissioner of Insurance related to the credentialing of medical professionals is confidential and is not considered public record.

Occupational Licensing Boards

S.L. 2002-168 (S 1281) authorizes occupational licensing boards to purchase liability insurance and also specifies that the state's tort claims protections and procedures apply to board members.

Dentists

S.L. 2002-37 revises and clarifies the requirements that apply when a dentist licensed in another state or territory seeks either an instructor's license or a license by credentials in North Carolina. The law includes new provisions permitting the State Board of Dental Examiners to issue a license by credentials to a dental hygienist licensed in another state or territory as long as certain conditions are satisfied.

S.L. 2002-37 also includes new provisions permitting the board to issue a limited volunteer dental license as long as certain conditions are satisfied. This limited license would authorize a dentist without a current North Carolina license to practice dentistry on a volunteer basis in nonprofit health care facilities serving low-income populations. Finally, the law establishes new application fees for licenses by credentials for dentists and dental hygienists and for limited volunteer dental licenses.

Chiropractors

S.L. 2002-59 (H 1747) requires persons seeking to renew their certification by the Board of Chiropractic Examiners to pay a renewal fee established by the board.

Health Care Provider Studies

The Studies Act of 2002, S.L. 2002-180, authorizes the Joint Legislative Health Care Oversight Committee to study the feasibility of establishing an appointments process for licensing boards that regulate health care professionals to ensure that each board includes representatives of all professionals licensed by that board. The bill also authorizes the Legislative Research Commission to study naturopathy.

Other Laws

Diabetes Care Plans

S.L. 2002-103 (S 911) directs the State Board of Education, in consultation with the DHHS North Carolina Diabetes Advisory Council, to adopt guidelines for the development and implementation of diabetes care plans for individual schoolchildren. This law is discussed in detail in Chapter 8, "Elementary and Secondary Education."

Address Confidentiality

S.L. 2002-171 (H 1702) establishes the Address Confidentiality Program in the Office of the Attorney General. The program allows victims of domestic violence, sexual offense, or stalking to prevent their actual addresses from being released by a public agency in response to a public records request. If a person is participating in the program, he or she will be issued a program authorization card. When a person presents a public agency, such as a local health department, with a program authorization card, the agency must use the substitute address listed on the card as the person's address in all new public records. Public agencies may seek a waiver from the Attorney General in order to use the person's actual address in certain circumstances. Chapter 5, "Courts and Civil Procedure," describes this law in more detail.

Interpreter and Transliterator Licensing

S.L. 2002-182 (H 1313) establishes new licensing requirements for persons offering interpretation or transliteration services for a fee. These services are narrowly defined to include only interpretation and transliteration services for persons who are deaf or hard-of-hearing. Among other things, the law establishes a new licensing board and specifies detailed procedures and qualifications for obtaining a license or a provisional license.

Criminal Background Checks

S.L. 2002-147 (H 1638) authorizes the Department of Justice to provide criminal record checks to certain state and local agencies, divisions, boards, commissions, and units, including the State Medical Board, the State Board of Dental Examiners, and the State Board of Pharmacy.

Teachers' and State Employees' Health Plan

Legislation regarding the Teachers' and State Employees' Health Plan is summarized in Chapter 19, "Public Personnel."

Aimee N. Wall

11

Higher Education

In the difficult economic times of the 2002 legislative session, the chief interests of the University of North Carolina and the North Carolina Community College System centered on the General Assembly's appropriations decisions. How bad would the cuts be?

The session's principal diversion was the controversy surrounding a summer reading program for incoming freshmen at Chapel Hill. Was it an unconstitutional violation of First Amendment rights to have all students read and discuss a book on Islam that many felt, in the wake of September 11, 2001, presented a distorted and unduly rosy picture of Islam and the Qur'an? A proposal to limit spending on such summer reading programs failed.

Mainly, thoughts centered on the lack of funds.

Appropriations and Salaries

The University of North Carolina Current Operations

Because the General Assembly works on a two-year budget cycle, the budget adopted in 2001, as in all odd-numbered years, set appropriations for both years of the cycle. In 2002, as in other even-numbered years, budget revisions made for the second year reflect the needs and resources currently available. This year, lack of resources drove the budget revisions: the General Assembly cut $464 million from the statewide, government-wide General Fund appropriations for 2002–2003.

The University of North Carolina (UNC) shared in the cuts. From the original appropriation to the UNC Board of Governors of $1,797,720,830, the budget revisions in the 2002 budget act (S.L. 2002-126 [S 1115]) took a total of $30,223,721.

Community Colleges Current Operations

The budget act appropriates funds for all categories of state government operations, including education, health and human services, natural and economic resources, justice and public safety, transportation, debt service, general government, and many subcategories within each of these. Of all the subcategories adjusted by the 2002 budget act, only a handful received increases in the

amounts originally appropriated for fiscal 2002–2003. Of these few, the single largest increase (after the reserve for step-increases for public school teachers' salaries) went to the Community College System, whose budget grew by $26,085,931 over the original appropriation of $643,195,459. When times are hard economically, demand for community college services increases, and this upward budgetary adjustment reflects that fact.

Capital Improvements

Historically, the General Assembly has appropriated funds for capital improvements at the constituent institutions of The University of North Carolina System through the regular budget cycles. For those institutions, the state bears the entire burden of maintaining facilities. For the Community College System, however, while the General Assembly has occasionally made appropriations for capital improvements, it has principally left the chief burden for community college facilities where the general law places it, on counties.

The 2001 budget act contained no appropriations at all for capital improvements in either the university system or the Community College System, and the 2002 budget act similarly contains no appropriations for this purpose. In 2000 the voters of the state approved issuance of $2.5 billion in bonds for the university and $600 million for the Community College System to fund an extensive list of capital improvement projects. Since that time, there have been no direct appropriations.

S.L. 2002-173 (H 1726) does, however, authorize a number of UNC construction projects to be funded through gifts, grants, receipts, self-liquidating indebtedness, or other sources, but not from state appropriations or 2000 bond funds. Among the projects authorized are a $78-million medical research facility at UNC Chapel Hill, a $77-million student housing project at North Carolina State University, a $46-million student residence project at UNC Chapel Hill, a $22-million student residence project at UNC Charlotte, and a $22-million student union project at UNC Wilmington.

Salaries

The 2002 budget act, S.L. 2002-126, contains no appropriations for salary increases for university system or community college employees. It does, however, include (in Section 28.3A) a one-time allocation of ten extra vacation days. The extra days are to be accounted for separately and may be carried over indefinitely. In that same section, the General Assembly "encourages the State Board of Community Colleges to adopt rules authorizing the colleges to provide special annual leave bonuses, compensation bonuses, or other employee benefits to their employees."

Community College Governance

Budget and Management

Section 8.1 of S.L. 2002-126 contains a provision, also found in the 2001 budget act, allowing a community college to use all the state funds allocated to it (except for Literacy Funds and Funds for New and Expanding Industries) for any authorized purpose that is consistent with the college's Institutional Effectiveness Plan. Each college is to include in its plan a section on how funding flexibility allows the college to meet the demands of the local community and to maintain a presence in all previously funded categorical programs. However, systemwide, no more than 2 percent of funds may be transferred from faculty salaries without the approval of the State Board of Community Colleges.

Section 8.8 of the budget act authorizes the State Board to transfer funds within the budget of the Community College System Office to the extent necessary to implement base budget reductions and to reorganize the System Office so as to maintain management efficiencies. Section 8.14 directs the State Board to report to the General Assembly all reductions made by the State

Board and the individual colleges in implementing management flexibility reductions. Section 8.5 directs the State Board to examine and recommend to the General Assembly new options in state aid allocation for community college budgets.

Study of Entire System

Section 8.7 of the 2002 budget act directs the Joint Legislative Education Oversight Committee, in conjunction with the State Board of Community Colleges, to hire an outside consultant to consider

- the organization and structure of the system,
- the number of colleges, their location and sizes,
- whether some colleges or programs should be consolidated,
- the formula used to fund administration at the colleges,
- funding levels,
- appropriate size of administrative staffs,
- the funding of multicampus colleges and off-campus centers.

The same section authorizes the Joint Legislative Education Oversight Committee to hire an outside consultant to

- study system funding (including state funds, county funds, and tuition rate),
- compare the level of funding in North Carolina to other states,
- consider an appropriate level of county funding,
- look at current levels of tuition in light of available financial aid.

The results of both these studies are to be reported to the 2003 General Assembly.

Regional Programs

Section 8.7 of the budget act expresses the legislature's intent to increase the number of regional program offerings in the community colleges and to reduce duplication of programs by colleges that are reasonably close together. It directs the State Board to review existing programs and determine which ones can be offered on a regional basis. It also directs the State Board to report annually to the Governor, the Lieutenant Governor, the Speaker of the House, and the Joint Legislative Education Oversight Committee on all new programs the Board approves, the reason for the approval, and the progress made toward regionalizing programs.

UNC Governance

Scholarship Programs Consolidated

In Section 9.4 of the 2002 budget act, the legislature created a single scholarship fund, to be known as the "UNC Campus Scholarships." The following programs are combined into this fund:

- minority presence grants,
- Incentive Scholarship Program for Native Americans,
- Elizabeth City State University Incentive Program,
- Incentive Grants for Certain Constituent Institutions,
- Freshmen Scholars Program,
- Legislative College Opportunity Program.

All obligations to current students under these old programs are to be met. Under the UNC Campus Scholarships program, funds will be distributed to institutions in the same proportions as the combined funds of all the programs being replaced. Each institution will be required to maintain its current proportion of the allocation for Native American undergraduates. Scholarships for doctoral study are to be allocated according to the proportion of doctoral students enrolled at each campus that has doctoral programs.

Only North Carolina residents will be eligible. The State Education Assistance Authority will administer the UNC Campus Scholarships and make periodic recommendations about the redistribution of funds.

The Board of Trustees of each institution shall define its particular campus goals and guidelines for using the UNC Campus Scholarships for undergraduates, subject to the approval of the UNC president. Unless a campus administration has determined that it already has sufficient diversity in its undergraduate student population to provide the educational benefits of diversity, it is to award at least the same proportion of these funds to undergraduates who would promote diversity as was previously provided by minority presence grants, to the extent permitted by the constitution and laws of North Carolina and the United States.

Section 9.4 provides that no institution is required to have a community service requirement for receipt of grants from the UNC Campus Scholarships.

Need-Based Scholarship Funding

Section 9.19 of the 2002 budget act amends G.S. 116B-7, which has made income derived from investments of the Escheat Fund available for student loans, to make the income also available for student grants administered by the State Education Assistance Authority. It appropriates $19,725,000 from Escheat Fund income to the UNC Board of Governors and $1,000,000 to the State Board of Community Colleges. These funds are to be allocated by the State Education Assistance Authority for need-based student financial aid.

Collection of Unpaid Loans

Section 9.2 of the 2002 budget act transfers to the State Education Assistance Authority responsibility for collecting certain student loans that are more than thirty days overdue. Heretofore, the loans were the responsibility of the North Carolina Teaching Fellows Commission (for teaching fellows loans) and the Department of Public Instruction (for loans under the Scholarship Loan Fund for Prospective Teachers).

Umstead Act

The Umstead Act in general prohibits state government entities in North Carolina from engaging in economic activities that compete with private businesses. A set of exceptions found in G.S. 66-58(b)(8) provides that the Umstead Act does not apply to the Centennial Campus of North Carolina State University, the Horace Williams Campus of UNC Chapel Hill, or to any millennial campus of any UNC institution. The 2002 budget act, in Section 9.10A, directs the UNC Board of Governors to report on all activities that have been undertaken under this set of exceptions, detailing the reasons for those activities, listing activities that would have been prohibited without the exceptions, and including a similar report on anticipated future activities. Section 9.15 adds a new G.S. 66-58(h) providing that before certain steps are taken in connection with building a new golf course, hotel, or motel on the Centennial Campus, the Horace Williams Campus, or a millennial campus, the university must consult the Joint Legislative Commission on Governmental Operations.

S.L. 2002-109 (S 1441) adds a new G.S. 66-58(b)(8a) creating an Umstead Act exception for UNC gift shops, snack bars, and food service facilities physically connected with any of UNC's public exhibition spaces, including the North Carolina Arboretum, provided that the resulting profits are used to support the operation of the public exhibition space.

State Funds to Private Colleges

For a number of years, the General Assembly has provided funds to private colleges in North Carolina that enroll North Carolina undergraduate students. The funds provided have been of two types. First, there has been a payment to the private college of an amount per student for each

North Carolina undergraduate enrolled; such payments are to be placed in a separate, identifiable account in the college's budget and used to provide scholarship funds for needy North Carolina students. Second, there has been a separate per student payment to the college that is credited directly against that student's obligation to the college.

Section 9.11 of the 2002 budget act amends G.S. 116-22, which defines the private colleges eligible to receive these funds. Previously, a college was eligible only if "its main campus" was located in North Carolina. As amended, the statute now provides that a college is eligible if it has "a main permanent campus" located in the state. That term is defined in the new provision to mean a campus owned by the institution that provides on-premises housing, food services, and classrooms with full-time faculty members and administration that engages in postsecondary-degree activity.

The budget act provides that institutions that met the old definition on January 1, 2001, continue to be eligible, even if they do not meet the new definition.

School of Science and Mathematics

Section 9.12 of the 2002 budget act directs the Joint Legislative Education Oversight Committee to study the North Carolina School of Science and Mathematics, its purpose, its programs, its admissions policies, its administrative and personnel policies, its finances, its property, its financial obligations, and other related issues and report to the 2003 General Assembly.

It also amends G.S. 116-235(d) to provide that the school's Board of Trustees may not impose any fee without approval of the General Assembly, except for traffic, parking, and motor vehicle registration fees.

Horace Williams Airport

The 2002 budget act, in section 9.13, directs UNC Chapel Hill not to close the Horace Williams Airport before January 1, 2005, and directs the chancellor to consult with the Joint Legislative Commission on Governmental Operations before moving Medical Air, Inc., from the airport.

Robert P. Joyce

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Information Technology

This session the North Carolina General Assembly enacted legislation to expand and safeguard the use of information technology to deliver public services. The changes implemented include the strengthening of punishments for identity fraud and misuse of governmental computers, a revision of the definition of electronic public records, an expansion in the opportunities for the use of the e-procurement program, and an improvement in the accessibility of information technology resources for persons with disabilities.

Damage to a Government Computer

S.L. 2002-157 (H 1501) adds new sections to G.S. Chapter 14 making the following subject to criminal penalties:

- willfully, directly or indirectly, accessing a government computer for fraudulent purposes;
- changing a grade or accessing testing material through electronic means;
- damaging or destroying a government computer;
- introducing a computer virus into software, computers, or computer networks.

See Chapter 6, "Criminal Law and Procedure," for a more thorough discussion of this topic.

Financial Identity Fraud

S.L. 2002-175 (H 1100) makes key changes to sections of G.S. 14-113 to strengthen laws against financial identity fraud. These changes are a direct response to identity theft, a growing problem that could potentially affect state and local governments with greater frequency as they conduct an increasing number of financial transactions with citizens on the Internet and through

other electronic means. The new law amends the statutes in several areas of interest to information technology (IT) professionals.

- It expands the definition of *financial transaction card theft* in G.S. 14-113.9 to include, with intent to defraud, (1) the use of a scanning device to access, read, obtain, memorize, or store information encoded on another person's financial transaction card, and (2) receipt of encoded information from another person's card.
- It adds biometric data, fingerprints, passwords, and parent's legal surname prior to marriage to the list of identifying information that could be used to commit financial identity fraud.
- It raises financial identity fraud from a Class H to a Class G felony (Class F if the victim suffers arrest, detention, or conviction as a proximate result of the offense or if the person committing the offense is in possession of identifying information pertaining to three or more separate persons).
- It adds new G.S. 14-113.20A to make it a Class E felony to (1) sell, transfer, or purchase another person's identifying information with the intent to commit financial identify fraud or (2) assist someone else in doing so.

These and other provisions are discussed in further detail in Chapter 6, "Criminal Law and Procedure."

Electronic Public Records

The primary purpose of S.L. 2002-171 (H 1402) is to protect the confidentiality of addresses of relocated victims of domestic violence, sexual offense, or stalking. In doing so, the act also has important implications for state and local government information systems. (Chapter 5, "Courts and Civil Procedure," provides further details about these and other related provisions.) Effective January 1, 2003, it creates new G.S. Chapter 15C establishing the Address Confidentiality Program in the Office of the Attorney General. A program participant may apply to the Attorney General to have a special address designated to serve as his or her "public" address. The act provides that when a program participant submits an authorization card to a state or local government agency, the agency shall use the address designation created by the Attorney General when creating new public records relating to that participant. The act further provides that the participant's actual address as maintained by a state or local government agency is not public record within the meaning of G.S. 132. Disclosure of an address other than the substitute address is prohibited except under designated circumstances, such as when the disclosure is requested by a federal, state, or local law enforcement agency for official use. The act also provides an exception for state and local government agencies if the Attorney General determines that an agency has a statutory or administrative requirement it is unable to fulfill without the participant's actual address and the agency will use the address only to satisfy that requirement. The substitute address is not to be used for purposes of listing, appraisal, and assessment of property and collection of property taxes or for purposes of indexing land in the register of deeds' office.

In summary, the implications of S.L. 2002-171 for electronic information systems will involve

- handling multiple addresses for the same person;
- preventing the inappropriate disclosure of victims' actual addresses;
- providing agencies with the means to ensure that correct addresses (substitute or actual) are used in any particular computer application;
- indicating whether an individual victim's address is actual—that is, an exception to the general rule that all addresses in a particular software application are public records;
- separating, in systems where the actual address is used, nonpublic from public addresses in response to a "request to inspect, examine, or obtain copies of public records." [G.S. 132-6(c)] As an example, local governments that publish property tax and land records

information on the Internet will no longer be able to publish the actual address on the Internet even though they must still use these addresses for tax and land records purposes.

Persons with Disabilities

Although S.L. 2002-163 (S 866) deals mainly with general changes to the state's Persons with Disabilities Act (G.S. 168A), several provisions will have a direct impact on state and local government information systems. First, the act amends GS 168A-7 to provide that the prohibition against "discrimination in public services," "including but not limited to education, health, social services, recreation, and rehabilitation" by the state and its political subdivisions and any person that contracts with these entities, now applies to "equivalent services provided via information technology" as well. The act defines *information technology* as "electronic data processing goods and services and telecommunications goods and services, microprocessors, software, information processing, office systems, any services related to the foregoing, and consulting or other services for design or redesign of information technology supporting business processes" and specifically includes "information transaction machines" within its definition.

While the act grandfathers information technology placed into service prior to January 1, 2004, after that date agencies cannot "refuse to provide reasonable aids and adaptations necessary for a known qualified person with a disability to use or benefit from" government services delivered through information technology. As one example, e-government services furnished through public Web sites and public terminals will need to be accessible to those with disabilities, beginning in 2004.

Electronic Procurement

S.L. 2002-107 (S 1170) expands the opportunities for state and local government to use advanced information technology to improve the purchasing process. Several of these changes relate specifically to information technology. (Chapter 20, "Purchasing and Contracting," describes these and other provisions in greater detail.) First, the act authorizes local governments to conduct reverse auctions—vendors bidding in real time in an open and interactive environment—for the purchase of goods and materials in the formal bid range, excluding construction aggregates. An electronic reverse auction (carried out exclusively over the Internet) may be conducted by a political subdivision, a third party under contract with a political subdivision, or through the state electronic procurement system. Second, the act permits the state Office of Information Technology Services to purchase through reverse auctions and the state Department of Administration to conduct a pilot of reverse auctions for local school system purchases of supplies and materials. Finally, the act authorizes local governments, public school systems, and state government to use *electronic bidding*, the submission and acceptance of sealed bids through electronic means, in addition to or instead of traditional paper bidding. Local government procedures for receipt of formal electronic bids must be designed to ensure bid security, authenticity, and confidentiality to at least the same extent as that provided for paper bids.

Universal Service

S.L. 2002-14 (S 641) revises G.S. 62-110 to authorize the North Carolina Utilities Commission, as a part of its rule-making authority, to consider within the definition of universal service evolving telecommunications trends and consumer need to access high-speed Internet and communications networks at reasonable costs.

Miscellaneous Provisions

The budget bill, S.L. 2002-126, includes several provisions relating to information technology.

- Section 27.2 amends G.S. 147-33.82(d) to add a new subdivision requiring state agencies to obtain the approval of the State Chief Information Officer (CIO) prior to entering into any contract to assess network security. The CIO must refer these contract requests to the State Auditor so that the State Auditor can determine if the assessment and testing can be performed by the auditor's office rather than being contracted out. The State Auditor is also authorized to contract with state agencies, to perform assessments of network vulnerability on a cost-reimbursement basis.
- Section 27.3 requires the Office of Administrative Hearings to report on the cost and feasibility of developing or acquiring an enterprise-wide automated system to be used in its rule-making process.
- Section 27.4 authorizes the Governor or the Governor's designee to coordinate state implementation of the federal Health Insurance Portability and Accountability Act (HIPAA).
- Section 27.5 requires the Legislative Research Commission to review how IT solutions might streamline the state's human resource management system—including processes related to personnel, benefits, leave reporting, and payroll—and how such solutions might eliminate unnecessary or duplicative paperwork. The commission also must (1) consider how an enterprise approach will improve the effectiveness and efficiency of the state's human resource management system and the state administration of retirement and employee benefits and (2) research any other matters relating to the state's use of information technology for personnel, retirement, and benefits administration.

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Lee Mandell

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Land Records and Registers of Deeds

Several significant bills affecting the office of the register of deeds were enacted by the 2002 Session of the General Assembly. One of these is a statewide act that removes certain information from the public records.

Removal of Discharge Documents and Redacting of Certain Information on Discharge Documents

For many years veterans of the armed forces have recorded a copy of their discharge documents, such as the DD-214, with the register of deeds. Because many of these records contain the veteran's social security number, there is a risk that they could be used for fraudulent purposes. S.L. 2002-96 (H 1627) is an attempt to deal with this problem. The bill was enacted as a local act applicable to three counties—Craven, Nash, and Pamlico—but a later bill, S.L. 2002-162 (H 1245), made the act's provisions applicable statewide. Yet another bill, S.L. 2002-159 (S 1217), created two effective dates: The act was effective with regard to Craven, Nash, and Pamlico Counties when it became law (August 28, 2002), but it becomes effective in the other ninety-seven counties on July 1, 2003. The actual effective date language reads as follows: "This act becomes effective July 1, 2003, in all other counties of the State, except that it may be implemented at an earlier date in any county by the Register of Deeds of that county." This language is likely to cause confusion. An act of the General Assembly becomes the law of the state only on its effective date. The language allowing registers to implement the act earlier than July 1, 2003, appears to be unenforceable surplusage, and registers should not implement the law before July 1, 2003.

S.L 2002-162 enacts new G.S. 47-113.1, which establishes two procedures for dealing with veterans' discharge records. The first procedure allows certain persons to request that the documents be removed from the register of deeds' recorded instruments. The records subject to removal are the following: DD 214, DD 215, WD AGO 53, WD AGO 55, WD AGO 53-55, NAVMC 78-PD, and NAVPERS 553. The persons authorized to request removal are: any veteran,

a veteran's widow or widower, a veteran's attorney-in-fact, personal representative, executor, or court-appointed guardian. The request must be made in person and must identify the page number of the record to be removed. To determine a person's eligibility under the statute to make the request, the register of deeds is required to ask persons making the request to identify themselves. The register is not required, however, to verify the identity. To facilitate the removal procedure, registers may wish to prepare and make available a Request for Removal form. This form would include blanks for the name of the person requesting removal, a statement that the person is eligible to request removal, the book and page number of the record to be removed, and the requester's signature. The register need not record these completed forms but may wish to file them for reference purposes. In addition, the register must:

- Provide a written notice to the requester that the document has been permanently removed from the records and that only an archived copy remains. The register may want to include space for this notice of removal on the Request for Removal form and provide a copy to the person making the request.
- Note on any index of the archived copy of the document that the document has been removed from the records.
- Notify the Division of Archives and History each time a record is removed so that the division can take appropriate actions regarding its records. The statute applies to discharge records held by the division as well as those held locally.

The register may not charge a fee for removing a record.

The second procedure relating to veterans' discharge records provides for *redacting* (in this context, deleting or covering) personal information in the record. This redaction procedure applies only to requests for certified copies of discharge documents that have been removed from the public records pursuant to G.S. 47-113.1(a). New G.S. 47-113.1(b) provides that if any person, other than a person authorized to request removal under subsection (a), requests a certified copy of any of the discharge records listed in subsection (a) and there is a notation of removal on the index for that record, the register is to prepare a paper copy of the record and redact the personal information in the record before certifying and distributing the copy. The statute states that "personal information" "includes" the veteran's Social Security number, but it does not say what other information on the record can be considered personal information. Registers should probably redact only the social security number and not attempt to determine what other personal information should be removed. A request for a certified copy of a record by a person authorized to request removal of the record must be made in person to the register of deeds so that the register can determine that person's identity and eligibility to make the request. Requests for certified copies of discharge documents not made in person are to be treated as made by persons ineligible under subsection (a), and in filling such requests the register is required to redact the personal information. Although the statute does not say so explicitly, apparently if a person authorized to request removal under subsection (a) makes a request for a certified copy pursuant to subsection (b), the certified copy furnished to that person is not to have the personal information—that is, the Social Security number—redacted. The register may charge the regular fee for making a certified copy and add the additional cost of making the redaction, except no fee may be charged if a veteran requests a certified copy of his or her own record (G.S. 47-113).

Registers of deeds need to be aware of what this new statute does not do.

- The statute does not provide that a discharge document is not public record under Chapter 132 of the General Statutes. Therefore, any person may examine the archived copy of the record in the register's office, even the archived copy of a record that has been removed.
- If a discharge document has not been removed from the records pursuant to G.S. 47-113.1(a), then any person may request and receive a certified copy of the unredacted record.
- Even if a document has been removed pursuant to G.S. 47-113.1(a), any person may request and receive an uncertified, unredacted copy of that record. Registers therefore need to retain archived copies of removed records in the office so that searchers can have access to the copies. So that persons requesting removal of the records are under no

misunderstanding about the status of the archived copies, registers may wish to include on the Request for Removal form a statement similar to the following: "Archived copies of the removed discharge record remain public records under Chapter 132 of the North Carolina General Statutes and may be viewed by members of the general public. Also, members of the public may obtain uncertified copies of these records." An *archived* copy of the record in the context of this statute appears to include any copy of the record in the office that is on microfilm, microfiche, or other medium.

Address Confidentiality Program

Effective January 1, 2003, S.L. 2002-171 (H 1402) enacts new Chapter 15C of the General Statutes to establish a program to keep the addresses and telephone numbers of certain persons confidential. In summary, a person who is a victim of domestic violence, a sexual offense, or stalking and who has relocated may apply to the Attorney General for acceptance in the Address Confidentiality Program. When a person is accepted into the program, the Attorney General issues that person an authorization card and establishes a substitute address where the person's mail is to be delivered. The person's actual address, even though it may appear on public records, is no longer to be treated as public record under Chapter 132 of the General Statutes, and its use by public officials is subject to numerous restrictions. Applicants accepted into the program are certified for four years and may have their certification renewed.

The statute defines two important concepts. *Actual address* is a "residential, work, or school street address as specified on the individual's application to be a program participant under this Chapter" [G.S. 15C-2(1)]. The second is *substitute address*, defined as "an address designated by the Attorney General under the Address Confidentiality Program" [G.S. 15C-2(9)].

Two provisions deal specifically with records in the office of the register of deeds. G.S. 15C-8(h) provides that a substitute address shall not be used as an address by any register of deeds on recorded documents or for the purpose of indexing Torrenized land under G.S. Chapter 43. The clear intent of this provision is that the register not change any actual address shown in these records. Although the statute is not entirely clear on this point, it appears that these records, with the actual addresses, remain public records. This conclusion is based on the observation that five subsections of G.S. 15C-8 deal with actual addresses of persons in the program: subsection (e) concerns records held by the board of elections; subsection (f), motor vehicle tax records; subsection (g), non–motor vehicle tax records; subsection (h), nonmarriage records and indexes in the office of the register of deeds; and subsection (i), certain school records. In three of these subsections—those dealing with elections records, motor vehicle tax records, and school records—the statute expressly provides that the actual addresses shown in those records shall be kept confidential. The subsections dealing with nonmarriage records in the office of the register of deeds and tax records other than those related to motor vehicles contain no such requirement of confidentiality. This indicates that the General Assembly intended to require that actual addresses on some records are to be kept confidential but those on others are to remain public record.

The second provision involving register of deeds' records adds new G.S. 51-16.1, which concerns addresses on marriage licenses. This statute provides that if a person applying for a marriage license presents his or her Address Confidentiality Program authorization card to the register of deeds, the register shall use the substitute address in creating the marriage license.

Anyone who knowingly and intentionally discloses information in violation of the provisions of G.S. Chapter 15C is guilty of a Class 1 misdemeanor and may be assessed a fine not to exceed $2,500 [G.S. 15C-9(f)].

Notary Application Fee

The budget modification act, S.L. 2002-126 (S 1115), amends G.S. 10A-4(b)(6) to increase the application fee for a notary's commission from $30 to $50. This increase was effective November 1, 2002.

Recording Standards

S.L. 2002-159 (S 1217) amends G.S. 161-14(b) to make it clear that the recording standards imposed by that statute do not apply to Uniform Commercial Code financing statements and amendments.

Electronic Records

S.L. 2002-15 (H 1581) amends several statutes to provide for the filing of electronic records in Cabarrus and Mecklenburg counties. The act amends G.S. 66-58.4 to provide that a document with an electronic signature may be electronically acknowledged or verified by a notary or other authorized official. It also amends G.S. 47-30(b) to provide that a map may be submitted for electronic recording. Finally, it amends G.S. 161-14 to authorize the register of deeds to accept electronic records for filing and specifies that the fees for such filings shall be based on what the number of pages and the formatting of the document would be if the register had printed the record after recording it.

Payment of Taxes before Recording Deeds

G.S. 161-31, which is applicable in only thirty-five counties, authorizes boards of county commissioners to adopt a resolution requiring the tax collector to certify that no delinquent property taxes are liens on a parcel of property before the register of deeds is allowed to record a deed conveying an interest in that property. S.L. 2002-51 (H 1533) adds the following counties to this statute: Bertie, Clay, Durham, Henderson, Hertford, Macon, Northampton, Polk, Rutherford, and Transylvania.

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Land Use, Community Planning, Code Enforcement, and Transportation

Because budgetary matters and redistricting intrigues attracted most of the legislative attention, 2002 was a relatively inactive year for legislation affecting land use, planning, code enforcement, and transportation. Concerns over smart growth took a back seat to other issues, and as of this writing legislators have not yet made all of their appointments to the Joint Legislative Growth Strategies Oversight Committee (which was established in 2001). Only a few local bills and technical refinements concerning local government zoning and land subdivision control were enacted. Likewise, most of the transportation legislation involved minor improvements to statutes adopted in prior years, including statutes affecting the identification of Highway Trust Fund projects, the organization of rural transportation planning organizations (RTPOs), and the paving and maintenance of secondary roads. One major legislative undertaking, the revamping of North Carolina's program to use business incentives to attract new jobs to the state, is discussed in Chapter 4, "Community Development and Housing."

Planning, Zoning, and Land Use Regulation

Definition of *Family Care Home*

G.S. 168-22 requires that local zoning ordinances treat family care homes as residential uses to be permitted in all residential zoning districts. G.S. 168-21 provides the definition for *family care homes* for zoning purposes, and when the statute was initially adopted in 1981, this definition included all facilities providing care, room, and board for six or fewer handicapped individuals. Many zoning ordinances used the same terminology when provisions were added to treat these homes as single-family residences. In the 1995 legislative update of the social services statutes, many statutory instances of "domiciliary care" or "family care" homes were changed to "adult care" homes. This update, which was associated with social service regulations and licensing, inadvertently included the zoning protection statute, amending G.S. 168-21 to add the term *adult* to the definition of *family care home* included within that statute. As a result, some local governments amended their zoning ordinances to provide single-family residential status only to those family care homes serving adult handicapped persons. S.L. 2002-159 (S 1217) restores the language of G.S. 168-21 to its original version by removing the term "adult care" from the definition of *family care home* when such homes are to be treated as single family homes for purposes of land use regulations. The statute's protections once again clearly apply to homes serving handicapped children as well as handicapped adults.

Disaster Relief Funds

In 2001 the General Assembly enacted S.L. 2001-214 to substantially revise the state's emergency management laws. That act created G.S. 166A-6A(b)(2) to provide that local governments are eligible for state public assistance funds for disaster relief only if they have an approved hazard mitigation plan. This requirement applied to disasters proclaimed after August 1, 2002. S.L. 2002-24 (H 1584) provides additional time for local government adoption of these hazard mitigation plans by making the requirement applicable to disasters proclaimed after November 1, 2003.

Historic Properties Study

Over the years the state has acquired a number of older houses and vacant lots adjacent to the state government mall in Raleigh. Many of the homes have been converted to offices and several of the vacant lots are used for parking. In recent years proponents of downtown revitalization and historic preservation have suggested the state return these homes and lots to residential and compatible commercial use rather than allow them to continue to be used for institutional purposes. S.L. 2002-186 (S 347) directs the North Carolina Capital Planning Commission to study the state-owned properties in the Blount Street Historic District to determine their present and recommended future use, potential means and timetables for disposal, and the costs of relocating state operations currently occupying these properties. The commission is to report to the Joint Legislative Commission on Government Operations by January 15, 2003.

Subdivision Control

There was no statewide legislation passed this year concerning subdivision regulation. The General Assembly, however, continued its practice of enacting local bills to modify the definition of subdivisions, determining which subdivisions will be subject to local regulation. S.L. 2002-141 (H 1640) amends the definition of *subdivision* in G.S. 153A-335 for Chowan County and makes the new definition applicable to all subdivisions created on or after June 16, 1992. In Chowan County, only divisions of land into three or more lots (rather than into two or more lots) are

subject to local regulation. The act also exempts from the definition the gift of a single lot by a parent to a child, provided that each lot has dedicated access and that no more than three lots are conveyed under this exemption.

Building and Housing Code Enforcement

Legislation adopted in 2000 and amended in 2001 broadens the building condemnation statutes to allow vacant or abandoned nonresidential buildings in certain community development target areas to be condemned if the buildings are unsafe or have a blighting influence. This legislation (codified at G.S. 160A-426 to -432) also allows a city to take summary action (that is, action without a court order) to demolish or remove such a building if the owner fails to comply with an inspector's order to demolish or remove it. S.L. 2002-118 (S 1312) allows the municipalities of Durham, Fayetteville, Hope Mills, and Spring Lake to use this authority with respect to residential buildings as well. The act also amends existing local legislation to allow Whiteville to adopt expedited procedures for requiring deteriorating, abandoned dwellings that have a blighting influence upon the neighborhood to be removed and demolished.

S.L. 2002-144 (H 1105) revises various statutes that affect the North Carolina Department of Insurance and the moneys paid into the Insurance Regulatory Fund. Moneys in the fund do not revert to the General Fund if unspent, but fund moneys may be spent only by General Assembly appropriation and in accordance with the line item budget. The new statute provides that credits to the fund will serve as reimbursement of General Fund appropriations for, among various things, staff support for the North Carolina Building Code Council and the North Carolina Code Officials Qualification Board and the expenses incurred by the Department of Insurance in purchasing and selling copies of the State Building Code. The statute also provides that proceeds from sales of the North Carolina State Building Code must be credited to this fund.

Appearance

The Highway Beautification Act of 1965 instituted a federal incentive for states to adopt programs to control outdoor advertising located near interstate and federally assisted primary highways. If a state fails to develop and implement a program for controlling outdoor advertising in these areas, federal grants for highway projects to those states are reduced by 10 percent. In response to this incentive, North Carolina adopted the Outdoor Advertising Control Act in 1967. One of the federal requirements, incorporated into state law as G.S. 136-131.1, is that local governments compensate property owners for the removal of nonconforming billboards. The session laws originally enacting this provision, however, specified that the compensation requirement would expire at a set time, which the General Assembly has periodically extended. S.L. 2002-11 (H 1487) has eliminated the need for future extensions, however, as it amends G.S. 136-131.1 to make it effective until the federal requirement is amended or repealed.

S.L. 2002-80 (H 1600) is a local act amending the law regarding regulation of abandoned and junked automobiles. G.S. 160A-303.2 requires that a junked car must appear to be worth less than $100 to be subject to local regulation under this statute. The new law raises this to $500 for the City of Albemarle.

Jurisdiction

The 2002 session continued the practice of enacting local acts to modify the potential extraterritorial jurisdiction of individual cities (fifteen local acts making such changes have been adopted in the previous five years). S.L. 2002-19 (S 1288) allows Bethel to extend its

extraterritorial jurisdiction up to two miles beyond its corporate limits, provided Pitt County approves any extension beyond one mile.

Transportation

Funding of Urban Loops

In 1989 the North Carolina Highway Trust Fund was established and a list of projects (including urban loops and projects on the North Carolina Intrastate System) it would finance was set forth in the General Statutes (see G.S. 136-179 and G.S. 136-180). Section 26.10(a) of the appropriations act, S.L. 2002-126 (S 1115), makes some slight changes in the description and location of these projects. It removes the description of the Durham Northern Loop, a multi-lane roadway proposed to link I-85 west of Durham with U.S. 70 east of Durham. Instead it provides that the corridor for this loop shall be as identified in the local long-range transportation plan adopted by the Durham-Chapel Hill-Carrboro metropolitan planning organization and the North Carolina Board of Transportation. In addition, the act adjusts the description of the Wilmington Bypass to include the Blue Clay Road interchange. Finally, in order to reflect the completion of Interstate 40 on the south side of Winston-Salem and the upgrading of U.S. 64 near Knightdale, the act authorizes the Board of Transportation, by resolution, to designate a new interstate or freeway as the revised termini of an urban loop. The board may make such a designation if the North Carolina Department of Transportation (NCDOT) has constructed the interstate or freeway facility since 1989 and has changed the termini for the loop to the new facility. In addition, the Board of Transportation must find that the designated change will enhance the purposes of the urban loop—particularly the reduction of congestion and the creation of high-speed, safe, travel-through service for the region.

Rural Transportation Planning Organizations

Legislation adopted in 1999 authorized NCDOT to establish rural transportation planning organizations (RTPOs). These organizations must include representatives from contiguous areas in three to fifteen counties, with the population of the entire area represented being at least 50,000. S.L. 2002-170 (H 1516) makes the eligibility requirements more flexible by allowing noncontiguous counties adjacent to the same metropolitan planning organization (MPO) to form an RTPO. The same act also directs the Board of Transportation to designate North Carolina Highway 136 in Iredell and Cabarrus counties as North Carolina Highway 3, which is to be known as the Dale Earnhardt Highway. To make this change possible, North Carolina Highway 3 in Currituck County was redesignated North Carolina Highway 136.

Condemnation of Land for Secondary Road Paving and Maintenance

The 2001 General Assembly adopted legislation to address the difficulties in qualifying rural roads for public use. One initiative amended G.S. 136-44.7 to compel NCDOT to condemn certain rights-of-way in preparation for certain secondary road-paving or maintenance projects. The statute requires condemnation if (1) one or more property owners have not dedicated the necessary right-of-way; (2) at least 75 percent of the owners of property adjacent to the project and the owners of 75 percent of the road frontage adjacent to the project have dedicated the necessary right-of-way and have provided the funds required by NCDOT rule to cover the costs of condemning the remaining property; and (3) NCDOT has tried unsuccessfully, over a period of at least six months, to persuade property owners unwilling to relinquish the right-of-way to do so voluntarily. S.L. 2002-86 (H 1492) changes the second requirement to provide that the owners of only the majority of the road frontage adjacent to the project need now dedicate necessary right-of-way to trigger the mandatory condemnation requirement.

Turnpike Authority/Toll Roads

S.L. 2002-133 (H 644) reflects the growing state interest in generating revenue from transportation facilities. It establishes a new quasi-independent North Carolina Turnpike Authority, to be located for administrative purposes in NCDOT. The authority's powers are carefully circumscribed. It may construct and operate three turnpike projects. One must be located in a county with a population of 650,000 or more (that is, Mecklenburg County). Another project must be located in one or more counties, each of which has a population of less than 650,000. After a project is selected and before the letting of a contract, the project must be included in applicable locally adopted comprehensive transportation plans and within the current State Transportation Improvement Plan. In each case in which a toll facility is built, NCDOT is required to maintain a non-toll primary highway as an alternative route.

The Turnpike Authority may not convert a segment of the state highway system for which tolls are not charged to a toll facility. But it may issue revenue bonds in the same manner as does a municipality. Once the revenue bonds for a facility are paid off, the tolls must be removed. NCDOT may "participate" in the costs of the preconstruction activities, construction, maintenance, or operation of a turnpike project.

In a related matter, Part XIII of S.L. 2002-180 (S 98), the legislative studies act, authorizes (but does not compel) the Joint Legislative Transportation Oversight Committee to study the feasibility of establishing tolls on I-95 from South Carolina to the Virginia line. If the committee undertakes the study, it is to report its findings to the 2003 General Assembly. Part XVII of the same act, however, compels NCDOT to study the feasibility of charging a toll on I-95 and of using the toll proceeds for the expansion and maintenance of I-95. As part of the study, the department must, among other things, evaluate the need for this expansion and maintainance and estimate the schedule of tolls and fees necessary to support these activities. The study also directs NCDOT to evaluate the impact federal law might have on the charging of tolls for travel on this interstate highway.

Other Studies

S.L. 2002-180, the legislative studies act, establishes a special Legislative Study Commission on the Horace Williams Airport in Chapel Hill. The commission is to study the utility of maintaining the operation of the airport, "taking into consideration issues of safety, access, and expense of operation." Section 26.12 of the appropriations act, S.L. 2002-126, directs NCDOT to study and determine the feasibility of establishing ferry service from Currituck County to the northern Outer Banks. The department was required to report its findings to the General Assembly by June 1, 2003.

Rail Transportation Liability

S.L. 2002-78 (S 759) recognizes the potential liability risk of operating the large public rail transportation systems that are being planned for the Research Triangle and Charlotte regions. The act applies to the Regional Public Transportation Authority that has been established in the Triangle region in Wake, Orange, and Durham counties. It also applies to passenger rail service offered as a public transportation enterprise through a transit governance interlocal agreement by a county with a city having a population of more than 500,000 (for practical purposes, Mecklenburg County and the City of Charlotte). The law requires the public entity or entities to purchase liability insurance with policy limits of not less than $200 million per single accident or incident (including a self-insured retention of not more than $5 million). However, the legislation also limits the maximum liability from all claims arising from a single accident or incident involving property damage, personal injury, bodily injury, and death to $200 million.

The Practice of Design Professionals

In North Carolina within the last decade, contentiousness and competitiveness have developed between professional engineers and professional landscape architects. This state of affairs has sometimes been apparent, for example, during the preparation of land development and public facility plans that must be approved by local governments. In some cases engineers and landscape architects have alleged that, in the process of restricting or designating who may prepare which type of plans, local governments have inappropriately favored one profession over the other. Section 2.1C of the appropriations act, S.L. 2002-126, may eventually affect this issue because it authorizes the Legislative Research Commission to study the relationship between the two professions. If undertaken, the study must examine, among other things, the qualifications and education of landscape architects, the definition of landscape architecture, the areas of overlap between (the scope of common practice affecting) the two professions, and the governance and procedures of the two licensing boards—the State Board of Examiners for Engineers and Surveyors and the Board of Landscape Architects.

Environment

Legislation addressing environment and natural resource issues is discussed in Chapter 9, "Environment and Natural Resources." Several of these acts also have an impact on land use and planning issues and are briefly mentioned here.

S.L. 2002-68 (H 1544) amends standards for issuing variances under the Coastal Area Management Act. It removes the requirement for a finding of "practical difficulties" (but retains that of "unnecessary hardship"), and it replaces the requirement that the hardship leading to the variance petition be unanticipated with a requirement that it not be self-created. S.L. 2002-116 (H 1540) prevents the Coastal Resource Commission from removing the swimming pool exemption from its oceanfront setback rules but adds amendments to G.S. 153A-140 and 160A-193 to allow counties and cities to require removal of swimming pools found to be a public nuisance because they are dangerous or prejudicial to public health or safety.

S.L. 2002-167 (H 1215) amends G.S. 143-55(1) to require local government water supply plans to include a water conservation and reuse element. S.L. 2002-184 (S 1161) amends the statutes regarding use-value taxation for lands devoted to agriculture, horticulture, and silvaculture. It removes the requirement for a management plan for woodlands of less than twenty acres that are part of a farm unit and for any woodlands that serve as a buffer to wind erosion, that protect water quality, or that serve as buffers for livestock or poultry operations. This act also allows continued use valuation for properties subject to conservation easements without regard to the otherwise applicable production and income standards.

The appropriations act, S.L. 2002-126, includes several provisions affecting land use and planning. Section 11.6 specifies that when Farmland Preservation Trust Fund moneys are used for the purchase of agricultural conservation easements, the easements must be perpetual and may not be reconveyed. Section 12.5 authorizes use of moneys from the Scrap Tire Disposal Fund to support a position that would assist local government scrap tire management programs. Section 18.8 extends the deadline for floodplain mapping of the Cape Fear River basin to December 30, 2003, and directs that the Catawba and Yadkin River basins be undertaken in Phase 2 of the mapping. Section 29.2 directs the Coastal Resources Commission to allow use of riprap to construct groins in estuarine and public trust waters on the same basis that wooden groins are allowed and specifies that clean, environmentally acceptable material dredged from inlets be placed on the beach or near-shore area when doing so is compatible with other uses of the beach.

Miscellaneous

The General Assembly adopted several bills affecting planning, development, and land use which are discussed in other chapters. Some of these bills relate to economic development. S.L. 2002-172 (H 1734) modifies various economic incentives in the Bill Lee Act and establishes a new Job Development and Investment Grant Program. S.L. 2002-146 (H 1665) revises the tax incentives in the Bill Lee Act for interstate air couriers and amends the wage standard in the act as it affects part-time jobs. S.L. 2002-87 (S 1416) revises the tax credits available for the construction or rehabilitation of low-income housing. These three acts are discussed in Chapter 4, "Community Development and Housing."

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Local Government and Local Finance

For counties and cities, the dominant concerns during the 2002 session were the efforts to protect existing sources of revenue from state interception and to advance the authorization for an additional one-half percent local sales and use tax.

Local Government Finance

Last year's General Assembly took a number of steps intended to bolster state revenues without causing long-term damage to local government revenue sources. The 2001 General Assembly temporarily increased the *state* sales and use tax by one-half percent, effective until June 30, 2003. At that time, counties were to be permitted to levy an additional one-half percent *local* sales and use tax, in effect replacing the temporary state tax. In addition, the reimbursement payments (compensation to local governments for tax revenues that were lost when the General Assembly removed important categories—including business inventories and intangible personal property—from the property tax base) were to terminate on June 30, 2003. Thus, local governments were losing their reimbursement payments in return for an additional one-half percent local sales and use tax.

Unfortunately, it became clear almost as soon as the 2001 budget was enacted that the state's economy was in worse shape than had been thought and that state revenues would not meet the predictions upon which the 2001 budget was based. The Governor began taking a variety of steps to conform state expenditures to actual revenues collected, and he directed the Secretary of Revenue not to distribute to local governments various payments due in March and June of 2002. It was clear when the General Assembly began its 2002 session that there would be some further erosion of state payments to local governments. Therefore, local governments' efforts during the 2002 session were undertaken in reaction to the Governor's strategies to balance the state budget and the indications of how the General Assembly might bring the 2002–2003 state budget into balance.

Protection of State-Shared Taxes

One line of effort by local governments was to seek legislation restricting the Governor's ability to withhold payments to local governments of tax moneys levied by the General Assembly. This effort succeeded, resulting in S.L. 2002-120 (H 1490).

When the Governor directed the Secretary of Revenue not to make scheduled payments to cities in the spring of 2002, he acted pursuant to Article III, section 5(3), of the North Carolina Constitution. That provision directs the Governor to monitor state revenue collections and to "effect the necessary economies in State expenditures" whenever he determines that receipts will not be sufficient to meet budgeted expenditures. S.L. 2002-120 begins by characterizing several payments made by the state to local governments from the proceeds of taxes levied by the state as "local revenue, not a State expenditure." Therefore, the legislation states, "the Governor may not reduce or withhold the distribution" of these revenues to local governments. The payments so characterized are the distributions of beer and wine taxes, the electric utility franchise tax, the piped natural gas tax, the telecommunications tax, and state street assistance (Powell Bill). The local government sales and use taxes are not included in this characterization, because it is clear that these are local, not state, revenues; the taxes are levied by counties and merely collected by the state on behalf of local governments.

Although the sections of S.L. 2002-120 that amend the various payment provisions noted above state that the Governor "may not reduce or withhold the distribution" of these payments, another section of the act seems to modify that statement. Section 7 amends G.S. 143-25, a part of the Executive Budget Act, and sets forth procedures regulating the Governor's exercise of his constitutional responsibility to keep the state budget in balance. The amendment states that the Governor is not to withhold from distribution funds "that have been collected by the State on behalf of local governments" *unless* he has first "exhausted all other sources of revenue of the State." Once he has done so, however, the rewritten G.S. 143-25 appears to permit the Governor to withhold distribution of the payments listed above. It is to be hoped that the state's fiscal situation does not deteriorate enough to require a court to sort out the precise interrelationship of these various provisions or to consider the General Assembly's authority to define "State expenditures" or otherwise restrict the Governor's direct constitutional authority in these matters.

City Electric Franchise Taxes

The electric utility franchise tax is levied by G.S. 105-116, and subsection (e) of that section provides that as long as "there is a distribution to cities from the tax imposed by this section," cities may not levy such taxes themselves. When the Governor withheld the March and June payments from the proceeds of this tax, cities began examining the question of whether they could levy such a tax themselves because there had been no distribution of the state-levied tax. The Attorney General's office issued an opinion in July arguing that the statutory condition had not in fact been triggered, but a few cities went ahead and levied the taxes (although no city has begun collecting them). Chapter 2002-120 settles this issue by adding a new provision to G.S. 105-116 stating that as long as an electric utility has paid the state tax, no city may levy a local franchise tax against that utility, regardless of whether the state has withheld distribution of the tax proceeds from cities.

Loss of Reimbursements

Since the 1980s, the state has made reimbursement payments to counties and cities to compensate local governments for tax revenues that were lost when the General Assembly removed sources of revenue from the property tax base. As noted above, these payments, which have totaled about $330 million annually, were scheduled to end in July 2003, with local governments receiving authority for an additional one-half percent sales and use tax in return. Because of the worsening of North Carolina's economy, the 2002 appropriations act ended these

reimbursement payments effective July 2002 rather than July 2003, thereby making $330 million available to help balance the state's budget.

Additional Sales and Use Tax

Counties and cities were aware from the beginning of the 2002 session that the reimbursement payments were likely to be ended this fiscal year rather than next, and so they immediately sought to advance the date upon which counties could levy the additional one-half percent sales and use tax intended as compensation for loss of the reimbursements. The Senate passed such legislation fairly readily, initially permitting counties to levy the tax as of August 2002. The proposal ran into difficulty in the House, however, due to opposition to keeping the temporary state sales tax in effect after counties began levying their taxes, and the measure was defeated on the House floor. The House voted instead to allow the local taxes effective January 1, 2003, and to repeal the temporary state tax at the same time. Because this would have cost the state about $250 million, the Senate was unwilling to agree, and the proposal was set aside for several weeks. However, after the legislature enacted the state budget bill—which included discontinuation of the reimbursements—local governments were able to persuade enough House members to change their votes to enact S.L. 2002-123 (S 1292), which permits counties to levy the additional one-half percent local sales and use tax effective as early as December 1, 2002, with the temporary state tax remaining in effect until July 1, 2003.

The 2001 legislation that originally authorized counties to levy this additional local sales and use tax included provisions intended to hold local governments harmless from the exchange of reimbursements for additional sales tax revenues. Those hold-harmless provisions are still scheduled to take effect next summer, but they were not extended to the current fiscal year. Therefore, local governments will experience a net loss this year because of the exchange of sales tax for reimbursements.

Public School Capital Facility Appropriations

G.S. 115C-489.1 establishes the Critical School Facilities Needs Fund, and G.S. 115C-546.1 establishes the Public School Building Capital Fund. Both funds receive continuing support from collections of the state's corporate income tax and provide assistance to local governments in meeting schools' capital facility needs. The 2002 appropriations act suspends state payments to those two funds for the 2002–2003 fiscal year, mandating instead that the moneys be used to support public schools' current operations.

Changes in the Local Government Budget and Fiscal Control Act

The 2002 appropriations act [S.L. 2002-126 (S 1115)] includes two changes to the Local Government Budget and Fiscal Control Act, both results of the state's economic problems and local and state government responses to those problems.

Reducing school appropriations. G.S. 159-13(b) prohibits a county from amending its budget ordinance to reduce appropriations to school administrative units unless the administrative unit agrees or unless "a general reduction in county expenditures is required because of prevailing economic conditions." A number of counties considered reductions in school appropriations in the spring of 2001 because of the loss of state funds. In response, apparently, the General Assembly added two procedural requirements that a county must meet before reducing a public school appropriation because of an economic downturn. First, the board of commissioners must hold a public meeting at which the board of education is permitted to testify as to the impact of any reduction on school operations. Second, the board of commissioners must take a public vote on the decision to reduce appropriations to the school unit.

Amending the tax rate. G.S. 159-15 previously prohibited a local government from changing its tax rate once it had adopted the budget ordinance. The 2002 appropriations act amends that section to permit a local governing board to reduce or increase the property tax rate following

adoption of the budget ordinance, at any time before January 1, if the local government has received budgeted revenues that "are substantially more or less than the amount anticipated."

Scrap Tire Tax Sunset

One final financial action taken by the 2002 General Assembly was not related to the state's fiscal problems. Since its enactment, the scrap tire tax has always had a sunset, and each time the sunset approached, the General Assembly extended it. The latest sunset would have terminated the tax on June 30, 2002. This year, rather than extending the sunset, the General Assembly removed it altogether. Therefore, the tax will continue in effect until and unless it is repealed.

Other Legislation of Interest to Local Governments

The 2002 General Assembly enacted a variety of other acts of interest to local governments. Some of them are discussed below, while others are covered more completely elsewhere in the book. The reader interested in local government should also consult Chapter 4, "Community Development and Housing," Chapter 7, "Elections," Chapter 14, "Land Use, Community Planning, Code Enforcement, and Transportation," and Chapter 16, "Local Taxes and Tax Collection."

Hazard Mitigation Plans Deadline

S.L. 2002-24 (H 1584) amends 166A-6.01(b)(2)a.3. to give local governments until November 1, 2003, to put in place a hazard mitigation plan approved pursuant to the federal Stafford Act or else become ineligible for state disaster relief in the form of public assistance grants. This conforms the state's deadline to that in federal law. The previous deadline was August 1, 2002.

Crimes Involving Government Computers

The use of computers by local governments has created not only opportunities for greater service to citizens but also opportunities for criminal acts. S.L. 2002-157 (H 1501) deals with unauthorized access and damage to government computer hardware and software. In general, the act makes it unlawful to use government computers for fraudulent or other unauthorized purposes; to access educational testing material or grades in government computers without authorization; to alter, damage, or destroy government computers; and to deny use of government computers without authorization, including by introduction of self-replicating or self-propagating computer programs (that is, viruses). S.L. 2002-157 is discussed in detail in Chapter 6, "Criminal Law and Procedure." The act became effective December 1, 2002, and applies to offenses committed on or after that date.

Public Records Exception for Domestic Violence, Sexual Offense, and Stalking Victims' Addresses

S.L. 2002-171 (H 1402) establishes a program to provide alternative addresses for victims of domestic violence, sexual offense, or stalking, while keeping their actual addresses confidential. The program, found in new G.S. Chapter 15C, will have an impact on local governments because of its effect on public records. In general, the actual addresses of persons enrolled in the program are not considered public records and may not be disclosed. Rather, the alternative addresses provided to local governments by the Attorney General's office must be used.

The act does require that the actual address be used in certain circumstances (property tax listing and assessing, for example), and the Attorney General may grant local government agencies waivers for specific statutory or program purposes. However, even when certain local officials know the actual address, the local government is still required to keep it confidential.

Criminal penalties are imposed for knowingly and intentionally obtaining or disclosing information in violation of Chapter 15C.

S.L. 2002-171 is effective January 1, 2003. The act is discussed in detail in Chapter 5, "Courts and Civil Procedure."

Preemption of Local Government Firearms Lawsuits

In recent years, a few local governing boards have discussed suing gun or ammunition manufacturers in an attempt to hold them liable for injuries or fatalities caused by persons using firearms in their communities, despite a state law preempting direct local regulation of firearms in most circumstances [G.S. 14-409(4a)]. Probably in reaction to these activities, the General Assembly enacted S.L. 2002-77 (H 622).

This act declares that the lawful design, marketing, manufacture, distribution, sale, or transfer of firearms or ammunition to the public is not an unreasonably dangerous activity and does not constitute a nuisance per se. It instructs the courts that, with respect to lawsuits brought under new G.S. 14-409(g), it is the *unlawful use* of firearms and ammunition, rather than their *lawful design, marketing, and so on,* that is the proximate cause of injuries arising from their unlawful use. New G.S. 14-409(g) *reserves exclusively to the state* the authority to bring suit and to recover against any firearms or ammunition marketer, manufacturer, and so forth, by or on behalf of governmental units, for injuries resulting from or relating to the lawful design, marketing, manufacture, distribution, sale, or transfer of firearms or ammunition to the public. The Attorney General is to bring all actions on behalf of the state. However, local governments are still allowed to bring breach of warranty and breach of contract actions. S.L. 2002-77 applies to any action filed on or after August 15, 2002.

Criminal Background Checks for Taxi Permittees and Others

S.L. 2002-147 (H 1638) authorizes cities to obtain criminal history background checks from the North Carolina Department of Justice as part of the process of issuing taxi permits or licenses. The act requires that if a background check is to be national in scope, the applicant must be fingerprinted. The city is to provide to the department the request, the applicant's fingerprints, any additional information required by the department, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the state or national repositories. Both the State Bureau of Investigation and the Federal Bureau of Investigation perform checks using the fingerprints. The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records. The city must keep all background check information confidential.

Consistent with confidentiality requirements, the legislation declares that background check information is not a public record under G.S. Chapter 132. Presumably, this means that in addition to being nonpublic, the information is not subject to the North Carolina Department of Cultural Resources' Records Retention Schedules published pursuant to Chapter 132 and can be disposed of as the city wishes unless otherwise restricted by state or federal law.

S.L. 2002-147 also gives similar authority to a variety of other agencies, including local law enforcement agencies that issue permits under G.S. 66-165 to dealers in precious metals.

Secondary Road Paving and Maintenance Projects

An act passed this session may result in additional paving or maintenance on rural roads in many of North Carolina's counties. Part of S.L. 2002-86 (H 1492) makes it easier for the state Department of Transportation to condemn land for secondary road paving and maintenance projects desired by most of the owners of property adjacent to the project. The act provides that the owners of *a majority of the road frontage* adjacent to the project (rather than the owners of 75 percent of the frontage, as previously required) must dedicate the necessary right-of-way and

provide the required funds to condemn the remaining property. (*Seventy-five percent of the owners of property* adjacent to the project must still dedicate right-of-way and provide funds.)

Liability of Local Governments Operating Passenger Railroads

S.L. 2002-78 (S 759) anticipates the day when there may be local intercity rail transit in North Carolina. It amends the city and county enabling acts to require local governments that operate passenger railroad service to secure liability insurance with a policy limit of not less than $200 million per accident. They are permitted to self-insure up to $5 million and to contract with railroads to allocate financial responsibility for passenger rail services claims. The act covers regional passenger transportation authorities, counties, cities with a census population over 500,000 (presently, only Charlotte), and cities contracting with Charlotte. The act limits recovery to $200 million or any proceeds available under any insurance policy secured by the local government, whichever is greater, for property damage, personal injury, bodily injury, and death claims arising from a single accident or incident related to passenger rail services.

Adding Nonprofit Corporations to Water and Sewer Authorities

S.L. 2002-76 (H 148) amends G.S. 162A-3(a1) and G.S. 162A-3.1(a1), which deal with the organization of water and sewer authorities, to allow an authority organized by three or more political subdivisions to include any number of nonprofit water corporations in its organization. Prior law limited the number of nonprofit water corporation members to two.

Incorporation of Red Cross and Ossipee

Acts relating to the incorporation of two new municipalities were passed this session. S.L. 2002-56 (H 1525) directly incorporates the town of Red Cross in Stanly County, effective August 1, 2002. S.L. 2002-137 (H 1670) creates the town of Ossipee in Alamance County and simultaneously dissolves the Ossipee Sanitary District, pursuant to G.S. 130A-81(l), as approved by the new town's voters in a referendum on November 5, 2002. The Ossipee incorporation took effect December 9, 2002. The sanitary district must take all steps necessary to ensure that all of its assets and liability are transferred to the town. Both towns operate under the mayor–council form of government, with four-year staggered terms for their board members. Red Cross elects its mayor separately and has four board members, while Ossipee's charter calls for five board members, one of whom is elected as a voting mayor. The acts also provide budget rules for the towns to follow during the first, abbreviated fiscal year and other rules for a smooth transition.

Moore County Board of Commissioners

The General Assembly occasionally uses its plenary authority over local governments to restrict, rather than permit, local actions. S.L. 2002-122 (H 1619) is an example of such limiting legislation. The act, which by its own terms is no longer in effect, forbade the five-member Moore County Board of Commissioners to take any action, including adoption of ordinances and resolutions, except with the affirmative vote of at least four members of the board. It applied from September 25, 2002 (the date S.L. 2002-122 became law), until new board members took the oath of office in December 2002. Presumably, this was intended to prevent last-minute actions during the period immediately prior to any changes in the board's composition, unless the actions were favored by a supermajority of the old board.

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Local Taxes and Tax Collection

The 2002 Session of the General Assembly made numerous changes to the property tax laws. The changes in the laws governing use-value assessment were especially extensive.

Assessment

Use-Value Assessment

S.L. 2002-184 (S 1161) makes broad and significant changes in the laws governing appraisal and assessment of agricultural, horticultural, and forest land at present-use value. All of these changes are effective for the 2003 tax year.

The valuation standard prescribed by the Machinery Act for appraisal and assessment of property in general is fair market value—that is, the price the property would bring in an arms-length sale between a willing buyer and a willing seller, each having equal knowledge of the highest and best use of the property. Agricultural, horticultural, and forest land may be eligible for taxation under a different valuation standard known as present-use value. Under this standard the current use of the property for agricultural, horticultural, or forest purposes is assumed to be the highest and best use. Appraisal values, standards, and rules must be based not on actual sales of comparable land but on the value imputed by capitalizing the land's capacity to generate income in its present use. Furthermore, the capitalization rate is fixed by law, not derived from the market. To be eligible for present-use valuation, both the land and its owner must meet complex eligibility requirements designed to aim program benefits toward individuals owning tracts of land large enough to be actively involved in commercial production of agricultural, horticultural, or forest products.

Use-Value Advisory Board. The heart of the use-value program is a set of standards and rules used by county assessors to appraise eligible property at present-use value. These standards and rules are known collectively as the use-value manual. Each county is free to develop its own

use-value manual, following the directives set out in the Machinery Act. In practice, however, most counties use a use-value manual recommended by the North Carolina Department of Revenue. The department's manual is in turn based on recommendations submitted by the Use-Value Advisory Board. This board has, in the past, been composed of four members: the director of the Agricultural Extension Service of North Carolina State University serves as chair and the remaining three members have been designated by the Department of Agriculture and Consumer Services, the Forest Resources Division of the Department of Environment and Natural Resources, and the Agricultural Extension Service at North Carolina Agricultural and Technical State University. S.L. 2002-184 adds five new board members to be appointed by the chief officers of the North Carolina Farm Bureau, the North Carolina Association of Assessing Officers, the Property Tax Division of the Department of Revenue, the North Carolina Association of County Commissioners, and the North Carolina Forestry Association.

Use-value manual. Previously the Machinery Act has required that the use-value manual establish ranges of expected net income per acre based on soil productivity and has prescribed a 9 percent capitalization rate. For agricultural land the income estimates have been based solely on corn and soybean production. S.L. 2002-184 makes major changes in this system. Instead of expected net income to the land, G.S. 105-277.7(c) now looks to estimated cash rental rates to the owner. These rental rates will be based on geographic area or soil class and will be derived from individual county studies or from contracted studies conducted by federal or state agencies. Income ranges for forestland will be based on up to six classes of land within each Major Land Resource Area designated by the United States Soil Conservation Service and will be developed by the Forestry Section of the Agricultural Extension Service. The capitalization rate for forestland remains 9 percent. The rate for agricultural and horticultural land may range between 6 and 7 percent, and the maximum value per acre for the best agricultural land may not exceed $1,200. Each year the Use Value Advisory Board must report to the Revenue Laws Study Committee and the legislative leadership its recommendations for adjustments to the capitalization rates or the maximum per-acre value for agricultural land.

Sound management. The Machinery Act has required that land must be under a *sound management program* in order to qualify for use-value assessment. According to G.S. 105-277.2(6), this program of production is "designed to obtain the greatest net return from the land consistent with its conservation and long-term improvement." As defined the program has been difficult to administer because few assessors have the time or resources to gather and analyze the information necessary to determine the sound management practices appropriate for hundreds or thousands of individual tracts. S.L. 2002-184 adds new subsection (f) to G.S. 105-277.3, which will make this task much more manageable. Under this new provision, a property owner may demonstrate that agricultural or horticultural land is part of a sound management program by providing evidence of any one of the following:

1. The land is enrolled in and complies with an agency-administered and approved farm management plan.
2. The land complies with a set of best management practices.
3. The land complies with a minimum gross income per acre.
4. The land yields net income from farm operations.
5. Farming is the farm operator's principal source of income.
6. A recognized agricultural or horticultural agency certifies that the land is operated according to a sound management program.
7. Other similar factors exist to support the conclusion that the land is operated according to a sound management program.

The new subsection provides that as long as the farm operator meets the sound management requirements, it is irrelevant whether the property owner received rent or income from the operator. This provision apparently pertains to the fourth and fifth means for demonstrating sound management listed above. The new subsection explicitly provides that forestland be subject to the current administrative practice of requiring the landowner to obtain and implement a written sound management plan.

S.L. 2002-184 also addresses problems that have arisen in applying the sound management requirement to woodland included within a farm or horticultural unit. Although the Machinery Act has allowed forestland that is part of a qualifying agricultural or horticultural tract to be included within the farm unit, such land must be appraised as woodland or wasteland under the use-value schedules. This stipulation has created difficulties in situations where the wooded portion of an agricultural tract is less than twenty acres—the minimum size required for classification as a forest tract—since sound management of forest tracts normally includes activities such as thinning and regular harvesting that would not be economically feasible on small isolated stands. S.L. 2002-184 provides that if an agricultural or horticultural tract includes less than twenty acres of woodland, the wooded portion is not required to be subject to a sound management program. Furthermore, a wooded portion of greater than twenty acres need not be subject to a sound management program if the highest and best use of the portion is (1) to reduce wind erosion on or protect the water quality of adjacent agricultural or horticultural land or (2) to serve as a buffer for livestock or poultry operations on adjacent agricultural land.

Eligible owners. The Machinery Act has been vague as to whether land can qualify for use-value assessment when it is owned by tenants in common who are not related within the degrees of kinship prescribed by G.S. 105-277.2(5a). S.L. 2002-184 clarifies this ambiguity by adding new G.S. 105-227.2(4)e to provide that tenants in common are qualified owners if each is either a natural person or a business entity as described in G.S. 105-277.2(4)b (generally, a family partnership or trust). Furthermore, each tenant in common may elect to treat his or her undivided interest as individually owned. Unfortunately the act does not make it clear whether such an election would have all of the effects of a partition of the land among co-owners, but it seems unlikely that this was the legislative intent. Take, for example, a nineteen-acre farm inherited in equal shares by two related individuals as tenants in common. Assuming that the tract is under a sound management program, it qualifies for use-value assessment as agricultural land. If it were to be partitioned between the two owners, each would presumably receive tracts of approximately nine and one-half acres in size, neither of which would meet the minimum ten-acre size requirement for use-value assessment. What would be the effect if one co-owner elected to treat his or her share as individually owned? In the example, if each undivided share were subjected to all of the eligibility requirements independently of the remainder of the tract, both co-owners' shares would no longer qualify, even if the other co-owner wished to remain in the program.

Farm unit. The Machinery Act has permitted an eligible owner who owns at least one agricultural, horticultural, or forest tract that meets the minimum size requirements for use-value assessment to "tack on" smaller tracts if all of the tracts are collectively operated as a single production unit. It has not been clear whether small tracts located in other counties could be so added to a unit. S.L. 2002-184 clarifies this issue by creating G.S. 105-277.2(7). The new definition of *unit* provided therein stipulates that multiple tracts contained within a farm, horticultural, or forest unit must be owned by the same entity and, if in different counties, be located within fifty miles of one another and share either the same type of classification or the same equipment or labor force.

Application. As with most other kinds of property classified for preferential treatment, an owner of property eligible for use-value assessment must apply for that benefit. G.S. 105-277.4 has provided that a new application is required when title to eligible land is transferred to another entity. S.L. 2002-184 amends G.S. 105-277.4(a) to provide that the new application "may be submitted at any time during the calendar year but must be submitted within sixty days of the date of the property's transfer." If interpreted literally, there are two situations in which this new provision will have potentially unforeseen consequences: (1) when property is transferred within the last sixty days of the calendar year and (2) when title to property is transferred by will, intestate succession, or operation of law. If property were to be transferred on December 29, for example, it seems unlikely that the General Assembly intended to require a new use-value application to be filed on or before December 31. More likely the intent would be to allow a full sixty days for submitting a new application even though the last day of that period may not be within the same calendar year as the transfer. It also appears the General Assembly intended the provision to apply to transfers of land by deed, not by other means such as by will or intestate

succession. The administrative practice in most counties is to list property of a deceased person in the name of the estate until the executor or the new owners have given the assessor notice of the division of the property among the heirs. It is not clear whether the sixty-day period for filing a new use-value application begins on the date of death, upon the filing of the executor's or administrator's final account, or upon notice to the assessor of the division of the estate.

Audit of use-value tracts. The Machinery Act requires the county assessor to review annually at least one-eighth of the parcels in the county that are in the use-value program. S.L. 2002-184 amends G.S. 105-296(j) to provide that the eligibility review must be based on the average of the preceding three years' data. In determining whether the property continues to be under a sound management program, the assessor must take into account weather conditions or other acts of nature that interfered with normal agricultural or horticultural operations. Before making this determination, the assessor must also allow the property owner to submit "additional information." The act also amends G.S. 105-299 to permit a county to assign to county agencies, or contract with state or federal agencies for performance of, any tasks involved with the approval or auditing of use-value accounts.

Deferred taxes. The Machinery Act provides that property in the use-value program is appraised at both its fair market value and its use value. The difference in taxes that would be due under market value assessment is carried forward in the taxing unit's records as deferred taxes, but those deferred taxes do not become due unless the property ceases to qualify for use-value assessment. When disqualification occurs, taxes for the current tax year are recomputed on the basis of fair market value and the deferred taxes for the previous three tax years immediately become due. The most common cause of disqualification is transfer of title to a new owner who does not meet the statute's complex ownership requirements.

G.S. 105-277.3 makes several exceptions to these general rules. G.S. 105-277.3(b2) permits a transferee who acquires land already in the use-value program to qualify immediately for use-value assessment, even though the transferee does not meet the natural person or entity ownership requirements imposed by G.S. 105-277.3(b) and (b1), if the transferee intends to continue using the land for the same purposes as did the previous owner. In such a case, deferred taxes will become due but they will be the responsibility of the new owner. S.L. 2002-184 makes it clear that the new owner must file a timely application and adds a requirement that the new owner certify that he or she (1) accepts liability for the deferred taxes and (2) intends to continue the present use of the land.

The act also adds new subsection (d1) to G.S. 105-277.3 concerning conservation easements. The new subsection provides that property in the use-value program continues to qualify as long as it is subject to an enforceable conservation easement that qualifies for the conservation tax credit available under the North Carolina income tax statutes even though the property no longer meets the use-value production or income requirements. Subsequent transfer of the property does not extinguish use-value eligibility of such property as long as the conservation easement is in effect.

Animal Waste Management Systems

G.S. 105-275(8)a classifies and excludes from taxation real and personal property used for pollution abatement or waste disposal purposes that complies with the requirements of the Environmental Management Commission (EMC) or a local air pollution control program, as evidenced by certification issued by the appropriate regulatory agency. S.L. 2002-104 (S 1253) adds a new subdivision to the statute that will have the effect of limiting the availability of this exclusion to animal waste management systems, such as waste lagoons, commonly operated in conjunction with large-scale commercial production of hogs and poultry. Effective for the 2002 tax year, real and personal property constituting an animal waste management system will qualify for exclusion only if the EMC determines that the facility will

- eliminate the discharge of animal waste to surface waters and groundwater through direct discharge, seepage, or runoff;

- substantially eliminate atmospheric emissions of ammonia;
- substantially eliminate odor detectable beyond the boundaries of the parcel or tract of land on which the farm is located;
- substantially eliminate release of disease-transmitting vectors and airborne pathogens; and
- substantially eliminate nutrient and heavy metal contamination of soil and groundwater.

S.L. 2002-104 also directs the Revenue Laws Study Committee to consider whether the exclusion afforded by G.S. 105-275(8) should be limited to property subject to an individual EMC permit and whether this exclusion should be phased out altogether. The committee is to report its recommendations to the 2003 session of the General Assembly.

Manufactured Housing

G.S. 105-273(13) was amended in 2001 to provide that a manufactured home that does not have the moving hitch, wheels, and axles removed and is not placed on a permanent foundation on land owned by the owner of the manufactured home is by definition to be considered tangible personal property. This amendment, enacted by S.L. 2001-406, was effective for the 2002 tax year and required some counties to reclassify a number of manufactured homes from real property to personal property. The 2001 act did not become law until December 19, 2001, less than two weeks before the beginning of the 2002 listing period. Section 4 of S.L. 2002-156 (H 1523) changes the effective date of the 2001 amendment so that the amendment will first apply to 2003 taxes. Thus counties that were unable to complete reclassification of manufactured housing for purposes of 2002 taxes have additional time to comply.

Listing and Valuation Appeals

S.L. 2002-156 corrects a long-standing flaw in the Machinery Act by establishing a procedure for the appeal of personal property valuations, effective for 2003 taxes.

When the Machinery Act was last revised in 1971, most counties were still using the township list taker system for obtaining lists of taxable property, especially taxable personal property. Under that traditional system, the taxpayers appeared in person before township list takers and "gave in their lists"—that is, taxpayers disclosed to the list taker any items of taxable personal property they owned and that had a tax situs in that township. The list taker might then ask questions designed to jog the taxpayer's memory regarding items that might have been overlooked and to obtain information useful in estimating each item's value. At the conclusion of the interview, the list taker assigned a tax value to each listed item and entered the value on a listing called an abstract. The taxpayer then signed the abstract. Under this system the taxpayer had actual notice of the tax value assigned to each listed item because the listing and appraisal were done in his or her presence. All tax listing occurred during the regular January listing period.

The statutory process for appeals of all listing and valuation decisions allows the taxpayer to appeal to the board of equalization and review. This board normally meets each year for four weeks beginning in April or May. After the board adjourns, which always occurs before the current year's taxes are levied and billed, the taxpayer no longer has a right to appeal for the current year.

Modern procedures for listing and appraising taxable personal property bear little resemblance to the traditional list taker system. Some counties provide valuation notices for personal property, but many do not. In counties that do provide valuation notices, mailing of the notices does not necessarily correspond with the scheduled meetings of the board of equalization and review. In counties that do not provide separate valuation notices, taxpayers have no actual notice of the tax value assigned to taxable personal property for the current year until taxes are billed. When the notice is finally received, the time for appeal of the listing, valuation, situs, or taxability of the property has long since passed.

S.L. 2002-156 redresses this anomalous situation by adding new subsection (c) to G.S. 105-317.1. The new provision states that the taxpayer is to be given thirty days from the date of the initial notice of value to initiate an appeal. If the assessor gives separate written notice of value before the taxes are billed, the thirty-day period is measured from the date of that notice (presumably, from the date the notice was mailed). If the assessor does not give separate notice, the tax bill serves as the notice of value, and the thirty-day period is measured from the billing date (again, presumably from the mailing date). In either event the notice must state that the taxpayer may appeal the property's assessed value, situs, or taxability within thirty days after the date of the notice. Counties that do not provide separate valuation notices for personal property will have to redesign the billing notice. From this point forward, the appeal process parallels the procedure for appealing a discovery. Upon receiving a timely appeal, the assessor must arrange a conference with the taxpayer. If the parties do not reach an agreement at the conference, the assessor must make a final decision and notify the taxpayer in writing within thirty days of the conference. The taxpayer then has thirty days to appeal the assessor's decision to the board of equalization and review or, if that board is not in session, to the board of county commissioners.

Collection

Bad Check Penalties

The current minimum penalty set by G.S. 105-357(b) when a check is submitted for payment of taxes and is returned by the bank either because of insufficient funds or nonexistence of an account is $1 or 10 percent of the amount of the check, whichever is greater. S.L. 2002-156 increases this minimum penalty to $25 or 10 percent of the amount of the check, whichever is greater. S.L. 2002-156 also enacts new G.S. 105-358(a) authorizing the tax collector to reduce or waive this penalty. However, the statute gives no guidance to collectors about what situations are appropriate for such a reduction or waiver. In the event a collector does reduce or waive the penalty, he or she must record the reasons for that action. These changes became effective October 9, 2002.

Setoff Debt Collection

Chapter 105A of the General Statutes establishes a procedure by which state agencies and local governments may request the Department of Revenue to collect, or set off, from a state tax refund amounts owed the agency or local government by the individual entitled to the refund. Tax collectors have used this procedure to collect delinquent property taxes. Collectors have found, however, that the law does not authorize them to charge the taxpayer the expenses incurred in using the procedure. S.L. 2002-156 remedies this problem by amending various sections of Chapter 105A to direct the Department of Revenue to add a local collection assistance fee of $15 to each local government debt collected and to remit this fee to the clearinghouse that submitted the debt. The collection assistance fee does not apply to child support debts. If only part of a debt can be collected through the setoff procedure, the state collection assistance fee has first priority, then the local collection assistance fee, and then the debt itself. [G.S. 105A-13(d)] The amendments to Chapter 105A are effective January 1, 2003.

Address Confidentiality Program

Effective January 1, 2003, S.L. 2002-171 (H 1402) enacts new G.S. Chapter 15C to establish a program to keep the addresses and telephone numbers of certain persons confidential. In summary, a victim of domestic violence, a sexual offense, or stalking who has relocated may apply to the Attorney General for acceptance in the Address Confidentiality Program. The statute defines two important concepts: (1) an *actual address* is a "residential, work, or school street address as specified on the individual's application to be a program participant under this Chapter"

[G.S. 15C-2(1)]; and (2) a *substitute address* is "an address designated by the Attorney General under the Address Confidentiality Program" [G.S. 15C-2(9)]. When a person is accepted into the program, the Attorney General's office issues that person an authorization card and establishes a substitute address where the person's mail is to be delivered. The person's actual address, even though it may appear on public records, is no longer to be treated as a public record under G.S. Chapter 132 and its use by public officials is subject to numerous restrictions. Applicants accepted into the program are certified for four years and may renew their certifications after that time.

Two of the new statute's provisions deal specifically with property tax records. G.S. 15C-8(f) provides that for purposes of assessing and collecting motor vehicle taxes, the Attorney General shall issue to assessors and collectors a list of the names and actual addresses of program participants residing in their counties. The statute further provides that this information is to be used only for assessing and collecting property taxes on motor vehicles and is not to be disclosed to any person other than tax office employees. G.S. 15C-8(g) provides that a substitute address is not to be used "for purposes of listing, appraising, or assessing taxes on property and collecting taxes on property under the provisions of Subchapter II of Chapter 105 of the General Statutes." The intent of this provision is that actual addresses will be used for property tax purposes. Although the statute is not entirely clear on this point, apparently these records, with the actual addresses, remain public records. This conclusion is based on the observation that five subsections of G.S. 15C-8 deal with actual addresses of persons in the program: subsection (e) pertains to board of elections records; subsection (f), to motor vehicle tax records; subsection (g), to non–motor vehicle tax records; subsection (h), to nonmarriage records and indexes in the office of the register of deeds; and subsection (i), to certain school records. In three of these subsections—those dealing with elections records, motor vehicle tax records, and school records—the statute expressly provides that the actual addresses shown in the records shall be kept confidential. The subsections dealing with nonmarriage records in the register of deeds' office and tax records other than those related to motor vehicles contain no such confidentiality requirement. Apparently the General Assembly intended to require that some records showing actual addresses be kept confidential but others are to remain public record.

Anyone who knowingly and intentionally discloses information in violation of Chapter 15C is guilty of a Class 1 misdemeanor and may be assessed a fine not to exceed $2,500 [G.S. 15C-9(f)].

Fees for In Rem Foreclosures

Effective October 1, 2002, S.L. 2002-126 (S 1115) increases two of the fees that taxing units filing in rem foreclosures pursuant to G.S. 105-375 must pay. The act amends G.S. 7A-308(a)(11) to increase the fee for recording and indexing the first page of any document from $4 to $6, and it amends G.S. 7A-308(a)(5) to increase the fee for issuance of an execution from $15 to $22.50.

Payment of Taxes before Recording Deeds

G.S. 161-31, which is applicable in only thirty-five counties, authorizes boards of county commissioners to adopt resolutions requiring tax collectors to certify that no delinquent property taxes are liens on a parcel of property before the register of deeds is allowed to record a deed conveying an interest in that property. S.L. 2002-51 (H 1533) adds the following counties to this statute: Bertie, Clay, Durham, Henderson, Hertford, Macon, Northampton, Polk, Rutherford, and Transylvania.

Studies

After a lapse of many years, the General Assembly has again created a permanent body charged with ongoing study of the property tax. S.L. 2002-184 adds new G.S. 120-70.108 to direct the Revenue Laws Study Committee to establish a permanent Property Tax Study Subcommittee

consisting of six members. The Senate and House co-chairs of the Revenue Laws Study Committee will each appoint three members from their respective chambers to serve on the subcommittee and will designate one of those members as co-chair. The subcommittee is specifically directed to study all classes of exempt and excluded property as well as the use-value system.

S.L. 2002-180 (S 98) authorizes the Revenue Laws Study Committee to study issues related to the collection of property taxes on mobile homes and to report its findings and recommendations to the 2003 General Assembly.

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Mental Health

One year after the enactment of legislation requiring the most significant reform of the mental health system in decades, the legislative focus turned to the state budget crisis. While providers of publicly funded services, service advocates, and client groups worked with the Department of Health and Human Services (DHHS) on the enormously complicated task of implementing the 2001 reform legislation, questions arose as to whether anticipated cuts in funding would undermine the reform and threaten the continuation of basic services. The final reductions to mental health, developmental disabilities, and substance abuse services for fiscal year 2002–2003 were much less than initially proposed, although administrators responsible for implementing reform on the local level remain concerned that insufficient state funding will compromise the effort. Perhaps because providers, consumers, administrators, and legislators remained largely focused on the 2001 reform legislation and the 2002–2003 budget, the 2002 session was less active in nonbudget mental health areas than usual.

This chapter discusses acts of the General Assembly affecting mental health, developmental disabilities, and substance abuse services. Particular attention is given to legislation that affects local government administration of the public-sector system of services. The mental health system reform legislation reorganized these local government administration units into area mental health, developmental disabilities, and substance abuse authorities (area authorities) and county-administered mental health, developmental disabilities, and substance abuse programs (county programs). Legislative enactments that could potentially affect area authorities and county programs include

- a change in the composition of the commission that adopts rules for administering mental health, developmental disabilities, and substance abuse services;
- the creation of an expedited process for seeking a waiver of rules;
- an extension of the deadline for funding a new consumer advocacy program;
- an amendment to the statute that prohibits the application of exclusionary zoning practices to group homes for the mentally and physically disabled; and
- a bioterrorism law that permits the State Health Director and local health directors to access confidential records.

Appropriations

General Fund Appropriations

The Current Operations, Capital Improvements, and Finance Act of 2002, S.L. 2002-126 (S 1115), appropriates $573,361,612 from the General Fund to the DHHS Division of Mental Health, Developmental Disabilities, and Substance Abuse Services (MH/DD/SAS) for fiscal year 2002–2003. This represents a $7,707,015 reduction from the $581,068,627 appropriated for 2002–2003 in the 2001 appropriations act (S.L. 2001-424). Appropriations for the past five fiscal years were $581.4 million (2001–2002), $630.4 million (2000–2001), $614.3 million (1999–2000), $564.3 million (1998–1999), and $528.5 million (1997–1998).

Cuts in funding, all recurring, include

- $3 million to area authorities;
- $630,487 to the five state-operated mental retardation centers by decreasing outreach expenditures and eliminating 6.5 positions;
- $184,818 to state-operated substance abuse facilities by eliminating 15.25 positions;
- $2,895,097 to state psychiatric hospitals by eliminating 61 positions;
- $129,135 to state-operated child and family facilities;
- $1 million by budgeting for increased institutional receipts;
- $835,628 to central office administration;
- $419,674 by eliminating or reducing a number of contracts for training, education, and other services;
- $295,229 by reducing expenditures for patient advocacy in the state psychiatric hospitals by 25 percent, eliminating 5 patient advocate positions;
- $96,947 by reducing expenditures for patient advocacy in the state-operated mental retardation centers, eliminating 6 patient advocate positions.

Section 10.23 of S.L. 2002-126 directs MH/DD/SAS to allocate the reductions to central administration to items of expenditure that have the least impact on (1) direct services provided by state facilities and local programs; (2) the implementation of the State Plan for Mental Health, Developmental Disabilities, and Substance Abuse Services; and (3) the state's ability to monitor program performance or otherwise comply with the oversight and reporting requirements of state and federal law. The budget act also requires that reductions to state-operated facilities be allocated (1) so that maximum resources are transferred to local programs for building local service capacity while the state reduces the population of state facilities and shifts principal service functions to community-based programs and (2) in a manner having the least possible impact on the state's ability to comply with *Olmstead v. L.C.*, 527 U.S. 581, 119 S. Ct. 2176, 144 L. Ed. 2d 540 (1999)[1] and the Civil Rights of Institutionalized Persons Act. DHHS was to submit a plan for allocating the foregoing reductions by November 1, 2002, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division of the General Assembly.

Nonrecurring increases in funding include $280,000 for residential services to autistic children; $500,000 to expand housing support placements for the mentally ill; and $1 million for nine therapeutic homes programs for women with substance abuse or dependency diagnoses.

1. 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.

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 and appropriated over $47 million to the trust fund to be used solely for the state's service needs and to supplement, not supplant, existing state and local funding. Specifically the General Assembly directed that the trust fund be used only to (1) support community-based treatment programs; (2) facilitate compliance with the United States Supreme Court's *Olmstead* decision; (3) expand services to reduce waiting lists; (4) provide bridge funding to maintain client services during transitional periods of facility closings and departmental restructuring of services; and (5) construct, repair, and renovate state mental health, developmental disabilities, and substance abuse facilities.

Most of the $47 million trust fund reserve was used to address the state budget shortfall for fiscal year 2001–2002 and was not used for the purposes for which it was originally intended. This year Section 2.1 of the budget bill allocates $8 million to the trust fund reserve and authorizes the expenditure of up to $7 million from the fund for siting, design, and capital planning costs associated with the construction of a new psychiatric hospital. (On September 25, 2002, the Secretary of DHHS announced that a new inpatient psychiatric facility would be built at Butner to replace the Dorothea Dix and John Umstead Hospitals, which will be closed when the new hospital opens.)

Federal Block Grant Allocations

Section 5.1 of S.L. 2002-126 allocates federal block grant funds for fiscal year 2002–2003. The Mental Health Services (MHS) Block Grant provides federal financial assistance to states to subsidize community-based services for people with mental illnesses. The General Assembly allocated $5,442,798 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 $2,513,141 for community-based mental health services for children, which include school-based programs, family preservation programs, group homes, specialized foster care, therapeutic homes, and special initiatives for serving children and families of children with serious emotional disturbances. The General Assembly allocated $1.5 million of the MHS Block Grant funds for the Comprehensive Treatment Services Program for Children (formerly the Child Residential Treatment Services Program), which endeavors to provide residential treatment alternatives for children who are at risk of institutionalization or other out-of-home placement.

The Substance Abuse Prevention and Treatment (SAPT) Block Grant provides federal funding to states for substance abuse prevention and treatment services for children and adults. From the SAPT Block Grant the General Assembly allocated $15,401,711 for the state-operated alcohol and drug abuse treatment centers (ADATCs) and adult alcohol and drug abuse services provided by community-based programs. Other allocations include $7,740,611 for services for children and adolescents (for example, prevention, high-risk intervention, outpatient, and regional residential services) and $8,069,524 for services for pregnant women and women with dependent children [including specialized services for women participating in the Temporary Assistance to Needy Families (TANF) program whose substance abuse is a barrier to self-sufficiency]. The budget bill also appropriates from the SAPT Block Grant $4,616,378 for substance abuse services for intravenous drug abusers and others at risk of HIV disease and $851,156 for prevention and treatment services for children who are affected by parental addiction.

From the Social Services Block Grant, which funds several DHHS divisions, S.L. 2002-126 allocates to MH/DD/SAS $3,234,601 for unspecified purposes and another $5 million to assist individuals who are on the state's developmental disabilities services waiting list. From the same block grant the General Assembly allocated $213,128 to the Division of Facility Services for mental health licensure purposes.

Among the appropriations from the TANF Block Grant, the General Assembly allocated $400,000 to MH/DD/SAS for substance abuse screening, diagnosis, treatment, and testing of Work First (TANF) participants and $1,475,142 for residential substance abuse services for women with children.

Medicaid Expenditures

Medicaid is a state and federally funded entitlement program that pays for health care services for low-income persons. It is an extremely important component of the state budget, accounting for more than 10 percent of total state expenditures each fiscal year. Further, it accounts for a significant portion of the local government revenues devoted to mental health, developmental disabilities, and substance abuse services.

The appropriations act, S.L. 2002-126, decreases funding to the Division of Medical Assistance (DMA) by reducing the Medicaid reimbursement rate for a number of health services. Cutbacks in Medicaid expenditures for fiscal year 2002–2003 include a recurring reduction of $7,716,342 for case management services. Section 10.14 of S.L. 2002-126 requires DHHS to allocate this reduction across all state programs currently providing case management services reimbursed by Medicaid, including mental health, developmental disabilities, and substance abuse programs administered at the local level. A description of the budget provisions affecting Medicaid is included in Chapter 22, "Social Services."

Laws Affecting Local Program Expenditures

Area Mental Health Administrative Costs

The 2001 appropriations act required area authorities and county programs to develop and implement plans to reduce local administrative costs (sec. 21.65 of S.L. 2001-424). Specifically, the law required that administrative costs for the 2001–2002 fiscal year not exceed 15 percent and capped the allowable administrative costs for 2002–2003 at 13 percent. A special provision in this year's appropriations act, Section 10.27 of S.L. 2002-126, amends last year's budget to permit DHHS, beginning with the 2002–2003 fiscal year, to implement alternative approaches for establishing administrative cost limitations for area authorities, county programs, and their service providers.

Private Agency Uniform Cost-Finding Requirement

For years the budget act has authorized MH/DD/SAS to require private agencies providing services under a contract with an area authority to complete an agency-wide uniform cost finding, the intent of which is to ensure uniformity in rates charged to area authorities for services paid for with state-allocated funds. Section 10.25 of this year's budget act authorizes DHHS to suspend all funding and payment to a private agency if the agency fails to timely and accurately complete the required agency-wide uniform cost finding in a manner acceptable to the DHHS controller's office. Funding may be suspended until an acceptable cost finding has been completed by the private agency and approved by the DHHS controller's office. The provision also clarifies that the requirement applies to providers who contract with counties administering services through a county program.

State Government Organization

Patient Advocates at State Institutions

Section 10.31 of S.L. 2002-126 directs DHHS to reorganize patient advocate positions at the state-operated psychiatric hospitals and mental retardation centers so that patient advocates are supervised by and report directly to DHHS officials rather than to the directors of these facilities. The act also directs DHHS to consider contracting for patient advocate services and to submit a report, by December 1, 2002, to the House and Senate Appropriations Committees on Health and Human Services and the General Assembly's Fiscal Research Division. The report must include information relating to

- the various organizational structures within DHHS potentially appropriate for the patient advocate positions,
- the organizational framework recommended by DHHS,
- the DHHS officials responsible for supervising patient advocates under the new organizational scheme, and
- the final DHHS decision on contracting for advocacy services and the reasons for that decision.

Office of Substance Abuse Prevention

Section 10.24 of S.L. 2002-126 directs MH/DD/SAS to create an Office of Substance Abuse Prevention with responsibility for implementing the Comprehensive Strategic Plan for Substance Abuse Prevention. In addition, this office must maintain the Interagency Agreement for Substance Abuse Prevention Services and ensure continuing collaboration between agencies that are parties to the agreement. The legislation also requires MH/DD/SAS to propose to the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services licensure rules for prevention programs that ensure the quality of service delivery in local communities. MH/DD/SAS must ensure that services are provided by qualified prevention professionals, implement an outcome-based system utilizing standard risk assessments and data elements, and provide only evidence-based prevention services determined to be effective in preventing alcohol or other drug problems.

Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services

This session the General Assembly amended G.S. 143B-148, the statute governing member appointment to and the composition of the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, to increase the number of commission members who are service consumers, family members of consumers, and mental health, developmental disabilities, and substance abuse professionals. S.L. 2002-61 (H 1515) increases the number of commission members from twenty-nine to thirty, lengthens the term of office from two to three years, and limits the number of terms to two consecutive terms. Further, to ensure the coordination of rules and policies adopted by the Secretary of DHHS and the commission and to assist the commission in carrying out its duties and responsibilities, the law requires the secretary to appoint to the commission an individual having knowledge of and experience with the commission's and the secretary's rule-making processes and with mental health, developmental disabilities, and substance abuse programs.

S.L. 2002-61 also requires that when the Speaker of the House of Representatives and the President Pro Tempore of the Senate make recommendations for appointments to the commission by the House and Senate, they consider balancing these recommendations between persons who have expertise in adult issues and those who have expertise in children's issues. Of the three

appointees recommended by the President Pro Tempore, one must be a physician licensed to practice medicine in North Carolina, with preference given to a psychiatrist, and two must be members of the public. Of the three appointees recommended by the Speaker of the House, one must be either a physician or a professional with a doctorate having expertise in the field of developmental disabilities, and two must be members of the public.

The twenty-four members appointed by the Governor must represent the following categories:

- Three professionals licensed or certified under G.S. Chapter 90 or 90B who are practicing, teaching, or conducting research in the field of mental health.
- Four consumers, or immediate family members of consumers, of mental health services. At least one must be a consumer and at least one must be an immediate family member of a consumer. No more than two of the consumers or immediate family members may be selected from nominations submitted by Coalition 2001 or its successor organization.
- Two professionals licensed or certified under G.S. Chapter 90 or 90B who are practicing, teaching, or conducting research in the field of developmental disabilities and a *qualified professional*, as defined in G.S. 122C-3(31), experienced in the field of developmental disabilities.
- Four consumers, or immediate family members of consumers, of developmental disabilities services. At least one must be a consumer and at least one must be an immediate family member of a consumer. No more than two of the consumers or immediate family members may be selected from nominations submitted by Coalition 2001 or its successor organization.
- Two professionals licensed or certified under G.S. Chapter 90 or 90B who are practicing, teaching, or conducting research in the field of substance abuse and one professional who is a certified prevention specialist or who specializes in addiction education.
- An individual knowledgeable and experienced in the field of controlled substances regulation and enforcement selected from recommendations made by the Attorney General of North Carolina.
- A physician licensed to practice medicine in North Carolina who has expertise and experience in the field of substance abuse, with preference given to a physician who is certified by the American Society of Addiction Medicine.
- Four consumers, or immediate family members of consumers, of substance abuse services. At least one must be a consumer and at least one must be an immediate family member of a consumer. No more than two of the consumers or immediate family members may be selected from nominations submitted by Coalition 2001 or its successor organization.
- A licensed attorney.

The appointments of professionals licensed or certified under G.S. Chapters 90 or 90B, including physicians appointed by the General Assembly, must be selected from nominations submitted to the appointing authority by the respective professional associations.

Rule Making

Waiver Process for Secretary and Commission Rules

Section 7 of S.L. 2002-160 (H 1777) creates an expedited review process for an area authority or county program that requests a waiver of rules on the basis that the waiver is necessary for the area authority or county program to implement its business plan developed under G.S. 122C-115.2. The expedited process applies to rules adopted by the Secretary of DHHS and the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services under the rule-making authority granted in G.S. 122C-112.1 and G.S. 122C-114. The secretary must review a request to ensure that the waiver furthers the purposes of mental health reform, does not compromise the quality of care or the effectiveness and efficiency of program administration and

service delivery, and meets the requirements of the business plan under G.S. 122C-115.2. Upon a finding that the waiver complies with these requirements, the secretary must refer to the commission a request for waiver of one or more rules adopted by the commission or conduct further review if the request seeks a waiver of one or more rules adopted by the secretary. The secretary must review and approve or deny a request for waiver of secretary-adopted rules within ten days of receipt of the request. The commission must review and approve or deny a request for waiver of one or more commission rules no later than its next regularly scheduled meeting following receipt of the request. The waiver must comply with regulations governing the waiver of rules adopted under G.S. 122C-112.1 and G.S. 122C-11, except that if the time allowed for review of a waiver under these regulations is longer than the time limits set out in S.L. 2002-160, then S.L. 2002-160 applies.

If the request for waiver is denied, the denial must be made in writing and state the grounds for the denial. Appeals of waiver denials must accord with applicable rules. If the waiver request is approved, the waiver will be in effect for a period not to exceed three years or for the period for which the business plan to which the waiver applies is in effect, whichever is shorter. Section 7 of S.L. 2002-160 expires July 1, 2005. On October 1, 2002, and annually thereafter, the secretary is to report activities related to the expedited review process to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.

Coordination of Rules Affecting Local Services

Section 10.31 of S.L. 2002-126 directs the Secretary of DHHS and specified commission chairs to develop a process for coordinating rule making affecting area authorities. The process must address how to identify on a routine basis:

- proposed rules that duplicate in whole or in part other proposed or adopted rules,
- methods of avoiding such duplication without interfering with an agency's statutory duty to adopt a rule or impairing a rule's effectiveness as part of a statutory mandate.

The process must also address how to identify

- rules that are in conflict,
- proposed rules that conflict with other proposed or adopted rules, and
- methods of addressing such conflicts without interfering with an agency's statutory duty to adopt a rule or impairing the rule's effectiveness as part of a statutory mandate.

The secretary and the following commissions must collaborate on the development of this process:

- the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services;
- the Social Services Commission;
- the Commission for Health Services;
- the Medical Care Commission; and
- other commissions adopting rules that affect area authorities and that must be implemented by the Secretary of DHHS.

The secretary must also involve a representative of the DHHS Division of Medical Assistance.

The coordination process was to be implemented no later than November 1, 2002. The secretary was to report on the following to the Joint Legislative Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services by November 15, 2002:

- the status of the review of rules for determining any existing ambiguity, duplication, or conflict;
- specific rules that are in conflict and the recommended action for resolving the conflict; and
- the statutory changes necessary to accomplish the purposes for which the rules review process is intended.

Zoning and Group Homes

G.S. Chapter 168, the Handicapped Persons Act, prohibits discrimination against individuals with physical, mental, or visual disabilities. Article 3 of the act declares that for zoning purposes a "family care home" is a residential use of property and is a permissible use in all residential districts. G.S. 168-22 specifically prohibits a political subdivision from requiring a family care home or its owner or operator to obtain a conditional use permit, special use permit, special exception, or variance from any such zoning ordinance or plan. The statute, however, does allow a political subdivision to prevent a family care home from being located within a one-half-mile radius of an existing family care home.

Before 1995 G.S. 168-21(1) defined *family care home* as a home staffed by support and supervisory personnel that provides room and board, personal care, and habilitation services in a family environment for not more than six resident handicapped persons. In 1995 the General Assembly enacted a law to replace the archaic term "domiciliary" care with the term "adult" care throughout the General Statutes. This new law inadvertently swept G.S. 168-21(1) into its scope and altered the definition of "family care home" by replacing the term "a home" with the words "an adult care home." (sec. 36 of S.L.1995-536.) This change led to confusion over whether the family care home provisions applied to homes for handicapped minors or only to homes for handicapped adults. This year the General Assembly clarified that the law applies to both homes for minors and homes for adults by restoring the definition of *family care home* to its pre-1995 text. [sec. 24 of S.L 2002-159 (S 1217).]

State Psychiatric Hospitals

Section 86 of S.L. 2002-159 requires DHHS to spend $2 million of its 2002–2003 appropriations on planning and preliminary design for facilities to replace Cherry and Broughton psychiatric hospitals. DHHS must ensure that the identification and use of funds for this purpose do not adversely impact direct services, area authorities, or county programs. The replacement hospitals for Cherry Hospital and Broughton Hospital must be located in Wayne and Burke Counties and serve the eastern and western regions of the state.

Section 91 of S.L. 2002-159 requires DHHS to maintain all existing educational and research programs in psychology and psychiatry managed by The University of North Carolina (UNC) at Dorothea Dix and John Umstead Hospitals, unless the programs are otherwise modified by UNC. The provision applies to psychiatry and psychology programs conducted by the UNC School of Medicine and the Psychology Department within the School of Arts and Sciences at UNC Chapel Hill. At these hospitals and any new state psychiatric hospital, the School of Medicine must retain authority over all educational and research programs in psychiatry, and the School of Arts and Sciences must retain authority over all educational and research programs in psychology. The provision further directs the Secretary of DHHS to consult with the School of Medicine in programmatic, operational, and facility planning of the new psychiatric hospital to ensure appropriate patient treatment and continuation of the School of Medicine's educational and research programs. Similarly, the secretary must consult with the School of Arts and Sciences to ensure appropriate continuation of its educational and research programs.

Laws Affecting Confidentiality

The laws discussed in this section either provide for access to confidential information or make certain information confidential by limiting its disclosure. However, confidentiality is not the sole feature of these laws. This chapter focuses exclusively on the provisions affecting the disclosure of confidential information since this issue is likely to be of most interest to consumers, providers, and administrators of mental health, developmental disabilities, and substance abuse

services. When a more complete description of a law is available in other chapters of this book, relevant references are provided.

Public Health Bioterrorism Preparedness

S.L. 2002-179 (H 1508) adds new Article 22 to G.S. Chapter 130A to grant the State Health Director broad authority to respond to a public health threat that may be caused by certain types of terrorist incidents. The new law gives the State Health Director the authority to issue a temporary order requiring health care providers to report symptoms, diseases, conditions, or trends in the use of health care services or other health-related information when necessary to conduct a public health investigation or surveillance of an illness, condition, or health hazard that may have been caused by a terrorist incident involving nuclear, biological, or chemical agents. The term *health care provider* is defined to include physicians or "person[s] who [are] licensed, certified, or credentialed to practice or provide health care services, including, but not limited to, pharmacists, dentists, physician assistants, registered nurses, licensed practical nurses, advanced practice nurses, chiropractors, respiratory care therapists, and emergency medical technicians."

The new law also permits a health care provider, a person in charge of a health care facility, or a unit of state or local government to report to the state or local health director any events that may indicate the existence of a case or outbreak of an illness, condition, or health hazard that may have been caused by a terrorist incident involving nuclear, biological, or chemical agents. "To the extent practicable," the person making a report must not disclose personally identifiable information. *Health care facility* is defined to include "hospitals, skilled nursing facilities, intermediate care facilities, psychiatric facilities, rehabilitation facilities, home health agencies, ambulatory surgical facilities, or any other health care related facility, whether publicly or privately owned." Unless the State Health Director orders it, reporting is not mandatory, and a person acting in good faith and without malice is immune from civil or criminal liability for reporting or not reporting. The immunity from liability is not available, however, when the health care provider or unit of state or local government has actual knowledge that a condition or illness was caused by the use of a nuclear, biological, or chemical weapon of mass destruction as defined in G.S. 14-288.21(c).

When a report is made under either of the two provisions described above—the mandatory report in response to a temporary order or the permissive report in response to suspicion or actual knowledge of a terrorist incident—the state or local health director may examine and copy records pertaining to the report that contain confidential or protected health information. For further information on the disclosure of confidential information and other provisions of the law, including provisions authorizing the detention and examination of persons or animals and the evacuation or closing of facilities, see Chapter 10, "Health."

Address Confidentiality for Domestic Violence, Sexual Offense, and Stalking Victims

S.L 2002-171 (H 1402) creates a program in the Office of the Attorney General to protect the confidentiality of the address of a relocated victim of domestic violence, sexual offense, or stalking so that a potential assailant may be prevented from finding the victim. Under this program, codified at new G.S. 15C-1 through -16.1, the Office of the Attorney General designates a substitute address for a program participant and acts as the agent of the program participant for purposes of receiving and forwarding first class, certified, or registered mail and receiving service of process. The program permits a participant to request state and local agencies to use the address designated by the Attorney General and, with a few exceptions, requires agencies to accept the designated address when requested to do so. The law prohibits employees of state and local agencies from disclosing a program participant's actual address and telephone number except as authorized by the law itself. For a detailed discussion of the address confidentiality program, see Chapter 5, "Courts and Civil Procedure."

Managed Care Patient Assistance Program

In 2001 the General Assembly enacted a Patients' Bill of Rights (S.L. 2001-446) that, among other things, authorizes patients to sue managed care organizations for failing to exercise due care in making treatment decisions, establishes a binding procedure for independent review of coverage decisions adverse to insured persons, and creates a new program to assist patients in exercising their rights under the law. The Managed Care Patient Assistance Program, established by the act, provides information and assistance to individuals enrolled in managed care plans. Among other things, the program must address consumer inquiries and assist managed care plan enrollees with grievance, appeal, and external review procedures.

This year, in Section 45 of S.L. 2002-159, the General Assembly amended G.S. 143-730 to make all health information in the possession of the Managed Care Assistance Program confidential and exempt from the public records law. The act defines *health information* as

1. information relating to an individual's past, present, or future physical or mental health or condition;
2. information relating to the provision of an individual's health care;
3. information relating to the past, present, or future payment for the provision of an individual's health care;
4. information in any form that identifies or may be used to identify an individual that is created by, provided by, or received from
   - an individual or an individual's spouse, parent, legal guardian, or designated representative; or
   - a health care provider, health plan, employer, health care clearinghouse, or any entity doing business with these entities.

Other Laws

Consumer Advocacy Program

Last year the General Assembly enacted legislation to establish the Mental Health, Developmental Disabilities, and Substance Abuse Consumer Advocacy Program (sec. 2 of S.L. 2001-437). The program is to furnish consumers, their families, and providers with the information and advocacy needed to locate services, resolve complaints, address common concerns, and promote community involvement. (*Consumer* is defined as a client or potential client of public services provided by an area or state facility.) The legislation contained a provision, however, that made it effective only if the 2001 General Assembly appropriated funds for the program in the 2002 Regular Session. Although these funds were not appropriated, Section 10.30 of S.L. 2002-126 amends S.L. 2001-437 to permit the consumer advocacy program to become effective if funds are appropriated by the 2003 General Assembly.

Alcohol and Drug Screening Tests

Effective December 1, 2002, S.L. 2002-183 (S 910) creates new G.S. 14-401.20 to make it a crime to sell or otherwise distribute urine to defraud a drug or alcohol test; to substitute or spike a sample to be used to defraud a test; or to use, possess, or sell an adulterating substance intended to be used to defraud a test. The first violation is a Class 1 misdemeanor; a second or subsequent offense is a Class I felony.

Inpatient Substance Abuse Facilities Serving Prison Inmates

In 2001 the General Assembly created an exemption from licensure under G.S. Chapter 122C, and from certificate-of-need requirements under G.S. Chapter 131E, for inpatient chemical dependency or substance abuse facilities that provide services exclusively to Department of

Correction inmates. (sec. 25.19 of S.L. 2001-424.) The law provided that if a facility serves both inmates and the general public, the portion of the facility that serves inmates is exempt from licensure. The law further provided that if a facility is built without a certificate of need, it may not admit anyone other than inmates until a certificate of need is obtained. Section 41 of S.L. 2002-159 amends G.S. 131E-184(d) again to clarify that if an inpatient chemical dependency or substance abuse facility provides services both to Department of Correction inmates and to the general public, only the portion of the facility serving inmates will be exempt from certificate of need review.

Studies and Reports

Criminal History Record Checks

Section 2.1A of S.L. 2002-180 (S 98) authorizes the Legislative Research Commission to study how federal law affects the distribution of national criminal history record check information requested for area authorities, nursing homes, home care agencies, adult care homes, and assisted living facilities and how it restricts implementation of state-required criminal record checks. The study may include a review of advantages and disadvantages, including costs, of various ways to obtain national record checks and an examination of solutions adopted by other states to implement their criminal record check requirements.

Homelessness

Section 2.1E of S.L. 2002-180 authorizes the Legislative Research Commission to study ways to decrease homelessness in the state. If the commission undertakes the study it must examine, among other things, the types of housing support systems required to ease or end homelessness for persons discharged from correctional facilities, mental health and substance abuse services, foster care, family income supports, and other institutions and systems. In addition, the report must consider the coordinated services necessary to end homelessness among individuals and families, including substance abuse and mental health counseling and treatment, adult education, employment training and placement, family stabilization and reunification services, child care and after school services, primary and preventive health care services, the Head Start program, post–criminal justice rehabilitation and reintegration services, transportation services, housing and rental assistance, energy and conservation assistance, nutrition assistance, group adult foster care, and other elder home care services.

Prescription Drug Access

Section 5.1 of S.L. 2002-180 requires DHHS to study ways the state can coordinate and facilitate public access to public and private free and discount prescription drug programs for senior citizens. DHHS must report its finding and recommendations by January 1, 2003, to the North Carolina Study Commission on Aging.

Mark Ford Botts

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Motor Vehicles

The 2002 session dealt with relatively few motor vehicle law issues. For the first time in well over a decade, there were no bills enacted that changed the law of impaired driving. For the most part the bills that were enacted were technical in nature and made minor adjustments to existing laws. This chapter will summarize those having a substantive impact. Unless otherwise noted, all acts are already effective.

Toll Roads

The most significant policy decision affecting motor vehicles did not involve a legal matter. S.L. 2002-133 (H 644) authorizes the construction and operation of toll roads and bridges. To manage these projects, it establishes the North Carolina Turnpike Authority. In recent history the state has not operated any toll roads or bridges, although some ferries charge fees. The new law specifies that the roads and bridges constructed under this authority are "highways" and "public vehicular areas" and thus the rules of the road, driver's license, and other motor vehicle laws apply to users traveling on them.

The authority may construct and operate three projects; one of them must be located in whole or in part in Mecklenburg County, and one must be located in some other county. The third project is not restricted to a particular location. The authority may plan three more projects but may not construct them without additional legislative approval.

Graduated Driver's License Changes

In 1997 the legislature, at the urging of the Child Fatality Task Force, enacted a graduated driver's license system. Under this system young drivers must progress through a series of increasingly permissive restrictions before they may drive unaccompanied at any time. The middle level of this progression prohibits drivers under eighteen from driving between 9:00 P.M. and 5:00 A.M. unless they are accompanied by a supervising driver. S.L. 2002-73 (H 1546), also proposed by the task force, modifies that restriction to require that the driver transport no more than one passenger under twenty-one unless the passengers are the driver's siblings. Violation of

these restrictions is not negligence per se or contributory negligence, does not result in driver's license or insurance points, and may not be admitted in any action except a prosecution under this section.

In a related change, S.L. 2002-159 (S 1217) amends the statutes pertaining to provisional licensees and learner's permits. Some of these licenses and permits expire on the driver's eighteenth birthday. If this date falls on a weekend or state holiday, the driver may not be able to obtain a regular license without a gap in license coverage. The new law extends the provisional license or learner's permit for five additional workdays in this situation.

Two-Wheeled Mobility Devices

As new types of vehicles have become available, the motor vehicle laws have been modified to regulate the use of the devices. S.L. 2002-98 (S 1144) is an example. Recently persons who must walk long distances have begun using two-wheeled, upright devices for transportation. Postal workers and law enforcement officers walking a beat are typical examples. S.L. 2002-98 defines *electric personal assistive mobility devices* as "self-balancing nontandem two-wheeled devices, designed to transport one person, with a propulsive system that limits the maximum speed . . . to 15 miles per hour or less." These devices are not vehicles and thus are not subject to the vast majority of regulations in the motor vehicle law. They are subject to a new set of regulations applicable only to them. The regulations generally treat persons using the devices as pedestrians, but some exceptions exist. The devices may be operated on highways with speed limits of 25 mph or less. They also may be operated on sidewalks and bike paths. Municipalities may regulate, but not prohibit, the use of these devices.

Mopeds

Unlike the mobility devices, mopeds (bicycles with small motors) are treated as vehicles and are subject to many of the rules of the road, such as the impaired driving statutes. The initial definition of mopeds has included only vehicles with motors that could not propel the vehicle at speeds greater than 20 mph on level surfaces. S.L. 2002-170 (H 1516) raises that speed to 30 mph.

Open Container Sunset

In 2000 the legislature made it an infraction for any person in a vehicle that is being driven to possess an opened container with any alcoholic beverage in it. This provision was scheduled to expire on September 30, 2002. S.L. 2002-25 (H 1488) extends this sunset to September 30, 2006.

Driving without Reclaiming License

G.S. 20-28 makes it a crime to drive if one's license has been revoked. Conviction of driving while license revoked carries a reduced punishment if the revocation is a civil revocation (CVR—the immediate pretrial revocation executed for those who fail a breath or blood test when charged with impaired driving). The reduced punishment is administered if the person drives after serving the CVR's minimum revocation period. (A CVR can last indefinitely if the person fails to surrender his or her license or pay the applicable court costs.) In 1983, when the CVR statute was enacted, the minimum revocation periods were either ten or thirty days, depending on when the license was revoked. Several years ago the General Assembly extended these periods to thirty and forty-five days but did not modify the special punishment section in G.S. 20-28 to reflect this

change. S.L. 2002-159 amends G.S. 20-28 to make the minimum revocation periods in this statute the same as in the CVR statute, thirty and forty-five days.

Special License Plates

The motor vehicle laws authorize numerous kinds of special license plates. S.L. 2002-134 (H 1745) changes some of these laws. It removes from the World War II and Korean Conflict Veterans' special plates program a requirement that at least three hundred people apply for the plates before the plates can be issued. It also authorizes the Division of Motor Vehicles to issue special license plates for Aviation Maintenance Technicians, N.C. Agribusiness, and the Sweet Potato, upon receipt of three hundred applications within any of these categories. The special plates carry an additional fee of from $10 to $25, depending on the particular license plate.

James C. Drennan

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Public Personnel

The 2002 General Assembly enacted few significant changes to North Carolina law affecting state and local government employees. Because of the continuing budget shortfall, state employees did not receive salary increases, although the General Assembly did authorize a one-time bonus of an additional ten days of paid annual leave for full-time, permanent state employees. Most of the legislation affecting state and local government employees involved the individual government retirement systems. The most significant provisions of the new legislation were a 1.4 percent cost-of-living increase in the Teachers' and State Employees' Retirement System (TSERS) and the Local Governmental Employees' Retirement System (LGERS); an increase in the multiplier by which benefits are calculated in both TSERS and LGERS; a restriction on the post-retirement earnings of TSERS and LGERS members re-employed by government units; and the opportunity for local government employees to repurchase withdrawn service credit.

State Employees

Salary

The General Assembly did not authorize any across-the-board salary increases for state employees this year. S.L. 2002-12 (S 1111) provides explicitly that state employees subject to G.S. 7A-102(c) (employees of the offices of the clerk of superior court), G.S.7A-171.1 (magistrates), or G.S. 20-187.3 (members of the State Highway Patrol) shall not move up on salary schedules or receive any automatic step increases until specifically authorized by the General Assembly.

Instead, state employees who were full-time permanent employees as of September 30, 2002, and who are eligible for annual leave will receive a one-time additional ten days of paid annual leave (Special Annual Leave Bonus) pursuant to the 2002 appropriations act [S.L. 2002-126 (S 1115)]. The Special Annual Leave Bonus will be accounted for separately from other annual leave and will remain available until it is used. Rules that limit the amount of annual leave that may be carried over from year to year will not apply to the Special Annual Leave Bonus.

Legislation Affecting All State Employee Retirement Systems

The 2002 appropriations act provides for cost-of-living increases of 1.4 percent in the retirement allowance paid to or on behalf of retirees participating in the Teachers' and State Employees' Retirement System (TSERS), the Consolidated Judicial Retirement System (CJRS), and the Legislative Retirement System (LRS) by amending G.S. 135-5, 135-65, and 120-4.22A, respectively.

At the same time, the 2002 appropriations act amends S.L. 2001-424 (the 2001 appropriations act) to reduce the employer contribution rates budgeted for retirement and related benefits as a percentage of covered salaries for the 2002–2003 fiscal year for employees enrolled in TSERS, the State Law Enforcement Officers' Retirement System, the University Employees' Optional Retirement System, the Community College Optional Retirement Program, CJRS, and LRS. The reduction in employer contribution rates does *not* affect the amount of the monthly pension benefit that those enrolled in the retirement systems are entitled to receive.

S.L. 2002-71 (S 1429) amends G.S. 120-4.16, 120-4.31, 128-26, 128-38.2, 135-4, 135-18.7, 135-56.3, and 135-74 in order to make certain provisions in TSERS, LGERS, CJRS, and LRS conform to provisions of the Internal Revenue Code. With respect to each of the aforementioned retirement systems, the changes (1) limit to $200,000 the amount of annual compensation taken into account for determining benefits accrued for plan years beginning with 2002, and (2) allow for the purchase of service credits in the respective retirement systems using rollover contributions from 403(b) or 457 retirement plans or through plan-to-plan transfers.

Teachers' and State Employees' Retirement System

The 2002 appropriations act adds new subsection (b19) to G.S. 135-5, increasing the benefits multiplier from 1.81 percent to 1.82 percent for those members of TSERS retiring on or after July 1, 2002. It also adds to G.S. 135-5 new subsection (kkk), which brings the retirement allowance of members who retired prior to July 1, 2002, into line with the new multiplier by increasing by 0.6 percent the allowance payable on June 1, 2002.

The 2002 appropriations act makes a significant change in the restrictions on the re-employment of TSERS retirees by employers participating in TSERS. Previously, retirees working for TSERS employers on a part-time, temporary, interim, or fee-for-service basis were limited *in any calendar year* to 50 percent of the retiree's reported compensation in the twelve months preceding retirement. For employees retiring in the middle of the calendar year, this meant that they could work in the very positions from which they had just retired, on a full-time basis and at an equivalent salary, for a period of up to one year, while drawing their retirement allowance at the same time. The 2002 appropriations act amends G.S. 135-3(8)c. to provide that TSERS retirees working for TSERS employers on a part-time, temporary, interim, or fee-for-service basis shall be limited to earning 50 percent of reported compensation in the twelve months preceding retirement in any calendar year or *during the twelve-month period immediately following the effective date of retirement*. As a practical matter, this means that retirees returning to work in the positions from which they have just retired will be limited to a six-month period of temporary, full-time employment.

Special Separation Allowance for Law Enforcement

The 2002 appropriations act amends G.S. 143-166.41(c), which previously prohibited retired law enforcement officers from being re-employed by any state department, agency, or institution while receiving a special separation allowance from the state. The amended version of the statute allows retired state law enforcement officers to continue receiving their special separation allowance if their new state employment is in a position exempt from the State Personnel Act and is with an agency other than the agency from which the officer retired.

Additional Family and Medical Leave

The 2002 appropriations act grants state employees the right to take up to fifty-two weeks of unpaid leave during a five-year period to care for the employee's child, spouse, or parent who has a serious health condition. This fifty-two-week entitlement to family and medical leave is in addition to the twelve weeks of unpaid leave to which state employees are entitled each year pursuant to the federal Family and Medical Leave Act of 1993.

Employees Reinstated after Reduction-in-Force

S.L. 2002-159 (S 1217) allows employees whose positions were eliminated as part of a reduction-in-force pursuant to Executive Order No. 22 but were ultimately funded in the 2002 appropriations act to regain their career state employee status pursuant to G.S. 126-1.1. S.L. 2002-159 also allows such employees to receive the Special Annual Leave Bonus authorized for state employees by the 2002 appropriations act.

Public Employee Special Pay Plan

The 2002 appropriations act amends Article 9 of Chapter 143B of the General Statutes by creating a new Part 29 and Section 143B-426.41, which directs the Governor to establish a Board of Trustees within the Department of Administration for the creation and administration of a Special Pay Plan for state employees. As defined in the statute, a Special Pay Plan is a qualified retirement plan under Section 401(a) of the Internal Revenue Code (IRC) that removes from the IRC definition of "compensation" special compensation (such as payment for unused annual leave) paid to the plan on behalf of state employees. The act also amends G.S. 135-1(7a), which defines "compensation" for the purposes of the Teachers' and State Employees' Retirement System to include "all special pay contribution of annual leave made to a 401(a) Special Pay Plan for the benefit of an employee."

State Employee Study Commissions

Human Resource and Retirement Systems Information Technology Study

The 2002 appropriations act authorizes the Legislative Research Commission to study both the current and potential role of information technology in the state's human resource systems and to review how an enterprise approach would improve the effectiveness and efficiency of the state's human resource management system and its administration of employee and retirement benefits. The commission is to report its findings, together with any recommended legislation, to the 2003 session of the General Assembly.

State Personnel System Statutes Study

S.L. 2002-180 (S 98), the Studies Act of 2002, authorizes the Legislative Research Commission to study those provisions of Chapter 126 of the General Statutes relating to benefits enhancements, career status, exemption, compensation, demonstration projects, and employee relations and to recommend legislation that would simplify the law and allow the State Personnel Commission to adopt policy and rules more efficiently. The commission is to report its findings, together with any recommended legislation, to the 2003 session of the General Assembly.

Legislative Study Commission on the Teachers' and State Employees' Retirement System

The Studies Act of 2002 establishes a seven-member Legislative Study Commission on the Teachers' and State Employees' Retirement System to study TSERS and to consider, in particular,

- establishing early retirement for state employees,
- the differential in the accrual of vacation benefits between employees working an eight-hour day and those working a twelve-hour day, and
- any other issues relating to the solvency, benefits, or financial health of the retirement system.

The commission is to report its findings, together with any recommended legislation, on or before the convening of the 2003 session of the General Assembly.

State and Local Government Employees

Discrimination Based on Disability

S.L. 2002-163 (S 866) made changes to Chapter 168A of the General Statutes, the North Carolina Persons with Disabilities Protection Act. With respect to employment, this bill amends the definition of "reasonable accommodations" in G.S. 168A-3(10)a.6. by removing the cap on the cost of physical changes to the workplace that an employer must consider making. The bill also adds to G.S. 168A-3 new subsection (11) defining "undue hardship" as "a significant difficulty or expense" and setting forth factors to be considered in determining whether a proposed accommodation would impose an undue hardship on the employer. These changes bring the "reasonable accommodations" and "undue hardship" provisions of the North Carolina Persons with Disabilities Protection Act in line with those of the federal Americans with Disabilities Act.

Local Government Retirement

Local Government Employees' Retirement System (LGERS)

The 2002 appropriations act amends G.S. 128-27 to provide for cost-of-living increases of 1.4 percent in the retirement allowance paid to or on behalf of retirees participating in LGERS. The act adds new subsection (b20) to G.S. 128-27, increasing the benefits multiplier from 1.81 percent to 1.82 percent for those members of LGERS retiring on or after July 1, 2002. It also adds to G.S. 128-27 new subsection (ccc), which brings the retirement allowance of members who retired prior to July 1, 2002, into line with the new multiplier by increasing by 0.6 percent the allowance payable on June 1, 2002.

The 2002 appropriations act makes a significant change in the restrictions on the re-employment of LGERS retirees by employers participating in LGERS. Previously, retirees working for LGERS employers on a part-time, temporary, interim, or fee-for-service basis were limited *in any calendar year* to 50 percent of the retiree's reported compensation in the twelve months preceding retirement. For employees retiring in the middle of the calendar year, this meant that they could work in the very positions from which they had just retired, on a full-time basis and at an equivalent salary, for a period of up to one year, while drawing their retirement allowance at the same time. The 2002 appropriations act amends G.S. 128-24(5)c. to provide that LGERS retirees working for LGERS employers on a part-time, temporary, interim, or fee-for-service basis shall be limited to earning 50 percent of reported compensation in the twelve months preceding retirement in any calendar year or *during the twelve-month period immediately following the effective date of retirement*. As a practical matter, this means that retirees returning to work in the positions from which they have just retired will be limited to a six-month period of temporary, full-time employment.

S.L. 2002-153 (S 1238) amends G.S. 128-26(i) to allow LGERS participants to purchase withdrawn service credit under more favorable terms than previously allowed. This bill reduces from ten to five the number of years of prior and current service necessary to effect a repurchase and provides for repayment of the contributions previously withdrawn in a lump sum with interest compounded annually at a rate of 6.5 percent for each calendar year from the year of withdrawal to the year of repayment. Participants will also have to pay a service fee to cover LGERS's administrative expenses in processing the repurchase.

Public School Employees

The General Assembly's 2002 legislation affecting public school employees is discussed in Chapter 8, "Elementary and Secondary Education."

Diane M. Juffras

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Purchasing and Contracting

The most important pieces of legislation affecting public purchasing and contracting this session (1) authorize the use of the "reverse auction" bidding method for purchase contracts, (2) allow public agencies to receive formal bids electronically for most types of purchase contracts, and (3) revise the law governing the use of competitive specifications for materials used in public construction projects. The first two changes continue the trend established over the past several sessions of expanding and updating public agencies' choices of contracting methods and approaches. The third reflects the constant tension between the government's desire for flexibility and the legal requirements for competition in public contracting.

Alternative Bidding Methods

During the past several sessions, the legislature has enacted laws that increased the number of exceptions to the public bidding requirements and expanded the potential for use of electronic media in the bidding process. This year, in S.L. 2002-107 (H 1170), the legislature authorized two new methods of receiving bids for the purchase of apparatus, supplies, materials, or equipment. These methods are alternatives to the process of receiving sealed paper bids and opening them at a public bid opening, as required in G.S. 143-129, or to the informal bidding procedures established in G.S. 143-131. Codified in G.S. 143-129.9, the new methods are (1) reverse auction and (2) electronic bidding.

Reverse auction is a method of receiving bids that allows bidders to compete against each other by offering multiple bids during a fixed bidding period. As defined by the statute, reverse auction is "a real-time purchasing process in which bidders compete to provide goods at the lowest selling price in an open and interactive environment. The bidders' prices may be revealed during the reverse auction" [G.S. 143-129.9(a)(1)]. Local governments may conduct these auctions themselves or through a third party, including the state's electronic procurement system. The reverse auction provisions in G.S. 143-129.9 apply only to purchases made by local governments;

they do not apply to construction or repair contracts. An exception in this statute provides that reverse auction bidding shall not be used for the purchase of "construction aggregates, including but not limited to, crushed stone, sand, and gravel" [G.S. 143-129.9(c)].

The second alternative bidding method authorized in the new statute is *electronic bidding*. This provision authorizes local governments to receive electronic bids instead of or in addition to paper bids. Like the reverse auction provision, the electronic bid authorization applies only to purchase contracts and not to construction or repair contracts. Since the informal bidding requirements in G.S. 143-131 (for purchasing contracts costing between $5,000 and $90,000) do not specify the form in which bids must be received, local governments already had the ability to receive bids electronically (including by fax) for contracts in this range. The electronic bidding authority was necessary, however, to provide an alternative to the sealed-bid requirement for contracts in the formal bid range ($90,000 and above) under G.S. 143-129.

A separate provision of the new statute provides that "the requirements for advertisement of bidding opportunities, timeliness of the receipt of bids, the standard for the award of contracts, and all other requirements in this Article that are not inconsistent with the methods authorized in this section shall apply to contracts awarded under this section." So for example, the usual requirement that all bids must be received at a set time may be modified to accommodate the reverse auction method but would still apply to bids received electronically under the traditional bidding system.

The foregoing discussion applies to the use of alternative methods by local governments. Local school systems, however, along with state agencies (including universities) and community colleges, are subject to bidding procedures established by the Department of Administration. S.L. 2002-107 amends the statute governing the purchasing authority of that department to include the use of "negotiation, reverse auctions, and acceptance of electronic bids" [sec. 2 (amending G.S. 143-53(a)(5))]. This provision also broadens the scope of the authority in that statute to include installment and lease purchase contracts. The use of reverse auctions under this provision, however, is limited to local school units. This method is not available to state agencies (including universities) or to community colleges. An uncodified provision in the law requires the Department of Administration to conduct a pilot program for reverse auctions for purchases by local school systems and to report the results to the Joint Select Committee on Information Technology when the 2003 General Assembly convenes. The exception barring use of the reverse auction for construction aggregates is not included in the authorization for local school systems.

Authority to use negotiations, reverse auctions, and electronic bids was also added to G.S. 147-33.95, which governs the procurement of information technology goods and services through the Office of Information Technology Services [S.L. 2002-207, sec. 4 (amending G.S. 147-33.95)].

Competitive Items in Construction Specifications

State laws governing public construction projects include a provision requiring public agencies to use open and competitive specifications for materials to be used in public works projects. General Statute 133-3 requires that materials be specified in terms of performance characteristics and allows brand-specific requirements only when it is "impossible or impractical" to use performance specifications. When brands *are* specified, multiple brands must be listed, if possible. A provision added to the law in 1993 allowed public agencies to list a preferred brand as an alternate to the base bid but still required that the base bid list three or more items of equal or equivalent design. This provision has allowed agencies to choose the preferred alternate at their discretion if they consider the product and cost to be the most desirable.

Concerns about the lack of open competition that occurred in some cases when the preferred alternate option was used led the legislature to repeal that portion of G.S. 133-3 in S.L. 2002-107; the repeal became effective September 6, 2002. After learning about this change, public agency officials expressed concern about the loss of flexibility in choosing materials for standardization or other purposes. To address this concern, compromise language was inserted into G.S. 133-3 and enacted as part of the technical corrections bill [S.L. 2002-159, S 1217, sec. 64(c)]. The new

language became effective January 1, 2003. Between September 6, when deletion of the preferred alternate option became effective, and January 1, 2003, public agencies had no authority to use this option to specify a particular brand in construction specifications.

The new language in G.S. 133-3 authorizes the use of one or more preferred brands as an alternate to the base bid "in limited circumstances." A public agency's preference for one or more particular brands must be supported by performance standards and must be approved in advance by the owner in an open meeting. The preference may be approved "only where (i) the preferred alternate will provide cost savings, maintain or improve the functioning of any process or system affected by the preferred item or items, or both, and (ii) justification identifying these criteria is made available in writing to the public." It would appear that approval by the public agency in an open meeting satisfies the requirement to make the justification available to the public but that agencies could also make the information available at local offices or on official Web sites. Alternatively, the agency might indicate where the public can obtain the information in the advertisement for the public meeting at which the brand preferences are to be approved.

Other Public Construction Law Changes

Department of Transportation: Threshold Increase

The threshold for formal bidding of projects by the Department of Transportation under G.S. 136-28.1 was increased from $800,000 to $1,200,000 [S.L. 2002-151 (H 1518)]. The same law broadened the department's authority to use the design-build method of construction by eliminating the three-project-per-year limit on use of this method. New standards and reporting requirements for design-build projects were added to G.S. 136-28.11.

Technical Correction for Separate-Prime Bidding

A provision in G.S. 143-128 erroneously deleted in an earlier revision to that statute was reinserted in the technical corrections bill. The reinserted provision applies to public building construction projects that are bid under the separate-prime bidding procedure in G.S. 143-128(b). It allows work in any category that is estimated to cost less than $25,000 to be included in another category of work for purposes of bidding.

Energy Efficiency in State-Owned Buildings

In S.L. 2002-161 (H 623), the legislature extended to state agencies, including the university system, the authority to use guaranteed energy savings contracts and to finance the costs of improvements made under those contracts. The guarantee in these contracts is that the resulting energy savings will pay back the cost of the improvements over the term of the contract. Procedures for state agencies undertaking guaranteed energy saving contracts are set out in G.S. 143-64.17A(c1). Reporting and inspection provisions are set out in Sections 143-64.17H and 143-64.17K. Authority and procedures for financing guaranteed energy savings projects are established in G.S. 142-60 through 142-70.

Engineering and Landscape Architecture Study

The Legislative Research Commission is authorized to study the professions of engineering and landscape architecture as they are regulated by North Carolina statutes. The study will address continuing concerns arising out of areas of overlap between the two professions.

Small Business Contractor Programs

Two bills were enacted this year to promote the use of small businesses in contracting and to provide financial assistance to small businesses. In S.L. 2002-181 (S 832), the legislature established the North Carolina Small Business Contractor Authority to provide financial assistance to small businesses unable to obtain adequate financing and bonding in connection with contracts. The authority is to be housed in the Department of Commerce and the provisions governing its work are contained in G.S. 143B-472.75 through 472.87. Small businesses are defined, for purposes of the act, according to the standards of the U.S. Small Business Administration. Types of assistance that may be provided include guarantees of loans made to qualified small business applicants and direct loans to applicants who demonstrate that they are unable to obtain money from any other source [G.S. 143B-472.80(a)]. The law also authorizes the Authority to establish a small business surety bond fund, which may be used to guarantee a surety for losses incurred under a bid bond, payment, or performance bond on small business contracts for government-funded projects [G.S. 143B-472.82]. The Authority may also issue bonds to a small business applicant [G.S. 143B-472.84]. The law will take effect January 1, 2003, and expire on June 30, 2006.

A local act amending the Charter of the City of Charlotte authorizes the city to establish a "Small Business Enterprise Program" [S.L. 2002-91 (S 1336)]. The authorization is to create a "race and gender neutral" program "to enhance opportunities for small businesses to participate in City contracts." The act does not define a small business enterprise but authorizes the city to do so. The provision authorizes the city to "establish bid and proposal specifications that include subcontracting goals and good faith efforts requirements," and to consider compliance with these requirements in awarding contracts. The act states that the program supplements and does not replace the requirements for minority business enterprise participation under existing general laws (G.S. 143-128.2, 143-131, 143-135.5). A legal challenge to Charlotte's minority business enterprise program led to the suspension of that program and to the establishment of race-neutral efforts pending development of the necessary legal and statistical requirements for maintaining a race-based program.

Other Provisions Affecting Local School and State Contracting

School Purchasing Studies

S.L. 2002-126 (S 1115), sec. 7.9(b), requires the Joint Legislative Education Oversight Committee to study the viability of the state contracting with "on-line school supply vendors to allow teachers free access to a specific amount of school supplies, textbooks, test[s], and other classroom materials." The study must determine whether "the establishment of an on-line debit account for each teacher is cost-effective and an efficient way to meet the supply needs of teachers." The committee must report its findings and recommendations to the General Assembly by January 15, 2003. In addition, S.L. 2002-180 (S 98), sec. 8.3, authorizes the Joint Legislative Education Oversight Committee to study local flexibility for school systems, including whether they have the "fiscal and administrative flexibility they need to operate the public schools efficiently and effectively." The committee may look at constraints on school board expenditure of state funds and purchases of supplies, textbooks, and other goods and services.

School Bus Replacement Funds

The state budget authorizes the State Board of Education to use up to $10 million dollars for replacement of school buses, the funds to be allocated to particular local school boards under G.S. 115C-249(c) and (d). S.L. 2002-126, section 7.14(a), specifies that the buses must be purchased from vendors approved by the State Board of Education on terms approved by the State Board.

Umstead Act Exemptions

A provision in the state budget requires the UNC Board of Governors to report to the Joint Legislative Commission on Governmental Operations prior to March 1, 2003, on activities undertaken under exemptions to the Umstead Act (G.S. 66-58(b)(8)) for the Centennial Campus at N.C. State University, the Horace Williams Campus at UNC Chapel Hill, and a millennial campus at another constituent institution of the university. The Umstead Act prohibits certain activities by state agencies that compete with private businesses. Additional exemptions to the Umstead Act were authorized as follows: (1) for the University of North Carolina to operate gift shops, snack bars, and food service facilities physically connected to university exhibition spaces, including the North Carolina Arboretum [S.L. 2002-109 (S 1441)]; (2) for the State Highway Patrol [S.L. 2002-126, sec. 18.5]; and (3) for the sale of products raised or produced incident to the operation of a community college viticulture/enology program as authorized by G.S. 18B-1114.4 [S.L. 2002-102 (H 190), sec. 3].

Frayda S. Bluestein

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Senior Citizens

Most of the aging-related legislation considered or enacted during the 2002 legislative session was influenced, directly or indirectly, by the state's continuing budget crisis.

State and Local Government Agencies

State Division of Aging

The Current Operations, Capital Improvements, and Finance Act of 2002, S.L. 2002-126 (S 1115), reduced appropriations to the state Division of Aging by $926,000 (from $29.5 million to $28.6 million) for 2002–2003. This budget cut included a $165,000 reduction in central administration funding, a $4,000 reduction in funding for the Governor's Advisory Council on Aging, and a $6,000 reduction in funding for the Senior Tar Heel Legislature.

Office of Long-Term Care

Section 10.4 of S.L. 2002-126 requires the Department of Health and Human Services (DHHS) Office of Long-Term Care to develop, in consultation with long-term care experts and others, a plan to streamline local services for older adults and to submit a report to the General Assembly's Fiscal Research Division, the Senate Appropriations Committee on Health and Human Services, and the House Appropriations Subcommittee on Health and Human Services by February 1, 2003. The report must identify all state agencies that provide services to persons sixty or older; describe the federal, state, and local resources available to provide these services; and propose a plan for reducing administration through consolidation of functions throughout DHHS.

Area Agencies on Aging

The $926,000 budget cut for aging programs enacted by S.L. 2002-126 included a $370,000 reduction in funding (from $700,000 to $330,000 per year) for North Carolina's seventeen area agencies on aging.

Government Programs for Senior Citizens

Adult Care Home Resident Assessment Program

Section 10.39 of S.L. 2002-126 eliminates funding for the adult care home resident assessment program established under S.L. 2001-424.

Adult Day Care Staffing Requirements

Section 10.3 of S.L. 2002-126 [as amended by the Technical Corrections Act, S.L. 2002-159 (S 1217)] requires the DHHS Office of Long-Term Care to review the state's current staffing requirements for adult day care and adult day health care programs and to report its findings and recommendations by February 15, 2003, to the General Assembly's Fiscal Research Division, the Senate Appropriations Committee on Health and Human Services, and the House Appropriations Subcommittee on Health and Human Services.

Medicaid

Legislation affecting the state's Medicaid program for elderly, disabled, and low-income persons is discussed in Chapter 22, "Social Services."

Prescription Drug Assistance Programs

Section 6.8 of S.L. 2002-126 authorizes the creation of a new senior prescription drug access program. Establishment of the new program is contingent upon a decision by the Health and Wellness Trust Fund Commission to spend up to $3 million in funds reserved under G.S. 147-86.30(c) to develop and implement the program and the availability of the funds themselves, considering that section 2.2(h) of S.L. 2002-126 authorizes the transfer of funds reserved under this statute for other purposes. The purpose of the new program is to reduce the cost of and improve access to and use of prescription drugs by providing individual assistance to senior citizens and low-income persons in accessing public and private prescription drug assistance programs, providing face-to-face counseling by pharmacist evaluators to senior citizens to promote prescription compliance and identify potential adverse drug interactions, and using computer software to help patients identify drug coverage options. Drug acquisition services under the new program will be available to senior citizens (persons sixty-five or older) and low-income persons. Free counseling services will be provided to senior citizens enrolled in Medicaid or the Carolina CARxES (now, Senior Care) program.

Section 10.49 of S.L. 2002-126 eliminates funding for the senior prescription drug assistance program established in 1999.

Section 5.1 of the Studies Act of 2002, S.L. 2002-180 (S 98), requires DHHS to study how the state can coordinate and facilitate public access to public and private free and discount senior citizen prescription drug programs and to report its findings to the North Carolina Study Commission on Aging by January 1, 2003.

Senior Centers

The $926,000 budget cut for aging programs enacted by S.L. 2002-126 included a $381,000 reduction in senior center development and outreach funding.

State-County Special Assistance

The State-County Special Assistance program provides financial assistance to elderly or disabled residents of adult care homes. S.L. 2002-126 makes several provisions regarding this program.

- It amends S.L. 2001-424 to maintain the maximum payment rate for the program at $1,091 per month (rather than increasing it to $1,120), resulting in state budget savings of $2.3 million and county budget savings of $2.3 million (sec. 10.36).
- It makes the federal Supplemental Security Income (SSI) policies regarding asset transfer and estate recovery applicable to the program (sec. 10.41B).
- It directs DHHS to submit a report to the General Assembly's Fiscal Research Division, the Senate Appropriations Committee on Health and Human Services, and the House Appropriations Subcommittee on Health and Human Services by March 1, 2003, regarding whether state policies governing the program should be changed to allow an adult care home to accept payments from family members of eligible residents to cover the difference between the maximum assistance payment and the facility's monthly rate for room, board, and services (sec. 10.41B).

Long-Term Care Facilities

Criminal History Checks of Adult Care Home and Nursing Home Employees

Section 10.10C of S.L. 2002-126 directs that the provisions of G.S. 131D-2 and G.S. 131E-265 requiring national criminal history checks of adult care home and nursing home employees shall not take effect before January 1, 2004.

Section 2.1A of the Studies Act of 2002 (S.L. 2002-180) authorizes the Legislative Research Commission to study how federal law affects the distribution of national criminal history record check information requested for nursing homes, adult care homes, and other specified facilities and programs and the problems federal restrictions pose for effective and efficient implementation of state-required criminal record checks.

Adult Care Home Model for Community Services

Section 10.38 of S.L. 2002-126 extends until March 1, 2003, the deadline for DHHS's submission of a final report on an adult care home model for community services.

Health Insurance for Employees of Long-Term Care Facilities

Section 5.2 of the Studies Act of 2002 (S.L. 2002-180) requires DHHS, in consultation with the Department of Insurance, to study the establishment of a group health insurance purchasing arrangement for staff of residential and non-residential long-term care facilities. DHHS must report its findings and recommendations to the North Carolina Study Commission on Aging by January 1, 2003.

State and Local Government Retirees

Benefits for Retired State and Local Government Employees

Effective July 1, 2002, Section 28.9 of S.L. 2002-126 increases the retirement benefits of persons receiving benefits under the Teachers' and State Employees' Retirement System (TSERS) and the Local Government Employees' Retirement System (LGERS) as of June 1, 2002, by 0.6 percent of the amount payable on June 30, 2002.

Effective July 1, 2002, Section 28.8 of S.L. 2002-126 provides a 1.4 percent cost-of-living increase (based on the amount of benefits payable on June 1, 2002) for persons receiving retirement benefits under TSERS, LGERS, the Consolidated Judicial Retirement System (CJRS), and the Legislative Retirement System (LRS).

State law suspends TSERS and LGERS retirement benefits when a retiree is reemployed by a covered employer and the retiree's earnings during a calendar year exceed a specified amount. Section 28.13 of S.L. 2002-126 extends the application of these earnings limits to the twelve-month period immediately following the effective date of the retiree's retirement.

Section 28.10 of S.L. 2002-126 extends until June 30, 2004, 1998 and 2001 legislation allowing a retired public school teacher to continue receiving TSERS retirement benefits if he or she is employed as a classroom teacher and meets certain other requirements.

Section 28.9 of S.L. 2002-126 increases from 1.81 percent to 1.82 percent the multiplier used, along with years of service and average final compensation, to determine the amount of full retirement benefits under TSERS and LGERS for persons retiring on or after July 1, 2002.

Making state law consistent with the federal Economic Growth and Tax Relief Reconciliation Act of 2001, S.L. 2002-71 (S 1429) amends the statutes governing TSERS, LGERS, CJRS, and LRS to increase from $150,000 to $200,000 the maximum level of compensation that may be considered in determining retirement benefits.

Purchase of Withdrawn Service and Rollover Contributions

Effective January 1, 2003, S.L. 2002-153 (S 1238) allows members of LGERS who have five or more years of service to purchase withdrawn service by paying the amount withdrawn plus 6.5 percent compounded interest. Under former law withdrawn service could be repurchased only if a covered employee worked under LGERS for ten years and made the repurchase within three years. Similar legislation was enacted in 2001 with respect to TSERS. S.L. 2002-153 establishes a formula for redetermining the amount of retirement benefits payable under TSERS and LGERS when a retired employee repurchases withdrawn service.

S.L. 2002-71 amends the statutes governing TSERS, LGERS, CJRS, and LRS to allow the use of rollover contributions from certain other plans to make service purchases, consistent with the federal Economic Growth and Tax Relief Reconciliation Act of 2001.

State Retirement Contributions

Section 28.5 of S.L. 2002-126 reduces the state's contributions to the Teachers' and State Employees' Retirement System, the Consolidated Judicial Retirement System, and the Legislative Retirement System for 2002–2003 by $145 million. Contributions to the optional retirement programs for university and community college employees are not reduced.

John L. Saxon

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Social Services

The General Assembly made very few statutory changes relating to social services. Although the state's continuing budget crisis forced the General Assembly to eliminate or reduce spending for some social services programs, state spending for social services in general was not cut as much as many people feared it would be.

State and Federal Social Services Funding

State Funding

Department of Health and Human Services. The Current Operations, Capital Improvements, and Finance Act of 2002, S.L. 2002-126 (S 1115), provided $141.8 million in additional funding for the state Department of Health and Human Services (DHHS). However, it reduced appropriations previously authorized to DHHS by $189.5 million, resulting in a net budget cut of $47.7 million (about 11 percent of the total amount cut from the state budget for 2002–2003) and an adjusted appropriation of $3.6 billion for 2002–2003 (a 1.3 percent reduction from the department's previously authorized budget). General Fund appropriations to DHHS constitute approximately one-quarter of the $14.3 billion 2002-2003 state budget.

Division of Social Services. The DHHS budget adjustments described above include $2 million in new, nonrecurring state funding to support the adoption of foster children (offsetting reductions in federal funding previously used for this purpose), a reduction of more than $2 million in state funding for the division's administrative and personnel costs (eliminating thirty-one vacant positions and thirteen filled positions), and a reduction of more than $13 million in state funding for social services programs.

County departments of social services. The DHHS budget adjustments include a $1 million reduction in state funding for the operating budgets of county social services departments and eliminate the ability of thirteen electing Work First counties to carry over unexpended state Work First Block Grant funds at the end of the fiscal year.

Medicaid and Health Choice. The DHHS budget adjustments also include:

- an additional $82 million in state funding for North Carolina's Medicaid program (based on revised estimates of anticipated program costs),

- a reduction of $65 million in previously authorized spending for the Medicaid program (achieved by imposing more restrictive eligibility policies, reducing reimbursement rates, and containing costs),
- a $43.7 million reduction in the state's Medicaid reserve fund (to be used to fund current services), and
- an additional $7.7 million to increase the enrollment of uninsured children in the state children's health insurance program (Health Choice).

S.L. 2002-100 (S 901) authorizes a one-time transfer of up to $5 million in state funds to pay for Health Choice costs attributable to additional program enrollment.

Child day care, More at Four, and Smart Start. The DHHS budget adjustments described above include $15 million in additional state funding for child day care subsidies (to offset reductions in federal funding and to reduce the waiting list for subsidized child care), an additional $28 million to expand the More at Four preschool program, and a reduction of $21 million in state funding for the Smart Start program.

Children with special needs. S.L. 2002-126 appropriates $1 million to establish the Ruth M. Easterling Trust Fund for Children With Special Needs. The new fund will subsidize services not currently paid for with state funds for children with special needs. The fund may be used to provide respite services for adoptive children, foster children, and special-needs children at risk for out-of-home placement, to provide special-needs children with mobility equipment or surgery to repair congenital abnormalities, and to provide training to parents and caregivers of special-needs children. The DHHS Secretary must adopt rules to implement this new program and submit a report regarding use of the trust fund by March 1, 2003, to the Senate Appropriations Committee on Health and Human Services and the House Appropriations Subcommittee on Health and Human Services.

Federal Funding

Child Care and Development Fund Block Grant. S.L. 2002-126 appropriates $150.2 million in federal funding for child care subsidies [not including $72.8 million transferred from the state's Temporary Assistance for Needy Families (TANF) Block Grant].

Low-income energy assistance. S.L. 2002-126 appropriates $25.6 million in federal funding for energy assistance, crisis intervention, weatherization, and related programs.

Social Services Block Grant. S.L. 2002-126 appropriates $27.1 million for services provided by county social services departments (including $4.5 million transferred from the state's TANF Block Grant for child welfare services), $2.1 million for in-home services provided by county social services departments, $3 million for child care subsidies, and $20.7 million for other human services programs.

Temporary Assistance for Needy Families. North Carolina is entitled to receive $349.7 million in federal block grant funding for TANF for 2002–2003 (approximately $23.4 million less than in 2001–2002). S.L. 2002-126 appropriates $129.4 million of these federal TANF funds for temporary cash assistance for needy families with dependent children (including at least $4 million in additional funding due to increased caseloads resulting from continuing high unemployment and depressed economic conditions in the state), $92 million for Work First Block Grants to counties, $99.4 million for child care, and $25.7 million for child welfare services (not including $4.5 million transferred to the Social Services Block Grant).

The General Assembly eliminated or reduced TANF funding to support the adoption of children in foster care ($2.8 million), to subsidize intensive family preservation services ($1.8 million), and to provide teen pregnancy prevention services ($3.5 million), but it partially offset these cuts by providing $2 million in state funding for the special-needs children adoption fund; $615,000 in state funding to the DHHS Division of Public Health for family planning services to reduce out-of-wedlock births; and $570,000 in state funding to the Division of Public Health for the adolescent parenting program.

Public Assistance and Social Services Programs

Adult Services

S.L. 2002-126 eliminates funding for the adult care home resident assessment program.

Child Day Care Services

Section 10.57 of S.L. 2002-126 provides that the payment rates for child day care in counties that do not have at least fifty children in each age group for center- and home-based care may be set at the statewide or regional market rate for licensed child care centers and homes or at the county market rate if application of the statewide or regional rate would inhibit the county's ability to purchase child care for low-income children.

G.S. 110-108 provided financial incentives for counties to investigate and pursue alleged fraud in the child day care program. Section 10.58 of S.L. 2002-126 repeals this section due to federal repayment requirements.

Child Welfare Services

S.L. 2002-126 eliminates state funding ($1.2 million) to sixteen county social services departments for the Families for Kids program, reduces state and federal funding for intensive family preservation services, and reduces state funding for family resource centers by $865,000.

The act allocates to the Division of Social Services $1.4 million in TANF Block Grant funds for the expansion of after-school programs and services for at-risk children. The division is required to develop and implement a program to award grants to community-based programs that demonstrate the ability to reach children at risk of teen pregnancy or of dropping out of school. The act also directs the DHHS Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to consult and coordinate with state and county social services agencies in expending TANF Block Grant funds ($1.5 million) allocated for the expansion of regionally based substance abuse services for women with children.

Over $7.5 million of the TANF Block Grant funds appropriated to DHHS is to be allocated to county departments of social services for hiring or contracting with child protective services staff; providing foster care and support services; recruiting, training, licensing, and supporting prospective foster and adoptive families; and providing interstate and post-adoption services for eligible families. Another $1.6 million of the TANF Block Grant appropriation to the Division of Social Services is allocated for various child welfare training initiatives.

Section 10.33 of S.L. 2002-126 expands the child welfare dual response pilot program to include participating counties' responses to dependency reports as well as neglect reports.

Early Childhood Development and Education Programs

Section 10.55 of S.L. 2002-126 requires DHHS and the North Carolina Partnership for Children, Inc., to ensure that state funds allocated for Early Childhood Education and Development Initiatives for 2002–2003 are not expended for advertising or promotional activities. It also requires the State Partnership to develop guidelines for local partnerships to follow when selecting capital projects to fund. The guidelines must include assessing community needs, assessing the cost of purchasing or constructing new facilities as opposed to renovating existing facilities, and prioritizing capital needs. In addition the act requires that the triennial statewide needs and resource assessment include an assessment of capital needs.

Section 10.56 of S.L. 2002-126 requires that the final report on the More at Four program be made by January 1, 2003, to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the General Assembly's Fiscal Research Division. The report must include recommendations on strategies to ensure coordination between the Partnership for Children, More

at Four, and other prekindergarten programs in addressing the academic and cognitive needs of at-risk preschoolers, along with recommendations on structural changes to or consolidation of programs that might be beneficial in encouraging such coordination. The section also specifies other kinds of information the report must include. In addition, DHHS must conduct a county-by-county needs and resources assessment to determine what, if any, additional resources are necessary to meet the needs of at-risk four-year-olds. The department must report the assessment results by April 1, 2003.

Health Choice (State Children's Health Insurance Program)

Section 10.20 of S.L. 2002-126 amends G.S. 108A-70.21 to set the dispensing fees under the Health Choice program at $4.00 per prescription for brand name drugs and $5.60 per prescription for generic drugs.

Medicaid

Various sections of the appropriations act, S.L. 2002-126, and the technical corrections act, S.L. 2002-159 (S 1217), make several provisions pertaining to the Medicaid program.

- Section 10.11(a) of S.L. 2002-126 provides that in determining the eligibility of a pregnant minor for Medicaid, the income of the minor's parents must be counted if the minor lives with her parents.
- Section 10.11(a) of S.L. 2002-126 also expands DHHS authority to apply federal transfer of assets policies to income-producing property and tenancy-in-common interests in real property when determining eligibility for Medicaid. Section 59 of S.L. 2002-159 expands the Medicaid transfer of assets rules to noninstitutionalized persons and their spouses.
- Section 10.11(c) of S.L. 2002-126 authorizes DHHS to implement the Supplemental Security Income (SSI) method for considering the equity value of income-producing property when determining Medicaid eligibility. Section 74 of S.L. 2002-159 requires DHHS to exclude the equity value of life estates and tenancy-in-common interests when determining Medicaid eligibility, even if the property produces income.
- Section 10.19C of S.L. 2002-126 allows DHHS, under specified conditions, to reinstate eligibility policies changed by S.L. 2002-126 if the state receives enhanced federal Medicaid funding.
- Section 10.11(b) of S.L. 2002-126 amends G.S. 108A-70.5 to allow DHHS to recover the cost of personal care services provided to Medicaid recipients fifty-five or older from the estates of these recipients after their deaths.
- Section 10.15 of S.L. 2002-126 directs DHHS to develop a plan for using federal waivers to assist in long-term cost containment for the state's Medicaid program and to submit a report regarding its plan by February 1, 2003, to the General Assembly's Fiscal Research Division, the Senate Appropriations Committee on Health and Human Services, and the House Appropriations Subcommittee on Health and Human Services.
- Section 10.16 of S.L. 2002-126 requires DHHS to administer the community alternatives program in the most economical and efficient manner possible to provide services to the maximum number of eligible persons and to any eligible person who entered a nursing facility on or before June 1, 2002, even if program services are suspended during the fiscal year. S.L. 2002-126 also requires the North Carolina Institute of Medicine to study the community alternatives program and to report its findings and recommendations to the 2003 General Assembly.
- Section 10.19A of S.L. 2002-126 requires the DHHS Division of Medical Assistance to develop a new reimbursement methodology for long-term care services and to submit a report regarding this methodology by January 1, 2003, to the General Assembly's Fiscal Research Division, the Senate Appropriations Committee on Health and Human Services, and the House Appropriations Subcommittee on Health and Human Services.

S.L. 2002-126 also reduces the maximum number of hours of personal care services covered under the state's Medicaid program; eliminates Medicaid funding for optional circumcision procedures; reduces funding for case management services; adopts a prospective payment methodology for home health services; reduces the reimbursement rates for private duty nursing, case management services, home infusion therapy, home health supplies, durable medical equipment, optical services, ambulatory surgical centers, and high risk intervention services; and requires DHHS to reduce its Medicaid payments to hospitals by 0.5 percent.

Prescription Drug Assistance Programs

Legislation regarding prescription drug assistance programs is summarized in Chapter 21, "Senior Citizens."

Senior Citizens

Other legislation affecting government programs for senior citizens is summarized in Chapter 21, "Senior Citizens."

State-County Special Assistance

The State-County Special Assistance program provides financial assistance to elderly or disabled residents of adult care homes. S.L. 2002-126 makes several provisions regarding this program.

- It amends S.L. 2001-424 to maintain the maximum payment rate for the program at $1,091 per month (rather than increasing it to $1,120), resulting in state budget savings of $2.3 million and county budget savings of $2.3 million (sec. 10.36).
- It makes the federal SSI policies regarding asset transfer and estate recovery applicable to the program (sec. 10.41B).
- It directs DHHS to submit a report to the General Assembly's Fiscal Research Division, the Senate Appropriations Committee on Health and Human Services, and the House Appropriations Subcommittee on Health and Human Services by March 1, 2003, regarding whether state policies governing the program should be changed to allow an adult care home to accept payments from family members of eligible residents to cover the difference between the maximum assistance payment and the facility's monthly rate for room, board, and services (sec. 10.41B).

Work First (Temporary Assistance for Needy Families)

Section 10.37 of S.L. 2002-126 repeals language in G.S. 108A-27.11(c) prohibiting the reversion of state Work First Block Grant funds paid to electing Work First counties.

Section 5.1(g) of S.L. 2002-126 requires DHHS to continue the current evaluation of the Work First program and to report on program progress by December 1, 2002, to the General Assembly's Fiscal Research Division, the Senate Appropriations Committee on Health and Human Services, and the House Appropriations Subcommittee on Health and Human Services. The evaluation must include an assessment of the state's child-only caseload (including indicators of economic and social well-being) and an assessment of former Work First recipients (including longitudinal data regarding employment and earnings).

Address Confidentiality Program

When administering all social services and public assistance programs, county departments of social services will be required to comply with provisions of new G.S. Chapter 15C, "Address Confidentiality Program." Effective January 1, 2003, S.L. 2002-171 (H 1402) establishes the

program in the Office of the Attorney General and authorizes the Attorney General to issue substitute addresses for relocated victims of domestic violence, sexual offense, or stalking. The Office of the Attorney General acts as a program participant's agent for purposes of service of process and receiving and forwarding first-class, certified, or registered mail. When presented with a person's valid, current program authorization card, a public agency must accept and use the person's substitute address unless it obtains a waiver after demonstrating a need to have the person's actual address. This new law is described more thoroughly in Chapter 5, "Courts and Civil Procedure."

Homelessness Study

S.L. 2002-180 (S 98) authorizes the Legislative Research Commission to study ways to decrease *homelessness*, which the act defines as lacking a sanitary, safe twenty-four-hour residence and having as a primary nighttime residence a publicly or privately operated, supervised shelter designed to provide temporary living accommodations. If the commission undertakes the study, it must consider topics specified in the act and consult with members of the North Carolina Interagency Council for Coordinating Homeless Programs. The commission may report its findings and recommendations to the 2003 General Assembly.

Janet Mason

John L. Saxon

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State Taxation

In its 2002 session, the General Assembly made numerous changes in North Carolina tax laws, especially concerning tax breaks to encourage economic development. Also, the budget bill contained a number of changes in the tax laws.

Mobile Telecommunications Sourcing

S.L. 2002-16 (H 1521) conforms state sales tax law to the federal Mobile Telecommunications Sourcing Act and codifies the sourcing rules for other types of telecommunications, as recommended by the Revenue Laws Study Committee. While this legislation may redistribute tax revenue between jurisdictions because of changes in sourcing, the total amount available to local governments will not change.

Most of the act became effective for taxable services reflected on bills dated on or after August 1, 2002. This effective date corresponds with the effective date of the federal Mobile Telecommunications Sourcing Act. Two provisions are delayed until January 1, 2004: a new sourcing principle for private lines and a requirement that postpaid calling service be sourced based on the origination point of the signal.

Housing Tax Credit/Estate Tax

S.L. 2002-87 (S 1416) modifies the low-income housing tax credit to make it simpler and more efficient. In 1999 North Carolina authorized a state income tax credit equal to a percentage of the developer's federal tax credit for low-income housing constructed in North Carolina. A project developer sells the tax credits to receive funds to finance the project.[1] Developers indicate that the state tax credit sells for no more than forty-five cents on the dollar.

During the 2002 session, the General Assembly became aware of several concerns with the low-income housing tax credit:

1. To buy a credit, a taxpayer invests in the project in exchange for the right to claim a share of the credits available for the project.

- The sale of a dollar tax credit for less than forty-five cents is an inefficient use of state tax expenditures.
- The process of selling the tax credits is complex. It involves finding investors, negotiating prices, and completing legal documents.
- The pool of investors interested in purchasing the credit is limited and is diminishing.

S.L. 2002-87 addresses these concerns in two ways:

- To address the short-term problem of utilizing the tax credits allocated to developers, the act reduces the tax basis required of a purchaser from 100 percent to 40 percent.
- To address the long-term problem of the complexity and inefficiency of the credit, the act converts the state credit, which is sold to investors, to a refundable credit received directly by the owner and invested directly in the project. The modification saves the state significant revenue over a five-year period while maintaining the same level of investment in low-income housing developments.

The low-income housing tax credit changes are effective beginning with the 2002 tax year for the existing credit and in 2003 for buildings that are awarded a federal credit allocation on or after January 1, 2003.

S.L. 2002-87 also modifies the formula for calculating estate tax on estates with property in more than one state from a net value calculation to a gross value calculation. This change makes North Carolina's treatment on this issue the same as that of the majority of states that have estate taxes. The change has little or no impact on the General Fund and is effective for the estates of decedents dying on or after January 1, 2002.

Economic Development

Extension of Qualified Business Venture Tax Credit

S.L. 2002-99 (H 1520) extends the tax credit for qualified business investments and the state ports tax credit from January 1, 2003, to January 1, 2004. It also revises the definition of *qualified grantee business* to alleviate a constitutional concern by replacing specific named entities with general descriptions of entities. This change is effective January 1, 2003. The amount of the tax credit on qualified business investments that is given each year is capped at $6 million. Because requests for credits have exceeded this cap for four out of the last five years, it is likely that the $6 million annual cost of the program will continue until its sunset in 2004. The impact on the General Fund due to the extension of this tax credit will occur in the 2003–2004 fiscal year because the investments made in 2003 will be awarded credits on returns filed in the spring of 2004. The extension of the state ports tax credit is estimated to cost the General Fund $650,000 in the 2003–2004 fiscal year.

The act also clarifies that the North Carolina State Ports Authority has fee-setting authority for its rates and tariffs, gives the Authority guidelines to use in setting those fees, requires the Authority to report to the Joint Legislative Commission on Governmental Operations no later than thirty days after it establishes or increases a fee, and exempts the Authority’s fee setting from the rule-making portion of the Administrative Procedure Act. The changes to the fee-setting authority became effective August 29, 2002, and have no fiscal impact.

Interstate Air Couriers

S.L. 2002-146 (H 1665) makes several changes to the William S. Lee Quality Jobs and Business Expansion Act (Bill Lee Act) as it applies to air courier hubs. In 1998 the General Assembly provided incentives in the Bill Lee Act to encourage FedEx to construct an air courier hub in the Piedmont Triad region. The interstate air courier industry faces many regulatory, administrative, and legal hurdles—particularly in the construction of hubs—that are not generally faced by other industries. Due to these extra burdens, construction time frames in this industry are

generally longer than in other industries. To accommodate these longer time frames, S.L. 2002-146 extends the regular Bill Lee Act sunset of January 1, 2006, to January 1, 2010, for an interstate air courier that enters into a major real estate lease with an airport authority on or before January 1, 2006. The act also extends from two years to seven years the time that an interstate air courier has to qualify for the enhanced incentives, and it extends the sunset on the Piedmont Triad Airport Authority's exemption from the bidding laws from January 1, 2008, to January 1, 2010. Finally, the act rewrites the definition of interstate air courier hub to conform to industry practice.

The initial estimates of the fiscal impact of the air courier incentives have not changed with the delay in the FedEx project. The 1998 estimates indicate that the lower sales tax rate on handling and storage equipment will amount to a cost of $400,000 for the first two years that the project is getting started and $100,000 per year thereafter. The impact of the sales tax exemption for lubricants and repair parts comes into play only after the facility is up and running. The cost estimate for this incentive is $200,000 a year. The uncertainty surrounding the timing of the project means that it is impossible to predict in which year the effects will be felt. Under current scheduling, the first year of the handling and storage equipment incentive could be 2005–2006, while the sales tax incentives will not occur until at least 2005–2006.

In addition, the extension from 2006 to 2010 of the Bill Lee Act's sunset for interstate air couriers will allow FedEx and other eligible taxpayers to take tax credits under the act during the 2006–2009 period. Data from the state's 1998 offer of financial benefits to FedEx indicated that Bill Lee Act credits of $2 million would be taken over a four-year period.

S.L. 2002-146 also amends the wage standards under the Bill Lee Act for all taxpayers. In order for a taxpayer to be eligible for any of the credits under the Bill Lee Act, the average wage of the jobs created by the taxpayer must meet or exceed the wage standard for the county in which the jobs are located. Included in this calculation are part-time jobs, converted to a full-time equivalency. Because part-time jobs generally pay less than full-time jobs, the inclusion of part-time jobs in determining eligibility for credits under the Bill Lee Act can render a taxpayer ineligible for those credits. S.L. 2002-146 provides that part-time jobs for which the taxpayer provides health insurance will be considered to have a wage that meets the applicable wage standard.

The air courier hub definition rewrite became effective October 1, 2002, and applies to sales made on or after that date. The bidding law exemption effective date change became effective when the act became law, October 7, 2002. The remaining provisions in the act are effective for tax years beginning on or after January 1, 2002.

North Carolina Economic Stimulus and Job Creation Act

S.L. 2002-172 (H 1734) has six parts.

- Part 1 amends the Bill Lee Act by reducing the machinery and equipment credit available in tier three, four, and five counties, by eliminating the wage standard in tier one and two counties and in development zones, and by eliminating the wage standard for the worker training credit. These changes are effective for taxable years beginning on or after January 1, 2003, and apply to business activities that occur on or after that date. They do not, however, apply to business activities occurring on or after January 1, 2003, that are subject to a letter of commitment signed before January 1, 2003. The changes will generate approximately $3.45 million in additional revenue for fiscal year 2003–2004, $7 million for fiscal year 2004–2005, and $10.56 million for fiscal year 2005–2006.
- Part 2 creates the Jobs Development Investment Grant Program, a discretionary program that awards grants to businesses based on a percentage of employee withholdings over a number of years. The term of a grant cannot exceed twelve years. The program grants are structured quite differently from those of the Bill Lee Act tax incentives. The exact cost of the program cannot be determined. The program is limited, however, to fifteen projects per year and $10 million in grants per year, and it sunsets on January 1, 2005.

- Part 3 requires production companies to spend at least $1 million in North Carolina to be eligible for a grant from the Film Industry Development Account. No fiscal impact is expected from this change to the film industry incentives.
- Part 4 makes a technical change to the North Carolina Railroad's condemnation authority. It does not appear to have any substantive effect on the railroad's power to condemn property.
- Part 5 relaxes the public hearing requirements for Industrial Development Bond financing to facilitate the process for smaller manufacturers.
- Part 6 authorizes initiation of the planning and development of a new biopharmaceutical training center and a cancer rehabilitation treatment center.

Parts 2, 3, 4, and 6 were effective October 31, 2002. Part 5 is effective January 1, 2003.

Pollution Abatement Tax Exclusion

S.L. 2002-104 (S 1253), recommended by the Environmental Review Commission, provides that an animal waste management system may not qualify for property tax exclusion as a pollution control device unless it eliminates or substantially eliminates certain discharges, emissions, and contamination. The act also requires the Revenue Laws Study Committee to study property tax exemptions for pollution control equipment. The legislation will not affect the state General Fund, but it will affect the amount of revenue in each county's property tax base. Since no exclusions have yet been granted to waste facilities, current county revenues have not been affected. Had the legislation not been enacted, however, potential revenue losses would have been distributed among counties based on the number of animal waste management systems maintained in each county. Potential losses had been estimated using the total property value of a county's swine, poultry, and turkey facilities. The potential property tax revenue losses statewide could have totaled $9.9 million per fiscal year.

The act is effective for property tax years beginning on or after July 1, 2002.

Revenue Law Enforcement Enhancements

S.L. 2002-106 (S 1218) enhances tax law enforcement by (1) providing for increased punishment for income tax return preparers who aid or assist in the filing of false or fraudulent documents with the Department of Revenue, (2) making it an offense for tax preparers to defraud taxpayers, and (3) allowing the Department of Revenue to share information concerning the commission of any offense with appropriate state or federal law enforcement agencies.

The section allowing Department of Revenue disclosure became effective September 6, 2002. The remainder of the act was effective December 1, 2002.

Fuel Tax

S.L. 2002-108 (S 1407) gives local fuel distributors a contract right to delay reimbursing federal fuel tax to the supplier until one day before the supplier is required to remit the tax to the federal government. The act also converts the local government fuel tax refund to an exemption and makes several other changes to the motor fuel tax laws. The only provision with a fiscal impact is that converting the local government fuel tax refund to an exemption. The exemption will produce some additional revenue for local governments because of the interest earned on moneys that once went to fuel tax payments before being refunded. Based on refund amounts for past years, the General Assembly's Fiscal Research Division estimates the annual float gain for local governments would have been $227,030 for fiscal year 2000–2001 and $252,860 for fiscal year 1999–2000.

The contract right provision was effective September 1, 2002. The motor fuel tax provisions become effective January 1, 2003.

Tax Changes in the Budget Bill

The Current Operations, Capital Improvements, and Finance Act of 2002, S.L. 2002-126 (S 1115), made numerous changes in the tax laws. These changes are summarized below.

Section	*Description and Effective Date*	*Fiscal Impact*
30A.1	**Local Government Revenues** Accelerates the repeal of the tax reimbursements from July 1, 2003, to July 1, 2002. Also authorizes local governments to raise or lower property taxes between July 1 and the following January 1 in any year to compensate for unanticipated revenue increases or decreases.	This provision will create a General Fund revenue gain of $333.4 million per year beginning in FY 2002–2003.
30B.1	**2001 Tax Break Delay: Elimination of Marriage Penalty for Standard Deduction** Delays the enactment by one year of the tax break enacted in 2001 eliminating the marriage penalty for the standard deduction, originally effective beginning with the 2002 tax year. Now, the standard deduction for married couples filing jointly will increase from $5,000 to $5,500 in tax year 2003 and then to $6,000 in tax year 2004.	The net gain to the General Fund as the result of delaying the first $500 increase is $31.9 million for FY 2002–2003. For the $6,000 standard deduction delayed until 2004, the estimated revenue loss is $32.4 million for FY 2003–2004. Since the original estimate for the 2003–2004 loss was $45 million, the General Fund will gain $12.6 million that year.
30B.2	**2001 Tax Break Delay: Increase of Tax Credit for Children** Delays by one year the effective date of the increased tax credit for children enacted in 2001. Beginning with tax year 2003, the tax credit for children is increased from $60 to $75 per child and then to $100 in tax year 2004.	The delay will eliminate the $19.8 million General Fund loss originally projected for FY 2002–2003 and result in a revenue gain of the same amount. Because the revenue loss for the $75 credit is less than that for the $100 credit originally scheduled for 2003–2004, there will be a revenue gain for that year of $34.9 million. The increase to $100 in tax year 2004 will result in a $54.8 million loss in FY 2004–2005.

Section	*Description and Effective Date*	*Fiscal Impact*
30C.1	**Update of IRC Reference** Updates the Internal Revenue Code reference from January 1, 2001, to May 1, 2002, with exceptions for accelerated depreciation and the estate tax credit. This update conforms North Carolina law to federal law with regard to recent pension tax changes, education initiatives, the increased estate tax exemption limitations, and the extension of the carryback period for net operating losses for tax years ending in 2001 and 2002.	The following General Fund revenue losses are expected: 2002–2003 $16.9 million 2003–2004 $25.5 million 2004–2005 $49.7 million 2005–2006 $76.9 million 2006–2007 $77.3 million
30C.2	**Accelerated Depreciation Provisions** Decouples North Carolina law from federal law by requiring taxpayers to add back to federal taxable income a percentage of the additional 30% accelerated depreciation allowed under federal law, effective for taxable years beginning on or after January 1, 2002. Taxpayers will continue to be able to deduct the same amount of an asset's basis under both federal and state law, but the timing of the deductions will differ. The percentage is 100% for the 2001 and 2002 taxable years and 70% for the 2003 taxable year. There is no add-back for the 2004 taxable year. In tax years beginning on or after January 1, 2005, a taxpayer may deduct from federal taxable income the total amount of the add-backs required in earlier years, divided into five equal installments.	The impact of the changes is essentially revenue neutral over the long term since the conformity deals with an acceleration of depreciation, not the total amount of the deduction over the life of an asset. The General Fund impact is estimated as follows: 2002–2003 $38.2 million 2003–2004 $ 8.6 million 2004–2005 -$60.8 million 2005–2006 0 2006–2007 0
30C.3	**Estate Death Tax Credit Provision** Decouples North Carolina law from the phaseout of the estate death tax credit under federal law, effective for estates of decedents dying on or after January 1, 2002. This provision sunsets for decedents dying on or after January 1, 2004.	The General Fund revenue loss is estimated as follows: 2002–2003 $5.5 million 2003–2004 $7.3 million 2004–2005 $3.8 million 2005–2006 $5.9 million
30C.5	**Federal Gift Tax Annual Exclusion** Conforms the North Carolina gift tax exclusion to the federal inflation-adjusted gift tax exclusion, effective January 1, 2002.	The General Fund revenue loss is estimated as follows: 2002–2003 $0.2 million 2003–2004 $0.2 million 2004–2005 $0.2 million 2005–2006 $0.4 million 2006–2007 $0.4 million
30D.	**Unauthorized Substance Tax Expenses** Provides that local governments will bear 70% of the state's expenses in collecting the unauthorized substance tax, effective June 30, 2002. The expenses are drawn from local sales tax distributions. This section does not, however, change the amounts that are distributed to local law enforcement agencies.	The General Fund will be reimbursed for 70% of the Unauthorized Substance Tax Division's operating expenses, resulting in an annual gain of $900,000.

Section	*Description and Effective Date*	*Fiscal Impact*
30E.	**Insurance Regulatory Charge** Sets the insurance regulatory fee, which is assessed on the premiums tax paid by insurers, at 6.5% for the 2002 calendar year. The revenue generated by this charge is used to reimburse the General Fund for appropriations to the Department of Insurance to pay expenses incurred in regulating the industry.	The fee is expected to generate $25 million for FY 2002–2003.
30F.	**Regulatory Fee for Utilities Commission** Sets the public utility regulatory fee, which funds the operations of the Utilities Commission and the Public Staff, at 0.1% for FY 2002–2003. It also sets the electric membership corporation regulatory fee at $200,000 for FY 2002–2003. These rates are the same as in 2001.	The fee is expected to produce $11.7 million for FY 2002–2003.
30G.1	**Closing of Corporate Tax Loophole: Broadening Definition of Business Income** Broadens the definition of *business income* to include all income that states can apportion for corporate income tax purposes under the U.S. Constitution, effective with taxable years beginning on or after January 1, 2002.	The General Fund revenue gain is estimated as follows: 2002–2003 $70.0 million 2003–2004 $50.0 million 2004–2005 $53.7 million 2005–2006 $56.7 million 2006–2007 $59.5 million
30G.2	**Closing of Corporate Tax Loophole: Equalizing Franchise Tax on Corporate-Affiliated LLCs** Tightens 2001 legislation intended to close a loophole allowing corporations to evade the franchise tax by transferring assets to a controlled limited liability corporation (LLC), effective beginning with payments due in March 2003.	The General Fund revenue gain is estimated as follows: 2002–2003 $20.0 million 2003–2004 $21.2 million 2004–2005 $22.5 million 2005–2006 $23.8 million 2006–2007 $25.2 million
30H.	**Housing Tax Credit** Expands the class of taxpayers eligible for an enhanced credit for investing in low-income housing in a county that sustained severe or moderate damage from a hurricane in 1999 by backdating the effective date for eligibility from 2001 to 2000.	Assuming the project investors take 100% of the available tax credit, the credits granted by this section would total $10.7 million. Since the state tax credit is taken over five years, the General Fund revenue loss is spread over five fiscal years. The annual loss is $2.15 million for fiscal years 2002–2003 to 2006–2007.

Subsidiary Dividend Changes

During the 2001 session, the General Assembly enacted legislation conforming state law to the federal rules for the deduction of dividends received. This change eliminated the adjustments that had previously been required to reflect differences between the federal and state dividends deduction. Eliminating the adjustments also made the dividends subject to the general state law

mandating that expenses related to untaxed income cannot be deducted from taxable income. As a result, expenses related to deductible dividends must be netted from those dividends.

The law did not provide guidelines for calculating the amount of expenses related to deductible dividends. Without knowing exactly how to determine the amount of related expenses, taxpayers were faced with uncertainty and potentially greater liability than they had originally anticipated. The new law was expected to have an especially significant impact on bank holding companies and electric power holding companies, because federal law requires them to have multiple subsidiaries.

In the 2002 session, the General Assembly enacted S.L. 2002-136 (H 1670) to clarify the expense attribution law as it applies to deductible dividends and to provide limits on the additional tax liability. These limits were calculated so that the act should yield revenue at least equal to what had been included in budget availability estimates based on the 2001 law. In summary, the act limits tax liability in the following ways.

- There are caps on the amount of related expenses that must be netted from deductible dividends as follows:
  - Most companies: 15 percent of dividends
  - Bank holding companies: 20 percent of dividends
  - Electric power holding companies: 15 percent of total interest expenses
- The additional tax that a bank holding company and its related companies must pay as a result of the expense netting is subject to a maximum of $11 million per corporate family.
- Bank holding company corporate families also receive a credit beginning in 2003. For bank corporate families that reach the $11 million maximum, the credit is $2 million. For other bank corporate families, the credit is equal to the amount of tax reduction that would result if bank holding companies were subject to a 15 percent cap rather than a 20 percent cap. These credits may be taken against income tax or franchise tax and are spread out over four tax years beginning in 2003.
- Electric power holding companies receive a credit equal to one-half of the additional tax that each must pay as a result of the expense netting. The credit is taken in the following year. The credit may be taken against income tax or franchise tax. As an alternative, an electric power holding company may elect to allocate the credit among the members of its affiliated group. If the electric power company makes this election, then the credit is spread out over four tax years, beginning in 2003.

S.L. 2002-136 is effective for taxable years beginning on or after January 1, 2001.

Revenue Laws Technical Changes

S.L. 2002-72 (S 1160) makes numerous technical and clarifying changes to the revenue laws and related statutes. It also makes one substantive change by allowing a one-time exception to the requirement that a letter of commitment under the Bill Lee Act be signed before year's end. This provision will reduce the General Fund by $725,000 a year through the 2006–2007 fiscal year and by $25,000 a year for three years thereafter. The remainder of the act has no fiscal impact.

Except for Section 9 of the bill, which conforms the payment date for the insurance regulatory charge on HMOs to the date they file their premium tax returns and which becomes effective for taxable years beginning on or after January 1, 2003, this act became effective when it became law, August 12, 2002.

Studies

The 2002 General Assembly enacted several bills authorizing or requiring studies pertaining to the state tax laws.

- Part IX of S.L. 2002-180 (S 98) authorizes the Revenue Laws Study Committee to study the sales tax on construction materials.
- S.L. 2002-104 directs the Revenue Laws Study Committee to study issues related to the application of the property tax exemption for certain animal waste management systems.
- S.L. 2002-136 directs the Revenue Laws Study Committee to study (1) tax treatment of expenses related to dividends received and other nontaxed income and (2) the taxation of affiliated corporations, holding companies, and financial institutions under current law. The committee is directed to report to the 2003 General Assembly its recommendations for creating more equitable and stable sources of revenue through the modification of S.L. 2002-136 and other provisions pertaining to the taxes on corporations and businesses. The act states the intent of the General Assembly to address the issues raised by S.L. 2002-136 during the 2003 Regular Session and enact related changes effective for taxable years beginning on or after January 1, 2003.
- S.L. 2002-172 directs the Revenue Laws Study Committee to study the use, effectiveness, and cost versus benefits of the Job Development Investment Grant Program, the Bill Lee Act credits, and the Industrial Recruitment Competitive Fund.

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