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Editor's Preface

Since 1955 the UNC Chapel Hill School of Government's Institute of Government has published periodic summaries of legislation enacted by the North Carolina General Assembly. Initially these summaries were published in special issues of *Popular Government*. Beginning in 1974, however, the Institute began publishing the summaries annually as a separate book, *North Carolina Legislation*.

North Carolina Legislation 2003 is the fortieth of these summaries and deals with newly enacted legislation of interest and importance to state and local government officials. It is organized by subject matter and divided into twenty-four 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, each chapter was written by a School of Government faculty member with expertise in the particular field addressed. The two exceptions are Chapter 12, "Information Technology," 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," 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.

Albeit comprehensive, this book does not summarize every legislative enactment of the 2003 General Assembly. For example, some important legislation that does not have a substantial impact on state or local governments, such as that involving business regulation or insurance, is not discussed at all. Local legislation of importance to a single jurisdiction often is treated only briefly. Readers who need information on public bills not covered in this book may wish to consult *Summaries of Substantive Ratified Legislation, 2003 General Assembly,* which contains brief summaries of all public laws enacted during the session. This compilation is published by the General Assembly's Research Division and posted on the Internet at the General Assembly's Web site. A list of General Statutes affected by 2003 legislation, prepared by the General Assembly's Bill Drafting Division, is also on-line 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 2003. These publications can be purchased through the School of Government Publications Sales Office (telephone: 919.966.4119; e-mail: sales@iogmail.iog.unc.edu).

Each day the General Assembly is in session, the Institute's Legislative Reporting Service publishes the *Daily Bulletin*. The *Daily Bulletin* includes summaries written by 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 School of Government Publications Sales Office (telephone: 919.966.4119; e-mail: sales@iogmail.iog.unc.edu).

Throughout the book, references to legislation enacted during the 2003 session are cited by the Session Law number of the act (for example, S.L. 2003-105), followed by a parenthetical reference to the number of the Senate or House bill that was enacted (for example, S 236). Generally 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

The 2003 General Assembly convened on January 29, 2003, and adjourned on July 20, 2003, a brief session as odd-year sessions go, especially when compared to the eleven-month run of the 2001 session. This chapter provides an overview of the 2003 session, concentrating on the organization of each house, major legislation enacted, and unfinished business.

The House of Representatives

When the votes were finally counted and certified in the November 2002 election for members of the 2003 North Carolina General Assembly, sixty-one Republicans and fifty-nine Democrats had been elected to the House of Representatives. As a result, the Republicans had better-than-even odds of electing the speaker and claiming the committee chairmanships. Then, before the General Assembly convened in January, Representative Michael Decker, Forsyth County, changed his registration from Republican to Democrat, creating a 60–60 tie between Democrats and Republicans and presenting the House with an historic challenge in electing a speaker.

The House convened at noon on January 29, 2003, with Denise G. Weeks, the House Principal Clerk for the 2001 session, serving as presiding officer. This is the customary procedure on opening day, and the former principal clerk usually presides for fifteen minutes or so until the speaker's election (which has usually been predetermined some time before convening). Because of the 60–60 party division, however, the House was unable to elect a speaker until February 5, the fifth legislative day after convening. Ms. Weeks presided during those five days of considerable procedural wrangling with a ready wit and an authoritative gavel, demonstrating a mastery of the rules of order and a total absence of partisanship. Finally, on February 5, 2003, with the adoption of House Bill 2, James B. Black, Mecklenburg County, was elected Democratic Speaker, and Richard T. Morgan, Moore County, was elected Republican Speaker. On February 6, 2003, Denise G. Weeks was elected House Principal Clerk for the 2003 session of the General Assembly.

House Bill 2, the resolution by which Representatives Black and Morgan were elected speakers, provided that each would serve as presiding speaker on alternate days until December 31, 2004. The resolution further required that each House committee consist of an equal number of

Democrats and Republicans and that the committee chairs and cochairs be named jointly by both speakers. The leadership of all of the major House committees, with one exception, was equally divided between Democrats and Republicans. The exception was the House Rules Committee, which was chaired by Representative William T. Culpepper III, Chowan County, a Democrat.

The dual-Speaker arrangement did not result in deadlock, as some observers had predicted; to the contrary it worked quite well. That the General Assembly was able to enact an appropriations bill before July 1 and adjourn before August 1 is evidence of this. On the other hand, a number of important legislative issues were simply not addressed. When Speakers Black and Morgan could rally their shifting coalition of fifty to fifty-five Democrats and five to fifteen Republicans on any bill, that bill passed easily; when they determined that they could not muster the requisite votes, the measure usually did not even come to a vote.

The demographics of the 2003 House can be broken down as follows:

- twenty-eight women, one more than in 2001;
- ninety-two men;
- eighteen African-Americans, the same as in 2001;
- one Native American; and
- one representative of Hispanic ancestry.

Table 1-1 lists the 2003 House officers.

Table 1-1. Officers of the 2003 House of Representatives

James B. Black, Mecklenburg County, Democratic Speaker
Richard T. Morgan, Moore County, Republican Speaker
Joe Hackney, Orange County, Democratic Leader
Joe Kiser, Lincoln County, Republican Leader
Beverly Earle, Mecklenburg County, R. Phillip Haire, Jackson County, Marian N. McLawhorn, Pitt County, and Paul Miller, Durham County, Democratic Whips
Trudi Walend, Transylvania County, Republican Whip
Denise G. Weeks, Principal Clerk
Robert R. Samuels, Sergeant-at-Arms

The Senate

The Democrats retained their majority in the 2003 Senate, but the Republicans gained seven seats more than what they held in the 2001 session. There were twenty-eight Democrats, compared to thirty-five in 2001, and twenty-two Republicans, compared to fifteen in 2001. With the Democrats holding a clear, though slim, majority, the election of Senate officers lacked the high drama of the House elections, but Senator Marc Basnight, the President Pro Tempore of the Senate, ensured that the increase in Republican strength was recognized in his committee appointments. For example, Senator John A. Garwood, Republican, Wilkes County, serves as cochair of the Committee on Education and Higher Education; Senator Stan Bingham, Republican, Davidson County, serves as cochair of the Committee on Health and Human Services; and Senator Fletcher L. Hartsell Jr., Republican, Cabarrus County, serves as chair of the Judiciary II Committee. Seven women were elected to the Senate, compared to five in 2001, and six African-Americans were elected, compared to seven in 2001.

The 2003 Senate officers and leadership are shown in Table 1-2.

Table 1-2. 2003 Senate Officers and Leadership

Beverly E. Perdue, Lieutenant Governor, President
Marc K. Basnight, Dare County, President Pro Tempore
Charlie S. Dannelly, Mecklenburg County, Deputy President Pro Tempore
Tony Rand, Cumberland County, Majority Leader
Patrick J. Ballantine Jr., New Hanover County, Minority Leader
James S. Forrester, Gaston County, Deputy Minority Leader
Jeanne H. Lucas, Durham County, Majority Whip
Fern Shubert, Union County, Minority Whip
Tom Apodaca, Henderson County, Deputy Minority Whip
R. C. Soles Jr., Columbus County, Chair, Democratic Caucus
Charlie Albertson, Duplin County, Secretary, Democratic Caucus
Phil Berger, Rockingham County, Secretary, Republican Caucus
Janet B. Pruitt, Principal Clerk
Ted Harrison, Reading Clerk
Cecil R. Goins, Sergeant-at-Arms
Mike Morris, Chaplain

Statistical Comparison

Table 1-3 compares the 2003 session with other odd-year sessions of the past ten years.

Table 1-3. Statistical Comparisons of Recent Odd-Year Sessions

	1993	1995	1997	1999	2001	2003
Date convened	Jan. 27	Jan. 25	Jan. 29	Jan. 27	Jan. 24	Jan. 29
Date adjourned	Jul. 24	Jul. 29	Aug. 28	Jul. 21	Dec. 6	Jul. 20
Senate legislative days	109	109	123	101	173	102
House legislative days	110	108	123	103	179	102
Senate bills introduced	1,299	1,103	1,089	1,175	1,109	1,028
House bills introduced	1,499	1,070	1,245	1,489	1,478	1,340
Total bills introduced	2,798	2,173	2,334	2,664	2,587	2,368
Session Laws Enacted	563	546	528	462	519	433
Vetoes			0	0	0	2
Joint resolutions ratified	31	15	33	22	36	32
Simple resolutions adopted	7	7	11	24	10	19
Total measures passed	601	568	572	508	565	484
% measures passed	21.5%	26.1%	24.5%	19.0%	21.8%	20.4%

Major Legislation Enacted by the 2003 General Assembly

The 2003 General Assembly enacted a number of significant pieces of legislation, some of which are listed here.

- **Administrative Procedures Act.** S.L. 2003-229 (H 1151) makes important changes to the Administrative Procedures Act, especially regarding temporary rule making. These changes are discussed in Chapter 22, "State Government."

- **Blount Street property.** Blount Street is one of the historic streets in downtown Raleigh. The Governor's Mansion is on Blount Street, as are a number of architecturally significant houses currently owned by the state and used as office space for state agencies. S.L. 2003-404 (S 819) directs that most of these properties be sold to private owners, subject to appropriate preservation or conservation agreements. This act is discussed in Chapter 22, "State Government."
- **Children in day care.** Two acts are designed to protect children while they are in day care facilities. S.L. 2003-406 (S 226) prohibits day care workers from administering medications to children in their charge without authorization from a parent or guardian, and S.L. 2003-407 (H 152) requires that children be placed on their backs while sleeping to prevent SIDS. Both of these new provisions are discussed in Chapter 3, "Children and Families."
- **DNA registry.** S.L. 2003-376 (H 79) expands the list of persons from whom DNA samples must be taken to include all persons convicted of a felony or found not guilty by reason of insanity. This act is covered in Chapter 6, "Criminal Law and Procedure."
- **Elections improvements.** The federal Help America Vote Act sets national standards for elections and provides funds to the states to assist them in meeting these standards. S.L. 2003-12 (H 548) and S.L. 2003-226 (H 842) are intended to aid North Carolina in meeting the standards and qualifying for the funds. These acts are discussed in Chapter 7, "Elections."
- **Internet access.** For several years the General Assembly has been concerned about providing adequate and affordable Internet access to the rural areas of the state. S.L. 2003-425 (H 1194) creates the e-NC Authority to address this concern. The authority and its charge are discussed in Chapter 12, "Information Technology."
- **Protection of turtles.** North Carolina has had no regulations regarding the commercial trapping of turtles. S.L. 2003-100 (S 825) remedies this deficiency by directing the Wildlife Resources Commission to adopt regulations to protect the turtle population. This act is discussed in Chapter 24, "Wildlife and Boating Regulation."
- **Psychiatric hospital.** S.L. 2003-284 (H 684) directs that a new 432-bed psychiatric hospital be built in Butner and authorizes the use of a variety of instruments of indebtedness to finance the hospital. This act is discussed in Chapter 23, "State Taxation."
- **State parks.** Two new state parks were created, one along the Haw River in Guilford and Rockingham counties [S.L. 2003-108 (H 1025)] and one on the Mayo River in Rockingham County [S.L. 2003-106 (H 1078)]. The bills establishing these parks are discussed in Chapter 9, "Environment and Natural Resources."
- **Roads and highways.** S.L. 2003-383 (H 48) makes substantial appropriations from the Highway Trust Fund for road improvements and maintenance and urban transportation and establishes a study commission to examine urban transportation needs. This act is discussed in Chapter 13, "Land Use, Community Planning, Code Enforcement, and Transportation."
- **Tax increment financing.** S.L. 2003-403 (S 725) proposes a constitutional amendment that would authorize cities and counties to use a method of project financing called tax increment financing. This initiative will be included on the November 2004 ballot. The proposed amendment and legislation to implement it are discussed in Chapter 14, "Local Government and Local Finance."
- **Tobacco products in schools.** S.L. 2003-421 (S 583) generally prohibits the use of all tobacco products in school buildings. This act is discussed in Chapter 8, "Elementary and Secondary Education."

Unfinished Business

The final days of a legislative session are always filled with stop-and-go floor sessions, last-minute committee reports that sometimes make radical changes in the original bills, and the revival of bills that many members thought had been quietly buried. The last days of the 2003 session were unusually hectic. The initial adjournment resolution called for the session to adjourn on Friday, July 18, 2003. When it became clear that adjournment could not be achieved by that date, the resolution was amended to call for adjournment on Sunday, July 20, 2003. As a result sessions were held on Saturday and Sunday, with the Sunday session convening at 11:00 AM—an uncommon hour for the conduct of government business in North Carolina. Both the Friday and Saturday sessions continued late into the evening; on Sunday the House adourned a little after 7:00 PM, and the Senate followed about 9:00 PM. Much was accomplished during the two days before adjournment—action was completed on forty-six bills, some of them complex, controversial, or both—but because of differences between the House and Senate, bills authorizing various studies and making technical corrections were not passed. In addition, several bills important to a number of General Assembly members either did not pass both houses or were simply never brought to a vote. All of these bills are discussed below.

- **Studies.** For many years the General Assembly has enacted a comprehsive studies bill at the end of the session. The studies selected for inclusion in the bill usually originate in one of two ways: either (1) several members believe an issue facing the state deserves a thorough examination, or (2) a bill is considered too controversial to be brought to a vote but the subject of the bill is important enough to merit further consideration. Many studies are authorized to be undertaken by the Legislative Research Commission, a standing body of the General Assembly, and others are to be undertaken by specially appointed study commissions. This session each chamber proposed its own version of a studies bill, S 34 by the House and H 674 by the Senate. Because they could not agree on a single bill by the time of adjournment, however, no studies bill was passed. Both S 34 and H 674 are eligible for consideration in the 2004 session. Generally, though, because of the short time frame and reelection concerns, no substantial studies are undertaken and completed between the end of a short session and the beginning of the next odd-numbered year session. Apart from those in the studies bills, however, several important studies are authorized in other bills that were enacted, such as the appropriations act. These studies are discussed in detail in various chapters throughout the book.
- **Technical corrections.** Usually one of the last acts passed in every session is a technical corrections bill, the purpose of which is to correct technical errors in previously enacted bills. Such errors may include incorrect statutory references, omitted or extra words, or incorrect effective dates. The bill is important because without it state and local officials charged with administering new legislation and lawyers trying to interpret that legislation may be unable to ascertain—in cases where a nontrivial error was made—what the General Assembly intended. In the closing days of the session, each chamber proposed a technical corrections bill; the original bill, H 281, became the vehicle for so many Senate amendments that the House rejected it and adopted S 137 as its version of a technical corrections bill. One major objection the House had to the Senate version of H 281 involved an amendment providing for the establishment of a cancer center at UNC Chapel Hill. (A reader unacquainted with legislative practices might reasonably ask how such a provision was determined to be a technical correction.) The House and Senate could not reach a compromise before adjournment, and so no technical corrections bill was enacted. Both H 281 and S 137 are eligible for consideration in the 2004 session.
- **Death penalty study and moratorium.** Concern about the administration of the death penalty, both nationally and in North Carolina, has focused on three factors: the significant number of cases in which a person has been sentenced to death and is subsequently determined to have been innocent, the adequacy of legal counsel in many cases involving imposition of the death penalty, and racial disparities in the imposition of the death penalty. Senate Bill 972 would have required a study of the death penalty to

examine these three factors, among others, and would have imposed a two-year moratorium on executions during the period of the study. Senate Bill 972 passed the Senate and remained in a House committee at adjournment. It is therefore eligible for consideration in the 2004 session.

- **State-sponsored lottery**. Ever since Governor Easley assumed office, he has pressed for a state-run lottery, the proceeds of which would be used to fund various programs in public education. The General Assembly has thus far not seen fit to enact such an initiative. This session's lottery proposal was H 5, calling for a referendum on whether the General Assembly should establish a lottery to fund programs in primary and secondary education. House Bill 5 remained in the House Rules Committee at adjournment.
- **Video poker**. For the last two sessions, many North Carolina law enforcement officers have campaigned for a ban on video poker machines. Senate Bill 6 proposes to ban the machines everywhere except on certain Indian reservations. Senate Bill 6 passed the Senate and remained in the House Rules Committee at adjournment. It is eligible for consideration in the 2004 session.
- **Cigarette tax**. Seven bills (H 254, H 378, H 1238, H 1313, S 915, S 917, and S 988) were introduced to increase the tax on cigarettes. Even though the state is suffering from an unprecedented financial crisis and has one of the lowest cigarette taxes in the nation, and even though the relationship between the increase in the cost of cigarettes and a reduction in smoking by young people has been clearly demonstrated, not one of the seven bills even made it out of committee.

The Governor's Vetoes

Governor Easley vetoed two bills enacted by the 2003 General Assembly, S 931 and H 917. Senate Bill 931 prohibited the State Board of Education from requiring a portfolio of materials from teachers seeking certification, but it also contained the following provision: "No new requirement added by the State Board of Education to the teacher certification process may be required for licensure now or in the future without explicit legislative authorization." The Governor stated in his veto message that this provision was very likely unconstitutional because the constitution grants the State Board general authority to administer the public school system. Governor Easley vetoed the bill on June 8, 2003, and on June 9, 2003, the Senate rereferred the bill to the Rules Committee, effectively sustaining the veto.

H 917 modified the statutes regarding mortgage rates charged by certain lenders, allowing increases in some of these rates. In his veto message, Governor Easley stated: "During a national recession, many families are struggling to make ends meet. However, the five large national and international conglomerates that make the vast number of consumer finance loans are thriving. This legislation has no economic benefit to North Carolina or our working familes. It would simply increase the cost of loans for North Carolina citizens at a time that they can afford it least." Governor Easley vetoed the bill on August 19, 2003, just within the thirty-day constitutional deadline for vetoing bills after the General Assembly has adjourned. The General Assembly reconvened on August 27, 2003, to consider the veto, and the House rereferred the bill to the Rules Committee, effectively sustaining the veto.

The 2004 Session

The adjournment resolution, Res. 2003-31 (H 1335), provides that the Senate is to convene on September 15, 2003, to consider only matters relating to economic development and civil justice and insurance reform and is to adjourn no later than September 19, 2003. It further provides that the regular 2004 session of the General Assembly is to convene at noon on May 10, 2004. Only the following may be considered during that session:

- bills directly affecting the budget for fiscal 2004–2005, provided they are introduced by May 27, 2004;
- bills introduced in 2003 and having passed third reading in the house of introduction and 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 they are introduced by May 19, 2004;
- noncontroversial local bills, provided they are introduced by May 26, 2004;
- 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 they are introduced by May 26, 2004;
- bills proposing constitutional amendments;
- resolutions regarding state government reorganization;
- memorial resolutions;
- resolutions disapproving administrative rules; and
- adjournment resolutions.

Blank bills may not be introduced in the House of Representatives during the 2004 session.

William A. Campbell

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The State Budget

This chapter summarizes, in broad outline, the fiscal provisions of the 2003–2005 state budget and legislation affecting the development, enactment, and administration of the state budget. More detailed information regarding budgetary actions that affect specific state departments and agencies is included in some of the following chapters.

The Budget Process

North Carolina's state government operates on a fiscal year that runs from July 1 to June 30. During regular sessions in odd-numbered years, the General Assembly adopts a state budget that makes appropriations for each of the following two fiscal years. The General Assembly returns for a short session in even-numbered years to make adjustments to the state budget for the second year of the biennium.

The biennial state budget process begins with the formulation of budget recommendations by the Governor, who, by virtue of the state constitution, is the director of the budget. At the beginning of the first regular session of the General Assembly in each odd-numbered year, the Governor presents to the legislature his budget recommendations for the next two fiscal years—including estimates of the amount of revenues available for appropriations; estimates of the appropriations needed to continue existing programs at their current levels; and recommended appropriations for expansion of existing programs, for new programs, and for capital improvements.

Although the House and Senate appropriations subcommittees usually meet jointly to review the Governor's budget proposals, the House and Senate develop their own respective versions of the state budget. In recent years, the House and Senate have alternated from year to year the responsibility for initially passing an appropriations bill for continuing operations, expansion, and capital improvements for state departments and agencies during the coming biennium. After the first chamber passes an appropriations bill, the second chamber revises the bill to reflect its own program priorities and policy considerations, and the differences between the two versions are resolved by conferees appointed by each chamber (or by a smaller group of appropriations chairs and the leadership of the two chambers). The conference committee report incorporating the

budget agreement between the House and Senate must then be adopted by both chambers and submitted to the Governor for approval.

In 2003 the House was responsible for taking the lead in preparing the budget. It passed an appropriations bill (H 397) on April 17, 2003. The Senate passed its version of H 397 on April 30, 2003. The House refused to concur with the Senate version, a conference committee was appointed, and the committee's proposed bill was ratified by both chambers and signed by the Governor on June 30, 2003. The approved bill is S.L. 2003-284.

One of the 2003 General Assembly's major accomplishments was the enactment of a state budget before the beginning of the fiscal year on July 1, and although it did it with no time to spare, at least it did it. This timely action on the budget is of considerable assistance to state agencies in planning their activities and to local governments and school administrative units in preparing their budgets—and it stands in marked contrast to action on the budget in 2001, when the appropriations bill was finally adopted on September 21, 2001, and in 2002, when the appropriations bill was adopted on September 20, 2002. Several factors contributed to the relatively early action on the budget by the 2003 General Assembly: the determination of the House Speakers to demonstrate that they could get the job done; the refusal of the House to pass a continuing budget resolution to allow state government to operate beyond June 30 without a ratified appropriations bill; concern by the leadership of the House and Senate and the Governor that temporary increases in the sales and income taxes needed to balance the budget would expire on July 1 if no action was taken; and a one-time infusion of $510 million in federal funds to assist with Medicaid expenses.

The 2003–2004 Budget

Revenue

The fund from which most money is appropriated is the General Fund; smaller appropriations for specific purposes are made from the Highway Fund and the Highway Trust Fund. Total General Fund revenues for 2003–2004 were estimated at $14.9 billion. The sources of this total were:

Beginning credit balance	244,159,298
Tax revenues	13,028,600,000
Nontax revenues	788,171,125
Adjustments	877,472,072

Four of the important elements in the adjustments category were tax related. First, the temporary increase in the sales tax from 4 percent to 4.5 percent, which was to expire July 1, 2003, was extended to July 1, 2005 ($342 million). Second, the top rate for individual income taxes of 8.25 percent, which was to expire at the end of 2003, was extended through the 2005 tax year ($37.5 million). Third, several amendments were made in the sales and use taxes to conform North Carolina tax provisions with the multistate Streamlined Sales and Use Tax Agreement, and these changes were predicted to generate an additional $44 million. And fourth, increased tax collection efforts by the Department of Revenue were estimated to generate $90.2 million. In addition to these tax measures, various fees were increased to generate a predicted $5.7 million. Highway Fund revenue was set at $1.3 billion and Highway Trust Fund revenue at $1.1 billion (these amounts were authorized and certified by Section 27.4(a) of S.L. 2001-424, the 2001 Appropriations Act).

Appropriations

From the revenues listed above, the General Assembly made the following current operations appropriations for 2003–2004:

General Fund	$14,775,122,783
Highway Fund	1,352,784,674
Highway Trust Fund	1,010,039,000

The General Fund appropriation is of most interest by far, and when journalists and others write and speak about a 2003–2004 budget of $14.8 billion, it is the General Fund to which they are referring (although, as can be seen, the total budget is considerably more than that). Of the General Fund appropriations, education and health and human services claim the lion's share, as has been the case for many years. The appropriation for education—including primary and secondary schools, community colleges, and the university system—is $8.48 billion, or 57 percent of the General Fund budget. The appropriation to the Department of Health and Human Services is $3.4 billion, or 22 percent of the budget. Thus, these two services account for 79 percent of the General Fund appropriation.

Capital Appropriations

The General Assembly made the following appropriations from the General Fund for capital improvement projects in 2003–2004:

Repairs and Renovations Reserve Account	$15,000,000
Department of Environment and Natural Resources	27,601,000

The Department of Environment and Natural Resources appropriation is to be expended on various water resources projects, the largest of which are the deepening of the Wilmington harbor, at a cost of $6.8 million, and the maintenance of the Shallowbag Bay channel, at a cost of $3.5 million.

Special Provisions

Many of the provisions of the 254-page appropriations act—and this has been true of appropriations acts for the last thirty years—have nothing to do with appropriating money. Rather, they make substantive changes in state law. In S.L. 2003-284, these special provisions dealt with, among other matters, an amendment to G. S. 130A-309.14 that requires state agencies to use products with recycled steel [section 6.10(a)]; new G.S. 143-64, which requires public schools and colleges to use competitive bidding when purchasing juice and bottled water [section 6.15(a)]; and new G.S. 90-85.21B, which defines the unlawful practice of pharmacy (section 10.8D). Additionally, three such provisions call for studies that may directly affect future appropriations bills. The first provision [section 6.2A(a)] directs the Office of State Management and Budget, in consultation with the State Controller, to review various budgetary practices of state agencies, including the proliferation of nonreverting funds and accounts; the designation of selected funds as "off-budget"; and the proper classification and management of funds as special funds, trust funds, internal service funds, or enterprise funds. The second provision [section 6.12(a)] creates a Joint Committee on Executive Budget Act Revisions consisting of four representatives and four senators. The committee is to consider any changes to the Executive Budget Act needed to modernize and improve the budget process and report its recommendations to the General Assembly by April 1, 2004. The third provision [section 29.12(a)] creates a twenty-member Highway Trust Fund Study Committee to study all aspects of the Highway Trust Fund and report its recommendations to the Joint Legislative Transportation Oversight Committee by November 1, 2004.

Budget Highlights

The following are some of the highlights of the 2003–2004 budget:

- Clean Water Management Trust Fund—$62 million
- Savings Reserve Account—$150 million
- More at Four program—$43.1 million
- Decrease in student teacher ratio in second grade classes from 1:20 to 1:18
- 1.8 percent average salary increase for teachers
- $550 one-time bonus for most state employees in lieu of a salary increase
- One-time annual leave bonus of ten days for most state employees
- 1.28 percent cost of living increase for retirees in the Teachers' and State Employees', Judicial, and Legislative retirement systems
- 0.5 percent increase in the state sales tax continued until July 1, 2005
- Increase in the individual income tax rate of 0.5 percent for certain higher income taxpayers continued until January 1, 2006
- Authorization of up to $300 million for repair and renovation of state properties through the use of special indebtedness (limited obligation bonds, lease-purchase arrangements, certificates of participation)

Conference Committee Report

The budget act was accompanied by a conference committee report on the bill, formally designated "Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets, dated June 28, 2003." This is an important document because it specifies in detail how the appropriations made in the act are to be allocated and expended. Section 49.2(a) of S.L. 2003-284 provides that the conference committee report is to be used to construe the budget act, is to be considered part of the act, and is to be printed as part of the session laws.

William A. Campbell

3

Children and Families

The 2003 North Carolina General Assembly addressed a number of issues relating to children and families. This chapter summarizes enacted bills dealing with divorce, domestic violence, juvenile proceedings, and child support. Also discussed herein are bills relating to child care; the Amber Alert system; and contracts for certain artistic, creative, or athletic services by minors. Other chapters that contain information regarding children and families include Chapter 5, "Courts and Civil Procedure"; Chapter 6, "Criminal Law and Procedure"; Chapter 8, "Elementary and Secondary Education"; Chapter 10, "Health"; Chapter 11, "Higher Education"; Chapter 16, "Mental Health"; and Chapter 21, "Social Services."

Divorce

Alternative Dispute Resolution for Divorce Cases

S.L. 2003-61 (H 952) amends G.S. 50-53, a provision of the Family Law Arbitration Act (G.S. Chapter 50, Article 3), to clarify that parties may agree not to submit to the court for confirmation an arbitration agreement reached pursuant to this article. The legislation became effective May 20, 2003.

S.L. 2003-371 (H 1126), effective October 1, 2003, adds new G.S. 50-70 through -79 to create a collaborative law settlement procedure for issues arising out of a divorce. The procedure includes a written agreement by the parties to make a good faith effort to resolve disputes arising from the marital relationship by agreement and without resort to judicial intervention. If the procedure results in a settlement agreement signed by both parties, either party is entitled to an entry of judgment or an order to effectuate the terms of the settlement agreement. If the parties fail to reach an agreement, either party can initiate civil proceedings. However, attorneys representing the parties during the collaborative process may not represent the parties in any future civil proceeding arising out of the marital relationship of the parties. An agreement to participate in the collaborative settlement process tolls all time limits or deadlines imposed by statutes or local court rules, including statutes of limitation, discovery and filing deadlines, and scheduling orders. Consistent with the recent amendment to G.S. 50-20(l)

discussed below, a personal representative of a deceased spouse can continue a collaborative law procedure initiated before the death of the party.

Equitable Distribution

S.L. 2003-168 (S 394) amends G.S. 50-20(l) to provide that a claim for equitable distribution survives the death of a spouse as long as the parties are living separate and apart at the time of death. The amendment replaces the current version of G.S. 50-20(l), enacted during the 2001 session of the General Assembly, *see* S.L. 2001-364, which allows a claim to survive only if an action is pending in court at the time of death. Both the 2001 amendment and S.L. 2003-168 are in response to the opinion by the North Carolina Supreme Court in *Brown v. Brown*, 353 N.C. 220, 539 S.E.2d 621 (2000), wherein the court held that a claim for equitable distribution does not survive death unless a judgment of absolute divorce is entered before death.

S.L. 2003-168 clarifies that a claim for equitable distribution by a surviving spouse is treated as a claim against the decedent's estate, subject to the provisions of G.S. Chapter 28A, Article 19. Claims by an estate against a surviving spouse must be filed within one year of death.

The amendment probably applies only to actions filed on or after the effective date of the legislation, June 12, 2003, and not to cases pending on that date. *See* Morris v. Morris, 79 N.C. App. 386, 339 S.E.2d 424 (1986) (statutes that do not say otherwise are presumed to apply prospectively only); Gardner v. Gardner, 300 N.C. 715, 268 S.E.2d 468 (1980) (amendments presumed to apply prospectively unless they are procedural in nature). *But cf.* Bowen v. Mabry, 154 N.C. App. 734, 572 S.E.2d 809 (2002) (earlier amendment to G.S. 50-20 regarding the survival of actions for equitable distribution held to apply to actions pending on the effective date because the amendment was clarifying a statute that had been "misconstrued" by the courts).

Marriage

S.L. 2003-4 (H 382) amends G.S. 51-1 to allow district court judges to perform marriage ceremonies between March 27, 2003, and March 31, 2003.

Domestic Violence

Renewal of Civil Protective Orders

S.L. 2003-107 (S 630) amends various sections of G.S. Chapter 50B to clarify that protective orders entered by consent of the parties are domestic violence protective orders for all purposes under the statute. The legislation also amends G.S. 50B-3(b) to clarify that a motion to renew a protective order must be filed before the expiration of the original or previous order, that orders previously renewed also are subject to renewal, and that the court can renew any order for good cause. No new act of domestic violence is required to support a renewal. S.L. 2003-107 became effective May 31, 2003.

Surrender of Firearms upon Entry of a Civil Protective Order

S.L. 2003–410 (S 919) adds new G.S. 50B-3.1 to provide that a court entering a civil domestic violence protective order must require the defendant to surrender all firearms and firearm permits to the sheriff if the court finds one of the following factors:

- the use or threatened use by the defendant of a deadly weapon against the aggrieved party or minor child or a pattern of prior conduct by the defendant involving the use or threatened use of violence with a firearm against persons,
- threats by the defendant to seriously injure or kill the aggrieved party or minor child,

- threats by the defendant to commit suicide,
- serious injuries inflicted by the defendant upon the aggrieved party or minor child.

S.L. 2003-410 requires the judge to inquire at the ex parte hearing and at the ten-day hearing as to the defendant's ownership of firearms and firearm permits. If the court orders the surrender of the firearms, the defendant must surrender them when served with the protective order by the sheriff or within twenty-four hours thereafter, at a time and place specified by the sheriff. The sheriff can charge a fee to the defendant for storage of the firearms. Once the items have been surrendered, the sheriff cannot return firearms or permits to the defendant without a court order. The court cannot order the firearms returned to the defendant until the protective order expires and the court determines that the defendant is not prohibited by state or federal law from possessing firearms. S.L. 2003-410 requires that the defendant seek recovery of the firearms within ninety days following the expiration of the domestic violence protective order. Firearms not recovered in a timely manner are subject to destruction or sale by the sheriff upon court approval. The legislation specifies a procedure for a third-party owner to file a motion with the court seeking recovery of surrendered firearms. S.L. 2003-410 does not apply to law enforcement officers or members of the armed services possessing or using firearms for official purposes.

S.L. 2003-410 is effective December 1, 2003, and applies to offenses committed on or after that date.

Child Abuse, Neglect, and Dependency

Purpose of Juvenile Code

S.L. 2003-140 (H 1048) amends G.S. 7B-100, the purpose statement for Subchapter I of the Juvenile Code. An addition to the section refers to the federal Adoption and Safe Families Act of 1997 (P.L. 105-89) as the basis for standards to ensure that

1. the juvenile's best interests are the court's paramount consideration, and
2. when it is not in the juvenile's best interest to be returned home, the juvenile will be placed in a safe, permanent home within a reasonable time.

The change is effective June 1, 2003.

Duty of School Principal to Report Nonattendance

As rewritten by S.L. 2003-304 (S 421), G.S. 115C-378 requires a school principal to notify the social services director in the county where a child resides when

1. the child has accumulated ten unexcused absences in a school year, and
2. the principal determines that the child's parent, guardian, or custodian has not made a good faith effort to comply with the compulsory attendance law.

A social services director who receives this kind of notification from a principal must determine whether to undertake a child protective services investigation. This provision is effective July 4, 2003.

Social Worker Entering Home during Investigation

Effective July 4, 2003, S.L. 2003-304 amends G.S. 7B-302 to provide that a social services director or the director's representative may enter a private residence for purposes of a child protective services investigation only

- if the person has a reasonable belief that a child is in imminent danger of death or serious physical injury, or
- with permission of the parent or person responsible for the child's care, or

- residence, or
- pursuant to an order from a court of competent jurisdiction.

Guardians ad Litem

Effective June 1, 2003, S.L. 2003-140 adds a new section, G.S. 7B-408, requiring the clerk of superior court, immediately after an abuse or neglect petition is filed, to provide a copy of the petition and any notices of hearing to the local guardian ad litem office.

Service of Process

As amended by S.L. 2003-304, G.S. 7B-407 allows service of process in an abuse, neglect, or dependency proceeding to be made by any method permitted by G.S. 1A-1, Rule 4(j). Previously, the statute required personal service on the parent, guardian, custodian, or caretaker unless the court authorized service by certified or registered mail or by publication. Service by publication continues to require prior court approval. This change became effective July 4, 2003.

Predisposition Reports

S.L. 2003-140 repeals G.S. 7B-304 (which required the county social services director to prepare an evaluation for the court in abuse, neglect, and dependency cases) and incorporates its provisions into G.S. 7B-808 (predisposition report). As rewritten, G.S. 7B-808 allows the court to proceed with a dispositional hearing without receiving a predisposition report if the court makes a written finding that a report is not necessary. The act also authorizes each chief district court judge to adopt a local rule or issue an administrative order to address the sharing of predisposition reports among the parties in abuse, neglect, and dependency proceedings. The rule or order may prohibit disclosure of the report to the juvenile, but it may not prohibit a party from receiving information that the party is legally entitled to receive or allow disclosure of confidential information to the public. S.L. 2003-140 is effective June 1, 2003.

Evidence Admissible at Disposition or Review

S.L. 2003-62 (H 126) makes clear that the court may consider any evidence—including hearsay evidence—that the court finds to be relevant, reliable, and necessary to determine the juvenile's needs or the most appropriate disposition in:

- abuse, neglect, and dependency dispositional hearings pursuant to G.S. 7B-901;
- abuse, neglect, and dependency review hearings pursuant to G.S. 7B-906;
- permanency planning hearings pursuant to G.S. 7B-907; and
- placement review hearings pursuant to G.S. 7B-908.

The act is effective May 20, 2003.

Determining Child's County of Residence

G.S. 153A-257 sets out rules for determining a person's residence for purposes of social services programs. S.L. 2003-304, effective July 4, 2003, adds to that section a provision authorizing the state Division of Social Services in the Department of Health and Human Services to determine which county is responsible for providing protective services and financial support for a child when two or more social services departments disagree about the child's legal residence in an abuse, neglect, or dependency case.

Appointment of Custodian or Guardian

S.L. 2003-140 amends G.S. 7B-600, -903, -906, and -907 to require the court, any time it either places a child in the custody of someone other than a parent or appoints someone as guardian of the child's person, to verify that the person being given custody or the appointed guardian

1. understands the legal significance of the placement or appointment, and
2. will have adequate resources to care appropriately for the child.

The act is effective June 4, 2003.

Conflicting Custody Orders Pilot

In abuse, neglect, and dependency proceedings the district court often enters orders that change or affect a child's custody. Sometimes an order concerning that same child's custody exists or is sought in a civil action pursuant to Chapter 50 of the General Statutes. Neither the Juvenile Code nor Chapter 50 addresses the relationship between these two kinds of orders or provides guidance for reconciling them when they conflict. House Bill 1033, which would have established a procedure for resolving these conflicts, was not enacted. S.L. 2003-381 (S 753), however, adopts a similar procedure as a pilot program that the Administrative Office of the Courts is required to create in the 12th Judicial District (Cumberland County). In the pilot program, a court that has jurisdiction over an abused, neglected, or dependent juvenile is authorized to

- stay any other civil action in North Carolina in which custody of the same child is an issue;
- order that a civil action for custody filed in the 12th judicial district be consolidated with the juvenile proceeding; and
- when a custody action is filed in another district in North Carolina, either order that action transferred to the 12th judicial district or order venue in the juvenile proceeding transferred to the district where the civil action is pending, after consulting with the court in which the civil action is filed.

For purposes of the pilot program, if there are two orders in North Carolina, the order in the juvenile court controls as long as the court retains jurisdiction in the juvenile proceeding. The court also can establish a mechanism, including a custody determination, for determining the legal status of the juvenile after the juvenile court's jurisdiction terminates. The act requires the Administrative Office of the Courts to evaluate the pilot program and report to the General Assembly by the beginning of the 2005 session. The act is effective August 1, 2003, and expires June 30, 2005.

Termination of Parental Rights

Appointment of Guardian ad Litem. Effective June 1, 2003, S.L. 2003-140 amends G.S. 7B-1108(b) to specify that a guardian ad litem trained and supervised by the state guardian ad litem program may be appointed in a termination of parental rights case only if

1. the juvenile is or has been the subject of an abuse, neglect, or dependency petition; or
2. the local guardian ad litem program, with good cause shown, consents to the appointment.

Continuances. Effective July 1, 2003, S.L. 2003-304 rewrites G.S. 7B-1109(d), which relates to continuances in the adjudication stage of a proceeding to terminate parental rights, to

- limit an initial continuance to ninety days from the date of the petition;
- add, as a reason the court may grant a continuance, allowing the parties to conduct expeditious discovery;
- provide that continuances longer than ninety days may be granted only in extraordinary circumstances when necessary for the proper administration of justice; and
- require the court to issue a written order stating the grounds for granting a continuance longer than ninety days.

Incapacity ground. S.L. 2003-140 amends 7B-1111(a)(6), which authorizes termination of parental rights based on a parent's incapacity to provide proper care and supervision of his or her child, to provide that the parent's incapacity may be due to any cause or condition (rather than just conditions that are listed, or similar to those that are listed, in the statute) that renders the parent unable or unavailable to parent the juvenile. The amendment also requires the court, before terminating parental rights based on incapacity, to find that the parent lacks an appropriate alternative child care arrangement. The act rewrites G.S. 7B-1101 to provide that when parental incapacity is alleged as a ground for terminating a parent's rights, the court is required to appoint a guardian ad litem for the parent only in cases in which the parent's incapacity is alleged to be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or another similar cause or condition.

Child Fatality Review Team

G.S. 143B-150.20(d) authorizes the state Child Fatality Review Team to obtain a variety of information that the team needs to carry out its duties. Effective July 1, 2003, S.L. 2003-304 amends the subsection to provide that if the team does not receive information within thirty days after requesting it, the team may apply for an order compelling disclosure. The application must state factors supporting the need for the order and must be filed in the district court of the county where the investigation is being conducted. The act specifies that the court has jurisdiction to issue orders compelling disclosure. Actions brought under the section must be scheduled for immediate hearing, and the appellate courts must give priority to subsequent proceedings in these actions.

Assault on Court Officers

S.L. 2003-140 amends G.S. 14-16.10(1) to provide that the term *court officer*, for purposes of G.S. Chapter 14, Article 5A (Endangering Executive, Legislative, and Court Officers), includes

- social services department attorneys and employees acting on the department's behalf in a juvenile proceeding under Subchapter I of the Juvenile Code,
- guardians ad litem and attorney advocates appointed to represent children in those proceedings, and
- any employee of the Guardian ad Litem Services Division of the Administrative Office of the Courts.

This amendment applies to offenses committed on or after December 1, 2003.

Other Criminal Offenses

Several criminal law changes that relate to child protection are described in Chapter 6, "Criminal Law and Procedure." Among the subjects they address are the following:

- Indecent liberties by a school safety officer. S. L. 2003-98 (S 555).
- Prohibition of "rebirthing" therapy. S.L. 2003-205 (S 251).
- New offense of sexual battery. S.L. 2003-252 (S 912).
- Revision of the peeping statutes. S.L. 2003-303 (H 408).
- Enhanced penalty for assault in the presence of a child. S.L. 2003- (H 926).

Delinquent and Undisciplined Juveniles

Evidence Admissible at Disposition Hearing

S.L. 2003-62 makes clear that in dispositional hearings for undisciplined or delinquent juveniles the court may consider any evidence, including hearsay evidence, that the court finds to

be relevant, reliable, and necessary to determine the juvenile's needs and the most appropriate disposition. This amendment to G.S. 7B-2501 became effective May 20, 2003.

Allowing Juvenile to Escape

S.L 2003-297 (H 1037) amends G.S. 14-239 to make the misdemeanor offense of allowing a prisoner to escape applicable to custodial personnel who willfully or wantonly allow the escape of a juvenile who is committed to the Department of Juvenile Justice and Delinquency Prevention. This amendment applies to offenses committed on or after December 1, 2003.

Photographing Juveniles

Effective October 1, 2003, S.L. 2003-297 amends G.S. 7B-2102 to require a county detention facility to photograph any juvenile in its custody who was at least ten years old when he or she allegedly committed a nondivertible offense. (Nondivertible offenses—those for which a court counselor must approve the filing of a petition after finding reasonable grounds to believe the juvenile committed the offense—are listed in G.S. 7B-1701.) It also authorizes the court to order the release of a juvenile's photograph to the public if the juvenile escapes from a youth development center, some other juvenile facility, a holdover facility, or the custody of juvenile personnel or a local law enforcement officer.

Court Approval of Alternative Commitment Plan

The most severe disposition for a delinquent juvenile is commitment to the Department of Juvenile Justice and Delinquency Prevention for placement in a youth development center (previously referred to as training school). The department conducts an assessment of every committed juvenile and has discretion to determine which youth development center can best meet a juvenile's needs. S.L. 2003-53 (H 950) clarifies the department's authority to place a committed juvenile somewhere other than a youth development center and establishes a procedure for making alternative placements. The act amends G.S. 7B-2513 to require prior approval of the committing district court when the department proposes assigning a committed juvenile to a program that is not located in a youth development center or detention facility. Before making an alternative placement, the department must file and serve on the prosecutor, the juvenile, and the juvenile's attorney a motion and information about the services it recommends for the juvenile. The court can approve the alternative placement without a hearing if the court determines that the proposed plan is appropriate and that a hearing is not necessary. The court must hold a hearing, however, if the juvenile or the juvenile's attorney requests one, and the department must keep the juvenile in a youth development center or detention facility pending the outcome of the hearing. These changes apply to dispositions entered on or after October 1, 2003.

County Appeal from Payment Orders

Subchapter II of the Juvenile Code authorizes the court to charge to the county the costs of various kinds of evaluation and treatment the court may order for an undisciplined or delinquent juvenile or for the juvenile's parent, when the parent is not able to pay. G.S. 7B-2502 requires that the county manager or another county official be notified and have an opportunity to be heard before this kind of order is entered. It also states that the county department of social services shall recommend the facility that will provide the juvenile with evaluation or treatment. The county is not a party to the juvenile proceeding, however, and the North Carolina appellate courts have held several times that the county may not appeal from these orders, which sometimes involve substantial financial commitments. *See*, *e.g.*, *In re* Brownlee, 301 N.C. 532, 272 S.E.2d 861 (1981); *In re* Voigt, 138 N.C. App. 542, 530 S.E.2d 76 (2000); *In re* Braithwaite, 150 N.C. App. 434, 562 S.E.2d 897 (2002). S.L. 2003-171 (H 925) rewrites G.S. 7B-2604 to authorize a county, in delinquency and undisciplined cases, to appeal any order that requires the county to pay for

medical, psychological, or other evaluation or treatment of a juvenile or the juvenile's parent. The act is effective October 1, 2003, and applies to petitions for appeal filed on or after that date.

Juvenile Justice Compliance with Audit Report

Section 15.9 of S.L. 2003-284 (H 397) directs the Department of Juvenile Justice and Delinquency Prevention to develop and implement a plan to address the findings and recommendations in the May 2003 report of the performance audit of the youth development centers and juvenile detention centers within the department. The plan must address problems identified in the report through proposed changes in organization and management, policies and procedures, and programs. It also must identify and document any funding needs for consideration by the 2004 session of the General Assembly. The act requires the department to report by November 1, 2003, to the chairs of the Senate and House Appropriations Committees and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on progress in developing the plan and initial steps taken to address the issues raised in the audit report. The department must report on the final plan by March 1, 2004.

Child Support

Health Insurance Requirements in Child Support Orders

Effective July 1, 2003, S.L. 2003-288 (S 423) amends G.S. 50-13.11(a1) to provide that if a court orders a parent or other responsible party to maintain health insurance for the benefit of a child for whom court-ordered child support is owed, but the parent or responsible party does not have access to health insurance at a reasonable cost at the time the order is entered, the court must order the parent or responsible party to obtain health insurance for the child when health insurance becomes available at a reasonable cost. The effect of this amendment is to negate, in part, the Court of Appeals' decision in *Buncombe County ex rel. Frady v. Rogers,* 148 N.C. App. 401, 559 S.E.2d 227 (2002).

Liquidation of Child Support Arrearages

S.L. 2003-288 amends G.S. 50-13.4(c) to provide that if (1) a parent's court-ordered child support obligation terminates (for example, when the child for whom support is owed reaches his or her eighteenth birthday and has graduated from high school), (2) the parent still owes child support arrearages under the order, and (3) the court order or an income withholding order requires the parent to pay both current support and an additional amount to liquidate the arrearage, the total payment due under the order, until further order of the court, will continue to be the amount due for current support plus the additional arrearage payment, and the total amount of the payment will be applied to the parent's child support arrearage until it is fully paid. The amendment is effective July 4, 2003, and probably applies to court-ordered child support obligations that terminate on or after that date.

State and Local Child Support Enforcement (IV-D) Agencies

Additional legislation regarding the establishment and enforcement of child support by state and local child support enforcement (IV-D) agencies is discussed in Chapter 21, "Social Services."

Child Day Care and Early Childhood Programs

Child Care Facilities

Safe sleep policies. Effective December 1, 2003, S.L. 2003-407 (H 152) amends G.S. 110-91 to require child care facilities to develop and implement safe sleep policies to reduce the risk of Sudden Infant Death Syndrome (SIDS).

Administration of medication. Effective December 1, 2003, S.L. 2003-406 (S 226) prohibits the administration of prescription or over-the-counter medication to a child in a licensed or unlicensed child care facility without the written authorization of the child's parent or guardian. The prohibition does not apply in the event of an emergency medical condition, if medication is administered with the authorization of and in accordance with the instructions of a bona fide medical care provider. Willful violation of the statute is a Class A1 misdemeanor, or a Class F felony if the violation results in serious injury to the child. The statute, known as "Kaitlyn's Law," is codified as G.S. 110-102.1A.

Information for parents. Effective October 1, 2003, S.L. 2003-196 (H 1063) amends G.S. 110-102 to require operators of child care facilities to provide the state Division of Child Development's summary of laws relating to child care facilities to the parents, guardians, or custodians of children who receive child care and to post this summary in the facility.

Criminal penalties. Effective December 1, 2003, S.L. 2003-192 (S 877) amends the criminal penalties for violations of the Child Care Facilities Act. A person who offers or provides child care without complying with the provisions of G.S. Chapter 110, Article 7, is guilty of a Class 1 misdemeanor, or a Class H felony if the violation causes serious injury to a child attending the facility or the person has a prior conviction for offering or providing child care in violation of G.S. Chapter 110, Article 7. A person who willfully operates a child care facility without a current license or who willfully violates the provisions of G.S. Chapter 110, Article 7, while providing child care for three or more children for more than four hours per day on two consecutive days is guilty of a Class I felony, or a Class H felony if the violation causes serious injury to a child attending the facility. The act decriminalizes violations related to advertising child care without disclosing the facility's identifying number, displaying child care licenses, and providing information to parents.

Investigation of abuse and neglect. Effective December 1, 2003, S.L. 2003-407 amends G.S. 110-105.2(a) to require the Department of Health and Human Services (DHHS), county social services departments, and local law enforcement personnel to cooperate with the medical community to ensure that reports of child abuse and neglect in child care facilities are properly investigated.

S.L. 2003-284 appropriates additional state funding to increase by fifteen the number of staff in the Division of Child Development's abuse and neglect investigation section.

License fees. Effective October 1, 2003, S.L. 2003-284 amends G.S. 110-90 to allow the Secretary of Health and Human Services, under policies and rules adopted by the Child Development Commission, to establish a fee (not to exceed $35 to $400 depending on facility capacity) for licensing child care centers (other than religious-sponsored child care centers operating pursuant to a letter of compliance).

Section 10.39A of S.L. 2003-284 requires the Division of Child Development to develop a plan proposing fees for the licensing of family child care homes and to submit the plan 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 April 1, 2004.

Child Day Care Subsidies

Section 10.35 of S.L. 2003-284 sets the income eligibility limit for subsidized child care at 75 percent of the state's median income adjusted for family size and provides that families who are required to share in the cost of child care must pay 8 to 10 percent (depending on family size) of

their gross family income for child care. The act also provides that noncitizen families who reside in the state legally are eligible for subsidized child care if they meet all other conditions of eligibility and the child for whom a subsidy is sought (1) is receiving child protective services or foster care services, (2) is developmentally delayed or at risk of being developmentally delayed, or (3) is a U.S. citizen.

Section 10.35 also requires the Division of Child Development to calculate statewide, regional, and county market rates for child care centers and homes at each rated license level and for each age group or category of children. The section specifies the maximum subsidy payments for licensed child care centers and homes that are rated at the two-star level or above, licensed child care centers and homes that meet the minimum licensing standards, religious-sponsored child care facilities operating pursuant to G.S. 110-106, and nonlicensed homes.

Section 10.36 of S.L. 2003-284 requires that federal and state funding for subsidized child care (other than the mandatory 30 percent Smart Start subsidy allocation) be allocated based on each county's projected cost of serving children under the age of eleven in families with working parents who earn less than 75 percent of the state's median income, but that no county's allocation may be less than 90 percent of its initial child care subsidy allocation for fiscal year 2001–2002. Section 10.34 of S.L. 2003-284 prohibits the Department of Health and Human Services from requiring local matching funds as a condition of receiving state funding for child care unless federal law requires a local match, but it authorizes local governments to spend local funds for child care services. Section 10.36 of S.L. 2003-284 authorizes DHHS to reallocate unused funding for child care subsidies based on county expenditures of federal, state, local, and Smart Start funding for subsidized child care.

More at Four

More at Four is a voluntary prekindergarten program for at-risk four-year-olds. S.L. 2003-284 provides approximately $85 million in state funding for the More at Four program for the fiscal biennium. Section 10.40 of S.L. 2003-284 requires the program to include

- a system for identifying unserved and underserved children who are at risk of academic failure;
- curricula that prepare children for kindergarten emotionally, socially, and academically;
- minimum teacher qualifications;
- requirements for local contribution of resources;
- pre- and post-assessment of children; and
- other specified components.
- Section 10.40 also requires the state Department of Health and Human Services and the Department of Public Instruction to establish a task force to oversee the program's development and implementation; directs DHHS to plan for the program's expansion to include child care centers with four- or five-star ratings and schools serving four-year-olds; allows DHHS to use nonobligated program funding to reduce the waiting list for subsidized child care, giving priority to four-year-olds attending child care centers with at least a three-star rating; and requires DHHS, the Department of Public Instruction, and the More at Four Task Force to submit program reports to specified legislative committees and agencies by January 1, 2004, and May 1, 2004.

Smart Start

Section 10.38 of S.L. 2003-284 limits the aggregate allowable administrative costs of local Smart Start partnerships (not to exceed 8 percent of the total statewide allocation to all local partnerships); requires the state and local Smart Start partnerships to use specified competitive bidding practices with respect to contracts for the purchase of goods and services; imposes match requirements for state Smart Start funding; requires local partnerships to spend at least $52 million for child care subsidies in fiscal year 2003–2004 to meet federal maintenance of effort and match

requirements; prohibits the expenditure of allocated funds for capital expenditures, playground equipment, and advertising and promotional activities; limits the use of state funding for one-time quality improvement initiatives; requires the assessment of a penalty against the allocation of local partnerships whose audits are classified as "needs improvement performance assessment"; and requires the state Smart Start partnership 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, 2004. S.L. 2003-284 also cuts state funding for Smart Start by $7.7 million per year.

Section 10.39 of S.L. 2003-284 authorizes the Division of Child Development to evaluate the quality of child care provided by the Smart Start program and the program's progress in promoting children's readiness to enter school and succeed.

Other Legislation Affecting Children and Families

Amber Alert

In 2002 the General Assembly enacted legislation (S.L. 2002-126) establishing the "North Carolina Child Alert Notification System" as part of the North Carolina Center for Missing Persons. S.L. 2003-191 (H 478) amends G.S. 143B-499.7 to change the name to the "North Carolina AMBER Alert System." The act also amends G.S. 143B-499.1 to require a law enforcement agency that receives a missing person report that meets the AMBER Alert criteria to notify the National Center for Missing and Exploited Children as well as the North Carolina Center for Missing Persons. In addition, it rewrites G.S. 143B-499.7(b), which sets out the AMBER Alert criteria, to

1. increase the maximum age of covered children from twelve to seventeen. (Previously, disseminating information about children ages thirteen through seventeen was discretionary and determined on a case-by-case basis.)
2. provide that the child is believed either to have been abducted or to be in danger of injury or death. (Previously, one criterion required both.)
3. include children who are known or suspected to have been abducted by a parent of the child, if the child is suspected to be in danger of injury or death. (The statute retains a statement, however, that the North Carolina Center for Missing Persons, in its discretion, may disseminate information through the AMBER Alert System if the child is believed to be in danger of injury or death.)

The act, which makes other conforming changes, is effective June 12, 2003.

Assault in the Presence of a Minor

S.L. 2003-409, enhancing the criminal penalty for assault in the presence of a minor, is discussed in Chapter 6, "Criminal Law and Procedure."

Unemployment Compensation

S.L. 2003-220 (S 439) amends G.S. 96-14 to provide that an individual is not disqualified from receiving unemployment compensation based on his or her leaving work solely due to an adequate disability or health condition of (1) a minor child who is in the individual's legally recognized custody, (2) the individual's aged or disabled parent, or (3) a disabled member of the individual's immediate family. S.L. 2003-220 also (1) reduces the disqualification period when an individual leaves work to accompany his or her spouse to a new place of residence where the spouse has secured employment, and (2) provides that an individual who leaves work to accompany his or her spouse to a new place of residence as the result of the spouse's military reassignment is deemed to have good cause for leaving work.

Certain Contracts by Minors

S.L. 2003-207 (S 315) designates existing provisions in G.S. Chapter 48A (Minors) as Article 1 and adds to the chapter a new Article 2 dealing with minors' contracts for certain artistic, creative, or athletic services. The act establishes a procedure whereby any party to the contract may petition the superior court for approval of the contract. For purposes of this or any other proceeding under the article, the parent or legal guardian who is entitled to physical custody, care, and control of the minor is considered the minor's guardian ad litem unless the court determines that the minor's best interest requires the appointment of someone else as the minor's guardian ad litem. The action may be filed in any county in which the minor resides or is employed or in which any party to the contract has its principal office in this state. A contract that is approved by the superior court cannot be disaffirmed, either during or after the minor party's minority, on the basis that the party was a minor when the contract was made.

Regardless of whether a contract has been approved by the superior court, the act requires that 15 percent (or a different percent ordered by the court when it approves a contract) of the minor's gross earnings be set aside in a trust or other savings plan for the benefit of the minor. Unless the court orders otherwise, a parent or guardian entitled to custody of the minor serves as trustee and in that regard has with the minor a fiduciary relationship that is governed by the law of trusts. The minor may claim the funds in the trust when he or she becomes eighteen. The act includes considerable detail about the establishment and management of the required trusts. S.L. 2003-207 is effective June 19, 2003, and applies to contracts that are entered into on or after January 1, 2004.

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Community Development and Housing

The 2003 General Assembly responded to the state's declining economy with considerable legislative debate over the effectiveness of a variety of community and economic development tools. Relatively little new legislation resulted, although the General Assembly authorized local governments to employ a few additional means to support their development efforts and sought to stimulate private sector activity by extending expiring business tax credits. Some proposals that were not enacted remain eligible for consideration in 2004. As a result of the state's budget deficit, however, affordable housing initiatives generated little in the way of interest or funding this session.

Community and Economic Development Tools

Project Development Financing

Subject to voter approval of an amendment to the North Carolina Constitution, S.L. 2003-403 (S 725) seeks to allow local governments to borrow money to finance public improvements associated with private development projects. This local economic development tool, which is commonly referred to as *tax increment financing,* can be used for industrial site development, redevelopment of existing industrial and brownfields sites, and the restoration of blighted areas. Because it is intended to support quality jobs, tax increment financing can only be used to create manufacturing positions that meet specific wage and benefit requirements. The proposed constitutional amendment will come before voters on the ballot of the November 2004 general election.

S.L. 2003-417 (H 1301) permits local governments to share financing, expenditures, and revenues related to joint undertakings. The new law is expected to facilitate the expansion of regional economic development projects as well as provide needed financing options for projects in rural areas of the state. See Chapter 14, "Local Government and Local Finance," for a more comprehensive discussion of these two provisions.

Tax Credits

In S.L. 2003-414 (H 1294) the General Assembly extended the State Ports Tax Credit and the Qualified Business Investments Tax Credit to January 1 of 2009 and 2007, respectively, as recommended by the North Carolina Economic Development Board, an advisory group to the Governor and the Department of Commerce. The State Ports Tax Credit aims to encourage North Carolina businesses to increase their use of state ports. The Qualified Business Credit encourages investments in entrepreneurial start-ups. The legislature expanded its applicability to include investments in companies that commercialize university-developed technologies. Both tax credits were to expire on December 31, 2003.

Senate Bill 944 and House Bill 1284 included proposals to significantly expand the tax credit available in North Carolina for research and development activity. The bills did not pass this session despite the North Carolina Economic Development Board's contention that the legislation would significantly increase research and development activity in the state. Currently a limited research and development credit is available only to companies that qualify for the William S. Lee Quality Jobs and Business Expansion Act (Bill Lee Act). The Bill Lee Act, enacted in 1996, offers tax credits to companies in specifically named industrial classifications that create jobs or invest in machinery and equipment, worker training, research and development, and central offices. For purposes of applying many of the credits, counties receive one of five tier designations based on per capita income, unemployment rates, and population growth. The lower the designation of the area in which a company is located—that is, the more economically distressed the county—the larger the available tax credit will be. Proponents of an expanded research and development tax credit complain that many research and development activities are not well suited for the economically distressed areas the Bill Lee Act was designed to target.

The General Assembly also failed to enact S 944, a sales tax incentive to benefit large, advanced, or high technology manufacturing facilities. The bill would have authorized a refund of sales taxes paid on construction materials to companies building facilities for aerospace, automotive, semiconductor, pharmaceutical, or biological manufacturing that would have cost more than $100 million to construct.

One North Carolina–Industrial Recruitment Competitive Fund

Last session the General Assembly appropriated $15 million to the One North Carolina–Industrial Recruitment Fund. This fund provides financial assistance to businesses or industries (1) that the Governor deems vital to a healthy and growing state economy and (2) that are making significant efforts to locate or expand in North Carolina. This session the General Assembly made no appropriation to this fund. S.L. 2003-284 (H 397), the appropriations act, directs the Department of Commerce to allot $1 million of the fund's 2001–2003 appropriation to provide financial assistance to Johnson and Wales University to support the creation and expansion of that educational institution's presence in North Carolina.

Workforce Development

The General Assembly considered, but took little action on, several strategies to respond to the high rates of dislocated workers in the state. Most of these proposals involved increased funding for workforce training; others were to be included in the study bill, which was not enacted.

S.L. 2003-418 (S 168) allows boards of county commissioners to create special economic development and training districts under Section 2(4) of Article V of the North Carolina Constitution.

These districts would support training workers for jobs with pharmaceutical, biotechnical, life sciences, chemical, telecommunications, and electronics companies. A county (through its community college) may provide targeted skills training centers in a district if it would be impossible or impractical to provide similar training facilities and services on a countywide basis to all existing and future employers. S.L. 2003-418 also authorizes county commissioners to finance, provide, or maintain a skills training center by levying additional property taxes in the economic development and training district. Finally, the act defines the property that may be initially included within an economic and training district in Johnston County, subject to selection by the Johnston County Board of Commissioners.

Moving Ahead Transportation Initiatives

This session Governor Easley advocated for significant improvements of roads and public transit systems as part of his overall economic development initiative. S.L. 2003-383 (H 48) appropriates $700 million from the Highway Trust Fund over the next two years to these improvement efforts across the state. A more detailed discussion of this legislation can be found in Chapter 13, "Land Use, Community Planning, Code Enforcement, and Transportation."

Tourism Grants

A bill to create a travel and tourism capital investment program (H 1316) would have provided grants to local governments for travel and tourism projects that (1) demonstrate a positive economic impact, (2) create at least ten jobs consistent with the Bill Lee Act's applicable wage standard [G.S. 105-129.4(b)], and (3) attract new visitors to the area. The requirements for eligible projects differed depending on the enterprise tier designation of the county. Communities in tier one through three counties were required to target tourists who reside outside of the state or more than twenty-five miles from the project and to create at least three new full-time jobs. Communities in tier four and five counties were required to target tourists who reside outside of the state or more than fifty miles from the project and to create at least ten full-time jobs. Similarly, the maximum grant percentages of the total project funds allotted to participating communities were determined by tier designation. Tier one and two communities were entitled to grants of up to 40 percent of the total project funds, grants for tier three and four were set at 30 percent, and grants for tier five were limited to 25 percent. The proceeds of the grants could be used only for capital costs associated with related projects. House Bill 1316, which was not enacted, is also discussed in Chapter 14, "Local Government and Local Finance."

Redevelopment

S.L. 2003-66 (H 1065) allows local governments to convey redevelopment property to nonprofits without receiving full cash consideration. Under the new law, redevelopment property can be conveyed under the procedures outlined in G.S. 160A-279. S.L. 2003-66 is discussed in more detail in Chapter 14, "Local Government and Local Finance."

Also, to encourage redevelopment in central cities, H 1301 sought to give local governments broader authority to defer increases in tax value for redeveloped property. The bill was not enacted.

Internet Access

In 2000 the General Assembly created the Rural Internet Access Authority (RIAA) to address the digital divide existing between the state's urban and rural communities. Finding that the objectives of the RIAA had been largely met but noting the need to ensure that the citizens of rural North Carolina keep pace with technological changes in telecommunications and information networks, the General Assembly enacted S.L. 2003-425 (H 1194). This new legislation allows the RIAA to sunset and creates in its place the e-NC Authority. Unlike the RIAA, which focused on rural areas, the e-NC Authority is charged with promoting efforts to provide high-speed broadband

Internet access to both rural and urban financially distressed areas. S.L. 2003-425 was effective December 31, 2003. The authority will be governed by a commission of nine voting members (to be selected by the Governor, President Pro Tempore of the Senate, and the Speaker of the House) and six nonvoting members [to include the Secretary of Commerce; the State Chief Information Officer; the President of the North Carolina Rural Economic Development Center, Inc.; the Executive Director of the North Carolina Justice and Community Development Center; the Executive Director of the North Carolina League of Municipalities; and the Executive Director of the North Carolina Association of County Commissioners (or their designees)].

Board of Science and Technology

S.L. 2003-210 (H 665) amends G.S. 143B-472.80 to add the General Assembly as an entity to which the North Carolina Board of Science and Technology will provide advice on the role of science and technology in the economic growth and development of North Carolina. Previously, the board advised the Governor, the Department of Commerce, and the Economic Development Board.

Affordable Housing

Manufactured Housing

S.L. 2003-400 (H 1006) provides consumer protections to purchasers of manufactured homes and increases the likelihood that this popular source of affordable housing will create equity for its owners. The law now reclassifies manufactured housing subject to a long-term ground lease (a primary term of twenty years or more) as real estate. This change gives manufactured home purchasers access to loans with terms similar to conventional mortgages. In an attempt to curb rampant abuses in the manufactured housing industry, the law requires criminal background checks for applicants seeking licensure as manufactured home manufacturers, dealers, salespersons, or setup contractors. It makes clear that a buyer of a manufactured home has the right to cancel a home purchase if the dealer changes the terms of the sales agreement and directs the Department of Insurance to develop new rules to improve protections to buyer's deposits when dealers file for bankruptcy. It also requires that a manufacturer's suggested retail price, if one exists, be displayed on the home. In addition, dealers must prominently display information on how to contact the Manufacturing Housing Board, on how to file a consumer complaint with the board, and on the warranties and protections that must be provided for new manufactured homes. The law also requires owners of manufactured home parks to give 180-day notices (rather than the 30-day notices under prior law) to tenants when they are selling or closing the park. If the state or a unit of local government orders the park to close, the owner must give residents notice of the closure within three business days of the order. As further protection for consumers, S.L. 2003-400 amends G.S. 149-139.1 to provide minimum construction and design standards for modular homes. A detailed analysis of these standards is included in Chapter 13, "Land Use, Community Planning, Code Enforcement, and Transportation."

Minimum Housing Ordinances

S.L. 2003-42 (S 23) and S.L. 2003-23 (S 465) add the cities of Clinton, Goldsboro, High Point, and Lumberton and the town of Franklin to the growing list of municipalities authorized to declare residential buildings in community development target areas unsafe and to demolish those buildings by using the same process authorized under G.S. 160A-426 for the demolition of unsafe nonresidential buildings.

S.L. 2003-76 (S 290) and S.L. 2003-320 (S 357) grant authority to the cities of Greensboro and Roanoke Rapids to order owners of residential properties to repair (rather than vacate) dilapidated housing to meet the city's minimum code standards. House Bill 628 would have permitted all local governments concerned about blight and the loss of affordable housing to

exercise this option. At adjournment the bill remained in the House committee to which it was referred.

Fair Housing

S.L. 2003-136 (H 1175) amends G.S. 41A-7(a) to permit fair housing organizations to file complaints with the State Human Relations Commission on behalf of a person who either claims to have been injured by or reasonably believes he or she will be injured by an unlawful discriminatory housing practice.

Late Fees on Rent

S.L. 2003-370 (S 847) clarifies that if a rental unit is subsidized by a government agency, any late fee must be calculated on the tenant's share of the contract rent only; the rent subsidy is not to be included. If the unit is not subsidized and rent is due in monthly installments, a landlord may charge a late fee not to exceed $15 or 5 percent of the rent, whichever is greater. If the rent is due in weekly installments, the landlord may charge a late fee not to exceed $4 or 5 percent of the weekly rent, whichever is greater.

Inclusionary Zoning

As a result of work by a regional task force staffed by the Triangle J Council of Governments' Affordable Housing Center and advised by the UNC Chapel Hill School of Government, the Town of Carrboro sought authorization to use inclusionary zoning to promote the development of affordable housing for sale and rent to persons of low and moderate income. Senate Bill 493 would have allowed Carrboro to develop a zoning scheme under which prospective housing developers of projects of fifty units or more would be required to make a percentage of the dwellings affordable to lower-income households in exchange for a density bonus and as a condition of zoning approval. As with prior similar efforts by other jurisdictions, the bill remained at adjournment in the committee to which it was originally assigned.

Consumer Lending

North Carolina's community development practitioners actively fight against laws permitting predatory lending practices. This year the Coalition of Responsible Lending, which includes 128 organizations associated with affordable housing interests, community development, consumer protection, and financial institutions, sought to defeat H 1213, which would have reauthorized payday lending in North Carolina. Payday lending (sometimes called "cash advances") involves loans marketed to low-income working consumers as an easy way to borrow cash for short-term emergencies. However, its detractors point out that the average payday customer in North Carolina takes out fourteen loans a year, resulting in significant wealth depletion for the state's financially fragile families.

The debate over payday lending is not new. In 1997 the General Assembly authorized a four-year payday lending experiment. In 2001 the experiment expired and the state's Commissioner of Banking ordered payday lenders to cease making loans in North Carolina. While many smaller payday lenders complied with this order, large chains continued to make loans in the state by affiliating with out-of-state banks. This practice, known as "renting-a-charter," allowed these lenders to claim that the out-of-state bank charters rendered the lenders exempt from North Carolina law. As they believed themselves exempt from any state regulations, some lenders began raising fees to as high as 30 percent of the loan's value. In 2002 the state's Attorney General and the Commissioner of Banks successfully sued one of these large companies for abusive business practices. Also in that year, industry supporters introduced a bill reauthorizing payday lending. Consumer groups successfully opposed the bill.

House Bill 1213 would have brought payday lending back under the state's authority. However, the Coalition for Responsible Lending (including the 128 organizations) and the Attorney General argued successfully that new regulations issued by the Federal Deposit Insurance Corporation on July 3, 2003, would offer additional protection to consumers but would be undermined by H 1213. The new regulations prohibit banks from tying up more than 25 percent of their capital in payday loans and require them to write off as losses any payday loans that are not repaid within sixty days. Such loans should then be declared "substandard" and as a result will face higher regulatory scrutiny.

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Courts and Civil Procedure

Court administration in North Carolina, like most other state agencies in 2003, was focused on staying afloat in a difficult financial year. For the first time in several sessions, there were no serious discussions about changing the structure of the courts or the method of selecting judges. This was due in part to the significant changes made in these areas in recent years (for example, the transition of the remaining levels of the judiciary to nonpartisan elections and the creation of a public fund to provide optional subsidies to candidates in appellate court elections). This session the State Judicial Council supported two significant bills involving court administration. Those bills, which dealt with jurisdiction and budget administration, were not enacted. The court-related bills that were enacted were mostly concerned with refining existing programs or clarifying current statutes. Many important criminal, juvenile, family, and motor vehicle law bills were enacted this session and are discussed in this book in separate chapters. Since the courts are involved in all of these areas, readers interested in the justice system or court administration should consult those chapters as well.

The Judicial Council's budget administration bills, H 1218 and its companion, S 726, would have substantially revised the fiscal relationship between the courts and the legislative and executive branches of state government. In general, the bill would have allowed the court system more flexibility in spending legislative appropriations and would have restricted the Governor's authority to withhold any appropriations from the courts. The bill would not have changed the division of responsibility between the Administrative Office of the Courts (AOC) and local court officials in making budget decisions. Neither chamber took up the bill this session.

The Judicial Council also endorsed S 577, which, had it been enacted, would have

- made substantial changes in the allocation of jurisdiction among the state's trial courts;
- allowed clerks and magistrates to hear not-guilty pleas in infraction cases;
- allowed clerks and magistrates to set child support amounts according to guidelines adopted by the Conference of Chief District Judges;
- raised the small claims limit from $4,000 to $5,000;
- allowed district court judges to take guilty pleas in nearly all felony cases;
- allowed the entry of default judgments in simple divorce cases; and

- authorized superior court judges to conduct district court criminal matters in circumstances in which the district court was unable to finish its work in a timely manner and the superior court judge had sufficient time to hear the cases.

Senate Bill 577 passed the Senate with all provisions intact except that allowing clerks and magistrates to hear cases involving infractions. It is therefore eligible for reconsideration in the 2004 session.

Budget

Nearly all state agency budgets were reduced this session, and the court system budget was no exception [S.L. 2003-284 (H 397)]. The budget directs the AOC to cut $3.4 million from nonrecurring funds in fiscal 2003–2004, to make $1 million in permanent cuts, and to forfeit $1.5 million in salary reserves on a permanent basis. (Salary reserves are funds that become available when an employee is replaced by another employee whose salary is less. If a person whose salary is $50,000 is replaced by someone whose salary will be $30,000, a salary reserve of $20,000 is created if the agency continues to receive the full $50,000 for that position.) In effect, the reduction in salary reserves reduces the court system personnel budget by $1.5 million. The budget bill also made smaller cuts in several programs and substantially reduced state funding for the arbitration program. The arbitration program assigns certain civil cases to a lawyer-arbitrator who decides the case using a summary of the evidence; parties retain the option of having the case heard by a judge or jury. Despite the reduction in funding, the program was not eliminated and no arbitration personnel were fired. In an attempt to generate the funds needed to support the program at its current level, the legislature established a $100 fee to be paid by the litigants in each case.

Only two new appropriations were made in the sphere of court administration. One establishes a reserve of $450,000 to fund salaries for any personnel deemed necessary by a study being conducted by the Office of State Personnel. The second establishes a new superior court district in Moore County. Currently Montgomery, Randolph, and Moore counties comprise Superior Court District 19B, and two superior court judgeships are assigned to that district. One judge lives in Moore County and the other lives in Randolph. The budget creates a new District 19D, comprised solely of Moore County. No new judgeships are created; the judge who currently resides in Randolph County is assigned to District 19B and the judge residing in Moore is assigned to the new District 19D. The additional funds necessary to establish the new district will include the salary differential involved in upgrading a judge to the position of senior resident judge and the cost of creating a judicial assistant position for that judge (around $50,000 per year). The district court and prosecutorial districts are not affected by this change.

The budget also made some salary- and fee-related changes that will affect the courts. Among them are amendments to the following statutes:

- G.S. 7A-102. Clerks of court are given the authority to appoint employees at a salary higher than the statutory minimum, pending AOC approval and availability of funds (salary reserve funds, which as noted above were reduced by $1.5 million). If clerks do not have this flexibility, their employees are paid pursuant to a salary schedule based solely on years of service in the clerk's office and the job classification within the office.
- G.S. 7A-65 and -498.7. Inconsistencies in prerequisites for longevity pay are eliminated. Previously wide variation existed in the types of service that qualified for the credit used to determine when certain employees got longevity raises. Rules that had been used only for judges now apply to district attorneys, public defenders, and the attorneys' and defenders' assistants.
- G.S. 7A-455.1. The option of making partial payments on the $50 fee assessed when an attorney is appointed for an indigent criminal defendant is eliminated.
- G.S. 7A-38.7. The $60 fee for mediation of criminal cases assigned to dispute settlement centers will now be imposed for each mediation in the case. Each center must attach the receipt for the fee to any dismissal form submitted to the district attorney and note the docket number for each case. Dispute settlement centers receive substantial sums in state

grants, and these changes are designed to make financial reporting more uniform and consistent among the various centers.

- G.S. 7A-308. Various miscellaneous fees are rounded up to at least the nearest whole dollar. These modifications were made to reduce the need for clerks to make change, and, since all the figures reflect a rounding up instead of down, to raise additional revenue.

Court Administration

Case Management Pilot Projects

Two significant provisions affecting court administration were enacted. The first, a special provision in the state budget, authorizes the AOC to designate up to four judicial districts to conduct a pilot in civil case assignment using assignments of cases to individual judges or sessions of court in the district or superior court. Currently, only the level of court to which a case is assigned determines how it will be administered (for example, the type of alternative dispute resolution designated to handle a case is largely a product of whether the case is filed in superior or district court). This pilot is intended to experiment with a method of case management that considers other factors that could be used to make such assignments. The factors to be studied include

- the nature of the case,
- the amount in controversy,
- the complexity of the issues involved,
- the likelihood of settlement,
- the availability and suitability of alternative dispute resolution programs, and
- any other appropriate factors relevant to just resolution of the cases and efficient use of court resources.

The pilot's authority expires June 30, 2005.

Master Jury Lists

As part of the Help America Vote Act, S.L 2003-226 (H 842) modifies the rules governing the preparation of each county's master jury list. Master jury lists are used to summon jurors for a two-year period (with some urban counties preparing a list every year). Currently the county jury commission must prepare the master jury list using at least the county driver license list and the voter registration list. These two lists must be merged to form a raw list from which the master jury list is created.

Jury systems have had a significant problem with the accuracy of the addresses used to summon jurors; often a very high percentage of these summonses cannot be served because the addresses are no longer valid. S.L. 2003-226 is intended to improve the quality of the voter registration list and to update the statutes on jury list preparation generally so that the master lists might be more accurate and easier to use. The new law requires the Division of Motor Vehicles (DMV) to include both licensed drivers and registered voters in the lists it provides to the jury commissioners of each county. The DMV must eliminate duplicate names from the lists and indicate which persons are only registered to vote and which are only licensed to drive (or are suspended from driving). The list provided to a jury commission is confidential and is not subject to the public records law. The jury commission must use the list provided by the DMV; it may include other sources of names, but additional lists must be merged in their entirety with the DMV list and duplicates removed (a complicated task unlikely to be executed very frequently). The names for the master list must then be selected randomly from the DMV list. Previously jury commissions in counties that prepared the list manually (without computers) used samples of names from various separate lists, but S.L. 2003-226 now prohibits that practice. The new law is effective January 1, 2004.

S.L. 2003-266 is discussed in more detail in Chapter 7, "Elections."

Judges' Power to Conduct Marriage Ceremonies

S.L. 2003-4 (H 382) reflects another trend in court administration. By law the only court officials authorized to perform marriages are magistrates. Over the last several years, some judges have been interested in performing marriage ceremonies for their friends or relatives. Rather than attempting to amend the general law, these judges typically have sought to amend the law for a narrow period of time to authorize these marriages. This year's law allowed district court judges to conduct marriages between March 27, 2003, and March 31, 2003. Some indication exists that some legislators do not approve of this use of the legislative power—one edition of this bill would have permanently authorized judges to perform marriages. However, it is generally believed that most judges do not wish to have this authorization.

Civil Procedure

Subpoenas

Rule 45 of the Rules of Civil Procedure governs subpoenas. S.L. 2003-276 (H 785) rewrites this rule to conform it to the comparable federal rule of civil procedure. Although new Rule 45 is not identical to the federal rule, it reflects the form of and includes much of the same language as the federal rule. The method of issuance and service of a subpoena remains unchanged, but the new rule requires a copy of any subpoena to be served on all parties under Rule 5 except in criminal cases. The new rule also

- requires a party to produce records and permits inspection and copying of those records.
- requires a party issuing a subpoena to take reasonable steps to avoid imposing undue burden or expense on the person subject to the subpoena.
- sets out procedures for filing a written objection to a subpoena or a motion to quash or modify a subpoena and specifies the grounds upon which motions may be granted.
- compels compliance with subpoenas.
- sets out procedures for responding to a subpoena for documents.
- specifies that failure to respond to a subpoena may be punished as contempt and a party's failure to respond may subject that party to sanctions.

Legal Holidays

Numerous civil statutes provide that if the last date on which a particular act may be executed falls on a legal holiday, the act may be executed by the end of the next day instead. For example, an answer to a complaint must be filed within thirty days of service of the complaint and an upset bid in a foreclosure sale must be filed within ten days of the filing of the report of sale. If the thirtieth or tenth day falls on a legal holiday, however, the act may be executed the following day. Because many of the numerous legal public holidays listed in G.S. 103-4—such as Robert E. Lee's birthday, Greek Independence Day, and the Anniversary of the signing of the Halifax Resolves—fall on days the courts of the state are open for business, court officials and litigants may not be able to properly calculate the amount of time legally permissible for executing a particular act. S.L. 2003-337 (H 394) corrects this problem by amending Rule 6 of the Rules of Civil Procedure and other statutes specifying that an act may be completed by the end of the next day after a legal holiday to provide that legal holiday means "legal holiday when the courthouse is closed for transactions."

Judgment Docketing

For over two hundred years, clerks of court have docketed judgments by writing information about the judgments in judgment docket books. In 1988 and 1989, clerks' offices began using a computerized indexing system developed by the AOC for use with civil cases. Sometime within the next year, the AOC also plans to implement a computerized system to be used for docketing

judgments and eliminate the judgment docket books. In preparation for the changeover, the AOC recommended S.L. 2003-59 (H 636) to remove obsolete provisions and otherwise make the docketing judgments statutes compatible with the proposed electronic system. The new law emphasizes the importance of the time of entry and the time of the indexing of the judgment by providing that:

- A judgment will constitute a lien against real property owned by the defendant for ten years from the date of the entry of the judgment rather than the date of the rendition of the judgment.
- Judgment liens will be effective against third parties from the time of the indexing of the judgment.
- Each judgment be given individual priority based on the time of its indexing. Previously, all judgments docketed during the same session of court were given equal priority.

Guardian ad Litem in Civil Cases

S.L. 2003-236 (H 1123) deals with whether a guardian ad litem can be appointed under Rule 17 of the Rules of Civil Procedure for a person alleged to be mentally incompetent without a determination of incompetency under G.S. Chapter 35A. In *Culton v. Culton*, 96 N.C. App. 620, 386 S.E.2d 592 (1989), *rev'd,* 327 N.C. 624, 398 S.E.2d 323 (1990), the court of appeals held that G.S. Chapter 35A was the exclusive procedure for determining whether a person is incompetent and that a guardian ad litem could not be appointed under Rule 17 until the person had been adjudicated incompetent under Chapter 35A. Although the case was reversed and dismissed by the supreme court on grounds that the appellant did not have standing to challenge the appointment of a guardian ad litem, it is still cited by many to challenge the appointment of a guardian ad litem under Rule 17 for a person alleged to be but not adjudicated incompetent. S.L. 2003-236 lays the issue to rest by amending G.S. 35A-1102 to provide that the statutes for determining incompetence do not interfere with the authority of a judge (and presumably a clerk) to appoint a guardian ad litem under Rule 17 for a party to litigation.

Bonds in Large Civil Judgments

In order to deal with multimillion-dollar tobacco litigation judgments, the 2000 General Assembly amended G.S. 1-289, which requires a bond to stay execution of money judgments while cases are on appeal, to set a maximum bond of $25 million for judgments with noncompensatory damages of $25 million or more. S.L. 2003-19 (S 784) modifies that provision to set the bond cap at $25 million regardless of the type of damages that have been awarded. To give foreign judgments sought to be collected in this state the same protections as judgments entered in North Carolina, the new law also amends G.S. 1C-1705 to require North Carolina courts to stay execution of foreign judgments registered in North Carolina upon the posting of the stay of execution bond if the judgment is stayed by the court in which it was entered, an appeal is pending, or the time for taking an appeal has not yet expired.

Pro Hac Vice Appearances by Out-of-State Attorneys

S.L. 2003-116 (S 539) amends G.S. 84-4.1 to require that an out-of-state attorney who files a motion to appear in a North Carolina case (*pro hac vice* motions) include with the motion a complete disciplinary history and a list of any revocations of previous *pro hac vice* admissions.

Evidence

S.L. 2003-101 (H 689) makes a substantial change in Evidence Rule 103 by providing that once the court makes a definitive ruling on the record admitting or excluding evidence, either

before or during a trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

S.L. 2003-342 (H 743) grants nurses a testimonial privilege similar to the physician-patient privilege. A nurse is not required to testify about any information acquired in rendering professional nursing services if the information is necessary to render those services. However, a judge may override the privilege and compel disclosure if such disclosure is necessary for the proper administration of justice.

S.L. 2003-62 (H 126) allows the admission in a juvenile case of hearsay and any other evidence the court finds relevant and reliable and necessary to determine the most appropriate disposition of the case.

Alternative Dispute Resolution

This session the General Assembly continued its trend of encouraging the use of methods alternative to court proceedings to resolve civil litigation.

- S.L. 2003-371 (H 1126) sets up a collaborative law settlement procedure for all family law issues except absolute divorce. This procedure allows a husband and wife and their attorneys to agree in writing to follow the collaborative law procedure in an attempt to resolve Chapter 50 actions (which include alimony, child custody, child support, and equitable distribution) rather than bringing a case to court. Entering into such an agreement tolls the statute of limitations and other statutory time limits for filing Chapter 50 actions or for proceeding with an action after it has already been filed. S.L. 2003-371 is discussed in detail in Chapter 3, "Children and Families."
- If a person claiming to be injured in an automobile accident requests the defendant's insurance company to provide the limits of coverage, S.L. 2003-307 (S 775) allows the insurance company to require the person claiming to be injured to try to settle the claim through mediation before filing a civil action.
- S.L. 2003-345 (S 716) repeals the Uniform Arbitration Act and replaces it with the Revised Uniform Arbitration Act.

Matters of Interest to Clerks of Court

Incompetency and Guardianship Issues

In the past year a number of newspaper articles have discussed the forced sterilizations authorized by the state's Eugenics Board, indicating that from about 1933 to 1974 the state sterilized approximately seven thousand women. In 1974 the General Assembly substantially rewrote the law to require a parent, a guardian, or certain public officials to petition the district court to authorize sterilization of a mentally retarded or mentally ill person. A district court judge could authorize sterilization upon a finding from the evidence presented that (1) because of a physical, mental, or nervous disease or deficiency that would not likely materially improve, the mentally ill or retarded person would probably be unable to care for a child, or (2) the mentally ill or retarded person would be likely, unless sterilized, to have a child which would probably have serious physical, mental, or nervous diseases or deficiencies. This statute specifically provided that the requirement for a court order did not apply to medical or surgical treatment for sound therapeutic purposes that also might involve the destruction of the reproductive function. The 1974 legislation drastically reduced the number of involuntary sterilizations, but advocates for the affected groups believed more action on the part of the General Assembly was needed. This year's legislation, S.L. 2003-13 (H 36), forbids forced sterilizations except when they occur as side effects of otherwise medically necessary surgery. It repeals the 1974 law and creates an entirely new procedure to be held by clerks of court. The new law requires the guardian of a mentally ill or retarded person to receive authorization from the clerk before consenting to the person's sterilization for any purpose. The clerk cannot authorize the guardian's consent unless the

guardian proves by a sworn statement from a North Carolina licensed physician that the proposed procedure is medically necessary and is not being performed solely for the purpose of sterilization, hygiene, or convenience. In addition a psychiatrist or psychologist licensed in this state must examine the ward to determine if he or she is able to comprehend the nature of the proposed procedure and its consequences and is able to give informed consent. If the ward is able to give consent, the clerk cannot authorize the procedure unless the ward gives sworn consent to it.

S.L. 2003-236 encourages the use of limited guardianships by requiring guardians ad litem to consider the possibility of limited guardianships and to make recommendations to the clerk about the rights a ward should retain under a limited guardianship. It also explicitly authorizes the clerk to use a limited guardianship if the nature and extent of the capacity of the ward justifies that use. S.L. 2003-236 requires a guardian ad litem to personally visit the respondent and specifies the duties of the guardian ad litem in representing the respondent. The guardian ad litem must present to the clerk the respondent's express wishes but may also make recommendations to the clerk regarding the respondent's best interests if these are different from the respondent's wishes.

Decedents' Estates

Three bills this session concerned the administration of decedents' estates. In 2001 new legislation provided that a pending equitable distribution action did not abate upon the death of one of the parties. S.L. 2003-168 (S 394) extends that provision to allow an equitable distribution action to be filed after the death of one of the parties if the parties were living separate and apart at the time of the death. The new law treats an equitable distribution action by the surviving spouse as a claim against the decedent's estate for purposes of the requirement to file the claim and for purposes of the order of payment. In addition, the law also allows a personal representative of the decedent to file an equitable distribution action against a surviving spouse within one year of the decedent's death.

Under current law only a cotenant of a safe-deposit box or a person holding letters of administration or letters testamentary may have access to a decedent's safe-deposit box without the presence of the clerk of court. S.L. 2003-255 (S 502) grants access to a deputy as well, as long as the lessee of the box has, in writing, specifically appointed the deputy as someone having the right of access. The new provision will allow deputies named by the lessee on the account card to enter the box not only while the lessee is living but also upon the lessee's death.

S.L. 2003-295 (S 881) addresses a problem that has occurred with payments to tobacco growers under the National Tobacco Grower Settlement Trust established by the tobacco companies in the settlement agreement in *North Carolina v. Philip Morris, Inc.* Some tobacco growers entitled to payments have died and their estates have been administered and closed before the payments were due. S.L. 2003-295 provides that in cases where persons who are entitled to payments under Phase II of the settlement have died, the personal representative may file a list of Phase II distributees with the clerk upon filing the final accounting if all of the debts and general monetary bequests of the estate have been paid. The list must contain the name and Social Security number of the decedent and the name and address of each devisee or heir entitled to receive Phase II benefits and the percentage of Phase II payments to be received by each. The clerk must determine whether the list is accurate and if so, approve it. Upon approval the Phase II benefits can be paid directly to the distributees without the estate having to be reopened solely for the purpose of distributing the payments. The new law also allows closed estates to be reopened for the purpose of filing a list of distributees.

Trust Administration

In 2001 the General Assembly significantly expanded the responsibility of clerks of superior court over trusts by providing that the clerks have original jurisdiction over all proceedings concerning the internal affairs of trusts except proceedings to modify or terminate trusts. The clerk's jurisdiction is exclusive with regard to appointing or removing a trustee, reviewing a trustee's fees, and settling accounts. S.L. 2003-261 (H 656) is a follow-up to the earlier statute, expanding some of the clerk's powers and clarifying the earlier law.

- It provides that clerks have exclusive, original jurisdiction over proceedings allowing a trustee to resign or renounce. However, a trustee may resign or renounce and have a successor named without the clerk's approval if the trustee does not have to file accountings with the clerk and if the trust names or provides a procedure for naming a successor trustee.
- It clarifies the procedures for the hearing before the clerk, specifying how the proceeding must be filed, who must be made respondents, and the type of hearing the clerk must hold.
- It provides that no trustee, even a successor trustee appointed by the clerk, may be required to file accountings unless the trust instrument requires accountings.

S.L. 2003-261 also changes the law regarding whether trustees must provide bonds and testamentary trustees must qualify and file accountings as do executors. For inter vivos trusts created before or testamentary trusts in wills executed before January 1, 2004, the trustee named in the instrument and any other trustee appointed by the clerk must post a bond unless the terms of the governing instrument provide otherwise. For trusts created on or after January 1, 2004, the trustee must provide a bond if the instrument requires one. If the instrument is silent, the clerk may require a bond if a beneficiary requests one and the clerk finds the request reasonable or if the clerk determines a bond is necessary to protect the interests of beneficiaries who are not able to protect themselves. If the governing instrument provides that the trustee serve without bond, no bond may be required of the trustee, including a trustee appointed by the clerk, regardless of when the trust was created. In a similar manner, the current law concerning testamentary trusts provides that the trustee must qualify and file accountings as if an executor unless the will provides differently. For testamentary trusts created under a will executed on or after January 1, 2004, the trustee must qualify under the laws applying to executors and file accountings with the clerk only if the will directs the trustee to do so. No trustee, including a trustee appointed by the clerk, may be required to account to the clerk unless the will directs it.

S.L. 2003-207 (S 315) concerns minors' contracts for certain artistic, creative, and athletic services. It establishes a procedure by which the superior court must approve of the contract and requires the creation of a trust for a portion of the minor's earnings. For all trusts created under the new law, the trustee must report annually to the clerk of court on the trust's activities.

Motor Vehicle Liens

G.S. 20-77 requires the operator of a business for storing, repairing, or parking vehicles in which a motor vehicle remains unclaimed for ten days or a landowner upon whose property a motor vehicle has been abandoned for more than thirty days to file an unclaimed vehicle report with the Division of Motor Vehicles (DMV) within five days after the expiration of those time periods. To ensure compliance with this requirement, S.L. 2003-336 (H 944) further provides that the business operators and landowners on whose property motor vehicles are abandoned cannot collect storage costs for the period of time between when they were required to make the report and when they actually did send the report to DMV by certified mail.

Matters of Interest to Magistrates

S.L. 2003-370 (S 847) modifies the residential rental late fee statute to include a specific provision dealing specifically with week-to-week tenancies and subsidized tenancies. It amends G.S. 42-46 to provide that if the rent is due in weekly installments, the maximum late fee to which the parties may agree is the greater of $4 or 5 percent of the weekly rent. S.L. 2003-370 makes no change in late fees for rent due in monthly installments, leaving the maximum fee at the greater of $15 or 5 percent of the monthly rental payment. If the rent is subsidized by a government agency, the late fee is calculated on the tenant's share of the contract rent only and not the rent subsidy.

Bills That Did Not Pass

Several bills on other topics affecting the courts were introduced but did not pass.

- House Bill 33 would have authorized private prosecution of certain criminal cases.
- House Bill 578 would have eliminated the mandatory retirement age of seventy-two for judges.
- House Bill 969 would have proposed a constitutional amendment to extend magistrates' terms to four years after an initial two year term.
- Senate Bill 572/House Bill 1125 would have provided for eight-year terms for district court judges.

Having passed the House in this year's session, H 969 is the only bill of this group eligible for legislative consideration in 2004.

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Criminal Law and Procedure

The 2003 legislative session resulted in no major changes in the criminal law or the criminal justice system. This chapter summarizes new legislation affecting criminal offenses, criminal procedure, law enforcement, and sentencing and corrections. For a discussion of several changes to the Rules of Evidence that apply to criminal cases and fee changes affecting the criminal justice system, see Chapter 5, "Courts and Civil Procedure." New legislation concerning motor vehicle law and impaired driving is addressed in Chapter 17, "Motor Vehicles." Legislation regarding child care offenses is discussed in Chapter 3, "Children and Families." And finally, for a discussion of S.L. 2003-313 (H 826) providing, in part, for the transmittal of reports of mental examinations of criminal defendants pursuant to G.S. 15A-1002, see Chapter 16, "Mental Health."

Criminal Offenses

Assault and Stalking

Assault in the presence of a minor. Effective December 1, 2003, and applicable to offenses committed on or after that date, S.L. 2003-409 (H 926) amends G.S. 14-33 to create an enhanced punishment for individuals who commit certain Class A1 misdemeanor assaults in the presence of minors. Specifically, anyone who, during an assault or affray and in the presence of a minor, uses a deadly weapon or inflicts serious injury on a person with whom the perpetrator has a personal relationship, must be placed on supervised probation in addition to any other punishment imposed. A second or subsequent such assault must be punished with active time of no less than thirty days, in addition to any other punishment imposed. For purposes of this provision, the term *personal relationship* is defined as in G.S. 50B-1(b) and includes current or former spouses, persons of the opposite sex who live or have lived together or who are or have been in a dating relationship, parent-child and grandparent-child relationships, persons who have a child in common, or persons who live or have lived in the same household. *In the presence of a minor* means that the minor was in a position to have observed the assault. A *minor* is any person who is under eighteen years

old, resides with or is under the care and supervision of the victim or perpetrator, and who has a personal relationship with the victim or perpetrator.

Assaults on and threats to court officers. G.S. 14-16.6 and 14-16.7 criminalize assaults on and threats to court officers. S.L. 2003-140 (H 1048) amends the definition of the term *court officer*, as used in these provisions, to include any attorney or other individual employed by or acting on behalf of the Department of Social Services in abuse, neglect, or dependency proceedings as well as any attorney or other individual appointed pursuant to G.S. 7B-601 or 7B-1108 or employed by the Guardian Ad Litem Services Division of the Administrative Office of the Courts. This amendment became effective December 1, 2003, and applies to offenses committed on or after that date.

Stalking. G.S. 14-277.3 provides that stalking is punished as a Class A1 misdemeanor, unless specific circumstances require a more severe punishment. S.L. 2003-181 (H 304) amends this statute to provide that if a person is convicted of a Class A1 misdemeanor stalking offense and is sentenced to a community punishment, he or she must be placed on supervised probation in addition to any other punishment imposed. S.L. 2003-181 became effective December 1, 2003, and applies to offenses committed on or after that date.

Sexual Assault

Sexual battery. S.L. 2003-252 (S 912) creates a new Class A1 misdemeanor of sexual battery. Under new G.S. 14-27.5A, a person is guilty of this offense if, for the purpose of sexual arousal, gratification, or abuse, he or she engages in sexual contact with a victim either by force and against the victim's will or when the victim is mentally disabled or incapacitated or physically helpless and the perpetrator knows or should reasonably know of this condition. *Sexual contact* is defined in this statute as touching the sexual organ, anus, breast, groin, or buttocks of any person or touching another with one's own sexual organ, anus, breast, groin, or buttocks. *Touching* is defined as physical contact with another, whether directly or through clothing. The new law became effective December 1, 2003, and applies to offenses committed on or after that date.

Sexual assaults on students. S.L. 2003-98 (S 555) amends provisions criminalizing sexual activity and the taking of indecent liberties with students by school personnel. The new law amends G.S. 14-27.7(b) to provide that a school safety officer who engages in vaginal intercourse or a sexual act with a student at the same school will be punished as a Class G felon, regardless of the officer's age. Before the changes, school safety officers would have been punished as Class G felons only if they were at least four years older than the student. If the age requirement was not met, punishment dropped down to a Class A1 misdemeanor. Similarly, S.L. 2003-98 amends G.S. 14-202.4 to provide that a school safety officer who takes indecent liberties with a student at the same school will be punished as a Class I felon, regardless of the officer's age. Before the changes, school safety officers would have been punished as Class I felons for this activity only if they were at least four years older than the student. If the age requirement was not met, punishment dropped down to a Class A1 misdemeanor. S.L. 2003-98 also amends the definition of *same school* to mean a school at which the student is enrolled and the perpetrator is employed, assigned, or volunteers. *School safety officer* is defined as a school resource officer or any other person who is regularly present in a school for the purpose of promoting and maintaining safety and order. S.L. 2003-98 became effective December 1, 2003, and applies to offenses committed on or after that date.

For a discussion of S.L. 2003-408 (S 993), providing for automatic revocation of certificates for teachers and school administrators who are convicted of sex offenses, taking indecent liberties with children, and other crimes, see Chapter 8, "Elementary and Secondary Education."

Peeping

Prior to passage of S.L. 2003-303 (H 408), the peeping statute, G.S. 14-202, made it a Class 1 misdemeanor to peep secretly into a room occupied by a female. S.L. 2003-303 amends this provision, making it gender neutral and prohibiting secret peeping into a room occupied by any

person, male or female. S.L. 2003-303 also amends G.S. 14-202 to create the following new felony and misdemeanor peeping offenses.

- Any person who while secretly peeping possesses a device capable of creating a photographic image shall be guilty of a Class A1 misdemeanor.
- Any person who while secretly peeping uses a device to create a photographic image of another for the purpose of arousing or gratifying any person's sexual desire shall be guilty of a Class I felony.
- Any person who without consent secretly uses a device to create a photographic image of another underneath or through his or her clothing for the purpose of viewing that person's body or undergarments shall be guilty of a Class I felony.
- Any person who, for the purpose of arousing or gratifying any person's sexual desire, secretly uses or installs in a room any device that can be used to create a photographic image with the intent to capture the image of another without his or her consent shall be guilty of a Class I felony.
- Any person who knowingly possesses a photographic image that he or she knows or has reason to believe was obtained in violation of G.S. 14-202 shall be guilty of a Class I felony.
- Any person who disseminates or allows to be disseminated images that he or she knows or should have known were obtained as a result of a violation of G.S. 14-202 shall be guilty of a Class H felony, if the dissemination is without the consent of the person depicted.

The term *photographic image* is defined to mean any photograph or photographic reproduction, still or moving, or any videotape, motion picture, or live television transmission, or any digital image of any individual. The term *room* includes, but is not limited to, bedrooms, restrooms, bathrooms, showers, and dressing rooms. Exceptions are delineated for law enforcement officers discharging or attempting to discharge their duties, Department of Correction and local confinement facility personnel, and certain individuals licensed pursuant to G.S. Chapter 74C, Private Protective Services, or G.S. Chapter 74D, Alarm Systems. The new law provides for enhanced sentences for second or subsequent offenses, contains provisions regarding obtaining psychological evaluations of defendants placed on probation for peeping offenses, and provides that certain peeping convictions may require the sentencing judge to order the defendant to register as a sex offender. Finally, the new law creates a civil cause of action for victims. S.L. 2003-303 became effective December 1, 2003, and applies to offenses committed on or after that date.

Arson and Other Burnings

Article 15 of G.S. Chapter 14 pertains to arson and other burnings. S.L. 2003-392 (S 661) adds new G.S. 14-69.3 to that article, making it a Class E felony to commit any felony included in Article 15 that results in serious bodily injury to a firefighter or emergency medical technician. The term *emergency medical technician* includes emergency medical technicians, technician-intermediates, and technician-paramedics.

S.L. 2003-392 also amends G.S. 14-49, creating a new bombing offense involving government buildings. Under the provision, any person who willfully and maliciously damages, aids, counsels, or procures the damaging by the use of any explosive or incendiary device or material of any building owned or occupied by the state or any of its agencies, institutions, or subdivisions or by any county, incorporated city or town, or other governmental entity is guilty of a Class E felony.

Both changes became effective December 1, 2003, and apply to offenses that occur on or after that date.

Controlled Substances

S.L. 2003-249 (S 694) creates new G.S. 90-89.1, providing that a controlled substance analogue shall, to the extent intended for human consumption, be treated as a Schedule I (G.S. 90-89) controlled substance. A *controlled substance analogue* is defined, in part, as a substance that has a chemical structure or effect similar to or greater than a Schedule I or II (G.S. 90-90)

controlled substance. Certain substances are specifically excluded from the definition, including, among others, controlled substances and substances for which there is an approved new drug application or for which certain exemptions for investigational use are in effect. The new law became effective December 1, 2003, and applies to offenses committed on or after that date.

Weapons

Firearms in domestic violence cases. S.L. 2003-410 (S 919) provides for the surrender of firearms in domestic violence cases, creates several new firearms felonies that apply in such cases, and amends the Class H firearms felony proscription in G.S. 14-269.8.

S.L. 2003-410 creates new G.S. 50B-3.1, providing that when issuing an emergency or ex parte order under G.S. 50B, the court must, if certain factors are found, order the defendant to surrender all firearms, machine guns, ammunition, and permits to purchase firearms or carry concealed firearms. When surrender is ordered, the court must include in the protective order a term prohibiting the defendant from owning, possessing, purchasing, or receiving or attempting to own, possess, purchase, or receive a firearm. The new statute also creates several new felony offenses related to the surrender procedures. Under G.S. 50B-3.1(i) it is a Class H felony for any person subject to a protective order prohibiting the possession or purchase of firearms to (1) fail to surrender all items as ordered; (2) fail to disclose all information pertaining to firearms, ammunition, and permits as requested by the court; or (3) provide false information to the court regarding such items. S.L. 2003-410 also amends G.S. 14-269.8 to provide that, in accordance with G.S. 50B-3.1, it is a Class H felony to own, possess, purchase, or receive or attempt to own, possess, purchase, or receive a firearm, machine gun, ammunition, or permits to purchase or carry concealed firearms when a 50B protective order prohibiting such activity is in place. Finally, G.S. 50B-3.1(k) creates an official use exemption for violations of G.S. 50B-3.1. S.L. 2003-410 became effective December 1, 2003, and applies to offenses committed on or after that date.

Concealed weapons. S.L. 2003-199 (S 33) creates new G.S. 14-415.24, making out-of-state permits to carry concealed weapons valid in North Carolina if the permit is issued by a state that honors North Carolina's permits. S.L. 2003-199 also amends G.S. 14-269(a1) to exempt from the offense of carrying a concealed weapon a handgun for which the person has a permit now considered valid under G.S. 114-415.24. S.L. 2003-199 was signed by the governor on June 14, 2003. These provisions became effective sixty days later.

Escape

G.S. 14-239 makes it a Class 1 misdemeanor for a sheriff, deputy sheriff, or jailer to willfully allow the escape of an individual in his or her custody who has been charged with a crime or sentenced after conviction. S.L. 2003-297 (H 1037) expands the coverage of this provision to include (1) other custodial personnel in the list of individuals subject to the offense and (2) allowing the escape of individuals who have been committed to the Department of Juvenile Justice and Delinquency Prevention. S.L. 2003-297 became effective December 1, 2003, and applies to offenses committed on or after that date. For a discussion of those portions of S.L. 2003-297 pertaining to photographing juveniles in juvenile detention facilities and the release of photographs to the public if the juvenile escapes, see Chapter 3, "Children and Families."

Rebirthing

S.L. 2003-205 (S 251) was a response, in part, to the death in 2000 of Candace Newmaker, a North Carolina child, from a form of attachment therapy called rebirthing. The American Psychological Association does not recognize rebirthing as a proper treatment. S.L. 2003-205 creates new G.S. 14-401.21, making it unlawful to practice rebirthing or related techniques. The new provision makes it unlawful to practice any technique to reenact the birthing process in a manner that includes restraint and creates a situation in which a patient may suffer physical injury or death. A first offense is punished as a Class A1 misdemeanor. A second or subsequent offense

is punished as a Class I felony. The new provision became effective December 1, 2003, and applies to offenses committed on and after that date.

Hazing

S.L. 2003-299 (H 1171) amends G.S. 14-35, the provision prohibiting and defining hazing. The amendments redefine *hazing* to mean subjecting another student to physical injury as part of an initiation or prerequisite to membership into any organized school group. They also specify that the prohibition on hazing contained in G.S. 14-35 applies to students attending any university, college, or school in the state. Finally, S.L. 2003-299 repeals G.S. 14-36, which had required expulsion of a student convicted of hazing and made failure to expel the student a Class 1 misdemeanor. The new law became effective December 1, 2003, and applies to offenses committed on or after that date.

Financial Fraud

Effective March 1, 2004, S.L. 2003-206 (H 357) creates new G.S. 14-113.24, making it an infraction for individuals who accept credit, charge, or debit cards for the transaction of business to print more than five digits of the card's account number or the card's expiration date on a receipt. The new infraction is subject to a fine of up to $500 per violation, not to exceed $500 in any month or $2,000 in any year. Anyone who receives a citation for violating this section is not subject to penalty if he or she establishes compliance within thirty days. The new infraction applies to machines first used on or after March 1, 2004, but all machines must be in compliance by July 1, 2005. The infraction does not apply to persons who record transactions by hand or by an imprint or a copy of a card.

Also effective March 1, 2004, S.L. 2003-206 creates new G.S. 14-113.25, making it an infraction to sell or offer to sell a device that cannot be programmed or operated to produce a receipt in compliance with G.S. 14-113.24. This infraction is subject to a penalty of up to $500 per violation.

Unauthorized Sound and Video Recordings

G.S. Chapter 14, Article 58, deals with the pirating of audio and video recordings and live performances. Effective December 1, 2003, and applicable to offenses committed on or after that date, S.L. 2003-159 (H 42) makes various amendments to this article, including

- creating a webcasting and Internet service provider exception to G.S. 14-433 (recording of live performances or recorded sounds and distribution of such recordings unlawful in certain circumstances);
- rewriting G.S. 14-435 (recorded devices to show true name and address of manufacturer); and
- modifying G.S. 14-437(a), the criminal penalty provision. Under the amended statute, the general rule is that violations of Article 58 constitute Class 1 misdemeanors. Punishment is elevated to a Class I felony with a maximum fine of $150,000 if the offense (1) involves at least one hundred unauthorized articles during any 180-day period or (2) is a third or subsequent conviction for an offense that involves at least twenty-six unauthorized articles during any 180-day period.

Pyrotechnics

Article 54 of G.S. Chapter 14 pertains to pyrotechnics. S.L. 2003-298 (S 521) makes several changes to this article, primarily affecting the indoor use of pyrotechnics. Additionally, S.L. 2003-298 amends G.S. 14-415, the provision pertaining to criminal penalties for violations of this article. Before the amendments, all violations of Article 54 were punished as Class 2 misdemeanors. Now, violations involving indoor exhibitions are punished as Class 1 misdemeanors. The amendments

to G.S. 14-415 become effective December 1, 2003, and apply to offenses committed on or after that date.

Animals and Hunting

Transporting or breeding coyotes. S.L. 2003-96 (S 245) makes it a Class 1 misdemeanor to breed coyotes or to transport or attempt to transport live coyotes into the state. Conviction will result in a two-year suspension of a controlled hunting preserve operator license. This provision became effective October 1, 2003, and applies to acts committed on or after that date.

Commercial taking of turtles or terrapins. Subject to certain exemptions, S.L. 2003-100 (S 825) prohibits the commercial taking of certain turtles or terrapins until the Wildlife Resources Commission adopts rules to regulate their taking. Violators are guilty of a misdemeanor and will be punished as provided in G.S. 113-135. The new prohibition became effective July 1, 2003, and applies to offenses committed on or after that date.

Importing or possessing black-tailed or mule deer. S.L. 2003-344 (H 948) amends G.S. 113-294, creating a new Class 1 misdemeanor that applies to any person who willfully imports or possesses black-tailed or mule deer. The new misdemeanor provision became effective October 1, 2003, and applies to acts committed on or after that date.

Regulatory Offenses

Amusement devices. S.L. 2003-170 (H 609) makes several changes to the Amusement Device Safety Act of North Carolina, found in Article 14B of G.S. Chapter 95. The new law provides that no person shall operate amusement device equipment while under the influence of alcohol or any other impairing substance or knowingly permit the operation of any device by a person under the influence of an impairing substance. S.L. 2003-170 also creates a new subsection in G.S. 95-111.13, providing that a willful violation of Article 14B resulting in death is a Class 2 misdemeanor, and punishment may include a fine of up to $10,000. Second or subsequent convictions are punished as Class 1 misdemeanors, and punishment may include a fine of up to $20,000. The amendment to G.S. 95-111.13 became effective December 1, 2003, and applies to offenses committed on or after that date. The other changes became effective October 1, 2003.

State unemployment tax dumping. S.L. 2003-67 (S 326) is designed to deter businesses from engaging in state unemployment tax (SUTA) dumping, the practice of setting up dummy corporations to avoid paying state unemployment tax. Effective December 1, 2003, the new law makes it a felony to engage in SUTA dumping.

Securities fraud. S.L. 2003-413 (S 925) amends various laws pertaining to securities fraud. It amends the criminal penalties provisions and creates a new felony obstruction of justice offense for obstruction of an investigation. These changes apply to offenses committed on or after December 1, 2003.

Sexually explicit conduct on premises licensed by the Alcoholic Beverage Control (ABC) Commission. S.L. 2003-382 (S 996) was passed in response to a preliminary injunction issued by the United States District Court for the Middle District of North Carolina enjoining the state from enforcing regulations prohibiting sexually explicit conduct on premises licensed by the ABC Commission. In its ruling the federal court indicated that the regulations are likely to be held unconstitutional. S.L. 2003-382 represents an attempt to craft new regulations that will withstand constitutional scrutiny. The law deletes problematic language in G.S. 18B-1005(a) and creates new G.S. 18B-1005.1, making it a Class 1 misdemeanor for a permittee, agent, or employee to knowingly allow or engage in the following on licensed premises:

- conduct or entertainment by any person whose genitals are exposed or who is wearing transparent clothing that reveals the genitals;
- conduct or entertainment that includes or simulates sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any act that includes or simulates the penetration, however slight, by any object into a person's genital or anal opening; or
- conduct or entertainment that includes fondling of the breasts, buttocks, anus, vulva, or genitals.

The new provision also makes it unlawful for a permittee to fail to superintend the permitted business. Excepted from the new G.S. 18B-1005.1 are persons operating theaters, concert halls, art centers, museums, or similar establishments primarily devoted to the arts or theatrical performances, when the performances are expressing matters of serious literary, artistic, scientific, or political value. The new provision became effective August 1, 2003.

Uniform Athlete Agents Act. S.L. 2003-375 (S 563) adopts the Uniform Athlete Agents Act (UAAA) as new Article 8A of G.S. Chapter 78C. Among other things, the UAAA prohibits an athlete agent, with the intent to induce a student-athlete to enter into an agency contract, from (1) providing any materially false or misleading information or making a materially false promise or representation, (2) furnishing anything of value to a student-athlete before the athlete enters into the agency contract, or (3) furnishing anything of value to any individual other than the student-athlete or another registered athlete agent. Violations of these prohibitions constitute Class I felonies. This provision of the UAAA is effective December 1, 2003, and applies to acts committed on or after that date.

Unlawful practice of pharmacy. The budget bill, S.L. 2003-284 (H 397), effective July 1, 2003, contained several substantive provisions. Section 10.8D, which creates new G.S. 90-85.21B, makes it a Class 1 misdemeanor for an individual or business to falsely hold him-, her-, or itself out as licensed or registered to practice pharmacy.

Economic Investment Committee conflicts of interest. G.S. 143B-437.54 established the Economic Investment Committee. S.L. 2003-416 (S 97) amends the provision's prohibition on conflicts of interest to include current as well as former committee members. This change became effective August 14, 2003.

Kerosene licensing. Effective January 1, 2004, S.L. 2003-349 (S 236) creates requirements regarding bonds or letters of credit as conditions for obtaining and keeping certain kerosene licenses. Failure to comply with the requirements is a Class 1 misdemeanor.

Criminal Procedure

Order for Arrest after Failure to Appear for Citation

S.L. 2003-15 (S 440) amends the citation statute, G.S. 15A-302, and the order for arrest statute, G.S. 15A-305, to provide that an order for arrest for failure to appear may be issued when an individual fails to appear in court as directed by a citation charging that individual with a misdemeanor. The new provision became effective April 19, 2003.

Bail Bonds

S.L. 2003-148 (S 962) creates new G.S. 58-71-141, providing that before receiving an appointment, a surety bondsman must submit an affidavit stating that he or she (1) does not owe any premium or unsatisfied judgment to any insurer and (2) agrees to discharge all outstanding forfeitures and judgments on bonds previously written. If the bondsman does not satisfy or discharge all forfeitures or judgments, the former insurer affected must notify, among others, the appointing insurer. Upon receipt of such notification, the appointing insurer must immediately cancel the surety bondsman's appointment. S.L. 2003-148 also creates procedures for reappointment and appeal and authorizes the Commissioner of Insurance to adopt rules implementing the new requirements. The new provision became effective October 1, 2003, and applies to all appointments on or after that date.

DNA Samples

S.L. 2003-376 (H 79) substantially revises G.S. 15A-266.4, the statute requiring that DNA samples be taken from persons convicted of certain crimes, and G.S. 15A-266.6, the statute establishing procedures for obtaining those samples. As revised, G.S. 15A-266.4 provides that unless a DNA sample has previously been obtained and has not been expunged, a sample must be

taken from any person who is (1) convicted of any felony, assault on a handicapped person, or stalking or (2) found not guilty of any of these crimes by reason of insanity and committed to a mental health facility. Samples will be drawn from individuals committed to jail, prison, or a mental health facility upon intake at those locations. Samples will be drawn from individuals who were confined before the statute's effective date before parole or release from a mental health facility. Under new procedures for obtaining samples from defendants who are not sentenced to a term of confinement, the sentencing court must order the defendant to report immediately to a location designated by the sheriff. If the sample cannot be taken immediately, the sheriff must notify the court when and where it will be taken, and the court must include this information in its order. If the defendant fails to appear to provide the sample as ordered, the sheriff must notify the court and the court may issue an order to show cause pursuant to G.S. 5A-15 and may issue an order for arrest pursuant to G.S. 5A-16. The State Bureau of Investigation must provide the sheriff the materials and supplies necessary to draw samples from defendants not sentenced to terms of confinement and these materials and supplies must be used when taking samples from those defendants. The new law also revises G.S. 15A-266.12, the statute pertaining to the confidentiality of DNA samples. S.L. 2003-376 became effective December 1, 2003.

Criminal History Records

Effective June 19, 2003, S.L. 2003-214 (H 1024) adopts the National Crime Prevention and Privacy Compact. The compact creates a legal framework for interstate and federal-state exchange of criminal history records for noncriminal justice purposes, such as background checks for governmental licensing and employment.

Law Enforcement

Veterans Administration Police Officers

S.L. 2003-36 (H 24) amends G.S. 15A-406(a) to add Veterans Administration police officers to the list of federal law enforcement officers authorized to enforce criminal laws in North Carolina, as provided in G.S. 15A-406. This law became effective May 14, 2003.

AMBER Alert System

S.L. 2003-191 (H 478) modifies the provisions in G.S. Chapter 143B pertaining to the North Carolina Child Alert Notification System. The new legislation renames the system the AMBER Alert System and modifies the criteria established in G.S. 143B-499.7 specifying the circumstances when the system must make efforts to disseminate information on missing children as quickly as possible. Under the amended criteria, the system must do so when

- the child is seventeen years of age or younger,
- the abduction is not known or suspected to be by the child's parent (unless the child is suspected to be in danger of injury or death),
- the child is believed to have been abducted or to be in danger of injury or death,
- the child is not a runaway or voluntarily missing, and
- the abduction has been reported to and investigated by a law enforcement agency.

These changes became effective June 12, 2003.

Sentencing and Corrections

Enhanced Sentences

S.L. 2003-378 (S 693) amends several statutes prescribing enhanced sentences to conform them to decisions by the United States and North Carolina Supreme Courts in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), *State v. Lucas*, 353 N.C. 568, 548 S.E.2d 712 (2001), and other cases. Specifically, S.L. 2003-378 amends the firearm enhancement statute, G.S. 15A-1340.16A, to provide that the facts necessary to establish the enhancement must be alleged in the indictment and proved beyond a reasonable doubt at trial, unless the defendant pleads guilty or no contest. Parallel changes are made to G.S. 15A-1340.16B (providing for enhanced punishment for second or subsequent convictions of Class B1 felonies when the victim is thirteen years of age or younger and there are no mitigating factors) and G.S. 15A-1340.16C (providing for enhanced punishment when the defendant wears or possesses a bulletproof vest). S.L. 2003-378 became effective August 1, 2003, and applies to offenses committed on or after that date.

Use of Force and Arrest by Corrections Officers

Effective July 27, 2003, S.L. 2003-351 (H 497) removes the sunset on the use of force and power of arrest granted to private correctional officers in S.L. 2001-378.

Substance Abuse Treatment

G.S. 15A-1343 sets out the law regarding conditions of probation necessary to help and ensure that defendants will lead law-abiding lives. S.L. 2003-141 (H 352) adds a new subsection to that statute, requiring defendants ordered to residential treatment in the Drug Alcohol Recovery Treatment Program (DART) to undergo a screening to determine chemical dependency. If the screening indicates chemical dependency, the court must order an assessment to determine the appropriate treatment level. The assessment may be conducted before or after the court imposes the condition, but program participation must be based on the results of the assessment. S.L. 2003-141 also repeals G.S. 15A-1351(h), which had allowed sentencing judges to recommend, in orders of commitment, that defendants be assigned to a Substance Abuse Treatment Unit. Finally, the new law amends G.S. 143B-262.1(h), deleting a court recommendation as one of the factors determining priority admission to the Substance Abuse Program. The new law became effective December 1, 2003, and applies to offenses committed on or after that date.

Probation

S.L. 2003-151 (S 93) amends G.S. 15A-1351(a), removing the six-month time limitation on the total of all periods of confinement imposed as an incident of special probation. The only limitation remaining is that such periods may not exceed one-fourth of the maximum sentence of imprisonment imposed for the offense. A parallel change is made to G.S. 15A-1344(e) (responses to probation violations). The new law became effective December 1, 2003, and applies to offenses committed on or after that date.

Reimbursement for Prisoners Awaiting Transfer to the State Prison System

The state budget, S.L. 2003-284, established several fees affecting the criminal justice system. Section 16.2 of the budget sets the fee that the Department of Correction pays counties to house prisoners awaiting transfer to the state prison system at $40 per day.

Studies

The state budget, S.L. 2003-284, requires several studies pertaining to the criminal justice sytem, including one on public defender offices (Section 13.6) and another on probation and parole caseloads (Section 16.18).

Jessica Smith

7

Elections

The biggest elections law story of the 2003 General Assembly involved the need to change a number of North Carolina elections procedures to comply with the new federal Help America Vote Act of 2002 (HAVA). The HAVA requirements set in motion most of the new legislation.

Help America Vote Act

North Carolina Requirements under the Federal Legislation

In the wake of the difficulties attending the presidential election in Florida in 2000, Congress passed HAVA[1] with the goal of improving the administration of elections throughout the United States. In its substantive provisions, HAVA imposes on the states a number of new requirements with respect to federal elections:

- It establishes standards for voting machines. Each polling place must now have at least one direct-record electronic voting system or other voting system equipped for voters with disabilities.
- It establishes new standards for provisional voting in an attempt to limit the number of voters turned away from the polls because of questionable registration statuses.
- It establishes standards for the information that must be posted at the polls.
- It creates new requirements concerning voting after the polls normally would have closed in situations where court orders keep the polls open.
- It requires each state to maintain a single, uniform, centralized, computerized statewide voter registration list that includes a unique identifier for each voter.
- It requires that a voter must provide a driver's license number or the last four digits of his or her Social Security number when registering to vote (if the voter has neither, he or she must be provided with a special number for that purpose).
- It adds requirements for the identification documents a voter must provide when voting if he or she initially registered by mail.

1. Pub. L. No. 107-252, 42 U.S. C. §§ 15301–15545.

Although the requirements literally apply only to federal elections, as a practical matter they will apply to all elections, since the state cannot realistically conduct federal elections by one set of rules and state and local elections by another.

In its financial assistance provisions, HAVA makes money available to the states for election administration improvements on a very favorable matching basis. North Carolina (and the other states) need only provide 5 percent of the amount that the federal government provides. As a "maintenance of effort" condition for receipt of the funds, North Carolina (as well as the other states) also must continue to appropriate money each year for HAVA-related activities at a level at least as high as that appropriated in 2002.

State Match for Federal Funds

HAVA requires that each state receiving the matching federal funds establish a special account for that money. S.L. 2003-12 (H 549) does so, amending G.S. 147-69.2(a) (which lists funds maintained by the state treasurer) to create the Election Fund.

The Current Operations and Capital Improvements Appropriations Act of 2003 (the budget act), S.L. 2003-284 (H 397), appropriates to the State Board of Elections $6,837,797 for fiscal 2003–2004 and $4,915,939 for fiscal 2004–2005. In Section 25.1 the budget act transfers $1,922,215 to the Election Fund to constitute the 5-percent match for federal funds over the biennium. Of that amount, approximately $1.2 million is to be used in the first year of the biennium to match an expected $22.6 million in federal funding. The remaining $0.7 million is to be reserved to match an expected $14 million in the second year of the biennium.

Statewide Voter List

Traditionally in North Carolina each county board of elections has maintained the official voter registration list for that county, and together the county voter registration lists comprised the official lists of registered voters for the entire state. In the mid-1990s the General Assembly directed the State Board of Elections (SBE) to create a statewide system of computerized voter registration. Though the system has been developed and implemented in the intervening years, it has continued to serve primarily as a supplement to the county-based official lists. G.S. 163-82.11 has provided that "[e]ach county board of elections shall maintain its own computer file of registered voters," and G.S. 163-82.10(a) has provided that "[t]he county board of elections shall maintain custody of the official registration records of all voters in the county."

S.L. 2003-226 (H842) (the state HAVA compliance act) modifies several state statutes to accommodate the new HAVA legislation. In light of the HAVA requirement that each state maintain a single, uniform, centralized, computerized statewide voter registration list, the act amends G.S. 163-82.10 to provide, beginning January 1, 2004, that the statewide computerized list is to be "the official voter registration list for the conduct of all elections in the State." The same provision is made in an amendment to G.S. 163-82.11. The requirement that each county maintain its own computerized file of registered voters is deleted. A new provision specifies that the completed and signed voter registration forms maintained by the counties are to be "backup to the official registration record of the voter" (that is, the statewide computerized file).

Electronic Applications for Voter Registration

G.S. 163-82.3 specifies the forms that a voter must use to apply to register to vote, whether application is made by mail, at a state agency, or at the office of the county board of elections. G.S. 163-82.6 provides that the county board of elections office may receive the application forms by mail, by fax, or in person and requires that the forms "shall be valid only if signed by the applicant." The state HAVA compliance act amends G.S. 163-82.6 and G.S. 163-82.10, beginning January 1, 2004, to permit the completed forms to be "either a paper hard copy or an electronic document" and to provide that "[a]n electronically captured image of the signature of the voter on

an electronic voter registration form offered by a State agency shall be considered a valid signature for all purposes."

The new statutory provisions make the electronically captured images of voters' signatures and the full or partial Social Security and driver's license numbers that may be generated in the voter registration process confidential and not subject to the public records law (a corresponding amendment is made to the Public Records Law, G.S. Chapter 132). Disclosure of driver's license numbers in violation of this provision does not give rise to civil cause of action unless the disclosure results from gross negligence, wanton conduct, or intentional wrongdoing.

Verification of Voter Identification

HAVA requires that the single statewide computerized voter registration list contain a unique identifier for each voter and that voters provide a driver's license number or the last four digits of their Social Security numbers when registering to vote (if the voter has neither, then he or she will be assigned a number for that purpose). To comply with HAVA, S.L. 2003-226 amends G.S. 163-82.4, effective January 1, 2004, adding the individual's driver's license number to the elements of information required on the voter registration application. It specifies that if the applicant does not have a driver's license, he or she is to provide the last four digits of his or her Social Security number. If the applicant has neither a driver's license nor a Social Security number—a situation presumably applicable to a very small set of individuals—the SBE will assign the applicant a "unique identifier number." In addition, S.L. 2003-226 also amends G.S. 163-10A, requiring the SBE to create, for use in the new statewide system, a unique registration number for every voter. This registration number will not necessarily be numerically related to an individual's driver's license or Social Security number or the unique identifier number described above.

To verify information provided on the voter registration application, the HAVA compliance act adds new G.S. 163-82.19(b), directing the SBE and the Department of Transportation to develop and operate a system for matching information in the voter registration system with driver's license information maintained by the Division of Motor Vehicles (DMV).

Finally, the state HAVA compliance act specifies that two additional questions be added to the voter registration application form, beginning January 1, 2004: (1) Is the applicant a United States citizen? (2) Will the applicant be eighteen years old by the time of the election?

Jury List Preparation

In each county, a jury commission prepares a list of prospective jurors for that county from two sets of names. The first set is a list of the county's registered voters and the second is a list of the county's licensed drivers. The state HAVA compliance act amends G.S. 20-43.4, beginning January 1, 2004, to require that the Commissioner of Motor Vehicles compare new lists of licensed drivers to the county voter registration list maintained by the SBE, eliminating duplicates in the two lists. The comparison will also be used to identify the licensed (or formerly licensed) drivers who are also registered voters, the licensed (or formerly licensed) drivers who are not registered voters, and the registered voters who are not licensed (or formerly licensed) drivers. This information will be included in the final list the DMV sends to each county's jury commission.

A separate bill, S.L 2003-278 (H 1120), amends G.S. 163-82.10(d) to provide that addresses required to be kept confidential in accordance with the Address Confidentiality Program of G.S. Chapter 15C are not to be made available to jury commissions.

Posted Information at Polling Places

The state HAVA compliance act creates G.S. 163-166.7 to meet HAVA's standards for information that must now be posted at the polls. The new statute requires that in every federal or state election, each county board of elections must post at each polling place a sample ballot including:

- the date of the election and the hours for voting,
- instructions on how to vote using the voting machines in that polling place,
- instructions on how to cast provisional ballots,
- instructions to mail-in registrants and first-time voters on how to comply with requirements regarding voter identification (see "Proof of ID of Mail-In Registrants" below), and
- general information on voting rights, such as how to contact appropriate officials to complain of violations.

This new provision is effective for all elections occurring after January 1, 2004.

Voting Systems, Overvotes, and Lever Machines

HAVA creates new standards for voting systems (commonly referred to as "voting machines"). The state HAVA compliance act responds by amending G.S. 163-182.1, directing the SBE to develop, beginning January 1, 2004, new procedures for certain types of voting systems. Optical scan and direct record systems are to make special provision for overvotes. If a voter casts a ballot on which he or she has marked more names than the number of candidates to be elected (or more proposals than the number to be approved), the voting machine is to notify the voter of the overvote, inform the voter that if the overvote is not corrected no vote will be counted in that race, and provide the voter with an opportunity to correct the overvote.

In 2001 the General Assembly provided that no new punch-card voting machines could be put into use in North Carolina and that those counties then using punch-card systems must eliminate them by 2006. The state HAVA compliance act adds a similar provision to G.S. 163-165.4A with respect to lever machine voting systems.

Finally, S.L. 2003-226 amends G.S. 163-165.7 to make clear that in the process of approving or disapproving voting systems to be used in the state, the SBE may employ the guidelines and information supplied and the laboratories approved by the Election Assistance Commission, which was created by HAVA.

Expansion of Provisional Voting and Notice to Provisional Voter

North Carolina has for a number of years permitted individuals to vote provisionally in certain circumstances in which they would otherwise be turned away from the polls without being allowed to vote at all. Such voters may cast a provisional ballot, one that is not counted until eligibility to vote has been established (establishment of eligibility typically being accomplished in the days after the election but before the canvass). Under administrative procedures adopted by the SBE (codified in the North Carolina Administrative Code but not in the General Statutes), voters have been able to cast provisional ballots in the following instances:

1. the person is already registered to vote in the county but moved from one precinct to another within the county more than thirty days earlier and reports to the new precinct to vote;
2. the person claims to have applied for voter registration (perhaps through the Division of Motor Vehicles or another state agency), but the person's name cannot be found in the voter registration records;
3. the person was previously removed from the voter registration list but has in fact continuously remained eligible to vote; or
4. the person disputes the voting district to which he or she has been assigned.

HAVA establishes new requirements for provisional voting. In response the state HAVA compliance act has expanded the range of circumstances in which a voter may vote provisionally, beginning January 1, 2004. It adds new G.S. 163-166.11 providing that *any* person is eligible to cast a provisional ballot—even if he or she does not appear on the official list of registered voters—as long as the person executes a written affirmation asserting that he or she is a registered voter and eligible to vote. The new statute also provides that the provisional voter is entitled to know whether his or her vote is eventually counted, and, if not, the reason. A system to furnish

this information to provisional voters must be established by either the SBE or county boards of elections.

Voting after 7:30 When Polls Are Kept Open by Court Order

Under North Carolina law, the polls close at 7:30 PM. Occasionally, because of irregularities or other circumstances, a court will order the polls to remain open for some time after 7:30. HAVA creates new standards for voting after the polls would normally have closed in situations where a court orders the polls to remain open. In response, the state HAVA compliance act amends G.S. 163-166.01 to provide, beginning January 1, 2004, that a voter who votes after 7:30 PM as a result of a court order or other lawful order, including an order of the county board of elections, may vote only by provisional ballot. These provisional ballots are to be handled and counted separately from other provisional ballots cast in that election. If the court order has not been reversed or stayed by the time of the canvass, the provisional ballots are to be counted.

Proof of ID of Mail-In Registrants

North Carolina law does not require voters to produce identification at the polls when they present themselves to vote. HAVA, however, includes requirements for identification documents to be provided by voters who initially registered by mail. In response, the state HAVA compliance act adds new G.S. 163-166.12, applicable only to individuals who have registered to vote by mail on or after January 1, 2003, and who have not previously voted in North Carolina in an election that includes a race for federal office. Such individuals, in order to vote in person after January 1, 2004, must present to the precinct election officials one of the following:

1. a current and valid photo identification;
2. a current utility bill, showing name and address;
3. a bank statement, showing name and address;
4. a government check, showing name and address;
5. a paycheck, showing name and address; or
6. another government document showing name and address.

In order to vote by absentee mail-in ballot after January 1, 2004, such individuals must submit a copy of one of these documents with the mailed-in ballot. Elections board officials must note the type of identification submitted and then dispose of the mailed copy.

If an individual subject to these requirements attempts to vote in person without the proper identification, he or she may vote a provisional ballot. If the individual attempts to vote by absentee mail-in ballot without the proper identification, elections board officials are to treat the mailed-in ballot as a provisional ballot.

These requirements do not apply to the following: (1) an individual who submits one of the acceptable identification documents when registering by mail; (2) an individual who submits a driver's license number or the last four digits of his or her Social Security number when registering by mail and an election official matches the number submitted to an existing state identification record bearing the same number, name, and date of birth; (3) an individual voting absentee under the Uniformed and Overseas Citizens Absentee Voting Act, the Voting Accessibility for the Elderly and Handicapped Act, or other federal law.

HAVA Complaint Procedures

The state HAVA compliance act creates new G.S. 163-91 directing the SBE to establish a complaint procedure, as required by HAVA, for the resolution of complaints alleging HAVA violations.

The SBE and Federal Write-In Absentee Ballots

The state HAVA compliance act amends G.S. 163-256 to specify that, as pertains to all elections and processes related to the use of federal write-in absentee ballots, the SBE is to be the single office responsible for providing information concerning voter registration and absentee voting procedures to be used by absent overseas and uniformed services voters.

The act also amends G.S. 163-245, effective January 1, 2004, to provide that an otherwise valid voter registration or absentee ballot application submitted by an absent uniformed services voter during a year is not to be refused or prohibited on the grounds that it was submitted before the first date that the county board of elections otherwise accepts such applications. If such an application is rejected, the county board of elections must notify the voter of the reason for the rejection.

Finally, the act amends G.S. 163-247(3) to provide that an absentee ballot request from an absentee uniformed services voter is to be considered an application for absentee ballots for all elections held through the next two regularly scheduled general elections for federal offices.

Non-HAVA Changes Related to Elections Administration

Campaigning at Polling Places

G.S. 163-166.4 prohibits campaign activities—distribution of literature, placement of signs, solicitation of votes, and so forth—in the voting place or within a buffer zone around the polling place. The statute provides that the buffer zone for each polling place is to be determined by county boards of elections. A buffer zone must be set at a fifty-foot width from the door of the polling place, where practical, but in any event must be at least twenty-five feet wide. The statute has further provided that, "where practical," the county board of elections is to establish an area outside the buffer zone where individuals can participate in campaign activities.

County boards of elections are responsible for securing appropriate sites for polling places in all of the precincts within the county. Frequently these sites are government-owned buildings, and establishing both the buffer zone and the area outside it permissible for campaign activities is usually a practical matter. Sometimes, however, the polling sites are privately owned buildings, such as churches, and the owners may impose as a condition of the site's use severe restrictions or even complete bans on campaign activities. S.L. 2003-365 (H 819) amends G.S. 163-166.4 to limit the circumstances in which county boards are able to set up polling places with such restrictions on campaign activities. First, it adds to the statute a direct requirement that county boards establish areas for campaign activities outside the buffer zones, removing the "where practical" provision. Second, it allows an exception to this requirement only upon a grant of special permission by the executive director of the SBE. With this permission a county board may enter into an agreement with property owners that includes this type of restriction. In order to grant such permission, the executive director must determine that

- no other suitable voting place is available in the precinct,
- the county board will require the precinct chief judge to monitor the grounds ensuring that the restrictions on campaign activity are applied equally to all candidates and parties, and
- the distribution of voting places subject to the restrictions does not disproportionately favor any party, candidate, or racial or ethnic group.

Precinct Officials' Pay

G.S. 163-46 requires that county boards of elections pay precinct chief judges, judges, and assistants at least the state minimum wage (currently $5.15 per hour) for their services and specifies that the county commissioners may provide funds with which the county elections board may pay these precinct officials additional amounts. S.L. 2003-278 adds a provision to the statute

specifying that if a precinct official is being paid an hourly wage or daily fee on an election day and the official performs additional election duties away from the assigned precinct voting place, he or she is not entitled to any additional moneys for those duties, except for reimbursable expenses.

Student Election Assistants

S.L. 2003-278 adds new G.S. 163-42.1 providing that for elections after January 1, 2004, students are eligible to be appointed as student election assistants to work at voting places. These students must

- be at least seventeen years old at the time of the primary or election,
- be United States citizens,
- be county residents,
- be enrolled in a secondary school (or home school),
- have exemplary academic records as determined by the school,
- be recommended by the school's principal or director, and
- have parental consent.

No more than two student assistants may be assigned to one voting place. Each student assistant works under the direct supervision of the election judges and receives the same training and compensation as other assistants.

Absentee Votes

G.S. 163-132.5G requires that county boards of elections maintain their voting data by precinct so that votes cast by precinct residents by absentee ballot, both mail-in and one-stop, are reported on the precinct returns. The statute also provides that the SBE rules enforcing this requirement are to call for compliance with it by 2006. Further, the statute requires that these rules may allow for exceptions in circumstances where the expense of compliance would create a financial hardship for a particular county. S.L. 2003-183 (H 869) amends G.S. 163-132.5G to move the compulsory compliance date to 2004 for counties the SBE determines are capable of complying by that year.

Candidates' Names on Ballots

G.S. 163-165.5 establishes requirements for the content of election ballots, including how candidates' names should appear as regards the use of titles, nicknames, and so forth. S.L. 2003-209 (H 201) adds a provision to the statute directing the SBE to establish a review procedure that local boards of elections must follow to ensure that names appear on the ballots in accordance with the statutory requirements.

Township ABC Elections

G.S. 18B-600 specifies the types of elections that may be held with respect to local options for the sale of alcoholic beverages—malt beverage sales, unfortified wine sales, sales of liquor through Alcoholic Beverage Control stores, and retail sales of mixed beverages. In general, the statute provides that these elections are to be on a countywide or citywide basis. In some instances, however, the statute allows for alcoholic beverage elections in jurisdictions other than counties or cities, such as townships with certain specified characteristics. S.L. 2003-218 (S 19) amends the provision concerning township elections to permit elections in townships located within a county where the population of all cities in the county that have previously approved the sale of any kind of alcoholic beverages comprises more than 20 percent of the total county population. In any such township election, the area within any incorporated municipality is to be excluded, and no permits may be issued in the excluded area.

Campaign Contributions by Federal PACs

G.S. 163-278.7A authorizes federal political committees to make contributions to North Carolina state candidates or political committees, provided that the federal committees comply with SBE reporting requirements. S.L. 2003-274 (H 787) amends the statute to specify that these requirements may not be more stringent than those required of North Carolina state political committees, unless the federal committee makes an election contribution to a state candidate or committee in excess of $4,000.

Campaign Reporting in Municipal Referenda

The campaign finance restrictions and reporting requirements applicable to state and local races in North Carolina are generally applicable to referenda and to the committees established in favor of or in opposition to a referendum question. The definition of *referendum* in G.S. 163-278.6(18a) broadly includes within its scope—and therefore within the restrictions and reporting requirements—"any type of municipal, county, or special district referendum." S.L. 2003-278 amends the statute to specify that the definition includes any initiative or referendum authorized by a city's charter or local act but does not include recall elections. (Currently, recall elections are available in fifteen municipalities and one school administrative unit.)

Nomination of Presidential Candidates

Candidates for North Carolina's presidential preference primary can get on the primary ballot in one of two ways. First, under G.S. 163-213.4, the SBE meets and nominates all individuals who have become eligible to receive payments from the federal Presidential Primary Matching Payment Account. The statute has provided that this meeting was to be held on the first Tuesday in February before the primary. Second, under G.S. 163-213.5, a candidate can present a petition to the SBE accompanied by a certain number of qualifying signatures by 5:00 PM on the day of the SBE nominating meeting. S.L. 2003-278 changes these two statutory dates. The nominating meeting is moved to the first Tuesday in March, and the deadline for the submission of petitions is moved to 5:00 PM on the Monday prior to the nominating meeting.

Non-HAVA Changes Related to Election Procedures

Signing the Poll Book

The state HAVA compliance act amends G.S. 163-166.7 to require, beginning January 1, 2004, that before voting, a voter must sign the poll book (or other voting record or voter authorization document being used at that polling place). If the voter is unable to sign, a precinct official is to enter the person's name.

Time Between Election and Canvass

On election night the votes are counted at the precinct (in the manner appropriate to the type of voting machines used) and the precinct officials report the results to the county board of elections. Some time after that, the county board of elections conducts the *canvass*, the final review for determining that the votes have been counted and tabulated correctly. With the results of the canvass in hand, the county board then prepares "abstracts" of the results in triplicate, sends one copy to the SBE, sends another to the clerk of superior court, and retains the third.

G.S. 163-182.5 has required county boards to conduct the canvass on the third day after the election (usually Friday after the Tuesday election). S.L. 2003-278 amends the statute to require the boards to conduct the canvass on the seventh day after the election. The same change is made

in G.S. 163-291(5) for partisan municipal elections and in G.S. 163-293(c) and G.S. 163-294(b) for nonpartisan municipal elections.

G.S. 163-300 has required county boards of elections to send abstracts of the municipal election results to the SBE by the fifth day after the election. S.L. 2003-278 moves this deadline to the ninth day.

These changes are effective for elections occurring after January 1, 2004.

Timing of Demand for Mandatory Recount

G.S. 163-182.7(b) permits a candidate who loses by 1 percent or less to demand a recount. The demand for a recount must be made by noon on the fourth day after the canvass. In coordination with the change of the canvass date, S.L. 2003-278 moves the deadline for demanding a mandatory recount to 5:00 PM on the first day after the canvass.

Federal, statewide, and certain other races are canvassed by the SBE rather than by county boards of elections. G.S. 163-182.7(c) permits any candidate losing by 1 percent or less to demand that the SBE conduct a recount. The statute has set the deadline for this recount demand to be the second Wednesday after the election. S.L. 2003-278 changes this deadline to the second Thursday after the election.

These changes are effective for elections occurring after January 1, 2004.

Timing of Demand for Second Primary

G.S. 163-111 permits a second-place candidate in a party primary election to demand a second primary if the leading candidate does not receive 40 percent of the vote. The statute has required that the demand be presented by noon on the seventh day following the primary. S.L. 2003-278 changes this deadline to noon on the ninth day.

G.S. 163-291(5) has provided that in partisan municipal elections the demand for a second primary must be presented by noon on the Monday following the canvass of the first primary. S.L. 2003-278 changes this deadline to noon on Thursday.

These changes are effective for elections occurring after January 1, 2004.

Timing of Certificate of Election

G.S. 163-182.15 has required the county board of elections and the SBE to issue certificates of nomination or election five days after completing their canvasses (unless there is an election protest pending). Effective for elections occurring after January 1, 2004, S.L. 2003-278 provides that boards of election and the SBE will have six days to issue the certificates.

Authority of SBE to Order a New Election

G.S. 163-182.13 outlines the circumstances in which the SBE, with the concurrence of four of its members, may order a new election. These circumstances include "irregularities or improprieties occur[ring] to such an extent that, *although it is not possible to determine whether those irregularities or improprieties affected the outcome of the election,* they taint the results of the entire election and cast doubt on its fairness." S.L. 2003-278 deletes the italicized portion of this provision. The effect of this deletion is that the SBE will be able to order a new election if the irregularities or improprieties cast doubt as to the results of the entire election or its fairness, even if the SBE is certain the irregularities or improprieties would not have affected the election's outcome.

Power of Court to Stay Certification of Election

Following an election a candidate may pursue a protest, first to the county board and then by appeal to the SBE. G.S. 163-182.14 has provided that after the SBE has made its decision and is

prepared to issue a certificate of election to the opponent, the candidate may petition the court for an order staying the issuance of the certification. Before the court can issue the stay, however, the statute has specified that (1) the candidate must provide evidence that he or she is likely to prevail in the protest, (2) the candidate must provide evidence that the results of the election would be changed in his or her favor as the result of the protest or appeal, and (3) minor irregularities having no effect on the election results are not sufficient for the court to issue a stay. S.L. 2003-278 deletes the second and third of these provisions.

Robert P. Joyce

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Elementary and Secondary Education

It was a quiet year for legislation related to public elementary and secondary schools. The General Assembly's debates and decisions were once again dominated by the budget, not by major policy questions. Although significant cuts were made in some areas, the General Assembly continued its efforts to improve student performance. It passed legislation (1) funding bonuses under the state's accountability program (known as the ABCs), (2) reducing second-grade class size, and (3) assisting schools that have not performed well under the ABCs or that have not made adequate yearly progress under the federal accountability program, the No Child Left Behind Act. The General Assembly also continued to refine strategies to deal with the perennial problems of North Carolina's high dropout rate and need to recruit and retain teachers.

Financial Issues

Appropriations

S.L. 2003-284 (H 397) appropriates $6.035 billion to the Department of Public Instruction (DPI) for each fiscal year of the 2003–2005 biennium. This amount includes $96 million for bonuses under the ABCs and $26 million for reductions in second-grade class size. It also provides $5 million in low-wealth supplemental funds for 2003–2004 and $5.9 million for 2004–2005; $1 million in small county supplemental funds for 2003–2004 and $1.9 million for 2004–2005; and $.5 million each year to assist low-performing local education agencies and to assist schools in meeting the requirements of No Child Left Behind. Appropriations for central office administration, teacher assistants, clerical and custodial staff, and many other items were reduced. Local units were once again granted some flexibility in cutting parts of their budgets. Teachers received a small salary increase, averaging 1.8 percent, although other school employees paid by the state did not.

Transfer of Supplemental Tax Proceeds to Charter Schools

G.S. 115C-238.29H(b) governs local funding for charter schools. It provides that for each student who attends a charter school, the local school unit in which the child resides must transfer to the charter school "an amount equal to the per pupil local current expense appropriation to the school unit for the fiscal year." In 2002 the North Carolina Court of Appeals ruled that the proceeds of a local school supplement tax are part of the per pupil local current expense appropriation.[1] S.L. 2003-423 (S 965) adds to G.S. 115C-23.9H(b) a provision that a school unit receiving supplemental tax funds must include a per pupil share of those tax proceeds in the amount transferred to a charter school for a student residing in the school unit only if that student attends a charter school located in the supplemental tax district. If a student attends a charter school outside the supplemental tax district in which he or she resides, the charter school is not entitled to supplemental tax proceeds for that student.

Fines and Forfeitures: Proposed Constitutional Amendment

In 1997 the General Assembly passed G.S. 115C-457.1, which created the Civil Penalty and Forfeiture Fund, into which are placed the clear proceeds from all civil penalties or civil forfeitures collected by a state agency and payable to the county school fund pursuant to the state constitution. G.S. 115C-457.3, however, provides that moneys in this fund are to be transferred first to the State School Technology Fund and then allocated to school administrative units on the basis of average daily membership (ADM). Before the issue was decided by the North Carolina Court of Appeals,[2] there was a question about whether this arrangement was in conflict with Section 7, Article IX of the North Carolina Constitution, which provides that the clear proceeds of all penalties and forfeitures and of all fines collected "in the several counties" for any breach of the penal law of North Carolina shall belong to and remain "in the several counties" and be used exclusively for maintaining free public schools. Because a key feature of this constitutional provision requires that the proceeds remain in the counties in which they are collected, different counties end up with different per pupil shares of the proceeds.

S.L. 2003-423, which was enacted before the court's decision, authorizes a referendum to amend the constitution to allow the General Assembly to place in a state fund the clear proceeds of civil penalties, forfeitures, and civil fines that are collected by state agencies and belong to the public schools. Moneys in this fund are to be appropriated by the General Assembly to the counties on a per pupil basis. This amendment will be voted on in November 2004. If voters approve the amendment, it will become effective July 1, 2005, and G.S. 115C-457.1 through G.S. 115C-457.3 will be amended accordingly.

Medicaid Reimbursement

Local school boards are eligible to receive reimbursement for the costs of some of the services they provide to students with disabilities. Section 10.29A of S.L. 2003-284 amends G.S. 108A-55.1 to require the Department of Health and Human Services (DHHS) to work with DPI and local school boards to develop efficient, effective, and appropriate administrative procedures and guidelines to provide maximum funding for Medicaid-related services for Medicaid-eligible students with disabilities. DHHS must streamline its procedures and guidelines to ensure that school boards receive reimbursement in a timely manner for services and administrative outreach to Medicaid-eligible students.

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1. Francine Delany New School for Children, Inc. v. Asheville City Board of Education, 150 N.C. App. 338, 563 S.E.2d 92 (2002), *rev. denied*, 356 N.C. 670, 577 S.E.2d 117 (2003).

2. North Carolina School Boards Association v. Moore. ___N.C. App.___, 585 S.E.2d 418 (2003). The court also identifies some particular categories of funds that must be made available to the schools pursuant to the state constitution. The North Carolina Supreme Court is expected to review the decision.

Educational Costs for Students in Group Homes

Children with disabilities are entitled to receive a free appropriate public education, which is usually provided in the school administrative unit where their parents, guardians, or custodians are domiciled. A small number of children with disabilities are placed in or assigned to a group home or foster home located in a different school administrative unit. G.S. 115C-140.1 establishes responsibility for payment of these children's educational expenses. S.L. 2003-294 (S 926) provides that, notwithstanding the responsibility of the local board of education where the group or foster home is located to bear the educational expenses for such children, the school unit in which a child is domiciled must annually transfer to the responsible school unit an amount equal to the actual local cost of educating the child for that fiscal year after all state and federal funding has been exhausted. The State Board establishes a reserve fund to reimburse local boards for such additional educational costs. Local school units may submit an application to the fund for the costs of special education and related services for any child in a foster or group home whose special education and related services expenses exceed the per child group home allocation.

S.L. 2003-294 also amends the statutes dealing with the licensure of group homes. These provisions are discussed in Chapter 16, "Mental Health."

Vocational Education Funding

According to Section 7.37 of S.L. 2003-284, the General Assembly intends to eliminate funding for vocational education in the seventh grade. Local school units must take all of the 2004–2005 budget reductions in vocational education from seventh-grade programs before making reductions to such programs in other grades.

Tax Refund to School Board Cooperatives

G.S. 105-164.14(c) allows many governmental entities, including school boards, to receive an annual refund of sale and use taxes on direct purchases of tangible personal property and services. S.L. 2003-431 (S 100) makes a joint agency created by agreement among local school units to purchase service-related materials, supplies, and equipment eligible for the refund. The refund is not available for electricity and telecommunications services. A discussion of other provisions of S.L. 2003-431 is included in Chapter 23, "State Taxation."

Improving Student Performance and Opportunities

Accountability

The state's ABCs is aimed at strong accountability, an emphasis on the basics and high educational standards, and local control.[3] The accountability model focuses on the performance of individual schools and sets goals for student achievement at each school based on the expectation of a year's growth in achievement for a year's time. The program rewards schools and certified personnel and teacher assistants based on both growth in student achievement and the overall percentages of students performing at or above grade level. School assistance teams are assigned to the lowest-performing schools. The ABCs was first implemented in 1996–1997 for elementary schools and in 1997–1998 for secondary schools.

The federal No Child Left Behind Act (NCLB)[4] became law in 2002. Its accountability model requires a measure of school quality called *adequate yearly progress* (AYP). AYP focuses on subgroups of students and the goal of having all students performing at a proficient level no later

3. For more information, see www.ncpublicschools.org/abcs/ (last checked August 27, 2003).

4. For more information, see www.ncpublicschools.org/nclb (last checked August 27, 2003) and the federal Department of Education's website at www.nclb.gov (last checked August 27, 2003).

than 2014. Subgroups include students in major racial/ethnic groups, economically disadvantaged students, students with limited English proficiency, and students with disabilities. For a school to achieve AYP, each subgroup and the overall school must make AYP. Under NCLB, Title I schools can face sanctions if they do not make AYP for two or more consecutive years. The Department of Public Instruction now incorporates AYP into the annual ABCs report.

S.L. 2003-419 (H 797) directs the State Board to assist local school units in implementing NCLB. To do so, the State Board must first identify schools making AYP with subgroups of students and study the instructional, administrative, and fiscal policies and practices of selected schools. Next, based on these policies and practices, and with help from UNC schools of education and the UNC Center for School Leadership Development, the State Board must create assistance models for each subgroup and offer technical assistance to local school units not making AYP. The technical assistance must include peer assistance and professional development by teachers, support personnel, and administrators of schools whose subgroups are making AYP. Priority in providing assistance must be given to school units with high concentrations of schools not making AYP. The State Board and DPI must report to the Joint Legislative Education Oversight Committee by June 15, 2004, and December 15, 2005, on this assistance.

Several sections of S.L. 2003-284 relating to accountability and student performance are similar or identical to provisions adopted in 2002. These include appropriations for continually low-performing schools (section 7.8), immediate assistance to the highest priority elementary schools (section 7.9), evaluation of initiatives to assist high-priority schools (section 7.10), at-risk student services/alternative schools (section 7.11), students with limited English proficiency (section 7.15), and expenditure of funds to improve student accountability (section 7.18). A new provision (section 7.17) directs the State Board to provide assistance to low-performing school systems and to assist schools in making AYP.

Cooperative Innovative High School Programs

North Carolina continues to have a high student dropout rate. At the same time, it has many students who likely would benefit from accelerated instruction. In an effort to expand opportunities for educational success for these two groups of students, S.L. 2003-277 (S 656) enacts new Part 9 of Article 16, G.S. Chapter 115C. It authorizes boards of trustees of community colleges and local boards of education to jointly establish cooperative innovative programs in high schools and community colleges. These programs must target high school students who are at risk of dropping out before earning a diploma or high school students who would benefit from accelerated instruction. Programs may include the creation of a school within a school, a technical high school, or a high school or technical center located on a community college campus. Students could be eligible for these programs as early as the ninth grade.

The act contains specific requirements for programs that target at-risk students and for programs that offer accelerated learning. It also sets out requirements that apply to both sets of programs. Among other requirements, programs must

- Encourage the cooperative or shared use of resources, personnel, and facilities,
- Emphasize parental involvement and provide consistent counseling, advising, and parent conferencing,
- Be held accountable for meeting measurable student achievement results,
- Establish joint institutional responsibility and accountability,
- Encourage the use of different and innovative teaching methods,
- Develop methods for early identification of potential participating students in the middle grades and through high school, and
- Be centered on the core academic standards represented by the college preparatory or tech prep program of study.

A local board of education and a local board of trustees of a community college apply jointly to establish a program. The act sets out a detailed application process and the components required in an application. After reviewing applications, the State Board of Education and the State Board

of Community Colleges must approve two cooperative innovative high school programs in each of the state's economic development regions.

"Education partners" may participate in the development of a program aimed at students who would benefit from accelerated academic instruction. A constituent institution of The University of North Carolina, a private college or university in North Carolina, a private business or organization, and the board of county commissioners in the county in which the program is located may serve as a partner. Such partners apply jointly with the two boards to establish a program.

Programs operate under written agreements that are in some ways similar to the charters under which charter schools operate. Programs are exempt from many of the laws that apply to boards of education and school units and boards of trustees and community colleges. However, programs must still provide instruction at least 180 days during nine calendar months and comply with laws and policies relating to the education of students with disabilities and with the provisions relating to discipline of students in Article 27 of G.S. Chapter 115C. Programs are accountable to the local board of education.

Boards of education, boards of trustees of community colleges, and partners may allocate funds; and, the board of county commissioners where a program is located may appropriate funds to it, even if that board is not an education partner.

The State Board of Education and the State Board of Community Colleges must evaluate the success of students in these programs. If, by October 15, 2006, the boards determine that any or all of these programs have been successful, they shall jointly develop a prototype plan for similar programs that could be expanded across the state.

Innovative Education Initiatives Act

In 1993, G.S. 116C-1 created the Education Cabinet, made up of representatives from all levels of education. The cabinet works to resolve issues between existing providers of education, sets the agenda for the State Education Commission, develops a strategic design for a continuum of education programs, and studies other issues referred to it by the Governor or the General Assembly. The First in America Innovative Initiative Act, S.L. 2003-277, codified as G.S. 116C-4, directs the Education Cabinet to set as a priority "cooperative efforts between secondary schools and institutions of higher education so as to reduce the high school dropout rate, decrease the need for remediation in institutions of higher education, and raise certificate, associate, and bachelor degree completion rates." More specifically, the act directs the cabinet to identify and support efforts to strengthen the cooperative innovative high school programs discussed above; reduce the dropout rate; close the achievement gap; create redesigned middle or high schools; provide customized programs for high school students who would benefit from accelerated, higher level course work or early graduation; establish high-quality alternative learning programs; establish a virtual high school; and implement other innovative education initiatives designed to advance the state's education system.

By January 15, 2004, and annually thereafter, the Cabinet must report to the Joint Legislative Education Oversight Committee on its activities under this act.

High School Completion and Rigorous Academic Course of Study

S.L. 2003-277 contains an uncodified provision that directs local boards of education and the State Board to identify, strengthen, and adopt policies and procedures that encourage all students to remain in high school and to pursue a rigorous academic course of study. The provision encourages the boards to eliminate or revise any policies or procedures that discourage students from completing high school or from pursuing such a rigorous academic course of study. Local school boards must report to the State Board on the policies they have identified, strengthened, adopted, and eliminated. The State Board too must reexamine its policies and report to the Joint Legislative Education Oversight Committee no later than April 15, 2004, on all changes made to local and state policy and procedures.

Early Entry into Four-Year College Programs

S.L. 2003-251 (H 601) amends G.S. 115C-12, which sets out the powers and duties of the State Board of Education. The law now directs the State Board to encourage the early entry of motivated students into four-year college programs and to ensure that academically talented students have opportunities to start college coursework, either at nearby institutions or through distance learning. The State Board is to act in cooperation with local school units, the Education Cabinet, UNC constituent institutions, community colleges, and private colleges and universities. Additionally, the State Board must adopt policies directing school guidance counselors to make ninth-grade students aware of the potential to complete the high school courses required for college entry in three years.

Character and Civic Education

All students in North Carolina are entitled to the opportunity for a sound basic education. According to the North Carolina Supreme Court, a sound basic education includes "sufficient fundamental knowledge of geography, history, and basic economic and political systems to enable the student to make informed choices with regard to issues that affect the student personally or affect the student's community, state, and nation."[5]

Perhaps in response to this requirement, and to a long-standing concern about preparing students to participate fully in a democracy, Section 7.40 of S.L. 2003-284 amends G.S. 115C-81, the Basic Education Program, in several ways. All schools are encouraged to have student councils. Middle and high school student councils should be elected and are to be the means through which students have input into the policies and decisions that affect them. This provision is noteworthy because it is an acknowledgment by the General Assembly that students should have input in some situations. (Of course, the existence of student councils does not prevent students from seeking to have input in other ways, such as through petitions to the school board.) Section 7.40 also encourages schools and teachers to discuss current events in a wide range of classes, especially social studies and language arts classes. More specifically, all high schools and middle schools are encouraged to provide a minimum of two classes per grade level that offer interactive current events discussions at least every four weeks.

For several years, G.S. 115C-81(h1) has encouraged schools to include in their courses instruction in respect for school personnel, responsibility for school safety, service to others, and good citizenship. Section 7.40 adds that the instruction should include (1) a consistent and age-appropriate antiviolence message, (2) a conflict-resolution component for students in kindergarten through twelfth grade, and (3) media-awareness education to help children recognize stereotypes and messages that portray violence. As part of the instruction on the responsibility to serve others, all schools are encouraged to provide opportunities for student involvement in community service or service-learning projects. These amendments take effect in the 2004-2005 school year.

Also included in Section 7.40 is an amendment to G.S. 115C-105.35 that directs the State Board to consider incorporating a character and civic education component, which may include a requirement for student councils, into the School-Based Management and Accountability Program.

State Competency Testing Program

G.S. 115C-174.11(b) directs the State Board to adopt tests or other measurement devices to assure that high school graduates possess the skills and knowledge necessary to function independently and successfully in assuming the responsibilities of citizenship. Tests are administered to ninth-grade students, and students have opportunities throughout high school to retake any part of any test they fail.

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5. Leandro v. State of North Carolina, 346 N.C. 336, 347, 488 S.E. 2d 249, 255 (1997).

Under the former statute, the State Board was authorized to either (1) adopt one or more nationally standardized tests or other equivalent measures that measure competencies in the verbal and qualitative areas or (2) develop and validate alternate means and standards for demonstrating minimum competence. These alternative standards had to be more difficult than the regular competency tests described above. S.L. 2003-275 (H 801) requires the State Board to adopt an existing alternative test or equivalent measure or to develop and validate alternate means and standards. These standards now must be as difficult as the regular competency tests, but not necessarily more difficult. The State Board must also adopt a policy to identify which students and under what circumstances students may meet an alternative standard instead of passing the regular tests.

Students in special education or designated as eligible for special education may be excluded from the regular testing program. In addition, under a new provision, students with disabilities who fail the regular competency tests after two attempts must be given the opportunity to take one of the alternate tests.

Financial Literacy Pilot Programs

To determine the best methods of preparing students to make critical personal financial decisions, Section 7.35 of S.L. 2003-284 directs the State Board to establish a pilot program authorizing and assisting up to five local school units to implement programs for teaching personal financial literacy. The State Board must develop program materials, guidelines, and a curriculum that covers, at a minimum, consumer financial education, personal finance, and personal credit.

Schools for Deaf Students

Every student with a disability is entitled to a free appropriate public education and to an Individualized Education Program (IEP) designed to meet his or her needs. Although the great majority of students with disabilities are served in traditional public schools, some are not. The Department of Health and Human Services operates the state's schools for deaf students and is responsible for providing unique instructional programs to meet the needs of all students enrolled in these schools.

S.L. 2003-253 (S 503) rewrites G.S. 143-216.41 to bring that statute more in line with current special education law and practice. It authorizes DHHS to consider for admission to these schools any deaf/multidisabled North Carolina resident who is at least five years old but not older than twenty-one. The student must be referred by the local education agency, and his or her IEP team must deem the child's admission to the school appropriate. Children who are not North Carolina residents may be considered for admission, but only if their admission does not prevent enrollment of a state resident. Nonresidents are not entitled to free tuition and room and board. DHHS, through the Office of Education Services, must provide unique instructional programs to meet the needs of all admitted students, including vocational and technical training, as called for in a student's IEP. DHHS must also maintain a collaborative relationship with institutions of higher education to provide teacher-training opportunities.

Health Issues

Tobacco-Free Schools

S.L. 2003-421 (S 583) began as an effort to ban the use of any tobacco product on public school grounds during school hours, with a possible exception for outdoor events when an admission fee is charged. The bill evolved to require schools to adopt and enforce a written policy enforcing the requirements of the federal Pro-Children Act of 1994, 20 U.S.C. § 6083. The federal law prohibits smoking inside any school building or school facility used to provide routine or

regular K–12 education or library services to children. In addition, the local boards' policy must prohibit use of all tobacco products in enclosed school buildings during regular school hours. The policy may allow the use of tobacco products in school buildings for instructional or research purposes under the supervision of a faculty member if the activity does not include smoking, chewing, or otherwise ingesting tobacco. Students and school personnel must be given adequate notice of the policy, and signs must be posted regarding the use of tobacco products. The policy must require school personnel to enforce the policy. Local school boards are free to adopt a more restrictive policy on the use of tobacco products in school buildings or facilities, on campuses, in or on other school property, or at school-related or school-sponsored events.

Administration of Medication to Preschoolers

The tragic death of a young child who had been given medication by a child care worker without the parents' direction or consent led to the enactment of "Kaitlyn's Law." S.L. 2003-406 (S 226) deals with the administration of medication at a child care facility as defined in G.S. 110-86(2)(f). The new law does not apply to K–12 classes, but it does apply to public and nonpublic schools that operate preschool programs. S.L. 2003-406 amends G.S. 110-102.1A to make it unlawful for an employee, owner, household member, volunteer, or operator of a child care facility to willfully administer any prescription or over-the-counter medication to a child attending that facility without proper written authorization from the child's parent or guardian. The authorization must include the child's name, date or dates for which the authorization applies, dosage instructions, and signature of the child's parent or guardian. (Schools also need accurate information about proper storage of medications, although the statute is silent on this point.) It is not a violation of the act if the medication is administered because of a child's emergency medical condition and the medication is administered with the authorization of and in accordance with instructions from a "bona fide medical care provider." A violation that results in a serious injury to a child is a Class F felony; in all other cases, a violation is a misdemeanor.

Miscellaneous

Volunteer Records

Public schools use volunteers in many positions, ranging from classroom helpers to fundraisers, chaperones, tutors, mentors, and assistant coaches. In response to a general concern about school safety—and after several serious incidents involving volunteers—many schools around the country have developed screening programs for potential volunteers and maintain information about each volunteer.[6]

In North Carolina a local school board may maintain a file on any individual volunteer but is not required to do so. Volunteers and school officials alike have been concerned about the confidentially of the information in such files. S.L. 2003-353 (H 1114) addresses that issue. New G.S. 115C-209.1 provides that records comprising a volunteer file are not public records under the state's public records statute, G.S. Chapter 132. Volunteer records are open for inspection only by (1) the volunteer, former volunteer, applicant to be a volunteer, or that individual's agent; (2) the superintendent and other supervisory personnel; (3) the parent or guardian of any student with whom the volunteer has or had contract; (4) members of the local board of education and the board's attorney; and (5) a party to a lawsuit, by authority of and in accordance with a subpoena or court order. Unless prohibited by state or federal law, a school board also may release or permit inspection of information in a file if, prior to release, the board determines that the release is

6. For more information, see Ingrid M. Johansen, *Public School Volunteers Law and Liability in North Carolina* (Chapel Hill, N.C.: Institute of Government, The University of North Carolina at Chapel Hill, 1999).

essential to maintaining the integrity of the school board or to maintaining the level or quality of services provided by the board. The board may also permit inspection of or release of information if the board makes a written finding that there is a "substantial showing" of these criteria. This finding is a public record. When individuals apply to volunteer, the school board must notify them that the board may maintain a file and that information in the file will be open to inspection as S.L. 2003-353 allows.

State Board of Education Advisory Members

S.L. 2003-306 (S 698) amends G.S. 115C-11 to add three new advisory members to the State Board. A superintendent of a local school unit, appointed by the Governor; the State Principal of the Year, as designated by DPI; and the current Raleigh Dingman Award winner will each serve as advisors to the State Board for a one-year term. The State Board may exclude these advisory members from closed sessions.

Compulsory Attendance Statute

G.S. 115C-378 is the state's compulsory attendance statute. It provides that a parent, guardian, or other person having charge or control of a child between the ages of seven and sixteen years must "cause the child to attend school." Adults responsible for children under the age of seven who are enrolled in public school in kindergarten through grade two are also subject to the law, unless the child has been withdrawn from school. After a child has ten unexcused absences in a school year, the principal must determine whether the parent, guardian, or custodian has made a good faith effort to comply with the law. If the principal determines that such effort has not been made, he or she must notify the district attorney. S.L. 2003-304 (S 421) also requires the principal to notify the director of social services of the county in which the child resides. Upon receiving notification by the principal, the director of social services must determine whether to undertake an investigation under G.S. 7B-302. Other provisions of S.L. 2003-304 are discussed in Chapter 21, "Social Services."

Length of a Charter School Charter

Charter schools are public schools that operate under charters from the State Board. S.L. 2003-354 (S 35) amends G.S. 115C-238.29D(d) to increase the maximum period for both initial and renewal charters from five years to ten years. The State Board must review the operations of each charter school at least once every five years to ensure that the school is meeting expected academic, financial, and governance standards. Once a school has a charter, the State Board or a chartering entity subject to the approval of the State Board (a local school board or board of trustees of a UNC constituent institution) may terminate or not renew a charter on grounds set out in G.S. 115C-238.29G.

Election Assistants

S.L. 2003-278 (H 1120) adds new G.S. 163.42.1 to provide that a student who is at least seventeen years of age at the time of an election or a primary election may be eligible for appointment as a student election assistant. The student must be a United States citizen; be enrolled in a secondary educational institution, including a home school; have an exemplary academic record (as determined by that institution); be recommended by the principal or director of the institution; and have the consent of a parent, legal custodian, or guardian. Student election assistants attend the same training sessions as precinct assistants and are sworn in and compensated in the same manner as precinct assistants. The county board of elections must prescribe the duties of student election assistants in accordance with guidelines to be issued by the State Board of Elections. Other provisions of S.L. 2003-278 are discussed in Chapter 7, "Elections."

Property Acquisition by Counties

In the past several years, a growing number of individual counties have been granted the authority to acquire property and, later, to lease or transfer property to be used for school projects as a way to use the counties' authority under G.S. 160A-20 to finance school projects. In early 2003, almost all counties had this authority. S.L. 2003-355 (S 301) amends G.S. 153A-158.1 to extend this authority to all one hundred counties.

Purchasing and Contracting

S.L. 2003-231 (S 620), which deals with new school purchasing procedures, and other acts dealing with purchasing and contracting issues for public schools are discussed in Chapter 19, "Purchasing and Contracting."

Bills Not Enacted

Bills touching on a wide variety of education issues did not pass in 2003. They include an education lottery (H 5), a tax increase on cigarettes with revenues going to education (H 378), proposals to begin the school year after Labor Day (S 779, H 863, S 1002), raising or removing the current statewide cap of one hundred charter schools (H 31, H 32, S 712), requiring thirty minutes of physical education each school day (H 303), a proposal for DPI to develop or study a plan to provide a free and appropriate education to students recommended for long-term suspension (H 1135), and raising the compulsory school attendance age from sixteen to seventeen (S 783). A proposed constitutional amendment (S 568) to make the Superintendent of Public Instruction an appointee of the Governor, rather than an elected official, also failed to pass.

Studies

Rapid Growth

Section 7.29 of S.L. 2003-284 directs the Joint Legislative Education Oversight Committee to study the effects of rapid growth in student enrollment on local education agencies and to report its results to the 2004 regular session of the General Assembly.

Activity Buses

Section 7.25(c) of S.L. 2003-284 requires the State Board of Education to study the adequacy of the safety rules and regulations adopted for activity buses by local boards of education. The State Board must report the study results to the Joint Legislative Education Oversight Committee by March 15, 2004.

Credit for Higher Education Courses

A growing number of high school students are interested in taking university and community college courses. Section 7.36 of S.L. 2003-284 directs the State Board to study the issue of weighted grades (used for figuring a student's grade-point average) for high school students who take higher education courses. The State Board must report to the Joint Legislative Education Oversight Committee by December 15, 2003.

School Nurses

Although not labeled a study, Section 7.32 of S.L. 2003-284 requires the State Board to review the standards for the number of school nurses recommended in the Basic Education

Program to determine whether local school units are meeting these standards. The State Board must determine whether current standards are adequate to meet students' changing needs and demands for health services. The State Board's review also must consider whether the legal requirements for providing health-related services to public school students need to be changed. The State Board must report on its findings to the Joint Legislative Education Oversight Committee by February 15, 2004.

Driver Education Privatization

Section 29.7 of S.L. 2003-284 requires the State Board to study statewide privatizing of state-funded driver education programs. The board is to report to the Joint Legislative Education Oversight Committee and the Joint Legislative Transportation Oversight Committee by November 30, 2003, on proposals for statewide privatization and cost reduction.

School Employment: Pay and Benefits

Salaries

S.L. 2003-284 sets provisions for the salaries of teachers and school-based administrators. For teachers, the act sets a salary schedule for 2003–2004 that 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 range is 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, which adds proportionate amounts to their salaries.

These salary schedules are identical to those in place for the 2001–2002 school year and the 2002–2003 school year, so that teachers and administrators who were paid on these schedules in those years and remain on them this year receive a small salary increase in each year by virtue of moving one step up in the experience ranks.

In addition, noncertified employees in the public schools who are employed on October 1, 2003, will receive a one-time bonus of $550.

ABCs Incentives

S.L. 2003-284 directs the State Board of Education to provide incentive funding for schools that in the 2002–2003 school year met or exceeded levels of improvement in student performance expected under the ABCs of Public Education Program. The awards provided for schools exceeding expectations are up to $1,500 for each teacher and other certified personnel and $500 for each teacher assistant; for schools meeting expectations, the awards are $750 and $375, respectively.

The General Assembly also expressed its intention to close the achievement gap between white and black students by providing an ABC funding incentive in future fiscal years for employees of schools that make adequate yearly progress as required by the No Child Left Behind Act.

Pay During Military Duty

S.L. 2003-301 (S 714) adds a new section to G.S. 302.1 directing the State Board to adopt rules regarding pay differentials for public school employees who take leaves of absence for military training, military duty, or special emergency management service. Under the rules, which apply to all school employees, the state will pay any salary differential for employees in state-funded

positions, the local board will pay the differential for locally funded employees, and charter schools will pay any differential to their employees.

Veterans Day Holiday

G.S. 115C-84.2(b) has for some time required that in setting the school calendar, public school officials must make Veterans Day a holiday for students. S.L. 2003-131 (H 421) makes it a mandatory holiday for all school personnel as well.

Shared Leave

S.L. 2003-9 (H 432) and Section 30.14A of the budget act together give related employees of public schools, community colleges, and state agencies the ability to share leave among themselves; employees of these institutions may also share leave with the immediate family members of their co-workers. That is, a community college employee may share leave with, for example, a public school employee who is an immediate family member. An employee may also share leave with a co-worker's immediate family member who is employed by a public school, community college, or state agency, so long as the co-worker whose family member receives the leave is employed by the same institution or public school administrative unit as the donating employee.

Job Sharing

In 2002 the General Assembly passed a statute (G.S. 115C-302.2) creating the new category of "classroom teacher in a job-sharing position." Such classroom teachers are employed on a half-time basis and share one position with another teacher. They are paid on the teacher salary schedule and enjoy teacher benefits, both on a pro rata basis. S.L. 2003-358 (S 701) repeals that statute and substitutes a new G.S. 115C-326.5. The new statute contains job-sharing provisions that are very similar to the now-repealed statute, but it makes them available to all public school employees, not just teachers. This change will be effective January 1, 2004.

School Employment: Tenure, Contracts, and Licensure

Administrator Term Contracts

Public school principals, assistant principals, supervisors, and directors are employed by contract. G.S. 115C-287.1 has for a number of years specified that their contracts must be between two and four years long. S.L. 2003-291 (S 955) amends the statute to provide that the *initial* contract period between such an administrator and a school system shall be between two and four years but that subsequent contracts must be for four years.

Time to Tenure for Veteran Teachers

A newly hired teacher who has never achieved tenure in any North Carolina school system must serve for four consecutive years as a probationary teacher before being eligible for "career status"—commonly called tenure. G.S. 115C-325(c)(2) has provided a different rule for teachers who, by contrast, have previously achieved tenure in a North Carolina school system but who are changing to a new system or returning to the old system after a break in service. For those teachers, the local school system has been able to grant tenure immediately upon hiring the teacher, after one year of probationary service, or after two years. S.L. 2003-302 (H 38) amends the statute to require that the system make the decision either immediately upon hiring the teacher

or after one probationary year. This change will become effective with contracts signed for the 2004–2005 school year.

License Revocation for Conviction of Serious Crime

G.S. 115C-296(d) directed the State Board to adopt rules setting out the grounds and procedures for revoking the license of a teacher or school administrator. The board did so, and the rules are now part of the North Carolina Administrative Code. They provide for a hearing in all revocation proceedings. S.L. 2003-408 (S 993) amends the statute to direct the State Board to revoke a license automatically and without a hearing when the teacher or administrator has been convicted of certain serious crimes or has pleaded guilty or nolo contendere to such charges.

The teacher or administrator will be informed that the State Board has received a certified copy of the criminal record and will revoke the license unless the teacher or administrator notifies the board that he or she is not the person identified in the criminal record.

The crimes specified are murder, conspiracy or solicitation to commit murder, rape or sexual offense, certain assaults, abduction of children, crime against nature, incest, employing or permitting a minor to assist in an offense against public morality and decency, certain crimes relating to dissemination of improper material to minors, sexual exploitation of children, prostitution, indecent liberties with children or students, solicitation of a child by computer to commit an unlawful sex act, and child abuse.

Licensure of Teachers from Out of State

S.L. 2003-284 adds new G.S. 115C-296.3 streamlining the procedure for licensing teachers who at the time of hiring by a North Carolina school administrative unit are employed as teachers in other states. If such a teacher is (1) fully licensed in that other state and (2) "highly qualified" within the meaning of the federal No Child Left Behind Act, then he or she is deemed to have satisfied the academic and professional preparation requirements for certification. Such teachers need not take and pass a standard examination to demonstrate such preparation (unless required by the No Child Left Behind Act).

If the teacher has less than three years' experience as a full-time classroom teacher, he or she receives initial certification for the length of time needed to accumulate three years of total teaching experience. Once the teacher has three years of total experience—with at least one full year of it in North Carolina—he or she receives full continuing certification, unless the employing school system recommends otherwise.

A teacher who has at least three years of experience receives continuing certification immediately. If at the end of one year the school system recommends continuing the certification, the State Board will renew it.

Lateral Entry Changes

In 1984 the General Assembly declared it the policy of the state to encourage individuals to move from employment outside the teaching profession into teaching, to supplement the core of teachers trained in traditional university teacher-training programs. The basic requirements of the so-called lateral entry program are found in G.S. 115C-296(c). S.L. 2003-284 amends that statute to make several changes: The statute now specifies that lateral entry teachers must have at least a bachelor's degree. The statute formerly provided for the granting of a provisional teaching certificate for five years and required full certification by the sixth year. Under the changes, the provisional certification will be granted for three years, with full certification required by the fourth year, for teachers covered by the federal No Child Left Behind Act.

Licensure Score

S.L. 2003-284 directs the State Board to review the requirements for initial teacher certification to determine whether the prescribed minimum score on the PRAXIS exam is sufficient to demonstrate an applicant's academic and professional preparation for teaching.

Licensure Study

In 2002 the General Assembly directed the State Board to contract with an outside consultant to study the initial licensure, continuing licensure, and relicensure programs and propose modifications to them. S.L. 2003-284 amends that directive to require the State Board to conduct the study itself rather than engage a consultant.

Veto of Portfolio Elimination Bill

For several years, the State Board of Education has required teachers in their early years of teaching to participate in a licensure program by which they move from the initial license through a series of steps to a continuing license. As part of that program, teachers holding the initial license were required to assemble a set of materials related to their teaching—termed a "portfolio"—which was to be reviewed as part of the teacher's progress toward a continuing license. In 2002 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.

On May 28, 2003, S 931, which amended G.S. 115C-296(b), was ratified. It directed the State Board of Education to develop a rigorous licensure procedure and specifies that "[t]hese rigorous standards shall not include a portfolio requirement for teachers." The bill then provided that "No new requirement added by the State Board of Education to the teacher certification process may be required for licensure now or in the future without explicit legislative authorization."

On June 8, Governor Easley vetoed the bill. In his veto message, the Governor noted that the state constitution grants the State Board the general authority "to administer the free public school system." The requirement that the legislature approve all future changes in the licensure process "is not only bad public policy, but it is also constitutionally questionable."

This was only the second gubernatorial veto in the history of the state.

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Environment and Natural Resources

After the landmark Clean Smokestacks legislation of 2002, the 2003 Regular Session reverted to an older, more contentious, incrementalist pattern. The competing forces for change largely cancelled each other out, leaving many relatively minor adjustments in the environmental and agricultural regulatory schemes. Several bills that were filed, but that did not pass, seemed to signal a harsher stance by legislators toward the environment. For example, bills were introduced to dismiss two particular water regulators and one air regulator from their positions. Another bill sought to restore the "Hardison amendments," which used to prevent North Carolina's environmental rules from being more stringent than their federal counterparts. These "rollback" bills generally failed, as did most of the attempts to strengthen the state's environmental laws, with one clear exception: a bill to codify North Carolina's policy against hardening the coastal shoreline passed.

Agriculture

Swine Farm Moratorium

S.L. 2003-266 (S 593) extends the existing moratorium on new or expanded lagoon and sprayfield-based swine farms for four years, until 2007. The bill was the subject of heated debate. Environmental groups pushed for legislation to set a date certain for phaseout of the lagoon and sprayfield system; Governor Easley had pledged to set such a date in his campaign for governor. House Bill 1188, however, which would have required this phaseout, made no progress. The agricultural community and most legislators instead continue to look to the technology assessment effort under way as a result of an agreement between then-Attorney General Easley, Smithfield Foods, and Premium Standard Farms to find an environmentally superior, economically feasible replacement technology. Completion of the assessment effort was originally scheduled for July 2002 but will probably not occur until 2004 or 2005.

S.L. 2003-340 (S 824) creates an exception to the moratorium on new and expanded swine farms. The exception allows farms in Moore County that received agricultural cost share funds on or before August 27, 1997, for farm construction or expansion to receive permits for new or expanded farms and waste lagoons, despite the moratorium.

Nondischarge Permits

S.L. 2003-28 (S 733) delays until October 2004 the effective date of several new general nondischarge permits for swine, dairy, and poultry operations adopted by the Environmental Management Commission and originally scheduled to become effective May 1, 2003. The new permits include more stringent monitoring and reporting requirements than the existing permits.

Extension of Special Swine Farm Inspections Program

In 1997 a pilot program for animal operation inspections was created in which staff from the Division of Soil and Water Conservation rather than the Division of Water Quality perform these inspections in three counties. S.L. 2003-340 extends the pilot for two more years (until September 1, 2005).

Air Quality

S.L. 2003-428 (S 945) clarifies the extent to which a person who needs an air quality permit can begin construction of a facility before being issued the permit for it. The bill spawned a contentious debate between those who favored letting owners proceed with as much construction as they were willing to risk versus those who favored disallowing any construction until the required permits were issued. As enacted, the bill largely codifies current Department of Environment and Natural Resources (DENR) guidelines allowing a person constructing a new facility to level and grade sites, build access roads, install underground pipes and conduits, and erect ancillary buildings—but not to begin foundations or undertake other construction activities in regard to structures that will house pollution sources—before obtaining the required air quality permit.

The legislative compromise relating to modifications of existing permitted structures is less clear. The enacted legislation creates a procedure whereby an entity gives public notice of its intent to modify a structure, submits a package of materials to DENR, and then waits fifteen days for DENR to approve or deny the request to proceed. DENR is to approve the request only if

- the applicant is in substantial compliance with existing permits,
- the modified facility will be put to a similar use as under the existing permits,
- the facility's emissions will remain substantially the same,
- the modification will not result in a "disproportionate" increase in the size of the facility,
- the modification will not have a significant effect on air quality, and
- DENR is likely to issue the permit modification.

The legislation leaves unclear what will occur if DENR takes no action within the fifteen-day period. Despite committee colloquy to the contrary, permittees arguably may undertake an expansion as long as they comply with the notice and submission requirements of the legislation and do not receive an adverse ruling from DENR. S.L. 2003-428 provides exceptions for projects in nonattainment areas or that are otherwise subject to federally imposed preconstruction requirements that exceed those of state law. The legislation also attempts to insulate the final air permit decision from the effects of a prior decision allowing facility expansion. It disallows the use of expansion authorization in contested cases involving permit denials and statutorily indemnifies state officials from liability for authorizing an expansion and then denying an air permit.

Coastal Resources

Coastal Shoreline Protection

S.L. 2003-427 (H 1028) bans the construction of hardened structures on the coastal shoreline and authorizes the creation of offshore sills of stone or other riprap materials to protect the estuarine shoreline. The hardened structure ban amends the Coastal Area Management Act (CAMA), codifying the past Coastal Resources Commission (CRC) practice forbidding permanent breakwaters, bulkheads, groins, jetties, seawalls, and similar structures on the ocean shoreline. This regulatory ban has seen increasingly strident opposition from property owners all along the migrating North Carolina coastline. The legislation, as enacted, allows the small number of permanent structures that have been built (such as the terminal groin on the south side of Oregon Inlet) to remain, but it attempts to prevent further hardening of the shore. The estuarine provisions authorize the CRC to create a new general permit for the construction of offshore structures that will protect coastal wetlands.

CAMA Fee Increase

House Bill 1323 increases CAMA permit fees from $400 to $1,000. It passed the House with bipartisan support and is available for consideration in the Senate Finance Committee in the short session.

Coastal Habitat Protection Plans

S.L. 2003-111 (H 1134) extends the period for adoption of coastal habitat protection plans from July 31, 2003, to December 31, 2004. These plans are supposed to result from an unprecedented level of cooperation between the CRC, the Environmental Management Commission, and the Marine Fisheries Commission.

South Coast Condemnation Authority

S.L. 2003-282 (H 542) adds the towns of Caswell Beach, Oak Island, Ocean Isle Beach, Sunset Beach, and the Village of Bald Head Island to the list of local governments allowed to use the power of eminent domain for beach erosion control, flood and hurricane protection, and beach access purposes.

Coastal Water Monitoring

S.L. 2003-149 (S 959) allows the Health Services Commission to include "coastal recreation waters" among the water types for which it will develop quality monitoring methods, thus allowing the state to be included in a federal program involving beach water quality assessment and public notification of water quality around beaches.

Environmental Finance

License Plates

S.L. 2003-424 (H 855) increases the cost of personal license plates by $10, with the revenue from the sale of these plates divided between the Natural Heritage Trust Fund and the Parks and Recreation Trust Fund. Earlier versions of the bill would have also increased the fees for many of the special license plates that have been authorized by the General Assembly. Concern over the

effect of the fee increases on plate sales, however, led to elimination of these increases and the creation of a study provision. The act authorizes several new special registration plates, including:

- Alternative Fuel Vehicles,
- Be Active NC,
- Blue Ridge Parkway Foundation,
- Breast Cancer Awareness,
- Buffalo Soldiers,
- Celebrate Adoption,
- Crystal Coast Artificial Reef Association,
- Delta Sigma Theta Sorority,
- Fraternal Order of Police,
- Friends of the Appalachian Trail,
- Mothers against Drunk Driving,
- POW/MIA,
- Red Hat Society,
- Retired Law Enforcement Officers,
- Surveyors, and
- Zeta Phi Beta Sorority.

Budget Act Special Provisions

S.L. 2003-284 (H 397), this year's budget act, includes several special provisions concerning the state's environment and natural resources.

Express permitting. DENR is authorized to create a pilot program in which applicants for stormwater permits, erosion and sediment control permits, CAMA permits, stream origination certifications, and 401 water quality certifications may pay more in permit fees to receive faster processing. The program will be funded by the increased fees themselves.

Cost-share funding. New classes of "limited-resource" and "beginning" farmers are allowed to receive 90 percent cost-share funding for approved practices (and the 10 percent farmer contribution can include in-kind support).

Study of the tax implications of land conservation practices. The Property Tax Subcommittee of the Revenue Laws Study Committee is directed to study the fiscal impacts of conservation land acquisition on local property taxes.

Permanent permitting for transportation projects. G.S. 136 is amended to provide that DENR permits required for transportation construction projects will remain effective and may not be modified until a project is completed, subject to limited exceptions.

Use of recycled steel by recipients of state funds. G.S. 130A-309.14 is amended to require recipients of state funds to specify recycled steel in their procurement processes, provided its price is reasonable and it meets appropriate performance standards.

Dedicated Funds

Despite the fiscal difficulties posed by one of the state's most serious budget deficits in decades, the primary dedicated environmental funds fared reasonably well in this session's budget negotiations. S.L. 2003-284, the budget act, provides $62 million for the Clean Water Management Trust Fund (CWMTF) each year of the biennium. The statutory authorization for CWMTF for this year was $100 million. The House budget appropriated only $25 million, so the final compromise figure seemed satisfactory to most CWMTF proponents. Of its appropriation, CWMTF is authorized to spend up to $4.1 million in the next year to match federal farmland preservation funds.

CWMTF, the Natural Heritage Trust Fund, and the Parks and Recreation Trust Fund are also given some procedural protection from having their funds transferred by the Governor in the event of a shortfall in the overall state budget. The Office of State Budget and Management

(OSBM) is directed to make transfers from other sources before it can transfer any moneys from these dedicated funds. At that point OSBM is authorized to transfer up to 20 percent of these funds to other areas to contend with a budget deficit. Before OSBM transfers more than 20 percent, the budget director is required to consult with the Joint Legislative Commission on Governmental Operations. Other dedicated environmental funds, such as the Farmland Protection Fund and the various solid waste and contaminated property cleanup funds, received no appropriations.

CWMTF Board

S.L. 2003-422 (S 831) increases the number of CWMTF board members to twenty-one and outlines board member appointing authority. The act also sets a quorum for the board and describes member terms in order to clarify how the terms should be staggered.

Bikeway Funding

S.L. 2003-256 (S 232) adds counties to the list of local governments having the authority to use transportation funding to build bikeways.

Certificates of Participation

In H 1227 and S 683, advocates for increased land conservation, in support of the state's Million Acres mandate (S.L. 2000-23, codified at G. S. 113A-241) and its current DENR embodiment, One NC Naturally, sought express authorization to use certificates of participation (COPS) for conservation land acquisition. Much of the financing structure included in those bills, allowing the use of COPS for state projects, was embedded in the budget act, but there was no express provision authorizing the use of COPS for conservation land acquisition.

Contaminated Property Cleanup

Underground Storage Tanks

The state continues to grapple with the looming insolvency of the two underground storage tank cleanup funds, predicted since the mid-1990s. This year's tank act, S.L. 2003-352 (H 897), restricts funded cleanups to the highest priority problems and requires that they be preapproved by DENR. The act also seeks to advance the performance-based cleanup concept introduced by DENR in 2001 (but still not widely accepted by cleanup contractors). Finally, the act authorizes the Environmental Management Commission to promulgate rules requiring secondary containment for nontank parts of tank systems (such as piping, pumps, and valves).

PCB Landfill

The budget act provides that, if needed, DENR can use up to $500,000 from the water quality permit fees collected for the 2003–2004 fiscal year to complete the decontamination of the famous PCB landfill in Warren County.

Natural Resources

Wildlife Resources

In response to a news story about someone who was harvesting large quantities of turtles for sale as food in Asia, S.L. 2003-100 (S 825) was enacted to give the Wildlife Resources Commission

authority to issue rules to prohibit the taking of more than four reptiles or amphibians of species with conservation concerns.

State Wildflower

S.L. 2003-426 (H 47) adopts the Carolina lily, *Lilium michauxii,* as the official State Wildflower, with some members expressing hope that this enactment would not preclude future recognition of the Venus flytrap, *Dionaea muscipula*, and the ramp, *Allium tricoccum.*

No-Wake Zone

S.L. 2003-189 (H 655) establishes a no-wake zone on Pembroke Creek in Chowan County.

Marine Fisheries

Proclamation authority. S.L. 2003-154 (H 987) substantially rewrites G.S. 113-221 to clarify the relationship between fisheries proclamations and the normal rule-making process of the Marine Fisheries Commission under G.S. 150B. It also increases the time before proclamations can become effective to forty-eight hours.

Coastal recreational fishing license. This year's attempt to legislate a requirement for a coastal recreational fishing license, H 831, passed the House near session's end and remains in the Senate Agriculture, Environment, and Natural Resources Committee for consideration in the short session.

Core Sound shellfishing. After years of simply extending the moratorium on new shellfish leases in Core Sound, the General Assembly enacted S.L. 2003-64 (S 765), defining an area called "western Core Sound" and permanently limiting new leases in that area.

Solid Waste

Only two bills concerning solid waste management were enacted this session. The first, S.L. 2003-37 (H 1205), involves local government franchises for certain sanitary landfills. In 2002 the General Assembly enacted the Clean Smokestacks Act, S.L. 2002-4, to limit emissions of certain pollutants from coal-fired electrical generating plants. Utilities may wish to dispose of these pollutants in a special-purpose sanitary landfill. G.S. 130A-294, however, requires that before any state permit may be granted for a sanitary landfill, the city or county in which the landfill is to be located must issue the permit applicant a franchise for the facility. S.L. 2003-37 eliminates this procedural hurdle for utilities. It amends G.S. 130A-294(b1) to provide that the franchise requirement does not apply to a sanitary landfill that will be used only to dispose of waste generated by a coal-fired generating unit owned by an investor-owned utility. The second bill, S.L. 2003-386 (H 999), creates new G.S. 75-36 to make void and unenforceable any agreement or contract provision prohibiting toner or inkjet cartridge reuse, remanufacture, or refill.

Senate Bill 970 and House Bill 878 are identical bills that would have established a recycling program for electronic goods. Neither passed the house in which it was introduced and therefore neither is eligible for consideration in the 2004 session.

State Parks and Natural Areas

Several bills made additions and changes to the state parks and natural areas system. Most noteworthy are two new authorized parks in the Piedmont. S.L. 2003-106 (H 1078) authorizes the addition of a new Mayo River State Park in Rockingham County. S.L. 2003-108 (H 1025) authorizes the addition of Haw River State Park in Guilford and Rockingham counties. S.L. 2003-

234 (S 627) makes changes to the system, notably the addition of 6,700 acres to the parks and natural areas system (the last dedication having been made in 2001). The parks affected include Beech Creek Bog State Natural Area, Bushy Lake State Natural Area, Elk Knob State Natural Area, and Lea Island State Natural Area.

Water Quality

Swift Creek Reclassification

One of the most controversial legislative efforts in the environmental arena in the 2003 session involved a bill to disapprove the reclassification of part of Swift Creek in the Tar-Pamlico River Basin. The Environmental Management Commission had reclassified Swift Creek, located in and around Nash County, as Outstanding Resource Waters following over ten years of discussion and debate. S.L. 2003-433 (H 566) permits this reclassification to remain effective for parts of the stream upriver from Nash County State Road 1003, but disapproves the reclassification for the appproximately one-third of the watershed below that road.

Catawba River Buffers

Temporary rules adopted by the Environmental Management Commission providing for riparian area management in certain parts of the Catawba River Basin were extended to September 1, 2004, by S.L. 2003-340, the environmental technical corrections bill.

Water Resources

Local Water Supply Plans

Local water supply plans have been required of publicly owned community water systems since the late 1980s. Now S.L. 2003-387 (H 1062) requires them of all water systems, including investor-owned systems, that regularly serve 1,000 or more connections or 3,000 or more individuals. The act also requires that all local water supply plans describe how the water system will respond to drought and other water shortage emergencies. Lastly, the act directs DENR to establish a Drought Advisory Council to improve coordination among water suppliers and to provide consistent information on drought conditions to interested parties.

Contiguous System Water Metering

The definition of *contiguous premises* was adopted by the state to allow submetering of apartments for water use. S.L. 2003-173 (H 1201) extends this definition to include manufactured homes in order that these homes and the parks in which they are located might be submetered in a similar manner.

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William A. Campbell

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Health

The 2003 General Assembly enacted several pieces of legislation affecting health care, health insurance, and health care providers, the most significant being legislation requiring changes to statutes governing the North Carolina Medical Board and emergency medical services. In addition, the legislature offered a significant proposal this session that would require a large-scale review and assessment of the state's public health system and the implementation of a statewide plan for the delivery of public health services.

Budget

Public Health

The 2003 appropriations act, S.L. 2003-284 (H 397), cuts several programs and positions in the Division of Public Health within the North Carolina Department of Health and Human Services (DHHS). The largest reductions came from eliminating state funds for the purchase of home health care ($3 million) and reducing inflationary increases for the purchase of medical care, energy, and utilities ($1.7 million). In addition, charging local health departments for the processing of pap smear specimens will generate more than $1 million. Funding for several programs was entirely eliminated, including the Area Health Education Center at the UNC School of Public Health, the Dusty Trades Program, the Intensive Home Visitation Program, and the Farmer's Market Program. Funding for many other programs was also significantly reduced, including

- a $170,000 reduction in recurring funds for pediatric primary care clinics within local health departments (this reduction was replaced with federal funds and other funding sources);
- a $144,000 reduction in recurring funds for Women's and Children's Health Programs, comprising reductions in the Sickle Cell Program, Community Transition Coordination, and the Perinatal Outreach and Education Training Program;
- a $100,000 reduction in recurring funds for health promotion; and
- a $33,000 reduction in recurring funds to support aid to local governments for the childhood lead poisoning program.

Despite cuts to existing programs, new funding was made available for several public health initiatives. The legislature appropriated $500,000 in nonrecurring funds for upgrading the automation and management of vital records within the Division of Public Health. The Cabarrus Public Health Authority was awarded a one-time $100,000 grant in support of a new clinic to serve the Latino community. Other new funding includes

- $300,000 in recurring funds to the North Carolina affiliate of the National Society to Prevent Blindness for the purpose of increasing vision screenings of children in child care settings;
- $300,000 in recurring funds for the support of the statewide folic acid campaign;
- $250,000 in recurring funds to the Healthy Start Foundation for the purpose of improving birth outcomes;
- $100,000 in nonrecurring funds to the Heart Disease/Stroke Prevention Task Force.

The appropriations act also includes several special provisions affecting public health. Currently, the qualifications for a local health director, including the educational requirements applicable to the position, are specified in G.S. 130A-40. Section 10.33C adds new G.S. 130A-40.1 authorizing a pilot program whereby one local board of health may appoint a local health director who has an educational background in nursing. The section also requires the nurse/health director to complete extra continuing education requirements.

Section 10.30 provides that of the funds allocated for childhood immunization programs, $1 million may be used for projects and activities designed to increase immunization rates, including outreach efforts and development of an automated immunization registry.

Section 10.31 specifies that for fiscal years 2003–2004 and 2004–2005, an HIV-positive individual may be eligible to participate in the AIDS Drug Assistance Program (ADAP) if his or her income is at or below 125 percent of the federal poverty level. Section 10.31A, however, directs DHHS to pursue alternatives to the current financing for ADAP such that eligibility may be expanded. In addition to establishing the eligibility level, S.L. 2003-284 requires DHHS to report to the General Assembly on utilization of ADAP.

In 2001 the General Assembly enacted the Infant Homicide Prevention Act, S.L. 2001-291, which permits a parent to surrender an infant without being subject to prosecution. Section 10.8B of S.L. 2003-284 directs the DHHS Divisions of Public Health and Social Services to incorporate education and awareness of the act into other state-funded programs at the local level.

HIPAA

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) required the U.S. Department of Health and Human Services to develop several federal regulations governing the electronic transmission, privacy, and security of health care information. Several state agencies and hundreds of local government agencies are required to comply with these complex regulations. Section 6.6 of the 2003 appropriations act allocates $2 million to the Reserve to Implement HIPAA and directs that the reserve be located in the Office of State Budget and Management. In addition, a special provision in Section 6.7 directs the Governor or his designee to coordinate the state's implementation of HIPAA, including coordinating correspondence with the federal government, obtaining interpretations from the North Carolina Attorney General, and establishing deadlines for state agencies.

Medicaid

Special provisions in the 2003 appropriations act affecting the Medicaid Program are addressed in Chapter 21, "Social Services."

Pharmacy

Section 10.8D of the 2003 appropriations act adds a new section to the Pharmacy Practice Act. New G.S. 90-85.21B provides that it is unlawful for any person not licensed or registered under the act to hold himself or herself out as licensed or registered to practice pharmacy in North Carolina.

Liability Insurance

Section 10.7 of S.L. 2003-284 authorizes DHHS and the North Carolina Department of Environment and Natural Resources (DENR) to provide medical liability coverage up to $1 million per incident for physicians and dentists working for the state, for certain physicians working on contract for DHHS, and for certain physicians in residency training programs.

Department of Health and Human Services Administration

Section 10.2 of S.L. 2003-284 directs DHHS to establish an Office of Policy and Planning to promote coordinated policy development and strategic planning for health and human services programs. The director of the Office will have the authority to direct other components of DHHS to conduct periodic reviews of policies, plans, and rules and will advise the DHHS Secretary about any recommended changes.

Other DHHS Requirements

Section 10.8A of S.L. 2003-284 directs DHHS to review its information technology infrastructure and report on its findings to the General Assembly. Section 10.8F requires DHHS to implement an initiative to support local coordination of long-term care and pilot the establishment of local lead agencies to facilitate the coordination process at the county or regional level. Section 10.32 requires DHHS to submit a report to the General Assembly on the newborn hearing screening program.

Public Health

Infrastructure

The introduction of S 672 this past session launched a major initiative designed to bolster the state's public health infrastructure. The bill proposes to redefine the mission of the public health system as well as the "essential public health services" to be provided by state and local public health agencies. It would direct each county to develop "local priorities" for public health that would then be used by the state to develop a state plan for public health services. In addition, it would require state and local public health agencies to obtain accreditation. The bill passed the Senate late in the 2003 session and is eligible for consideration by the House in the 2004 short session.

Lead Poisoning

S.L. 2003-150 (S 519) makes several changes to Chapter 130A, Article 5, Part 4, the statutes relating to lead poisoning in children. Perhaps most importantly, the law modifies the remediation standards for certain lead dust and soil poisoning hazards. For example, the remediation standard for lead dust on floors is reduced from 100 micrograms per square foot to 40 micrograms per square foot. The act also amends the standard for lead levels in soil to remove a flexible standard that allowed the Department of Environment and Natural Resources to allow lead levels above 400 parts per million depending upon "the condition and use of the land and . . . other relevant

factors." The flexible standard is replaced with a more specific standard requiring lead levels of less than 400 parts per million in certain areas within three feet of residential housing units or child-occupied facilities and less than 1,200 parts per million in other locations of the yard. These changes correspond with federal regulations promulgated by the U.S. Environmental Protection Agency in 2001.

The law makes changes to the definitions of *lead-based paint hazard* and *lead poisoning hazard* and deletes the definitions of *mouthable lead-bearing substance* and *persistent elevated blood level*. Previously, a child had to have a persistent elevated blood level, which meant a blood lead concentration of 15 to 19 micrograms per deciliter according to a specific blood testing protocol, before DENR could require a child to be tested and investigate the child's residence. S.L. 2003-150 replaces the term *persistent elevated blood level* with *elevated blood level* so that the statutory standard for testing and investigation is now 10 micrograms per deciliter.

The law also eliminates the use of the term *abatement* and incorporates all such activities under the term *remediation*. Finally, the list of prohibited methods for remediation of lead-based paint hazards is modified to include dry scraping except in limited circumstances.

Vaccinations

S.L. 2003-227 (H 916) directs DHHS and local health departments to offer a vaccination program for first responders. The program must offer several different vaccinations, including hepatitis A and B, diphtheria-tetanus, influenza, pneumococcal, and any others recommended by the U.S. Public Health Service and in accordance with the Federal Emergency Management Directors Policy. The program is voluntary for all first responders except those classified as having occupational exposure to blood-borne pathogens. First responders include state and local law enforcement personnel, fire department personnel, and emergency medical personnel who will be deployed to bioterrorism attacks, terrorist attacks, catastrophic or natural disasters, or emergencies. The law directs DHHS to work with local employers to attract federal funding to support the vaccination program.

Smoking

Under Chapter 143, Article 64, only certain classes of state-controlled buildings may be designated nonsmoking, including libraries and museums. All other buildings must have a designated smoking area. S.L. 2003-292 (H 1016) amends the statute to provide that certain buildings of the University of North Carolina may be designated nonsmoking, including health services facilities, enclosed student recreational centers, laboratories, and residence halls. Each UNC institution must, however, make a reasonable effort to provide residential smoking rooms in residence halls in proportion to student demand.

Another new law, S.L. 2003-421 (S 583), requires local boards of education to adopt policies prohibiting the use of tobacco products in public school buildings. S.L. 2003-421 is addressed in Chapter 8, "Elementary and Secondary Education."

Jail Health

S.L. 2003-392 (S 661) amends G.S. 153A-225 to provide that when a jail transfers an inmate to another jail, the transferring jail must provide the receiving jail with any health information it has in its possession pertaining to the inmate.

Emergency Medical Services

S.L. 2003-392 (S 661) makes several significant changes to Chapter 131E, Article 7, Regulation of Emergency Medical Services. First, it adds definitions to G.S. 131E-155 for the terms *emergency medical services instructor* and *emergency medical services peer review committee*. Within the definition of emergency medical services (EMS) peer review committee, the law provides that such a committee, including its members, proceedings, records, and materials, shall be afforded the same protections afforded Medical Review Committees under G.S. 131E-95. The law amends the definitions of *emergency medical services-nurse practitioner, emergency medical services-physician assistant,* and *mobile intensive care nurse* to provide that those professionals may, after completion of an orientation program, be approved by the medical director to issue instructions to EMS personnel in accordance with approved protocols.

The law revises the applicability of the credentialing requirements reflected in G.S. 131E-159 such that the requirements are no longer applicable to some classes of EMS personnel and are applicable to several new classes.

G.S. 131E-162 directs DHHS to establish a statewide trauma system and the North Carolina Medical Care Commission to adopt rules governing the system. S.L. 2003-392 amends the statute to require the commission to adopt rules establishing regional trauma peer review committees. The law also specifies some of the committees' responsibilities as well as the required composition of the committees. It affords the members, proceedings, records, and materials of the committees the same protections as those of Medical Review Committees under G.S. 131E-95. G.S. 143-508 directs the Medical Care Commission to adopt several different types of rules that are intended to govern the Statewide Emergency Medical Services System. S.L. 2003-392 requires the commission to adopt rules to establish occupational standards for EMS systems, EMS educational institutions, and specialty care transport programs.

G.S. 143-518 outlines strict confidentiality provisions that apply to certain EMS-related medical records compiled or maintained in connection with dispatch, response, treatment, or transport of patients or in connection with the statewide trauma system. S.L. 2003-392 amends the statute so that it applies not only to medical records of DHHS and EMS providers but also to medical records of hospitals participating in the statewide trauma system.

G.S. 143-519 establishes the Emergency Medical Services Disciplinary Committee, which is charged with making recommendations to DHHS regarding disciplinary matters related to credentialing. S.L. 2003-392 amends the statute to increase the number of committee members from five to seven and requires that one member be an EMS educator and that two members, rather than one, be currently practicing and credentialed EMS personnel. The law also amends the statute to require the committee to elect a chairperson and vice-chairperson on an annual basis.

Health Professions

Medicine

S.L. 2003-366 (H 886) makes several changes to the North Carolina Medical Board. Under current law, the Governor appoints the twelve members of the board, seven of whom are nominated by the North Carolina Medical Society. The new law directs the Governor and the Medical Society to make an effort to ensure that the appointees and nominees reflect the composition of the state with regard to gender, ethnic, racial, and age composition. The law also now requires that the board include at least one osteopathic physician, one medical school faculty member who utilizes integrative medicine in his or her clinical practice, or one member of the Old North State Medical Society. *Integrative medicine* is defined in the law to include treatment that may not be considered a conventionally accepted medical treatment but that the physician believes may be of potential benefit to the patient, so long as the treatment poses no greater risk of harm to the patient than the comparable conventional treatment.

The law also revises the disciplinary authority of the Medical Society Board to provide that in order to annul, suspend, deny, or revoke a license, the board must find by the greater weight of the evidence that the care provided was not in accordance with the standards of practice for the procedures or treatments administered. In addition, when disciplining a physician who practices integrative medicine, the board is now required by law to consult with a licensee who practices integrative medicine.

Finally, the law amends the provisions that govern the type of evidence that is admissible in disciplinary proceedings. Specifically, the law allows a licensee under investigation to call witnesses and allows the admission of statements contained in medical or scientific literature.

Nursing

Currently, state law provides that certain communications—such as communications between a physician and a patient, a psychologist and a patient, and a member of the clergy and his or her communicants—are privileged. If a communication is privileged, the holder of the information, such as a physician, is not required to disclose information about the communication in the course of court proceedings except in limited circumstances. S.L. 2003-342 (H 743) establishes a new privilege for nurses. Under the new law, information that is acquired while rendering professional nursing services and that is necessary to the provision of such services is now privileged. The nurse may not be required to disclose the information unless a court determines that disclosure is necessary to the proper administration of justice and that such disclosure is not prohibited by other law.

Another new law makes several changes to the statutes governing the Board of Nursing. S.L. 2003-146 (S 522)

- amends G.S. 90-171.21 to reduce the number serving on the board from fifteen to fourteen;
- revises the board's composition requirements by reducing the number of registered nurses from nine to eight, reducing the number of licensed practical nurses from four to three, and increasing the number of members of the public from two to three;
- provides the Governor with the authority to appoint one public member and the General Assembly with the authority to appoint two public members;
- revises the mandatory qualifications applicable to each of the members and changes the terms from three to four years;
- revises G.S. 90-171.22 to provide that the chairperson of the Board of Nursing is no longer required to be a registered nurse;
- revises G.S. 90-171.23(b) and G.S. 90-171.40 to provide that the board is only required to review nursing programs every eight years rather than every five years;
- provides that the terms of all current board members expire on December 31, 2004;
- provides for the appointment and election of new board members; and
- creates a new requirement that, before hiring a nurse, every health care facility must verify the applicant's license.

Dental Health

S.L. 2003-348 (S 800) raises the licensure fees for dentists and dental hygienists.

Respiratory Care

S.L. 2003-384 (H 1257) amends the Respiratory Care Practice Act to provide the North Carolina Respiratory Care Board additional authority to investigate the background of an applicant and to assess civil monetary penalties for violations of the act. It also establishes a procedure for the board to grant temporary licenses under certain circumstances.

Chiropractic

S.L. 2003-155 (H 278) amends the provisions of G.S. 90-143 relating to the examination for licensure to practice chiropractic medicine. The amendments allow the North Carolina Board of Chiropractic Examiners to include as part of the North Carolina examination any examination developed and administered by the National Board of Chiropractic Examiners, as long as the North Carolina Board sets the passing scores.

Speech and Language Pathologists and Audiologists

S.L. 2003-222 (H 1260) raises the licensure fees for speech and language pathologists and audiologists.

Massage and Bodywork Therapy

S.L. 2003-348 authorizes the North Carolina Board of Massage and Bodywork Therapy to assess civil penalties and the costs of disciplinary actions against licensees for violations of Chapter 90, Article 36 (Massage and Bodywork Therapy Practice) and any rules promulgated by the board.

Financing

Managed Care

In 2001 the General Assembly established the Managed Care Patient Assistance Program to provide information and assistance to individuals enrolled in managed care plans. S.L. 2003-105 (H 744) directs health insurers to provide information to enrollees about the availability of the program, including the telephone number and the address of the program. Insurers are required to provide such information in several instances; for example, the information must be included in the member handbook and must be provided to enrollees at several different stages in the insurer's grievance process. S.L. 2003-105 also directs the Commissioner of Insurance to notify individuals of the availability of the Managed Care Patient Assistance Program after receiving a request for external review.

Insurance

S.L. 2003-223 (S 887) requires all health benefit plans and small employer carrier standard plans to provide coverage for surveillance tests for women age twenty-five and older at risk for ovarian cancer. A woman is "at risk for ovarian cancer" if she tests positive for a hereditary ovarian cancer syndrome or if she has a family history of cancer. The law requires that the surveillance tests be subject to the same deductibles, coinsurance, and other limitations as similar services covered under the plan.

Another new law makes several statutory changes intended to reflect recent medical advances in screening for the early detection of cervical cancer. S.L. 2003-186 (S 388) requires all health benefit plans, small employer carrier standard plans, hospital and medical service plans, health maintenance organizations, and the Teachers' and State Employees' Comprehensive Major Medical Plan to provide coverage for examinations and tests for the early detection of cervical cancer. The law replaces the term "pap smear" with a more general phrase referring to several tests, including the pap smear, designed to screen for cervical cancer. The law does not specify how and when these screenings should be covered but rather provides that coverage must be in accordance with the most recently published American Cancer Society guidelines or guidelines adopted by the North Carolina Advisory Committee on Cancer Coordination and Control.

In general, when a provider submits a claim to an insurer, the insurer often charges a fee for processing the claim. S.L. 2003-369 (H 1066) requires each insurer to make available to providers a schedule of the fees associated with the services or procedures for which bills are submitted. Schedules must be made available to contracted providers as well as prospective contracted providers. The law also requires insurers to disclose a description of their policies with respect to claims submission and reimbursement. Insurers must notify providers about changes to the schedule of fees or the claims submission or reimbursement policies. The law specifies two limited exceptions to these requirements. All insurers must submit to the Commissioner of Insurance a written description of their policies and procedures for complying with these requirements.

Consistent with the requirements of federal law, including the Graham-Leach-Bliley Act and the security regulations promulgated under HIPAA, S.L. 2003-262 (S 966) requires insurers and others to implement a comprehensive written information security program by April 1, 2005. The purpose of the program is to protect the privacy of information about applicants and policyholders. The law authorizes the Commissioner of Insurance to adopt rules necessary to carry out this purpose.

Medicaid

Legislation affecting the Medicaid program is addressed in Chapter 21, "Social Services."

State Employees' Health Benefit Plan

Legislation affecting the State Employees' Health Benefit Plan is addressed in Chapter 18, "Public Personnel."

Advisory Committees

S.L. 2003-114 (S 704) establishes the North Carolina Traumatic Brain Injury Advisory Committee. The Committee is charged with, among other things, studying the needs of individuals with traumatic brain injuries and making recommendations to the Governor, the General Assembly, and the Secretary of Health and Human Services regarding a comprehensive statewide service delivery system for persons suffering from traumatic brain injuries.

In 1993 the General Assembly established the Advisory Committee on Cancer Coordination and Control. S.L. 2003-176 (S 648) establishes the Cervical Cancer Elimination Task Force to serve the advisory committee. The task force has several duties, including the obligation to raise public awareness about cervical cancer; examine existing laws, programs, and services with regard to coverage and awareness issues for cervical cancer; and develop a statewide cervical cancer prevention plan. Beginning in April 2004, the task force is required to submit annual progress reports to the advisory committee. The task force is set to expire in 2008.

Anatomical Gifts

Article 21 of Chapter 130A establishes the Advance Health Care Directive Registry, a statewide, on-line central registry for advance health care directives, including health care powers of attorney and declarations of anatomical gifts. Previously, all documents and revocations of documents filed with the registry were required to be notarized. S.L. 2003-70 (S 422) amends G.S. 130A-466 to remove the notarization requirement for declarations of anatomical gifts.

Other Laws of Interest

- S.L. 2003-169 (H 273), which amends the state workers' compensation laws to include diseases or injuries resulting from certain employees' having received a smallpox vaccination, is addressed in Chapter 18, "Public Personnel."
- S.L. 2003-194 (H 825), which requires some postsecondary institutions to provide meningitis immunization information to students, is addressed in Chapter 11, "Higher Education."
- S.L. 2003-304 (S 421), which includes some changes to the statutes governing the State Child Fatality Review Team, is addressed in Chapter 21, "Social Services."
- S.L. 2003-393 (S 1016), which requires nursing homes to establish medication management advisory committees and to take certain steps to reduce medication-related errors, is addressed in Chapter 20, "Senior Citizens."

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Higher Education

In 2000 the General Assembly proposed—and the voters approved—the issuance of $2.5 billion in general obligation bonds for capital improvements at the University of North Carolina (UNC) and $600 million for the North Carolina Community College System. Since then, the funding news for UNC and the community colleges has been uniformly dismal, as the state has suffered through an economic downturn and overall revenue shortfalls. The tough times continued in 2003.

The gloomy economic picture dominated legislative activity in 2003, but a number of other considerations provided a background context. One study indicated that the funding mechanisms in place work to the measurable detriment of five of UNC's sixteen constituent institutions. Some supporters of the Chapel Hill campus have agitated for an increase in the 18 percent cap on out-of-state students. Elements within the university system have argued that Boards of Trustees of constituent campuses should have tuition-setting authority independent of the UNC Board of Governors. In 2001 the General Assembly created the UNC Board of Governors Study Commission to study the size, terms, and method of selecting members of the university's governing board. The impetus for that study was a concern expressed by some that the centralized system for governing UNC's sixteen constituent institutions was insufficiently responsive to the unique needs and opportunities of individual campuses. The General Assembly directed the study commission to report its findings to the 2003 session of the legislature, but it did not.

Appropriations and Salaries

UNC Current Operations

The Current Operations and Capital Improvements Appropriations Act of 2003 [S.L. 2003-284 (H 397)], the budget act, appropriates to the University of North Carolina Board of Governors—for the operation of all UNC campuses and hospitals—$1,792,141,661 for fiscal 2003–2004 and $1,822,426,657 for fiscal 2004–2005. In the budget act of 2001, the comparable figures for the two years of the 2001–2003 biennium were $1,789,335,775 and $1,797,720,830.

Community Colleges Current Operations

The budget act appropriates to the Community Colleges System $660,927,719 for fiscal 2003–2004 and $660,199,222 for fiscal 2004–2005. In the budget act of 2001, the comparable figures for the two years of the 2001–2003 biennium were $643,695,459 and $643,195,459.

Capital Improvements

The 2003 General Assembly made no direct appropriations for capital improvements, but UNC and the Community College System are both implementing projects under the 2000 bond issuance. The proceeds of that bond issuance support the construction projects listed in S.L. 2000–3 (S 912). Section 9.3 of this year's budget act, S.L. 2003-284, amends that list as follows.

At Elizabeth City State University (ECSU), a $1.7 million project entitled "Campus Infrastructure Improvements" replaces a project of the same cost entitled "Doles Residence Hall—Comprehensive Renovation." ECSU is also authorized, with the approval of the Board of Governors, to transfer funds from bond projects in order to plan the facilities needed by the Joint Pharmacy Program.

At North Carolina Central University (NCCU), a $2.1 million project entitled "Old Senior Dorm—Conversion to Academic Use" is deleted and those funds are transferred to a project entitled "Pearson Cafeteria—Expansion," which replaces a project entitled "Pearson Cafeteria—Comprehensive Renovation." In addition, $5.6 million is transferred to the Pearson Cafeteria renovation from the "Farrison-Newton Building—Comprehensive Renovation of Classroom Building" project (leaving a total of $1.4 million for that project). NCCU is also authorized, with the approval of the Board of Governors, to transfer funds from one bond project to another to make the infrastructure improvements and building repairs needed for remediation of the mold problem on campus.

At The University of North Carolina at Asheville, a project entitled "Carmichael Hall Classroom Building—Demolition and New Construction" replaces "Carmichael Hall Classroom Building—Comprehensive Renovation."

At The University of North Carolina at Pembroke, $7.4 million is transferred from a project entitled "Residence/Dining Hall—Replacement of Jacobs and Wellons Halls" to a new project entitled "General Purpose Classroom Building."

Several project changes are authorized at Winston-Salem State University. (1) The "Anderson Center—Comprehensive Renovation" project replaces a project entitled "Anderson Center—Comprehensive Renovation & Change of Use for Early Childhood/Gerontology Programs." (2) Two new projects, "Coltrane Hall—Renovation to House Gerontology" and "New Facility for the Early Childhood Program," are added and a portion of the Anderson Center funds are transferred for these two projects. (3) A project entitled "New Student Health Center" replaces a project entitled "Health Center Bldg. & Old Nursing Bldg.—Comprehensive Renovation for Student Health."

Salaries

Under Section 8.11 of the budget act, community college faculty and professional staff receive salary increases averaging 0.5 percent, and instructional personnel supported by state funds receive, in addition, a one-time $550 bonus. Most UNC employees receive the $550 bonus, but teaching employees of the School of Science and Mathematics receive an average salary increase of 1.8 percent instead. In addition, most UNC and community college employees receive a special credit of ten additional days of annual leave.

S.L. 2003-9 (H 432) and Section 30.14A of the budget act together give related employees of community colleges, public schools, and UNC the ability to share leave among themselves. That is, a community college employee may share leave with, for example, a public school employee who is an immediate family member. An employee may also share leave with a co-worker's immediate family member who is employed by a public school, community college, or state

agency, so long as the co-worker whose family member receives the leave is employed by the same institution or public school administrative unit as the donating employee.

University and Community College Governance

Community College Budget Flexibility

Section 8.1 of the budget act provides that each community college may use all 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. No more than 2 percent systemwide may be transferred from faculty salaries without the approval of the State Board of Community Colleges.

Section 8.7 of the budget act provides that fees collected by the Hosiery Technology Center of Catawba Valley Community College for testing hosiery products are to be retained by the center and used for its operations.

UNC Purchasing Flexibility

S.L. 2003-228 (H 975) and S.L. 2003-312 (H 1070) give UNC increased flexibility and autonomy in making purchases of goods and services. For a discussion of these statutory changes, see Chapter 19, "Purchasing and Contracting."

Community Colleges Trust Fund

Section 8.14 of the budget act enacts new G.S. 115D-42 to create the North Carolina Community Colleges Instructional Trust Fund, which is designed to supplement the funds raised by community college foundations to enhance the academic missions of those colleges. For every two dollars raised by a community college's foundation and placed in the Trust Fund, the state will contribute one dollar, up to $25,000 for each college. Community colleges may use state funds from the Trust Fund only for scholarships or financial aid for needy students. Funds raised by a college's foundation may be used for resource center materials, professional development of faculty and staff, and other purposes authorized by the State Board of Community Colleges. Section 8.14 appropriates $1.4 million from the Escheat Fund to the State Board to provide for the state's contributions to the Trust Fund.

Community College Public/Private Construction Projects

S.L. 2003-286 (S 773) enacts new G.S. 115D-20(13) authorizing community college boards of trustees to enter into public/private partnerships in which the board agrees to lease community college land to a private entity on condition that the private entity construct a facility on the land. The facility, to be jointly owned and used by the entity and the college, may not be leased to the entity under a long-term or capital lease or by entering into an installment contract or other financing contract with the entity. State bond funds cannot be used to pay for construction of the part of the facility to be owned and used by the entity.

UNC Special Obligation Bonds

S.L. 2003-357 (S 633) amends G.S. 116D-26, a statute giving the Board of Governors the authority to issue, with the approval of the Governor, special obligation bonds for construction projects to be repaid from designated revenue sources. This amendment (1) extends the maximum term of such bonds from twenty-five to thirty years and (2) extends the maximum term of bond anticipation notes issued in connection with the bonds from two years to thirty (but also provides

that if bond anticipation notes are issued for terms longer than three years, no individual construction project may be funded with proceeds from the note for longer than three years).

Beverage Contracts

Section 6.15 of the budget act enacts new G.S. 143-64 directing community colleges, UNC institutions, and school administrative units to competitively bid contracts that involve the sale of juice or bottled water. These entities may set quality standards for the beverages and use those standards to accept or reject a bid.

Millennium Campuses Land Transfers

Section 6.20 of the budget provides that property allocated to the Department of Administration and previously allocated to the Department of Health and Human Services for the Central School for the Deaf at Greensboro is reallocated to the UNC Board of Governors. The property is to be used to establish millennium campuses at The University of North Carolina at Greensboro and North Carolina Agricultural and Technical State University.

School of Science and Mathematics Board of Trustees

S.L. 2003-57 (H 103) raises the number of members of the Board of Trustees of the School of Science and Mathematics from twenty-six to twenty-seven. The Board of Governors appoints one person from each of North Carolina's congressional districts to the Board of Trustees. This change adjusts the number of trustees in light of the increase in the number of the state's congressional districts from twelve to thirteen.

North Carolina Arboretum Board of Directors

G.S. 116-243 establishes the Board of Directors of the North Carolina Arboretum, limits each member to two consecutive terms, and has formerly provided that a member must have been absent from the board for at least four years before being eligible for reappointment. S.L. 2003-102 (S 851) reduces the mandatory absence to one year.

Appalachian State University Parking Authority

G.S. 116-44.5(2) sets out the authority of the Board of Trustees of Appalachian State University to regulate parking on certain public streets in Boone. S.L. 2003-213 (H 928) revises and expands the list of such streets.

North Carolina School of the Arts Board of Trustees

G.S. 116-65 has provided that the conductor of the North Carolina Symphony is a member of the North Carolina School of the Arts Board of Trustees. A revision in S.L. 2003-215 (H 1210) provides that either the conductor or his or her designee will serve as a trustee.

Distinguished Professorships Challenge Grants

In 1985 the General Assembly, in G.S. 116-41.13 through -41.19, created the Distinguished Professors Endowment Trust Fund. The fund was designed to provide state grants to match private donations made to the individual UNC constituent institutions for the creation of endowed professorships. The grants are made—to the extent that there is money in the Trust Fund—on a two-for-one basis; that is, for every two dollars of private funds raised, the state puts up one dollar. S.L. 2003-293 (S 952) changes the matching formula for nine of the institutions so that the match is one for one. The nine institutions are seven "focused growth institutions" (Elizabeth City State

University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, The University of North Carolina at Pembroke, Western Carolina University, and Winston-Salem State University) and two "special needs institutions" (the North Carolina School of the Arts and The University of North Carolina at Asheville).

Film Industry Feasibility Study

Section 9.5 of the budget act directs the Board of Governors to conduct, in consultation with the faculty and staff of the School of the Arts, a study assessing strategic opportunities in the arts and entertainment industry for Forsyth County. The study is to consider development of (1) a program in digital media and (2) a film industry studio backlot as a tourist destination.

Duke University Police

S.L. 2003-329 (S 736), a local act applicable only to Durham, permits the city of Durham to enter into a joint agreement with Duke University permitting the university's police officers to exercise law enforcement authority throughout the city, not just on the campus.

Cooperative Innovative High School Programs

S.L. 2003-277 (S 656) enacts a new Part 9 of Article 16 of G.S. 115C, authorizing boards of trustees of community colleges and local boards of education to jointly establish cooperative innovative programs in high schools and community colleges. The programs are to target students at risk of dropping out of high school and students who could benefit by accelerated instruction. For a full discussion, see Chapter 8, "Elementary and Secondary Education."

Innovative Education Initiatives Act

S.L. 2003-277 enacts the Innovative Education Initiatives Act, directing the state's Education Cabinet (consisting of representatives from the public schools, the community college system, and the university) to work in specific ways to improve cooperative efforts among all levels of the state's education system. The act is discussed more fully in Chapter 8, "Elementary and Secondary Education."

Student Relationships and Financial Aid

Tuition for Active-Duty Military Personnel

G.S. 116-143.3 provides a formula for determining how much a member of the armed services must pay in tuition to attend a UNC constituent institution or a community college. Section 8.16 amends the statute to (1) specify that the advantages of the statute shall accrue only to "active duty" members of the armed services, (2) keep the tuition formula in place for community colleges, and (3) provide a new formula for UNC institutions. At UNC institutions, the new provisions specify that an active-duty member of the armed services shall be charged as tuition and fees the maximum amount of tuition assistance he or she is eligible to receive from the U.S. Department of Defense.

In-State Tuition at Community Colleges

G.S. 115D-39 provides that in certain circumstances individuals who are not residents of North Carolina may nonetheless be charged in-state tuition at a North Carolina community

college. Section 8.16 of the budget act amends the statute to add to the list (1) any person lawfully admitted to the United States who has satisfied the requirements for assignment to a public school and has graduated from that public school and (2) any person lawfully admitted to the United States and sponsored by a qualifying charitable or religious nonprofit entity.

General Articulation Agreement

Community college students transferring to an institution in the UNC system take with them credit for courses successfully completed. At one time, the various community colleges had individual agreements with the various UNC institutions concerning what courses could be counted for credit and for how many credits. In the 1990s, the Community College System and UNC replaced this spider's web of individual agreements with the General Articulation Agreement (GAA). Section 8.12 of the budget act directs the Joint Legislative Education Oversight Committee to contract with an independent individual or organization to study the GAA and provide recommendations for improving it.

Financial Aid Appropriation

Section 9.2 of the budget act appropriates $23,750,000 for each year of the 2003–2005 biennium from the Escheat Fund to the Board of Governors for use as need-based student financial aid at UNC constituent institutions, and $10,262,806 each year to the State Board of Community Colleges for the same purpose. This aid is administered by the State Education Assistance Authority.

School of Science and Math College Scholarships

Section 9.4 of the budget act adds new G.S. 116-238.1 granting a full-tuition grant to every North Carolina resident who graduates from the School of Science and Mathematics and enrolls as a full-time student at a UNC institution. The program is to be administered by the State Education Assistance Authority.

Community College Financial Aid Paperwork

G.S. 115D-40.1(c) specifies the application forms community college students applying for financial assistance must complete. S.L. 2003-52 (H 234) makes it clear that these requirements apply only to candidates for a degree, diploma, or certificate.

Community College Financial Aid Qualification

G.S. 115D-40.1(b) provides that up to 10 percent of the amount allocated for community college student financial assistance may be used by students who do not qualify for need-based assistance but who enroll in low-enrollment programs that prepare students for high-demand occupations. S.L. 2003-385 (H 223) adds a new provision specifying that a portion of that 10 percent allocation may be used for students with disabilities who are referred by the Division of Vocational Rehabilitation.

State Aid to Private Colleges

Under programs set up in G.S. 116-19 and 116-21.2, the state provides for two payments to private colleges in North Carolina that enroll North Carolina residents as full-time students. The first payment (set at $1,800 per student) is paid to the college and credited against the amount the student owes the college. The second payment (set at $1,100 per student) is paid into a financial aid fund at the college for needy North Carolina students attending that college. S. L. 2003-429 (H 150) adds new G.S. 116-43.5 to create a new program providing for payments to students at

private colleges who do not qualify under the older programs. For students to qualify for the new program, the college must (1) be accredited by the Southern Association of Colleges and Schools, (2) award postsecondary degrees, and (3) have its main permanent campus in North Carolina. Under this new program, payment will be made not to the college but directly to the student upon completion of each academic year.

Under both of the older programs and the new program, the amount of the payment may be prorated if there is not enough state money available within appropriated amounts to make the full payments per student.

Hazing

G.S. 14-35 creates the crime of hazing and classifies it as a Class 2 misdemeanor (carrying a maximum sentence of sixty days in jail). S.L. 2003-299 (H 1171) amends the statute to redefine the term. Before the change, *hazing* meant "to annoy any student by playing abusive or ridiculous tricks upon him, to frighten, scold, beat or harass him, or to subject him to personal indignity." Now it means, "to subject another student to physical injury as part of an initiation, or as a prerequisite to membership, into any organized school group, including any society, athletic team, fraternity or sorority, or other similar group."

G.S. 14-36 required colleges to expel students convicted of hazing. This act repeals that statute.

Meningococcal Disease Immunization Information

S.L. 2003-194 (H 825) adds new G.S. 116-260 requiring colleges with residential campuses to provide vaccination information on meningococcal disease to each student. The new statute specifies that colleges are not required to provide the vaccination itself.

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Information Technology

The most significant legislative changes in the information technology field this session were intended to improve the security, cost, and efficiency of IT processes. The legislature sought to streamline and standardize security requirements in a number of areas and made efforts to regulate contingency plan implementation by and reporting requirements for various state agencies. In the budget and appropriations arena, the legislature commissioned a number of studies to examine expenditures in state IT implementation and upgrade. In addition a number of bills were enacted to standardize procurement and transfer processes by allowing state agencies to make such transactions electronically.

The legislature also made significant changes to several sections of the state Help America Vote Act in order to bring it into compliance with the federal act of the same name. Much of the new language focuses on technology issues and is important in relationship both to how citizens of the state register to vote and to how the state collects and processes the registration information provided by those citizens.

IT Security Issues

The 2003 General Assembly continued to expand the authority and responsibility of the state Chief Information Officer (CIO) in ensuring the safety and security of state information technology resources. Earlier legislation had required the state CIO to establish an enterprise-wide set of security standards and to periodically review state agency adherence to those standards.

Security Compliance

S.L. 2003-153 (H 1003) further broadens the scope of state security compliance by requiring the CIO to assess each state agency's "security organization, network security architecture, and current expenditures for information technology security [G.S.147-33.82 e(1)]." At a minimum

this assessment must include a description of the agency's level of compliance with the enterprise security standards and an estimate of the funds necessary to enable an agency to fully comply with these standards.

No later than May 4, 2004, the Information Resources Management Commission and the state CIO must submit to the Joint Legislative Commission on Governmental Operations a public report that summarizes the security assessment findings, including an estimate of additional funding needed to bring agencies into compliance with the established standards. An annual update of the assessment must be submitted by January 15 in each subsequent year.

Notification Requirements

S.L. 2003-153 also creates some notification requirements for state agencies. Specifically, information technology security incidents (not defined in the statutes) must be reported to ITS within twenty-four hours of confirmation.

Background Checks

S.L. 2003-153 requires that state agency security liaisons—agency employees designated to work with the ITS security staff—be subject to criminal background checks given by the State Bureau of Investigation.

Disaster Recovery Plan

Finally, S.L. 2003-153 adds new G.S.147-33.89 (Business Continuity Planning) to Article 3D of Chapter 147. The new section requires each state agency to develop, review, and update a business and disaster recovery plan for its information technology resources. An agency disaster recovery planning team will be responsible for developing and administering the plan. As part of the plan development, the agency team must: (1) consider the organizational, managerial, and technical environments in which the plan will be implemented; (2) assess the types, likelihood, and impacts of various disasters; and (3) list protective measures to be implemented in preparation for a disaster. The plan is to be submitted annually to the Information Management Resource Commission (IRMC) and the state CIO.

Budget and Appropriations Issues

This year's appropriations act, S.L. 2003-284 (H 397), contains several special provisions affecting state information technology resources and funding.

Electronic Sale of Surplus Property

Section 18.6 of the appropriations act authorizes state agencies, local governments, and other public bodies to sell surplus items through electronic auctions. It amends G.S. 143-64.03 by adding a new subsection, which reads: "The state agency for surplus property may sell or otherwise dispose of surplus property, including motor vehicles, through an electronic auction service." The section also adds new G.S. 143-64.6 (Disposal of Surplus Property), which reads: "A county, municipality, or other public body may sell or otherwise dispose of surplus property, including motor vehicles, through an electronic auction service." This new language duplicates the essence but not the details of existing law authorizing local governments to hold electronic auctions (G.S. 160A-270).

Section 18.6 of the appropriations act also creates new G.S. 15-14.1 (Sale of Property through Electronic Auction), which reads: "In addition to selling property as authorized in G.S. 15-13, a sheriff or police department may sell property in his or its possession through an electronic auction

service. The sheriff or police department shall comply with the publication and notice requirements provided in G.S. 15-12 through G.S. 15-14 prior to any sale under this section." Prior to this change, sheriff and police departments had no authority to use electronic auctions to dispose of abandoned and confiscated property (although they could sell surplus items through electronic auctions).

IT Expenditures Study

Section 21.1 of the appropriations act requires the Office of State Budget and Management (OSBM) to study information technology expenditures across state government, especially as regards duplicate IT expenditures, operations, and inventory. OSBM is to consider and recommend cost-saving strategies that might be implemented in state agency IT operations by addressing whether the current IT budget and organizational structure is the most efficient or if alternate arrangements would be more economical. In consultation with ITS and the IRMC, OSBM must prepare at least three alternate budget transition plans for these agencies. Two plans must consider making all or portions of the ITS and IRMC budgets general fund appropriations, to be reimbursed by agency receipts for the ITS services utilized. The third must consider maintaining the two budgets as internal services funds but transferring the responsibility for budget approval from the IRMC to the General Assembly. OSBM must report its findings by April 1, 2004, to the Joint Legislative Commission on Governmental Operations, the chairs of the Joint Appropriations Subcommittee on General Government, and the Fiscal Research Division.

Multiyear IT Maintenance Agreements

This year's appropriations act also provides for a pilot project involving multiyear IT maintenance agreements. Section 21.2 permits the state controller to authorize ITS to purchase up to four two-year infrastructure maintenance agreements whose terms require full payment up front. Prior to this authorization, the state controller must ensure that the agreement is more cost-effective than an arrangement involving a one-year term, that any savings are passed along to ITS users in the form of lower rates, and that the agreement complies with all applicable statutes and rules. ITS must refund any excess revenue to its customers as required by the federal Office of Management and Budget Circular A-87. Within sixty days of authorization, the state controller must provide full justification of the authorization to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division.

The Help America Vote Compliance Act

S.L. 2003-226 (H 842) (the state HAVA compliance act) amends and rewrites several sections of G.S. 163 concerning the elections process in North Carolina. The act seeks to ensure that the election systems and procedures used in the state's elections comply with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, P. L. 107-252, 116 Stat. 1666 (2002), codified at 42 U.S.C. Sections 15481-15485.

Many of the amendments affect sections and subsections within G.S. 163 that involve IT issues. These are listed below.

Electronic Records of Voter Registration

G.S. 163-82.10 regulates the creation of the official record for voter registration purposes. As now amended it provides that the statewide computerized voter registration system constitutes the official voter registrations list. The state HAVA compliance act adds new G.S. 163-82.10(a)(1) to provide that a voter's registration application form may be either paper or electronic.

Acceptance of Electronic Signatures

G.S. 163-82.6 outlines the process to be used for acceptance of voter registration application forms. It imposes, among other things, standards for valid signatures. The state HAVA compliance act rewrites Subsection (b) to provide that an electronically captured image of a voter's signature on an electronic voter registration form supplied by a state agency shall be considered a valid signature for all purposes for which a signature on a paper voter registration form would be used.

Establishment of Statewide Computerized Voter Registration

The state HAVA compliance act rewrites G.S. 163-82.11. Generally this section requires the State Board of Elections (SBE) to develop and implement a statewide computerized voter registration system. The changes to this section primarily involve making a shift from individual county voter registration systems to a single statewide registration system. As amended G.S. 163-82.11 now does the following:

- Subsection (a) (Statewide System as Official List), provides that the statewide computerized voter registration system shall serve as the single system for storing and managing the official list of registered voters in the state. The system is also to supply the official voter registration list for the conduct of all elections in the state.
- Subsection (b) (Uses of Statewide System), allows each county board of elections to
  - verify that an applicant to register is not also registered in another county,
  - be automatically notified when a registered voter registers to vote in another county, and
  - automatically receive data about a person who has applied to vote at a DMV office or at another public agency authorized to accept voter registration applications.
- Subsection (c) (Compliance with Federal Law), requires the SBE to update the statewide voter registration list to comply with Section 303(a) of the federal Help America Vote Act of 2002.
- Subsection (d) (Role of County and State Boards of Elections), provides that rather than maintaining its own computer file of registered voters, each county must use the statewide computerized voter registration system to maintain its records. This subsection also eliminates the earlier requirement that the SBE and the county boards of elections maintain duplicate files of all registered voters.

Promulgation of Rules Relating to Computerized Voter Registration

G.S. 163-82.12 has required the SBE to make the rules necessary to administer the statewide voter registration system and has detailed the scope of these rules. The state HAVA compliance act amends this section to require the SBE to make the guidelines (instead of rules) necessary to administer the system and to obligate all county boards of elections to follow these guidelines and cooperate with the SBE in their implementation. The guidelines are to:

- establishing, developing, and maintaining a computerized central voter registration file.
- linking the central file through a network to computerized voter registration files in each county.
- interacting with the computerized driver's license records of the DMV and with the computerized records of other public agencies authorized to accept voter registration applications.
- protecting and securing the data.
- converting current county voter registration records to computer formats compatible with the statewide computerized registration system.
- creating the means by which the statewide system can be used to determine whether the voter identification information provided by an individual is valid.
- enabling the statewide system to interact electronically with the DMV system for purposes of validating identification information.

- creating the means by which the DMV can provide a real-time interface for the validation of driver's license numbers and the last four digits of social security numbers.
- creating the means by which the statewide system can assign a unique identifier to each legally registered voter in the state.

Voter Registration at the DMV

The state HAVA compliance act adds Subsection (b) (Coordination on Data Interface) to G.S. 163-82.19. This new subsection provides that the Department of Transportation (DOT) and the SBE shall jointly develop and operate a computerized interface that will match information in the statewide voter registration system database to the driver's license information held by the DMV to the extent required to enable the SBE and the DOT to verify information provided on voter registration applications. This new interface must comply with Section 303 of the federal Help America Vote Act of 2002.

E-NC Authority

During the 2000 session, the legislature created the Rural Internet Access Authority (RIAA) to facilitate Internet access throughout rural North Carolina. The authority had a sunset date of December 31, 2003. S.L. 2003-425 (H 1194) establishes the e-NC Authority as the successor entity to the RIAA; its sunset is to be December 31, 2006. The RIAA has largely accomplished its goals and the e-NC Authority will "continue and conclude" the work of the RIAA.

Creation

S.L. 2003-425 creates the fifteen-member e-NC Authority within the Department of Commerce. Its charge will be to promote, manage, oversee, and monitor efforts to provide rural counties and distressed urban areas with high-speed broadband Internet access, as defined by the Federal Communications Commission. The authority will also serve as the central Internet access planning body for rural and urban distressed areas and is to communicate and coordinate its efforts with state, regional, and local agencies. Its membership will include as ex officio, nonvoting members the executive directors of the North Carolina League of Municipalities and the North Carolina Association of County Commissioners (or their designees), the Secretary of State, the state CIO, the President of the North Carolina Rural Center, and the Executive Director of the North Carolina Justice and Community Development Center.

Duties and Responsibilities

S.L. 2003-425 specifies that the e-NC Authority will be responsible for

- monitoring and safeguarding RIAA investments and contracts.
- maintaining a Web site relating to current and future telecommunications and Internet services and including information about public access sites and digital literacy training.
- continuing efforts to ensure that affordable broadband Internet access is available in rural and distressed urban areas.
- attracting and coordinating federal, foundation, and corporate funding for regional and statewide technology initiatives and assisting local governments, including e-communities, in obtaining grants to enhance their technology infrastructure.
- proposing funding for incentives to attract private sector investments that will help the authority achieve its goals and objectives.
- providing leadership, coordination, and support for efforts targeting technology-based economic development.

- providing leadership, coordination, and support for telecommunications policy assessments relating to Internet access in rural counties and urban distressed areas.
- promoting collaborative technology projects, programs, and activities to generate technology-based economic development.
- encouraging the development of replicable and scalable Internet applications in government, health care, education, and business settings.
- promoting constitutionally valid protective mechanisms to limit electronic distribution of obscene material to children via the Internet.

The act also specifies that the authority does not have the power to impose any charge, surcharge, or fees on telephone or telecommunications services.

Miscellaneous

Electronic Signatures and Public Agencies

S.L. 2003-233 (S 622) reconciles the provisions of three earlier pieces of legislation to make clear that all electronic signatures created pursuant to law, even those that require attestation by a notary, may be accepted by public agencies. Section 1 amends G.S. 66-58.4 (Use of Electronic Signatures) to clarify that public agencies may accept signatures as provided in Article 11A (Electronic Commerce in Government Act) or Article 40 [Uniform Electronic Transactions Act (UETA)] of G.S. 66 or pursuant to other law [primarily the Federal Electronic Signatures in Global and National Commerce Act (ESIGN)]. Section 1 also removes from the Electronic Commerce in Government Act the prohibition on electronic signatures where notarization is required, making that act consistent with UETA. These changes give local governments and state agencies greater flexibility to match the most appropriate method of accepting electronic signatures to their business needs.

Section 2 of S.L. 2003-233 amends the Electronic Commerce Act to provide that this act does not affect the validity, presumptions, or burdens of proof of UETA or other law. Section 4 of S.L. 2003-233 authorizes the Secretary of State to study what changes might be necessary in the notary public law to facilitate electronic notarization and requires that a report summarizing his or her recommendations be made to the General Assembly in the 2004 short session.

IT Legacy Systems Study

S.L. 2003-172 (H 941) creates new G.S. 147-33.89 to require ITS, in conjunction with the IRMC, to conduct a two-phase analysis of the state's IT legacy systems. In the first phase of the analysis, ITS and the IRMC will assess the existing legacy systems themselves. In the second phase, the the two groups will develop a plan to ascertain the resources, funds, and time frame necessary for state agencies to "progress to more modern information technology systems."

Legacy system assessment. Subsection (b) of S.L. 2003-172 outlines the requirements for the legacy system assessment phase of the analysis. It provides that ITS shall

- examine the hierarchical structure within and the interrelationships between state agency legacy systems.
- catalog and analyze the portfolio of legacy applications in use in state agencies and consider the extent to which new applications could be used concurrently with, or should replace, legacy systems.
- consider issues related to the migration from legacy environments to Internet-based and client/server environments and to the availability of programmers and other IT professionals possessing the skills necessary to assist in this migration.
- study any other issues relative to the assessment of legacy information technology systems in state agencies.

ITS should complete the assessment phase and report its findings to the Joint Legislative Commission on Governmental Operations by March 1, 2004. ITS must also make annual reports on "these matters" to the commission by March 1 of each year.

IT modernization planning requirements. The requirements for the second phase of the study (ascertainment of the funds, resources, and time necessary for the modernization of state agency IT processes) are outlined in Subsection (c) of S.L. 2003-172. ITS should complete this phase by January 31, 2005, and report its findings to the 2005 General Assembly. Although the act does not specify the requirements for this phase, it does provide that ITS shall include in its findings and recommendations a cost estimate and time line for the modernization of state agency legacy IT systems. ITS is also to submit an ongoing and updated report of its estimates to the General Assembly on the opening day of each biennial session.

Universal Telephone Service Provider

G.S. 62-110 broadly outlines the rules and procedures necessary for the North Carolina Utilities Commission to issue certificates of convenience and necessity to utility franchises. Among other things, the statute authorizes the commission to adopt rules it finds necessary to provide for the continued development and encouragement of "universally available telephone service at reasonably affordable rates."

Evolving trends. S.L. 2003-99 (H 913) rewrites parts of Subsection (f)(2) of G.S. 62-110 to require the commission, when developing rules to define "universal service," to consider evolving trends in telecommunications services and to take into consideration the extent to which such services provide social benefits to the public at a reasonable cost. This additional language is important because it recognizes the need to expand the definition of universal service to encompass access to the Internet and to high-speed communications networks.

Indefinite time line for final rules adoption. S.L. 2003-99 removes the July 1, 2003, deadline for the commission to adopt final rules concerning the definition and provision of universal service, the entity that should be the universal service provider, and the means for funding universal service (whether through interconnection rates or another mechanism). Instead of proposing a new deadline, the act allows the commission to determine, consistent with the public interest, the time frame in which it wants to conduct an investigation for the purpose of adopting the final rules.

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Land Use, Community Planning, Code Enforcement, and Transportation

The 2003 General Assembly enacted a major transportation initiative, temporarily limited local authority to compel removal of nonconforming billboards, adopted appearance standards for some factory-built housing, and ratified a number of local bills concerning a wide variety of land development and code enforcement issues.

Zoning

The only statewide bill adopted in 2003 directly affecting zoning establishes an eighteen-month moratorium on new amortization of off-premise billboards. Several bills were introduced to limit use of amortization (a regulatory requirement that land uses or structures that were legal when initiated but that violate current regulations come into compliance or be removed after a reasonable grace period). S 534 and H 429 would have broadly eliminated amortization of nonconforming buildings, structures, or signs. Under these bills cities and counties would have had to pay monetary compensation for removal of nonconformities. H 429 passed the House of Representatives but remained in Senate committee at adjournment. An alternative bill, H 984, would have provided detailed guidelines for limitations on nonconformities and would have allowed continued amortization of signs, adult businesses, and junkyards. S.L. 2003-432 (H 754) was adopted as a compromise. This act places a moratorium on any new ordinances and prohibits

extending or expanding existing ordinances amortizing off-premise advertising signs until December 31, 2004.

Five local bills affecting zoning were enacted.

- S.L. 2003-3 (H 35) exempts Waynesville from mailed notice requirements if it rezones its entire territory before January 1, 2004. The town will have to make four half-page published notices in lieu of the mailed notices.
- S.L. 2003-83 (H 124) amends the protest petition statute for Durham County to provide that the protest must be received in time to allow the county at least four working days before the hearing to verify the sufficiency of the petition.
- S.L. 2003-162 (H 249) amends the Wilmington city charter to allow the city to use legislative conditional zoning without an accompanying special or conditional use permit. The statute allows the zoning only upon request of the landowner, requires the rezoning to be made "in consideration of" relevant plans, and requires the petitioner to hold a community meeting prior to making the rezoning petition. This scheme is similar to the process established by local legislation in Charlotte and approved by the court of appeals in *Massey v. City of Charlotte*, 145 N.C. App. 345, 550 S.E.2d 838, *rev. denied*, 354 N.C. 219, 554 S.E.2d 342 (2001) and *Summers v. City of Charlotte*, 149 N.C. App. 509, 562 S.E.2d 18, *rev. denied*, 355 N.C. 758, 566 S.E.2d 482 (2002).
- S.L. 2003-330 (H 440) provides that agricultural land uses are exempt from town zoning in Wentworth.
- S.L. 2003-237 (S 494) authorizes Chapel Hill to require reservation of school sites as part of zoning approvals (including site plan and special use permit reviews). The school sites must be included in the comprehensive plan along with town council and school board approval of the sites. The statute also requires mailed notice to affected owners prior to plan adoption.

Subdivision

There were no statewide bills regarding subdivision regulation enacted. As in most sessions of the past decade, several local bills were adopted making modest changes in the definition of subdivisions subject to local regulation. S.L. 2003-79 (H 765) adds an exemption to the definition of subdivisions for Chowan County. It provides that the division of land as part of an estate settlement is exempt from local subdivision regulation [as the court of appeals ruled thirty years ago in *Williamson v. Avant*, 21 N.C. App. 211, 203 S.E.2d 634, *cert. denied*, 285 N.C. 596, 205 S.E.2d 727 (1974)], but that compliance and building permits can be denied for the resultant lots if they do not meet minimum size requirements for zoning, septic tanks, or building setback ordinances. S.L. 2003-245 (H 70) repeals a 1991 subdivision exemption applicable to Pender County.

Building Code

Homeowner Recovery Fund Permit Fee

Since 1991 local inspection departments have collected a fee from each general contractor who applies for a single-family residential building permit. This fee is then remitted to the Licensing Board of General Contractors and earmarked for its Homeowners Recovery Fund. The fund provides financial assistance for homeowners who have suffered a loss resulting from dishonest or incompetent work performed by a licensed general contractor or someone who fraudulently acts as one. S.L. 2003-372 (S 324) doubles the fee from $5 per permit to $10. The act provides that the inspection department may continue to retain $1 of each such permit fee collected.

Elimination of Architect or Engineer Review

S. L. 2003-305 (H 994) amends G.S. 133-1.1(c), the statute that specifies when a registered architect or engineer must review plans and specifications for a government project. It allows cities, counties, local boards of education, and the state of North Carolina to erect pre-engineered structures without the involvement of a registered architect or engineer, if several requirements are met. First, the structure must be a garage, shed, or workshop no larger than 5,000 square feet in size. Second, the buildings must be for the exclusive use of city, county, public school, or state employees for purposes related to their work. Third, these pre-engineered structures must be located at least 30 feet from other buildings or property lines.

Subcontractor Bids

The general contractor's licensing law, G.S. 87-1, requires that a person who submits a bid for a public contract have a license covering the work involved in that contract. In many cases, however, a project involves multiple trades, and these may be subcontracted by the bidding contractor. S. L. 2003-231 (S 437) authorizes the North Carolina General Contractors Licensing Board to adopt rules allowing a licensed HVAC or electrical contractor to bid on projects that include general contracting work, so long as the cost of the general contracting work does not exceed a percentage of the total bid price, as established by board rules. The act also allows the board to adopt temporary rules to exercise this authority.

Pyrotechnic Displays

A recent tragic fire caused by a fireworks display in a Rhode Island nightclub spawned several legislative reactions in this state. The first affects the authority of local governments to approve pyrotechnic displays at concerts and various public exhibitions. S. L. 2003-298 (S 521) amends G.S. 14-413 to provide that a board of county commissioners may not issue a permit for the indoor use of pyrotechnics at a concert or public exhibition unless the local fire marshal or the State Fire Marshal certifies their safety. In particular a fire marshal must certify that (1) adequate fire suppression will be used; (2) the structure is safe for the use of pyrotechnics, given the type of fire suppression available; and (3) egress from the building is adequate, based on the size of the expected crowd. The statute also requires such certifications from cities authorized by local act to grant pyrotechnic permits. In addition the act also authorizes the State Fire Marshal to certify the pyrotechnics used in certain concerts or exhibitions authorized by The University of North Carolina at Chapel Hill. Most of the act became effective December 1, 2003.

Sprinkler Requirements

The North Carolina Building Code does not require sprinklers in clubs and bars. S. L. 2003-237, however, allows Carrboro to adopt an ordinance to require sprinklers in bars, clubs, and other similar places of public assembly if these establishments sell alcoholic beverages and are designed for occupancy by at least 100 people. Restaurants are exempt. The requirement may be made applicable to any new occupancy, and the sprinklers must be installed before the certificate of occupancy is issued. The regulation may also be made applicable to any existing occupancy three years following the date the ordinance is enacted. Another act, S.L. 2003-247 (H 773), extends similar authority to the Town of Chapel Hill. However, Chapel Hill may apply such regulations to bars and clubs with occupancies of over 100 but less than 200 people only if required egress points are one story above or below grade. Otherwise the regulation may not apply except to occupancies exceeding 200 people. The Chapel Hill legislation would allow an existing club lacking sprinklers up to five years to comply, if its existing occupancy exceeds 200. It would also allow a club up to five years to comply if its occupancy exceeds 150 and it lacks suitable at-grade egress.

Building Condemnation

The municipal building condemnation statutes (G.S. 160A-426 to G.S. 160A-432) have authorized all cities to use summary procedures to demolish nonresidential buildings in target areas. Using summary procedures a city can demolish such a building without a court order if the owner refuses to do so. However, the power to demolish residential buildings without a court order has been available to only a few cities that have managed to obtain the necessary local legislation. S.L. 2003-23 (S 465) allows two cities (High Point and Goldsboro) and S.L. 2003-42 (S 123) allows three more (Clinton, Lumberton, and Franklin) to use summary procedures under the unsafe building condemnation statutes to demolish residential structures in community development target areas.

Housing Code

Current legislation (G.S. 160A-441) governing the application of minimum housing ordinances seems to imply that if a dwelling is deteriorating (but not yet dilapidated), a minimum housing inspector's order must allow the owner the choice of whether to repair the dwelling or, alternatively, whether to close it and board it up. Because of the blighting effect of boarded-up houses, some local governments have sought other options. S.L. 2003-76 (S 290) and S.L. 2003-320 (S 357) allow Greensboro and Roanoke Rapids, respectively, to require owners to repair such properties rather than vacating them. A bill that would have extended this power to all local governments, H 628, remained in a House committee at adjournment.

Community Appearance

Historic Preservation

G.S. 105-129.35 provides that a taxpayer can receive a state income tax credit for rehabilitating an income-producing historic structure if the taxpayer qualifies for a corresponding federal income tax credit. The state tax credit is equal to 20 percent of the qualifying expenditures. This session several changes were made to this statute. Section 35A.1 of the appropriations act, S.L. 2003-284 (H 397), amends G.S. 105-129.35 to require that a taxpayer intending to claim the credit provide the Department of Revenue a copy of the certification made by the State Historic Preservation Officer verifying that the structure has been rehabilitated in accordance with the law. S.L. 2003-415 (S 119) liberalizes the ability of partnerships, joint ventures, and the like to take advantage of these credits by allowing the credit to be allocated among any of the structure's owners so long as the particular owner's adjusted basis for the property at the end of the year in which the structure is placed into service is at least 40 percent of the amount of the credit allocated to that owner. (Before this enactment, the credit could not exceed the owner's adjusted basis.) In addition, the act extends the expiration date for these "pass-through" provisions to January 1, 2008 (was, January 1, 2004).

S.L. 2003-46 (H 512) allows nonresident property owners to serve on the Nags Head Historic Preservation Commission.

Nuisance Abatement Ordinances

Overgrown vegetation ordinance. S.L. 1999-58 authorized the City of Roanoke Rapids to give chronic violators of its overgrown vegetation ordinance a single annual notice announcing that the city may remedy (abate) the violation and charge the costs to the property owner. That idea proved popular and other cities followed the lead of Roanoke Rapids. This year several more cities were granted identical authority. S.L. 2003-77 (S 478) authorizes Durham and Monroe to use this procedure, and S.L. 2003-80 (S 83) adds Rocky Mount to the list of those cities that are

included in the original act. S.L. 2003-120 (H 153) adjusts the authority of Winston-Salem under the original act by defining a *chronic violator* as someone to whom the city issued a violation notice at least three times in the previous calendar year (was, took remedial action against). S.L. 2003-40 (S 356) extends similar authority to the City of Henderson with respect to its "weeded-lot" ordinance. In addition this act authorizes the city to notify a repeat violator that not only may the city charge the expense of its remedial action to the owner; it may also impose a surcharge of up to 50 percent of the expense of the action to remedy the preceding violation.

Refuse and debris ordinance. S.L. 2003-133 (H 735) authorizes Durham to give annual notice to chronic violators of the city's refuse and debris ordinance. A *chronic violator* is defined as someone against whom the city took remedial action under the ordinance at least three times in the previous calendar year. S.L. 2003-120 extends similar power to Winston-Salem, but here a *chronic violator* is someone to whom the city issued violation notices under the ordinance at least three times in the previous calendar year.

Nuisance ordinance procedure. S.L. 2003-51 (S 477) amends the Durham city charter to allow the city council to delegate to the housing appeals board the authority to hear public health nuisance cases.

Manufactured/Modular Housing

One of the more remarkable pieces of comprehensive legislation adopted by the General Assembly this year affects manufactured and modular housing. S. L. 2003-400 (H 1006)

- broadens the circumstances in which manufactured homes can be considered real property;
- requires the owners of manufactured home communities to give notice to tenants if the community is going to be converted to another use;
- adds new requirements governing the sale of manufactured homes;
- adds new requirements governing the licensure of manufactured home manufacturers, dealers, salespersons, and setup contractors; and
- requires that new modular homes meet certain design and appearance standards.

One section of S.L. 2003-400 provides the first definition for modular homes that the North Carolina statutes have ever included. According to new G.S. 105-164.3(21a), a *modular home* is a "factory-built structure that is designed to be used as a dwelling, is manufactured in accordance with the specifications for modular homes under the North Carolina State Residential Building Code, and bears a seal or label issued by the Department of Insurance pursuant to G.S. 143-139.1."

Legislation adopted in 2001 made important changes to the law affecting the classification of manufactured homes as real property. This law allows an owner of a single- or doublewide manufactured home to qualify the unit as real property by, among other things, submitting an affidavit to the Division of Motor Vehicles stating that the owner of the manufactured home also owns the land on which the home is located. S.L. 2003-400, adopted this year, also allows units to be qualified as real property if the unit's owner has entered into a lease of at least twenty years for the land on which the manufactured home is affixed.

S.L. 2003-400 also adds new G.S. 42-14.3, which applies to an owner of a manufactured home community (which consists of at least five manufactured homes) if the owner intends to convert the land to another use. In such a case, the landowner must give each owner of each manufactured home notice of the intended conversion at least 180 days before the home owner is required to vacate and move, regardless of the term of tenancy. Local government code inspectors should note that if the manufactured home community is being closed under a valid order issued by the state or a local government (for example, if the community's water system is contaminated), the owner of the manufactured home community must give notice of the closure to each community resident within three business days of the date on which the order is issued.

Perhaps the most remarkable feature of the act is an amendment to G.S. 143-139.1 establishing minimum appearance standards new modular homes must meet in order to qualify for a label or seal that indicates conformance with the State Building Code. These appearance standards are similar to the zoning standards some local governments apply to manufactured

homes to ensure that the units blend into existing neighborhoods. Few of these existing zoning appearance regulations have ever been applied to modular homes, however. The legislation, adopted with support from the modular home industry, represents a preemptive strike by the industry and others to dissuade local governments from applying zoning regulations to modular homes in the same manner the regulations are applied to manufactured homes. The following construction and design standards apply to modular homes manufactured after January 1, 2004:

- For homes with a single predominant roofline, the pitch of the roof shall be no less than 5 feet rise for every 12 feet of run.
- The eave projections of the roof shall not be less than 10 inches (excluding roof gutters) unless the roof pitch is 8/12 or greater.
- The minimum height of the first story exterior wall must be at least 7 feet 6 inches.
- The materials used in and texture of the exterior must be compatible in composition, appearance, and durability to the materials commonly used in the exteriors of standard residential construction.
- The modular home must be designed to require foundation supports around the perimeter. These may be in the form of piers, piers and curtain walls, piling foundations, perimeter walls, or another type of approved perimeter support.

Tree Protection

The topic of tree protection continues to generate interest among municipalities and in the General Assembly. In 2000 the towns of Apex, Cary, Garner, Kinston, and Morrisville gained authority to adopt ordinances regulating the planting, removal, and preservation of trees and shrubs [S.L. 2000-108 (H 684)]. In the 2001 session, Cary, Garner, and Morrisville, along with their sister Wake County municipalities of Knightdale and Fuquay-Varina, and the two cities of Durham and Spencer again turned to the General Assembly to clarify and expand their authority as regards tree preservation. S.L. 2001-191 (H 910) expressly authorizes these municipalities to adopt regulations governing the removal and preservation of existing trees and shrubs prior to development within certain buffer zones. The perimeter buffer zone extends up to 65 feet along roadways and property boundaries adjacent to undeveloped land. The regulations must allow for reasonable access onto and within the property they affect. In addition, they must exclude normal forestry activities that either are taxed at present-use value (in accordance with the state's program for use-value taxation) or are conducted pursuant to a forestry management plan prepared or approved by a registered forester. The 2001 legislation gives several important new powers to the affected cities. First, if all or substantially all of the perimeter buffer trees which should have been protected from clear-cutting are removed and afterward a property owner seeks a permit or plan approval for that tract of land, the city may deny the building permit or refuse to approve the site or subdivision plan for that site for a period of up to five years following the "harvest." Second, a municipality subject to the act may adopt regulations governing the removal and preservation of specimen or "champion" trees on sites being planned for new development. The application of these specimen or champion tree regulations is not restricted to the corridors or buffer zones that are subject to the clear-cutting restrictions.

Legislation affecting six additional municipalities was adopted in 2003. S.L. 2003-128 (H 679) amends S.L. 2001-191 to add Raleigh to those municipalities included in the 2001 local act. Five other entities obtained local acts addressing their particular needs, but these acts are somewhat less ambitious than the 2001 legislation. The provisions governing tree protection in S.L. 2003-246 (H 516) (applicable to Statesville, Rockingham, and Smithfield), in S.L. 2003-73 (H 517) (applicable to Holly Springs), and in S.L. 2003-129 (H 679) (applicable to Rutherfordton and Wake County) are essentially identical. The notable features that apply to the five local governments are as follows.

1. The perimeter buffer zone within which tree cutting is restricted can only extend up to 50 feet along public roadways and up to 25 feet along property boundaries adjacent to undeveloped properties.

2. The area within the required buffer may not exceed 20 percent of the area of the tract, excluding road and conservation easements.
3. Tracts of two acres or less that are zoned for single-family residential use are exempt.
4. Local governments may not require surveys of individual trees.
5. A local government may deny approval of a site plan or a subdivision plat for a period of just three years after an impermissible harvest of trees from the land involved.
6. If the owner of a harvested area replants the buffer zone within 120 days of the harvest with plant materials consistent with the required buffer area, then site plan or subdivision approval may be denied for a period of only two years.

The local act affecting Holly Springs became effective June 25, 2003, but the provisions that affect the remaining local governments become effective January 1, 2004.

Transportation

The "Moving Ahead" Transportation Plan

The most significant piece of transportation legislation adopted in 2003 must certainly be that advocated by Governor Easley and known as the North Carolina Moving Ahead Transportation Initiative. S.L. 2003-383 (H 48) requires the state to spend $700 million in the next two years to improve roads and public transit. The main objective of the act is to provide money for infrastructure maintenance, preservation, and modernization, particularly for two-lane highways. The plan assigns $630 million to improve and widen roads, in accordance with the current equity distribution formula used for general highway funds. In suburban areas the money will be used to add turn lanes and pave shoulders to enhance traffic safety. In rural areas the money will be used to pave dirt roads and widen lanes. In addition, a number of bridges will be improved. Some $70 million is targeted for public transportation development. Although the act does not specify particular projects, it appears that some of these funds will be used to build the commuter rail line that will extend from Raleigh to Durham and a light rail system in the Charlotte region.

The "Moving Ahead" initiative allows cash balances to be borrowed from the Highway Trust Fund, which was established in 1989 and is funded with certain gas tax revenues and highway use, vehicle registration, and title fees. (Moneys in the Trust Fund have been previously limited to new construction projects, including seven urban loops.) The act is based on the state's apparent intention to replenish the Trust Fund money when it sells $700 million in bonds that remain unsold from a $950 million bond issue voters approved in 1996. The act also amends G.S. 136-176 to require the North Carolina Department of Transportation (NCDOT) to report to the Joint Legislative Transportation Oversight Committee twice each year, first on its intended use of the funds and later on its actual current and intended future use of the funds. Each year NCDOT must also certify to the committee that use of the Highway Trust Fund cash balances will not adversely affect the delivery schedule of any Highway Trust Fund project. The funds made available for Moving Ahead projects must be reduced to the amount above which NCDOT cannot so certify.

S.L. 2003-383 also amends Section 2.2(j) of the appropriations act to establish a complicated reimbursement arrangement by which $490 million is transferred from the Highway Trust Fund to the General Fund during fiscal 2003–2005 to partially compensate the General Fund for the annual transfer over the last fourteen years of motor vehicle sales tax revenues from the General Fund to the Highway Trust Fund. However, the act requires that this transfer of $490 million be repaid to the Highway Trust Fund over the next five years.

The Moving Ahead transportation act also establishes a twenty-seven-member Blue Ribbon Commission to study "the unique mobility needs of urban areas in North Carolina." The commission is to study (1) innovative financing approaches to address urban congestion, (2) local revenue options which would give urban areas more control over regional mobility, and (3) any other urban transportation issues that the commission cochairs approve for consideration.

Funding of Urban Loops

For the second year in a row the General Assembly made some slight changes in the description and location of urban loop highway projects in the North Carolina Intrastate System. These projects are funded by the North Carolina Highway Trust Fund and are delineated in G.S. 136-179 and G.S. 136-180. Section 29.11 of the appropriations act, S.L. 2003-284,

- adds two new urban loop sections: the Fayetteville Western Outer Loop (upgrading a proposed connector) and a multilane extension of the Greenville Loop to the west and south of the city.
- adds two interchanges to the Greensboro Loop and makes changes to the Raleigh Outer Loop, the Wilmington Bypass, and the Winston-Salem Northbelt.
- identifies seven different road sections that are eligible for funding as part of the Durham Northern Loop.
- provides that the cross sections for these Durham Northern Loop projects will be established by the metropolitan planning organization (MPO) and NCDOT through the state and federal environmental review process.

Priorities must be set by mutual agreement of the MPOs and NCDOT through the Transportation Improvement Program.

MPO/RPO Funding

Section 29.14(a) of the appropriations act allocates $750,000 from the Highway Trust Fund to the rural transportation planning organizations (RPOs). In addition, $2 million is appropriated for matching loan funds to be made available to MPOs located in air-quality nonattainment or maintenance areas under the federal Clean Air Act. The lead planning agency of an MPO must provide matching funds and the money may be used only in efforts to avoid a lapse in conformity with the air-quality plan. The loans must be repaid within five years.

Section 29.14 also allocates $750,000 for matching grant funds to be used by regional transportation agencies located in nonattainment or maintenance areas. The funds must be matched by the regional agency and must be used to support regional transportation planning, but they need not be repaid.

Virginia-North Carolina Interstate High-Speed Rail Commission

Section 29.19 of the appropriations act amends legislation adopted in 2001 that established the Virginia-North Carolina Interstate High-Speed Rail Commission. It directs the commission to study the establishment of an interstate high-speed rail compact not only between North Carolina and Virginia, but between these states and other states as well. Since the commission failed to reports its findings to the Governor and the General Assembly by October 20, 2002, as specified in 2001 legislation, this year's act allows the commission to report before November 30, 2004, and terminates the commission as of that date.

Studies

The appropriations act provides for several new major studies, indicating a certain legislative dissatisfaction with the state's transportation project planning process. Section 29.12 establishes a Highway Trust Fund Study Committee made up entirely of members of the General Assembly, including the chairs of the Joint Transportation Oversight Committee. The committee is to study the current status and feasibility of current Highway Trust Fund projects and the "(u)nanticipated problems with the structure of the Highway Trust Fund." The committee is also directed to study questions about the equity of existing funding distribution, the feasibility of altering project eligibility requirements with an eye to allowing NCDOT to add projects if these projects will not jeopardize those previously planned, and the possibility of using Highway Trust Funds as

matching funds for certain federal projects. The committee must report to the Joint Legislative Transportation Oversight Committee no later than November 1, 2004.

Section 29.21 of the appropriations act directs the Joint Legislative Transportation oversight Committee to contract with an independent consultant to study transportation project processes from the inception of the projects to their completion. The study is to examine NCDOT planning, design, and contract-letting procedures; the effect of other resource and regulatory agency decisions on the project-delivery process; and "all significant causes of delay" in project processes.

Environmental Permits and NCDOT Construction Projects

Section 29.6 of the appropriations act creates G.S. 136-44.7B concerning the modification and cancellation of permits issued by the Department of Environmental and Natural Resources (DENR) for construction projects included in the Transportation Improvement Program. The new legislation provides that once issued by DENR, such permits do not expire and may not be modified or canceled unless one of several exceptions is met. One such exception involves a change in federal law that would necessitate changes in a permit to avoid jeopardizing federal program recognition or funding or that would mandate the expiration of the permit. Another basis for modifying or canceling a permit is any change in state law that includes an express statement that the change is applicable to "ongoing transportation construction programs."

Bikeway Funding

G.S. 136-71.12 authorizes NCDOT to spend any of its available federal, state, local, or private funds to establish bikeways and trails. S.L. 2003-256 (S 232) amends this statute to allow counties and municipalities to spend "any funds available" for these purposes as well.

Rail Corridor Subdivisions

Section 29.23(a) of the appropriations act amends G.S. 160A-376 and G.S. 153A-335, the statutes defining the scope of coverage of local government land subdivision control ordinances. The new provision exempts from regulation the purchase of strips of land for public transportation system corridors. A similar exemption remains in effect for land division associated with the widening or opening of streets.

Municipal Funding of State Roads outside City Limits

S.L. 2003-132 (H 627) allows Greensboro and Kernersville to fund the construction of roads outside their respective city limits and outside their respective extraterritorial planning jurisdictions. However, the funds may be appropriated only if the roads are to be state roads maintained by NCDOT. The act also provides that the authorized cities may not fund roads within the limits of another municipality without that municipality's consent.

Miscellaneous Related Topics

Adult Entertainment

In 2001 the U.S. District Court ruled that the state's regulations applicable to dancers at clubs with ABC licenses were unconstitutional because they were content-based restrictions of free speech and were not narrowly drawn to address a compelling governmental interest. The case, *Giovani Carandola, Ltd. v. Bason*, 147 F. Supp. 2d 383 (2001), involved topless dancers at Christie's Cabaret, in Greensboro. In 2002 the Fourth Circuit Court of Appeals issued a narrower

ruling but still upheld the injunction against enforcement, holding that the regulation was too broad because it covered serious artistic performances as well as adult clubs. 303 F.3d 507 (4th Cir. 2002). S.L. 2003-382 (S 996) enacts G.S. 18B-1005.1 to address this statutory flaw by clarifying the state's authority to regulate sexually explicit performances at facilities with ABC licenses. The act codifies the regulatory prohibition against performers in these facilities exposing their genitals or simulating sexual acts, clarifies that the regulatory intent is to prevent adverse secondary impacts, and provides an exception for serious literary, artistic, scientific, or political expressions.

Electronic Notice

Two local bills may be indicative of a new trend—substitution of electronic posting of hearing notices for newspaper publication. S.L. 2003-81 (S 425) allows Cabarrus County to post notices of public hearings on ordinance amendments on the Internet rather than in a newspaper. The county must use the same schedule that is required for published notices and will still have to make any required mailed notices. S.L. 2003-161 (S 292) creates the same provisions for Raleigh and Lake Waccamaw but specifies that these municipalities are not relieved of any required posting of notice on the affected sites themselves.

Raleigh Historic District

Several decades ago state government acquired a number of historic homes adjacent to the state government complex in Raleigh and converted the structures to office space. S.L. 2003-404 (S 819) will return these homes to residential and commercial use. The law will allow the sale of most of these structures, subject to conservation agreements that will protect their historic and architectural character. Up to $5 million from the net proceeds of the sale are to be placed in a trust fund for upkeep, maintenance, and repair of the Governor's Mansion (a historic structure adjacent to this area). The act also creates an eight-member Blount Street Historic District Oversight Committee to monitor the act's implementation.

Environment

S.L. 2003-427 (H 1028) creates G.S. 113A-115.1 to add to the statutes the state's ban on oceanfront bulkheads, groins, jetties, and similar shoreline hardening erosion control devices [some form of the ban has been in place as an administrative rule adopted by the Coastal Resources Commission (CRC) since 1979]. Limited use of sandbags to protect imminently threatened oceanfront structures is still permissible. S.L. 2003-427 also allows the CRC to issue a general permit for offshore parallel sills of stone or riprap used as estuarine shoreline erosion control devices when the sills are employed in conjunction with existing, created, or restored wetlands.

S.L. 2003-428 (S 945) allows limited site preparation work on projects that require an air quality permit prior to that permit being issued. The work can include site clearing and grading, construction of access roads, utility installation, and construction of ancillary structures (offices, fences, and so forth). The act also creates G.S. 215.108A(g) to specifically provide that the state's air quality permitting program does not affect the validity of local zoning, subdivision, or other land use regulatory programs.

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Local Government and Local Finance

The principal concerns of local governments during the 2003 session were whether and to what extent the state's budgetary problems would affect those revenues the state collects and then distributes to local governments. As it turned out, the League of Municipalities and the Association of County Commissioners were successful in minimizing the impact of the state's budget troubles on local finance. Cities and counties were less successful in efforts pertaining to a different aspect of state-local relations. Legislation was proposed to reduce local governments' dependence on the General Assembly, but the bill made little progress. The proposed studies bill would have created a special commission to investigate and propose changes in state-local relations, possibly leading to greater flexibility for local governments. Unfortunately, when the studies bill was not able to survive the end-of-session turmoil, the opportunity for a comprehensive review of this vital topic died as well.

Local Finance

Local Government Revenues

The state budget. In 2001 the General Assembly repealed the statutes that appropriated so-called reimbursement moneys to local governments and instead authorized counties to levy an additional half-cent local government sales and use tax. (The reimbursements were state funds intended to compensate local governments for revenues lost when the General Assembly excluded certain categories of property from the local property tax base.) In substituting the new tax for the reimbursements, the General Assembly recognized that in a few communities the additional sales and use tax revenues would amount to significantly less than the reimbursement payments those communities had been receiving. Therefore the General Assembly enacted "hold-harmless" provisions that appropriate state funds to these communities to make up any shortfall resulting from the substitution. The 2001 legislation permitted counties to levy the new sales and use tax

beginning July 1, 2003; but the 2002 General Assembly accelerated that authority, permitting a county to levy the tax as early as December 1, 2002. The repeal of the reimbursement payments was accelerated as well. The hold-harmless provisions were not accelerated, however, and local governments were concerned that these payments might fall a victim to the General Assembly's need to balance the 2003–2005 state budget. Ultimately the hold-harmless provisions survived intact and were even slightly strengthened. The 2001 provisions directed the Secretary of Revenue to distribute hold-harmless payments by September 15 of each year; the state appropriations act [S.L. 2003-284 (H 397)] changes the distribution date to August 15, thereby benefiting local government cash flow. The appropriations act also states the General Assembly's current intention to continue distribution of hold-harmless payments through 2012.

As initially enacted the appropriations act did affect one category of state-shared revenues. It provided for shifts of money from the Wireless Fund (a state fund in which surcharges against wireless communication customers are placed to be distributed, in part, to local governments to pay the capital costs of 911 centers) to help balance the state budget. The act directed that all surcharges collected in 2003–2004 and $25 million of 2004–2005 collections be transferred to the state's General Fund. The local government organizations, however, saw to it that these provisions were changed in a manner that protected local 911 centers. The Wireless Fund has on hand sufficient reserves—money earmarked for distribution to wireless service providers—to provide the funds needed to balance the state budget, thereby allowing new collections to continue to be distributed to local governments. A separate act, S.L. 2003-416 (S 97), permits the reserves to be used in this fashion.

A final set of provisions in the appropriations act, as modified by S.L. 2003-416, are intended to facilitate North Carolina's participation in the so-called streamlined sales tax, a multistate effort to harmonize state sales and use tax provisions and thereby facilitate collection of sales and use taxes on remote sales. One change concerns allocation of the proceeds of local sales and use taxes on food purchases. Half of these proceeds will be distributed among the one hundred counties on a per capita basis, while the other half will be distributed among the counties in proportion to the percentage of food tax collections in each county in 1997–1998, the last year such purchases were subject to both state and local sales and use taxes.

Sales tax on modular homes. S.L. 2003-400 (H 1006) levies a 2.5 percent sales and use tax on the sale of modular homes. This category of transaction is not added to the local government sales and use taxes, however. Rather, the act creates new G.S. 105-164.44G directing the Secretary of Revenue to set aside 20 percent of the proceeds of this new tax for distribution among the one hundred counties. One-half of this amount is to be allocated to the counties in proportion to the total local sales taxes collected in each county, and the other half is to be distributed to the counties on a per capita basis.

Fines, penalties, and forfeitures. Article IX, section 7, of the N.C. Constitution directs that the clear proceeds of all fines, penalties, and forfeitures be credited to county school funds. Generally these moneys are collected in criminal or civil proceedings before a court in a specific county, and that county's schools receive the moneys. Questions can arise, however, as to which county is the appropriate recipient for the proceeds of penalties or fines imposed by state administrative agencies. S.L. 2003-423 (S 965) proposes an amendment to this constitutional provision that would direct that the clear proceeds of all fines, penalties, and forfeitures collected by state agencies be placed in a statewide fund and subsequently appropriated by the General Assembly to the various school administrative units on a per pupil basis. The act puts the proposed amendment on the ballot of the November 2004 general election. If the amendment is approved, its provisions become effective January 1, 2005.

Economic development cooperation. A number of local governments have been interested in cooperating in the development of industrial parks and in attracting major industrial projects. However, the fact that any potential project will be located in one specific place and thus not all of the cooperating governments will have jurisdiction to levy property taxes on it has discouraged participation in such arrangements. Consequently local governments have been seeking methods through which they might share the tax base created by such projects. S.L. 2003-417 (H 1301) addresses this issue by providing that two or more local governments may cooperatively develop

an industrial or commercial park or site, agreeing that some or all of the property taxes generated by the park or site will be allocated among the participating governments. Such agreements may remain in place for as long as forty years.

Tourism grants. House Bill 1316 would establish a Travel and Tourism Capital Investment Program within the Department of Commerce, which would make grants to local governments for the creation or expansion of travel or tourism projects wholly or partly owned by the local government. The bill authorizes total annual grants of up to $20 million, with the maximum single grant being $2 million. It has passed the House and therefore is eligible for consideration in the 2004 session.

Capital Finance

Project development financing. For the third time in the last twenty years, the legislature has proposed an amendment to the state constitution to permit "project development financing" and enacts companion legislation to become effective if the voters approve the amendment. S.L. 2003-403 (S 725) creates the amendment that, if passed, would authorize a financing method of a type of what is nationally known as *tax increment financing* (TIF). This method provides a new way local governments can secure debt issued to finance public improvements intended to generate associated private development (for example, a city might use TIF bonds to finance a downtown parking deck in order to attract private investment that would fund the construction of new office buildings, hotels, or other commercial facilities). When proposing to use TIF, a local government delineates a project financing district that will include the site of the private development anticipated to result from the public investments and probably some surrounding territory as well. The current value of taxable property in the district is determined and becomes the base value of the district. Thereafter, each local government with jurisdiction over the district levies its normal property taxes against property in the district. The proceeds of the taxes on the base value of the district are turned over to each levying government. If there has been new development in the district since its creation, however, such that the actual value of property in the district is greater than the district's base value, the taxes on that additional value (the *increment*) are placed into a special fund that will become the primary security for the TIF bonds. (The implementing legislation also allows local governments issuing TIF bonds to pledge as additional security revenues from nontax sources so that TIF bonds might carry the same sort of security that special obligation bonds do.)

The legislation permits cities to establish project financing districts within redevelopment areas and permits both cities and counties to establish such districts in areas that are "inappropriately developed" or "are appropriate for economic development." Cities must notify counties of any project financing district proposals, at which point the counties, in turn, are authorized to veto the creation of any of these proposed districts.

The state constitution requires voter approval of any bonds that pledge a local government's taxing power. The TIF bonds do not carry a general obligation pledge—bondholders cannot force a government issuing TIF bonds to levy taxes sufficient to retire the debt. The bonds do, however, carry a pledge of the proceeds of property taxes on specific property, and it is therefore possible that a court could hold that this new type of bond is indeed secured by a pledge of taxing power. The General Assembly could have enacted this legislation without a constitutional amendment and then awaited a test case to settle the issue, but it preferred to propose an amendment that clearly exempts TIF bonds from any requirement of voter approval. Thus the state's voters will have the final say on this amendment in the November 2004 general election.

Technical bond amendments. The State Treasurer's office proposed, and the General Assembly enacted, legislation clarifying a number of technical details involving local government debt. S.L. 2003-388 (S 679) makes two major clarifications of existing law. First, the act rewrites G.S. 160A-20, the statute authorizing local governments to use installment financings and certificates of participation (COPs), to allow the use of installment financing agreements and COPs to refinance existing obligations. The rewritten section also specifically authorizes debt service payment and debt service reserve funds and permits local governments to provide security

interests in such funds as an element of a financing. Second, the act establishes express authority for participation in interest rate swap agreements, a tool that is being used with increasing frequency by local governments to stabilize their interest obligations on outstanding debt.

Installment financing for school projects. Installment financing agreements, which are made pursuant to G.S. 160A-20, pledge the financed property as security for the debt. Thus, for example, an installment financing of a new jail pledges the jail as security, or the installment financing of a fire truck pledges the vehicle. This form of security has created a problem for school projects—the county does the borrowing but the school building is owned by the school board, and the county has no authority to give a deed of trust on another entity's asset. To deal with this problem, the General Assembly enacted G.S. 153A-158.1, which has permitted school units in specified counties to convey school property to a county or the counties themselves to purchase land for school facilities, thus making it possible for the county to provide the deed of trust necessary for an installment financing. The statute has never been statewide; instead, it has been added to over time until, at the beginning of the 2003 session, it included eighty-seven counties. By adding the remaining thirteen counties to the statute, S.L. 2003-355 (S 301) evidences the legislature's conclusion that this piecemeal process should end. Now, all one hundred counties may use installment financing for school projects.

Other capital financing legislation. S.L. 2003-259 (S 652) adds local airport authorities created by local act of the General Assembly to those entities that may borrow money pursuant to G.S. 160A-20. S.L. 2003-138 (H 864) makes a small amendment to G.S. 143-64.17B, which permits local governments and the state to enter into guaranteed energy savings contracts. The statute has required that the other party to the contract provide a 100 percent performance bond to the contracting government. The act removes the bond requirement and replaces it with a requirement that the other party provide security in the amount of 100 percent of the contract cost in a form acceptable to the Office of State Treasurer. This change affects contracts with both local governments and state agencies.

Senate Bill 137 proposes to include any project undertaken within and as part of a municipal service district among the purposes for which special obligation bonds may be issued. The bill also permits such service districts to be created to support transit-oriented development and allows them to be established within a quarter-mile radius of any passenger stop or station on a mass-transit line. Senate Bill 137 passed the Senate and remains in a House committee and therefore may be considered in the 2004 session.

Budgeting

When a county conducts a general reappraisal of real property (which is required at least every eight years), local governments within that county usually reduce their property tax rates because of the growth in their tax bases. In fact, though, local governments often effectively increase tax rates after a revaluation, because the reduction in tax rate is less than the growth in tax base. For a number of years, there have been proposals to require local governments to publicize the rate of tax on the reappraised tax base that would be revenue-neutral (that is, that would generate the same amount of revenue as the prior year's rate on the pre-reappraisal base). S.L. 2003-264 (S 511) places such a requirement in the Local Government Budget and Fiscal Control Act. The act requires each unit's budget officer to include in the proposed budget in any year in which there has been a general reappraisal of real property a "statement of the revenue-neutral property tax rate for the budget." That rate is calculated as follows:

1. Determine a rate of tax on the new tax base that would produce revenues equal to those produced for the current fiscal year.
2. Increase that rate "by a growth factor equal to the average annual percentage increase in the tax base due to improvements since the last general appraisal."
3. Further adjust the rate to account for annexations, deannexations, and so forth.

Here is an example of the required calculation: Assume that the current year's tax base was $492.5 million, the current year's tax rate was 64 cents, and the amount of the levy was therefore $3.152 million. Following revaluation the new tax base is $577.3 million, and the levy necessary

to raise $3.152 million is 54.6 cents. The average annual growth in tax base since the previous revaluation was 5.1 percent, and 105.1 percent of 54.6 cents is 57.4 cents. There were no annexations; therefore, 57.4 cents is the revenue-neutral tax rate for this unit.

A local government must prepare this revenue-neutral tax rate analysis for each separate levy it makes and includes in its budget. A county's analysis would thus include its general fund, any fire district taxes, any school supplemental taxes, and so on.

Expenditures

Bikeways. G.S. Chapter 136, Article 4A, establishes the North Carolina Bicycle and Bikeway Program within the state Department of Transportation. G.S. 136-71.12 has permitted cities and towns to construct and maintain bikeways using any available funds. S.L. 2003-256 (S 232) permits counties to do so as well.

Medicaid. Counties remain concerned about the increasing burden that Medicaid places on their budgets, as does the state. The appropriations act establishes the North Carolina Blue Ribbon Commission on Medicaid Reform, charging it to make a comprehensive review of the state's Medicaid program, including specifically "how to minimize the state and county share of Medicaid costs and maximize federal participation." The commission is to report to the General Assembly in 2004 and 2005.

Financial Administration

Credit card sales. S.L. 2003-206 (H 357) affects "persons" who own or lease cash registers and accept credit, charge, or debit card payments. Since local governments are, with increasing frequency, accepting payment by credit card for a variety of goods and services, this statute will apply to them as well. The act provides that it is an infraction to print a cash register receipt that includes more than five digits of the card account number or the card's expiration date. The statute applies to cash registers or other machines first used on or after March 1, 2004. The act also requires salespeople to sell only machines that comply with this new requirement, a provision that should facilitate compliance by local governments and other vendors.

Water and sewer authority use of debt setoff. G.S. Chapter 105A establishes the Setoff Debt Collection Act, under which state agencies and cities and counties can arrange to have sums owed to them deducted from income tax refunds otherwise payable by the state to the debtor. S.L. 2003-333 (S 529) extends the authority to use this debt collection method to water and sewer authorities, effective January 1, 2004.

Local Government

Regulatory Powers

State and local powers. Perhaps the most significant bill considered by the 2003 General Assembly involving the regulatory powers of local governments was one that did not pass. Senate Bill 160, which died in a Senate committee, would have, in its original form, clarified a confusing series of court decisions that have cast doubt over whether grants of legislative power to cities and counties should be construed broadly, despite plain language to that effect in G.S. 160A-4 and G.S. 153A-4, respectively. The bill would also have made it clear that cities and counties have "the authority and flexibility to adopt reasonable definitions, procedures, rules, fee schedules, exceptions, and exemptions" in carrying out their delegated powers. Third, the bill would have clarified (if clarification was needed) that if a city or county has multiple sources of authority to act, it may freely elect to use any or all of those sources, as long as proper procedures are followed.

Senate Bill 160 would have also responded to two North Carolina court decisions that involved local ordinances or regulations and were unfavorable to local governments. One recent

case found that the state had preempted local regulation of large-scale hog operations. In response the act would have provided that in order to preempt local regulation, the legislature must "expressly state" rather than just "clearly show" an intent to provide a complete and integrated regulatory scheme to the exclusion of local regulation. The other case held that a local board of health had exceeded its rule-making power by basing a rule partly on nonhealth grounds. In response, S 160 would have specified that if a local board of health finds that a proposed local rule is required for public health reasons, the fact that the rule may also be partly based on nonhealth grounds does not invalidate the rule as one that exceeds the board's rule-making authority. The bill would have authorized separability clauses in such rules and authorized judicial findings of separability. Furthermore, the bill would have defined board of health rules as county ordinances for purposes of the general ordinance-making power statute, G.S. 153A-121 (including preemption rules).

A committee substitute for S 160 emerged from the Senate Judiciary I committee and was referred to the Senate Finance Committee, where it remained at the end of the session. The committee's version of the bill eliminated or modified some sections that were objectionable to various interest groups (for example, the preemption provisions and the provisions dealing with board of health powers were eliminated). The committee substitute also added a cautionary note indicating that G.S. 153A-4 and 160A-4 did not expand or restrict either the counties' or cities' powers to impose taxes or to finance public enterprises or the purposes for which regulations may be adopted pursuant to the laws governing planning and regulation of development. The committee substitute also added provisions concerning intergovernmental relationships (some of which were enacted through other bills) and made other minor changes.

The failure of S 160 led to proposals for two studies, but neither will be implemented because the legislature adjourned without passing this session's studies bill. Senate Bill 34, The Studies Act of 2003, would have authorized the Legislative Research Commission to study "[r]epealing Dillon's Rule *in certain circumstances* (S.B. 160—Clodfelter)" (emphasis added). (Dillon's Rule is the principle of statutory construction that requires construing grants of legislative authority narrowly.) The second and more important provision, Part XXXXII of S 34, would have established a twelve-member Local Government Select Committee to investigate the relationship between the state and cities and counties "to the end of strengthening that relationship and increasing flexibility for cities and counties." This would have been the first study committee or commission of its type established by the General Assembly in many years. This important committee was to be provided staff support, meeting space, and travel, per diem, and subsistence money. The committee would have examined and made recommendations on four topics:

1. funded and unfunded mandates imposed by the state and federal governments on cities and counties;
2. the ability of cities and counties to meet their responsibilities under their current structures;
3. the relationships between counties, between cities, and between cities and counties; and
4. consolidation of functions between these local governments in order to increase efficiency.

The committee was to have submitted its report, along with any legislative recommendations, to the General Assembly by December 31, 2004.

It is unclear what will happen next in this ongoing saga. The North Carolina Association of County Commissioners was studying issues relating to Dillon's Rule and county authority prior to the legislative session. No doubt the association and its sister organization, the North Carolina League of Municipalities, will remain keenly attuned to developments in this area.

Fireworks rules. Probably in response to a recent deadly fire at an indoor concert in Rhode Island, the legislature passed S.L. 2003-298 (S 521), which creates new requirements for the use of pyrotechnics at concerts, particularly those held indoors, and tightens the existing requirements for the use of fireworks at public exhibitions. The act amends G.S. 14-410 to require specifically the issuance of fireworks permits when pyrotechnics are to be used at concerts, and it amends G.S. 14-413 to authorize boards of county commissioners to issue those fireworks permits. S.L. 2003-298 also creates a series of rules for the indoor use of pyrotechnics at concerts and public exhibitions. Boards of commissioners may not issue fireworks permits for such events unless the

appropriate fire marshal has certified that (1) adequate fire suppression will be used at the site, (2) the structure is safe for the use of the intended fireworks with the intended fire suppression, and (3) the building has adequate exits based on the size of the expected crowd. These indoor permit requirements also apply to those cities and their officials that are given the power to grant pyrotechnic permits by local act, to counties that have local acts authorizing issuance of fireworks permits by county fire marshals themselves, and to permits authorized by the state fire marshal in connection with state-sponsored events. Violation of the pyrotechnics article of Chapter 14 is a Class 1 misdemeanor if the exhibition is indoors; this change became effective December 1, 2003, and applies to offenses committed on or after that date. The remainder of the act was effective July 4, 2003, and applies to any permits granted on or after that date.

Taxicab drug tests. For many years cities have been allowed to license all vehicles for hire operated within their boundaries. S.L. 2003-65 (S 557) amends G.S. 160A-304(a) to allow cities to require applicants to pass a drug test ("substance abuse examination") before obtaining a license to operate a taxicab.

Charlotte speed-measuring cameras experiment. Charlotte was the first city in North Carolina to try using electronic methods of traffic enforcement, being authorized a number of years ago by the General Assembly to use automatic cameras to detect red-light violations at major intersections. The use of these devices has been repeatedly upheld against court challenges and the technology is now employed by about a dozen North Carolina municipalities.

S.L. 2003-280 (H 1562) authorizes Charlotte to employ traffic-control cameras in a new experiment. Under the act, the city may adopt ordinances for the civil enforcement of certain traffic speed statutes by means of an automatic photographic speed-measuring system as part of a three-year pilot program operating at specified locations within the ciy. The act provides for various safeguards related to the accuracy of the equipment and the procedures to be followed in the equipment's use. Citations under the program will be for noncriminal $50 infractions, with the clear proceeds of amounts paid going to the county school fund. Violations do not result in the assessment of driver's license or insurance points, and appeals are allowed. Standards for the equipment being used are to be established by the North Carolina Criminal Justice Education and Training Standards Commission and the state Secretary of Crime Control and Public Safety. S.L. 2003-280 became effective July 1, 2003, and expires June 30, 2006.

Liability for parking and traffic violations. It is often difficult to determine who is actually responsible for an empty vehicle cited for a parking violation. The same is true for citations resulting from speeding or red-light violations detected by means of photographic equipment (these citations are usually automatically mailed to the registered owner of the vehicle). In both cases the registered owner may not be the person who committed the offense and indeed may be completely unaware of the events that have transpired concerning the vehicle.

S.L. 2003-380 (H 786) creates what most people would consider an additional element of fairness in this type of situation. It provides that the owner of a vehicle is not liable for a parking violation or a civil speeding or red-light violation captured by photographic means if, within thirty days after notification of the violation, the owner files with municipality officials or agents an affidavit including the name and address of the person or company that leased or rented the vehicle (for parking offenses) or that had the care, custody, and control of the vehicle (for offenses involving speeding and running red lights). Previously this affidavit option was not available in cases involving parking tickets and owners had only twenty-one days to respond to citations issued as a result of photographic detection. The act also provides that an owner cannot be held responsible for the violation at all if he or she receives the notification of the offense ninety days or more after its occurrence. The owner is also not required, in this last situation, to provide the lessee's, renter's, or custodian's name and address.

In addition, the amended statute now requires that owners seeking to avoid responsibility for a parking or traffic offense because of a vehicle's theft must produce an affidavit supported by evidence of the theft, including insurance or police report information.

The provisions relating to parking amend G.S. 160A-301 and apply to all cities. The other provisions of SL 2003-380 apply only to those cities that have been given specific legislative

authority to use red-light cameras and photographic speed-measuring system equipment (in the latter case, only Charlotte).

Public Records and Open Meetings

Criminal records checks. The General Assembly enacted two bills authorizing criminal records checks for two categories of local government employees: S.L. 2003-214 (H 1024) permits cities to require applicants for any city job to submit to a criminal records check, while S.L. 2003-182 (S 708) permits criminal records checks to be made concerning any person applying for a paid or volunteer position as a firefighter. The personnel privacy statutes allow a variety of people, including employees, to have access to personnel files. These two acts, however, require that the information relating to criminal records checks be kept more confidential than other personnel records. Such information is intended for the exclusive use of the person or agency requesting the check and may not be made part of the regular personnel file nor released to anyone, including the applicant or employee.

Details of other aspects of these two acts can be found in Chapter 18, "Public Personnel."

Anti-terrorism plans. G.S. 132-1.7, enacted in the immediate aftermath of the September 11, 2001, terrorist attacks, has exempted from public access government documents that include specific details of public security plans and detailed plans and drawings of public buildings and infrastructure facilities. S.L. 2003-180 (S 692) adds a new subsection to the statute exempting from public access "plans to prevent or respond to terrorist activity, to the extent such records set forth vulnerability and risk assessments, potential targets, specific tactics, or specific security or emergency procedures, the disclosure of which would jeopardize" human safety or the safety of governmental structures or information storage systems. The act also amends the list of permitted purposes for which closed sessions can be held under the open meetings law. A public body may now hold a closed session to discuss and take action regarding plans to protect the public safety when it is threatened by existing or potential terrorist activity. A public body may also hold a closed session to receive briefings about actions being or to be taken to respond to such terrorist activities.

Airport billing records. The 2001 General Assembly exempted from public access public enterprise billing information. S.L. 2003-287 (S 537) excludes from the exemption the billing information for public airports, thereby making it once again open to public access.

Other public records legislation. S.L. 2003-353 (H 1114) creates new G.S. 115C-209.1 to exempt from public access most of the records associated with public school volunteers. Such legislation was necessary because volunteers with local governments generally are not employees and therefore the various personnel privacy statutes do not apply to records pertaining to the volunteers. House Bill 65 attracted a good deal of public attention early in the session, with its proposal to exempt from public access photographs made during autopsies. (The bill was occasioned by events following the death of NASCAR driver Dale Earnhardt.) The bill passed the House but has remained in a Senate committee. It is available for consideration in the 2004 session.

Government Property

Redevelopment property. The redevelopment law, G.S. 160A-514, generally requires that redevelopment property be sold by competitive means. There are exceptions, however, that allow private sale to governments, public utilities, and nonprofit entities, as long as the property will be used pursuant to the redevelopment plan. The provision allowing private sale to a nonprofit corporation has not, however, permitted doing so without full cash consideration. It has required that a committee of three professional appraisers agree upon the property's fair value and that the conveyance be for no less than that amount. S.L. 2003-66 (H 1065) permits a private sale of redevelopment property to a nonprofit pursuant to G.S. 160A-279, which provides for a simpler procedure (no public hearing required) and does not include a fair value requirement. Cities and counties frequently use G.S. 160A-279 to convey property to nonprofit entities and to accept as

consideration the nonprofit's promise to put the property to some public use. S.L. 2003-66 will now permit them to follow this procedure with redevelopment property as well.

Electronic auctions. Section 18.6 of the appropriations act enacts new G.S. 143-64.6 permitting any county, municipality, or other public body to dispose of surplus property through an electronic auction service. G.S. 160A-270(c) already allows public entities to sell property electronically, and that section (unlike the new one) sets out specific procedural requirements the entities must follow in doing so. It would seem odd if the new statute is intended to allow the use of electronic auctions without any procedural requirements, but otherwise it is entirely redundant. More usefully, Section 18.6 creates new G.S. 15-14.1 permitting sheriffs or police departments to sell stolen or abandoned property through electronic auction services. This new section specifically requires the sheriff or police department to comply with the publication and notice requirements in G.S. 15-12 through G.S. 15-14.

Fire helmets. S.L. 2003-145 (H 55) enacts two identical new sections—G.S. 153A-236 and G.S. 160A-294.1—that permit a county or city fire department to award a firefighter's fire helmet to the retiring firefighter or to the family of a deceased firefighter. Such an award or system of awards must first be approved by the board of county commissioners or city council, which is to determine the manner of setting the price at which the helmet or helmets will be conveyed. The statute says the price may be less than fair market value, but this statement may only be intended to suggest that the helmet may not simply be given to the firefighter or family.

Tort Liability

Regulation of skateboarding and similar "hazardous recreational activities." S.L. 2003-334 (S 774) provides that its intention is "to encourage governmental owners or lessees of property to make land available to a governmental entity for skateboarding, inline skating, and freestyle bicycling" (defined collectively by the act as "hazardous recreational activities"). The act seeks to accomplish this goal by (1) placing the risks involved in such activities specifically on the people engaging in them and (2) requiring participants to wear safety equipment.

First, under this act the assumption of legal responsibility for the known and unknown inherent risks taken by persons participating or assisting in these activities automatically occurs irrespective of the participant's age. Each participant is responsible for acting within the limits of his or her ability and the purpose and design of the equipment used; for maintaining control of his or her person and the equipment; and for not acting in any manner that may cause or contribute to death or injury of him- or herself or others, *regardless of whether the hazardous recreational activities occur on governmental property or elsewhere*. Failure to do any of these things is legal negligence.

Second, the act provides that no operator of a skateboard park may permit any person to ride a skateboard in it unless the person is wearing a helmet, elbow pads, and kneepads. The act also specifies that this requirement is satisfied for government-owned or -operated facilities that are designed and maintained for recreational skateboard use but are not regularly supervised, if (1) the governmental entity has adopted an ordinance requiring the helmet and pads, and (2) signs are posted at the facility affording reasonable notice of the equipment requirement and that any person failing to meet it will be subject to citation under the ordinance.

No governmental entity or public employee who has complied with these requirements is liable to anyone who voluntarily participates in hazardous recreational activities for any damage or injury to property or persons that arises from the person's participation in the activity and that occurs in an area designated for the activity. In addition, public entities that sponsor, allow, or permit these activities are not required to eliminate, alter, or control the risks inherent in these activities.

There are several things that S.L. 2003-334 specifically does *not* do.

- It does not grant permission for engaging in hazardous recreational activities on governmental property unless the government involved has designated the area for this purpose.

- It does not limit liability for gross negligence by a governmental entity or public employee that proximately causes an injury.
- It does not limit liability for failure of a governmental entity or public employee to guard against or warn of a dangerous condition of which a participant does not have and cannot reasonably be expected to have notice.
- It does not create a duty of care or basis of liability.
- It does not waive sovereign immunity.

S.L. 2003-334 also does not limit the liability of independent concessionaires or other persons or organizations, other than governmental entities or public employees, for injuries or damages suffered as a result of that party's operation on public property of equipment for hazardous recreational activities. This particular rule applies regardless of whether the person or organization has a contract with the government to use the property.

Finally, the fact that a governmental entity carries insurance that covers any activity subject to S.L. 2003-334 does not constitute a waiver of the liability limits under the act, regardless of the amount of coverage.

The act became effective October 1, 2003, and applies to activities engaged in on or after that date and to actions that arise on or after that date.

Self-funded risk programs. Catawba and Mecklenburg counties and the cities of Charlotte and Raleigh have, under the authority of local acts, used self-funded reserves instead of purchasing traditional insurance to insure against various county and city liabilities and have thereby partially waived governmental immunity. S.L. 2003-175 (S 647) carries this local experiment statewide by authorizing all counties and cities to take the same action. Specifically, the act amends G.S. 153A-435(a) and G.S. 160A-485(a) to provide that counties and cities, respectively, may adopt resolutions deeming the creation of a funded reserve to be equivalent under the cited county and city statutes to the purchase of insurance against specified risks of liability in tort. (The risks are described in the act.) However, adoption of the resolution only waives the local government's governmental immunity up to the amount of funds available in the reserve for the payment of claims, or the amount that the resolution specifies, whichever is less.

Miscellaneous

Incorporations. The General Assembly passed four municipal incorporation bills this session. Two municipalities were incorporated directly by the legislature, while two of the incorporations were made subject to the approval of the voters in the area of the proposed town. One of those votes failed and the other was scheduled for November 2003.

Mills River. S.L. 2003-242 (H 232) incorporates the Town of Mills River in Henderson County, effective June 24, 2003. The town operates with a five-member council, with the mayor chosen by the council from among its members at the council organizational meeting every two years. The mayor serves at the pleasure of the council; if the mayor's office becomes vacant, the council chooses a person from among its membership to serve the remainder of the unexpired term. Council members are elected for four-year staggered terms by the nonpartisan plurality method as provided in G.S. 163-292. Three members are elected from residence-only districts and two are elected at large; thus, although the candidates are nominated and elected by all of the town's voters, the district candidates must reside within their respective districts. Any council vacancy must be filled for the remainder of the unexpired term, notwithstanding G.S. 160A-63. The first town election, which set up a staggered council, took place at the regular municipal election time in 2003. The town will operate under the council-manager form of government. One unusual provision authorizes the town to reimburse the expenses of the entities sponsoring incorporation.

Misenheimer. S.L. 2003-268 (S 76) incorporates the Village of Misenheimer in Stanly County, effective June 26, 2003. The town's governing board consists of the mayor and a four-member village council, and the town operates under the mayor-council form of government. All five board members serve four-year staggered terms. The mayor is elected from among the council

members every two years at the council's organizational meeting and serves at the council's pleasure. As in Mills River, the council fills a vacancy in the office of mayor from among its membership for the remainder of the term. All council members are elected at large, using the nonpartisan nomination and election method specified in G.S. 163-294.

The act contains an important peculiarity, which may or may not have been a drafting error. S.L. 2003-268 calls for Misenheimer's elections to be held in even-numbered years, contrary to the uniform statewide rule under G.S. Chapter 163 providing for odd-numbered year elections for North Carolina municipalities, including elections held according to the nonpartisan nomination and election method. Assuming that the legislature intended for Misenheimer to hold its first election in 2004, the interim village council that it appointed will continue to serve until that time.

Sunset Harbor. S.L. 2003-317 (H 685) would have incorporated the Town of Sunset Harbor in Brunswick County. The incorporation was subject to a referendum, which was held on November 4, 2003, but the referendum failed. If it had been incorporated, the town would have operated under the mayor-council plan with a five-member board of aldermen and a mayor, all of whom would have been elected by the voters of the entire town for two-year terms (except that some of the members elected in the first election would have served four-year terms).

Cashiers. Had the voters of the Cashiers area approved, S.L. 2003-75 (H 790) would have repealed the 1927 charter of the inactive town by that name in Jackson County and would have incorporated in its place a new Village of Cashiers. The new village would have had a five-member council and a mayor and would have operated under the council-manager form of government. The incorporation referendum failed, however, in an election held on Tuesday, August 12, 2003, so no new village was created, and the charter of the old, inactive town was not repealed.

Sanitary district board salaries. For many years the maximum salary that sanitary district board members could set for themselves has been $150 per month. S.L. 2003-185 (S 90) removes this restriction and authorizes the board itself to fix the compensation and allowances of the chairman and other board members by adoption of the annual budget ordinance. This change mirrors the statutory salary-setting provisions for city councils and boards of county commissioners.

Public financing of campaigns. Perhaps as a result of recent efforts of the Town Council of Cary to encourage public financing of city campaigns, S 760 was introduced this session. If enacted, it would amend G.S. Chapter 160A to authorize the governing bodies of counties with census populations over 80,000 and cities with census populations exceeding 40,000 to appropriate funds for a uniform program of grants to benefit the campaigns of candidates for county or city office, respectively, in those jurisdictions. However, the authorization is contingent upon four conditions.

1. The grants are available as a source of campaign financing only for candidates who demonstrate public support and voluntarily accept strict fund-raising and spending limits in accordance with a set of criteria created by the county or city.
2. The grant criteria are crafted to further the public goal of free elections and do not discriminate for or against any candidate on the basis of race, creed, position on issues, whether he or she is an incumbent, or party affiliation.
3. The grants can only be used for permissible campaign-related expenditures in accordance with State Board of Elections guidelines.
4. Unspent grants are returned to the local government.

Any county or city exercising this authority would be required to notify the State Board of Elections and the county board of elections. A city must notify the board of elections of any county in which it has territory.

As an incentive to candidates to use the grants, the grants would not be included in the definition of *contribution* found in G.S. 163-278.6(6) (part of the election law) and would not be subject to certain other contribution limitations and prohibitions. They would, however, have to be included in legally required campaign reports as if they were campaign contributions.

Senate Bill 760 passed the Senate and is therefore eligible for further consideration in the 2004 session.

Geographic place-names. According to the provisions of S.L. 2003-211 (H 483), boards of county commissioners may soon find the state and federal governments contacting them about renaming geographical locations within their boundaries. This act requires the North Carolina Secretary of State, pursuant to federal government guidelines and in consultation with the North Carolina Geographic Information Coordinating Council, to adopt procedures for changing geographical place-names that are "offensive" or "insulting." The act does not define these terms, however, nor does it specify any standards for the council to use in determining how the two terms will be applied.

The act provides that the Geographic Information Coordinating Council's procedures must include a notification to the board of county commissioners where the offensive or insulting place-name is deemed to exist that the council intends to apply to change the name. The board of commissioners then has ninety days in which to respond. The council cannot act to change a place-name until it reviews the county's response or ninety days expires, whichever happens first. The council also must consider any resolutions passed by the commissioners regarding the changing of a geographical place-name in a particular county.

S.L. 2003-211 specifies that it is not to be construed to apply to place-names that are those of historic persons or events or to nonpejorative place-names. It specifically declares that geographical place or location names in North Carolina that contain the word "nigger" are offensive and insulting. The Council must notify the board of county commissioners of the county in which there are places or locations the names of which include this term that (1) the council is going to apply to the U.S. Bureau of Geographic Names to change the offensive name and (2) the board has ninety days to suggest a replacement name. The council will accept the board's suggestion unless, by vote, the council deems the new name to be "offensive" or "insulting." In that case, or if the county does not suggest a potential name, the council will apply to change the name to one chosen within its discretion.

HOV lanes. As North Carolina becomes more urbanized, some larger cities and the state Department of Transportation are becoming increasingly interested in the use of high occupancy vehicle (HOV) lanes to encourage carpooling and help reduce traffic congestion. Part of S.L. 2003-184 (S 38) amends G.S. 20-146.2(a) to further refine the rules for using HOV lanes. Of particular interest to local governments is a provision specifying that HOV lane restrictions do not apply to *emergency vehicles,* defined as any law enforcement, fire, police, or other government vehicle or any publicly or privately owned ambulance or emergency service vehicle operating in response to an emergency. The restrictions also do not apply to motorcycles or to vehicles designed to transport fifteen or more passengers, regardless of the actual number of occupants. The act also specifies that vehicles with more than three axles—for example, tractor-trailer trucks—may not travel in HOV lanes at all. The part of the act containing these new rules became effective December 1, 2003, and applies to violations that occur on or after that date.

Service districts. G.S. Chapter 153A, Article 16, Part 2, authorizes the creation of research and production service districts, a unique type of service district of which the only current example is the Research Triangle Park in Durham County. S.L. 2003-187 (S 214) adds provisions to this law outlining the conditions under which territory may be removed from such a district. In particular, the board of commissioners for the county within which the district is located must find that (1) the owners of the territory to be removed are considering residential uses for some of the removed land; (2) all of the real property owners in the territory being removed have petitioned for removal; and (3) the territory in question no longer requires the district's services, facilities, or functions.

A. Fleming Bell, II

David M. Lawrence

15

Local Taxes and Tax Collection

The year 2003 was unusually quiet in terms of statewide legislation affecting the levy and collection of taxes by counties, cities, and special districts. This chapter summarizes all such legislation of interest to county assessors and county and city tax collectors. It also addresses a number of local acts.

Listing and Assessment

Tax Increment Financing

S.L. 2003-403 (S 725) submits a constitutional amendment that, if approved, will allow local governments to finance public improvements though a technique known as tax increment financing. The act is discussed in detail in Chapter 14, "Local Government and Local Finance." In a tax increment financing scheme, a local government defines a territorial area within which a project will be built. The assessed value of property within the area at the time of its creation is ascertained. The project is then constructed and the tax revenue resulting from additional assessed value within the area is pledged toward retirement of the debt incurred to finance the project. To ensure that the tax revenue from the project will be sufficient to retire the debt, the financing plan normally provides that the owner of the project must agree to a minimum tax valuation.

The constitutional amendment will be submitted to the voters at the 2004 general election. If it is approved, legislation authorizing use of tax increment financing will take effect. Part of this legislation will amend G.S. 105-284 and 105-277.11 to provide that property in a development financing district will be assessed at the greater of its market value or the minimum value specified in an agreement with the owner as part of the financing package.

Deployed Military Personnel

S.L. 2003-300 (S 936) modifies G.S. 105-307 (length of listing period, extension, preliminary work) with respect to military personnel on active duty in support of Operation Iraqi Freedom on or after January 1, 2003. The act provides that military personnel required to list property during such deployment are allowed ninety days after the end of deployment to do so.

Cotton Dust Abatement Equipment

G.S. 105-275(8)c. classifies and excludes from the tax base equipment exclusively used to prevent or reduce emission of cotton dust inside textile plants. S.L. 2003-284 (H 397) expands this classification to include all parts of a ventilation or air conditioning system that are integrated into a system used to prevent or reduce cotton dust emission, except chillers and cooling towers. This change took effect June 30, 2003. It does not affect 2003–2004 taxes but will apply to exclusion applications filed for 2004–2005 taxes.

Manufactured Homes

The definition of real property in G.S. 105-273(13) contains a special provision concerning manufactured housing: a residential manufactured home is real property if its owner also owns the land on which it is situated and the structure is placed on a permanent foundation and has its moving hitch, wheels, and axles removed. Section 4 of S.L. 2003-400 (H 1006) expands this special provision to include such a structure situated on land in which the structure's owner has a leasehold interest under a lease with a primary term of at least twenty years and the lease expressly provides for disposition of the manufactured home upon termination. This change became effective August 7, 2003. It will affect the listing of manufactured homes for 2004 and future tax years.

Stored Cotton

Section 20 of S.L. 2003-416 (S 97) deletes from G.S. 105-277(d) obsolete provisions concerning the valuation of stored cotton pledged as collateral for a loan incurred to purchase the cotton.

Local Acts

Robeson County. S.L. 2003-201 (S 414) allows Robeson County to delay its required 2004 reappraisal until 2005, but does not change Robeson's place in the normal eight-year cycle. Robeson will still be required to complete its next reappraisal by 2012.

Levy and Collection

Revenue-Neutral Tax Rate

S.L. 2003-264 (S 511) requires county and municipal budget officers to include in the county or city budget a statement of the revenue-neutral property tax rate for budget years in which a general reappraisal of real property has been conducted. The *revenue-neutral rate* is defined as the rate that is estimated to produce property tax revenue for the budget year equal to the revenue that would have been generated by the current tax rate if no reappraisal had been conducted. In computing the rate, the budget officer is directed to include a growth factor equal to the average annual percentage increase in the tax base "due to improvements" since the last general reappraisal. The budget officer is also to adjust the rate to account for annexations, deannexations, mergers, or similar events. The act does not define what is meant by *improvements*. Narrowly construed, that term would cover only new construction. It seems more likely that the intent is to

factor in the average annual change in real property values since the last reappraisal, no matter what the reasons.

S.L. 2003-264 became effective June 26, 2003.

Deployed Military Personnel

S.L. 2003-300 (S 936) modifies G.S. 105-360 (due date, interest for nonpayment of taxes, discounts for prepayment) and G.S. 105-330.4 (due date, interest, and enforcement remedies for tax on motor vehicles) with respect to military personnel on active duty in support of Operation Iraqi Freedom on or after January 1, 2003. The act provides that deadlines for paying taxes at par that occur during such deployment are extended until ninety days after the end of deployment. If a member of the military who takes advantage of the extension fails to pay taxes before the end of the ninety-day extension, interest accrues as if the extension had not been granted. The act became effective July 4, 2003. The act does not specify whether it applies retroactively to taxes that became delinquent after deployment but before July 4, but that seems the better interpretation.

Internet-Based Certification

S.L. 2003-399 (H 972) adds new subsection (e) to G.S. 105-361 to allow counties, cities, and other taxing units to provide an Internet-based alternative to the current method of issuing certificates of taxes and special assessments due. The new procedure is permissive, not mandatory. It is available to any unit that maintains a Web site on which current information on the amount of unpaid taxes, special assessments, penalties, interest, and costs is available. To implement the procedure, the governing body of the unit must adopt an ordinance that allows a person to rely on information obtained from the Web site as if it were a written certificate issued by the collector under the current method. The ordinance may provide for disclaimers to be posted on the Web site pertaining to such matters as the date the information was posted, the date as of which it is current, and any special instructions and procedures for obtaining complete and accurate information. If such disclaimers are not posted on the Web site, the collector may be liable on his or her bond for any loss to the taxing unit caused by incomplete or inaccurate information. The ordinance may also include appropriate procedural provisions enabling the collector to ensure full and accurate payments. A person who relies on Web site information must keep and present a copy of the information as necessary or appropriate, "as if the copy were a certificate issued under subsection (a)." Presumably, this means producing the copy by downloading and printing the information in a format that can be authenticated as having been obtained directly from the Web site.

Release or Refund of Certain Taxes

S.L. 2003-250 (S 450) appears to be aimed at correcting a particular problem with an unidentified county's 2002 revaluation. The act allows a taxing unit to release or refund that portion of 2002–2003 taxes attributable to the erroneous inclusion of a septic or well system in the valuation of property.

Payment of Delinquent Taxes Required for Deed Recordation

G.S. 161-31, a codified local act that applies to certain named counties, authorizes a board of county commissioners, by resolution, to require the register of deeds not to record a deed transferring title to real property unless the county tax collector certifies that there are no delinquent taxes constituting a lien on the property. S.L. 2003-72 (H 393) adds to this act a new subsection (a1) that directs the register of deeds in the affected counties to accept for registration without the collector's certificate a deed submitted under the supervision of a closing attorney that contains the following statement on the face of the deed: "This instrument prepared by: _____, a licensed North Carolina attorney. Delinquent taxes, if any, to be paid by the closing attorney to the county tax collector upon disbursement of closing proceeds."

Three counties have been added to the coverage of G.S. 161-31, bringing the total number of covered counties to forty-eight. They are Duplin (S.L. 2003-354, Section 3 [H 393]); Gates (S.L. 2004-289, Section 6 [H 655]); and Hyde (S.L. 2003-72 [H 393]).

Collecting Unpaid Fees for Water and Sewer Services

S.L. 2003-270 (H 469) applies to Columbus, Davie, Duplin, and Lenoir Counties and all municipalities, water and sewer districts, and service districts wholly or partially therein. The act authorizes the board of county commissioners to adopt an ordinance providing that fees for water or sewer services remaining unpaid for ninety days may be collected in any manner by which delinquent real or personal property may be collected. The ordinance may specifically provide that such unpaid fees constitute a lien on real property, in which case the lien is valid from the time of the filing of a statement of the unpaid fees in the office of the clerk of superior court. The act does not apply to collection of ambulance fees or solid waste collection or disposal fees, both of which are the subject of separate statewide statutes.

Tax Collector Selection

Madison County Collector. S.L. 2003-123 (H 214) repeals local acts making the office of tax collector of Madison County an elective office, effective upon expiration of the term of the incumbent collector or a vacancy in the office for any reason. The effect is to make the office an appointive office to be filled by the board of county commissioners pursuant to G.S. 105-349.

Foreclosure Sales

Section 11 of S.L. 337-2003 (H 394) amends G.S. 105-374(m) to forbid holding a foreclosure sale on a legal holiday "when the courthouse is closed for transactions." The effect appears to be to allow sales on any legal holiday when the courthouse is open for transactions. The change is effective October 1, 2003.

Occupancy Taxes

Blowing Rock. Section 13 of S.L. 2003-28 (S 497), effective May 1, 2003, authorizes Blowing Rock to levy a 3 percent occupancy tax in addition to the 3 percent tax already authorized by 1987 N.C. Sess. Laws ch. 171. The act also places Blowing Rock under the general occupancy tax administrative provisions of G.S. 160A-215.

Mount Airy. Section 12 of S.L. 2003-28 (S 497), effective May 1, 2003, authorizes Mount Airy to levy an additional occupancy tax of up to 3 percent in addition to the 3 percent tax already authorized by S.L. 1997-410.

New Hanover. S.L. 2003-166 (H 668) makes administrative changes in the New Hanover County occupancy tax that do not affect levy or collection of the tax.

Municipal Vehicle Tax

City of Durham. G.S. 20-97(b) authorizes cities and towns to levy a municipal motor vehicle tax of not more than $5 per year. S.L. 2003-329 (H 736) increases the maximum levy to $10 per year for the City of Durham. This act became effective July 18, 2003, and expires July 18, 2004. It therefore appears to authorize an increase in the Durham vehicle tax for the 2003–2004 tax year only.

Studies

S.L. 2003-284 directs the Property Tax Subcommittee of the Revenue Laws Study Committee to study the positive and negative impacts on local government property tax revenues of land acquisition by the state and nonprofit organizations using money from the Clean Water Management Trust Fund and other state funds available for conservation purposes. The subcommittee is directed to report by January 15, 2004.

Technical Corrections

Sections 9 and 10 of S.L. 416-2003 (S 97) make technical corrections to G.S. 105-299 and 105-358(a). Neither change appears to have substantive effect.

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Mental Health

This chapter discusses acts of the General Assembly affecting mental health, developmental disabilities, and substance abuse services. Particular attention is given to legislation affecting the publicly funded system of services, which is currently being reorganized and undergoing other changes mandated by S.L. 2001-437. The mental health system reform legislation of 2001 requires counties to administer services through either an area mental health, developmental disabilities, and substance abuse authority (area authority) or a county mental health, developmental disabilities, and substance abuse program (county program). The legislation further requires that county programs and area authorities develop a network of qualified providers to provide services that are arranged, approved, monitored, and largely paid for by the area authorities and county programs. Legislative enactments in 2003 affecting area authorities, county programs, and their provider networks include changes to

- statutes governing the confidentiality of client information;
- laws affecting the licensure of mental health, developmental disabilities, and substance abuse (MH/DD/SA) services and facilities; and
- the types of professionals that may, on a pilot basis, examine persons being evaluated for involuntary commitment.

Other legislation includes appropriations for MH/DD/SA services, restrictions on the sterilization of the mentally ill and mentally retarded, an extension of the deadline for funding a new consumer advocacy program, a ban on the use of "rebirthing" techniques in psychotherapy practice, and acts permitting marriage and family therapists and psychological associates to receive direct payment for services from third-party payers.

Appropriations

General Fund Appropriations

State funding to the Department of Health and Human Services (DHHS), about $3.3 billion for fiscal year 2003–2004, comprises about 23 percent of the of the state's General Fund budget. About 17 percent of the DHHS funding, or almost 4 percent of the state's General Fund budget for 2003–2004, is appropriated to the Division of MH/DD/SA Services. This appropriation, however,

does not include state funding for the Medicaid program, which accounts for a significant portion of the local government revenues devoted to MH/DD/SA services. (See "Medicaid Funding," below.)

The Current Operations and Capital Improvements Act of 2003, S.L. 2003-284 (H 397), appropriates $577,290,247 from the General Fund to the DHHS Division of MH/DD/SA Services for fiscal year 2003–2004 and $580,423,098 for 2004–2005, both more than the $573.3 million appropriated for 2002–2003 but less than the $581.4 million appropriated for 2001–2002. Prior to that, annual appropriations were $630.4 million (2000–2001), $614.3 million (1999–2000), $564.3 million (1998–1999), and $528.5 million (1997–1998).

Budget act provisions cut $268,664 in funding to the state-operated mental retardation centers by means of a 15 percent decrease in outreach expenditures and save $894,053 in contract costs by eliminating or reducing funding for MH/DD/SA services contracts with nonprofit organizations. S.L. 2003-284 also reduces projected state spending by the Division of MH/DD/SA Services by approximately $3.1 million for each fiscal year of the 2003–2005 biennium contingent on eliminating inflation-based increases associated with utility, vehicle, communications, and equipment costs.

Mental Health Trust Fund

In 2001 the General Assembly established the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs as a nonreverting special trust fund in the Office of State Budget and Management. G.S. 143-15.3D provides that the trust fund must be used solely to meet the mental health, developmental disabilities, and substance abuse services needs of the state and must supplement, not supplant, existing state and local funding for these services. Specifically, the fund must be used only to

1. support community-based treatment programs;
2. facilitate compliance with the U.S. Supreme Court's *Olmstead*[1] 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.

Last year, the General Assembly authorized the expenditure of most of the 2002 appropriation to the trust fund for siting, design, and capital-planning costs associated with the construction of a new state-operated psychiatric hospital to replace the Dorothea Dix and John Umstead Hospitals. This year Section 2.1 of the budget bill allocates $12.5 million in nonrecurring funds to the MH/DD/SAS Trust Fund for fiscal year 2003–2004. Section 10.9 of the act provides that these funds can be used to expand or establish community-based services only if DHHS can identify sufficient recurring funds within its current budget for the continued support of these services.

HIPAA Reserve

The state budget includes a $2 million appropriation to a reserve to implement the Health Insurance Portability and Accountability Act of 1996 (HIPAA), a federal law that—among other things—requires health plans, health information clearinghouses, and health care providers to standardize electronic transactions of health information and protect the privacy and security of that information. Section 6.6 of S.L. 2003-284 directs that the reserve be located in the Office of State Budget and Management. Section 6.7 directs the Governor or his designee to oversee the

1. Olmstead v. L.C., 527 U.S. 581, 119 S. Ct. 2176, 144 L. Ed. 2d 540 (1999). In *Olmstead*, the Court held that the unnecessary segregation of individuals with mental disabilities in institutions may constitute discrimination based on disability, in violation of the Americans with Disabilities Act. As a result of the ruling, states risk litigation if they do not develop a comprehensive plan for moving qualified persons with mental disabilities from institutions to less restrictive settings at a reasonable pace.

state's implementation of HIPAA, including coordinating correspondence with the federal government, obtaining interpretations of the law from the N.C. Attorney General, and establishing deadlines for state agencies to provide the data to be used for monitoring compliance with the law.

Federal Block Grant Allocations

Section 5.1 of S.L. 2003-284 allocates federal block grant funds for fiscal year 2003–2004. The Mental Health Services (MHS) Block Grant provides federal financial assistance to states to subsidize community-based services for people with mental illnesses. This year, the General Assembly allocated $5,657,798 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, including school-based programs, family preservation programs, group homes, specialized foster care, therapeutic homes, and special initiatives for serving children and families of children having serious emotional disturbances. 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 $18,901,711 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. The budget bill also provides for an appropriation from the SAPT Block Grant of $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. 2003-284 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 and $422,003 for the Comprehensive Treatment Services Program for Children.

Among the appropriations from the Temporary Assistance to Needy Families (TANF) Block Grant, the General Assembly allocated $2 million to the Division of MH/DD/SA Services for regional residential substance abuse services for women with children. Section 5.1(j) of the budget act requires the Division of MH/DD/SA Services and the Division of Social Services, in consultation with local departments of social services, area mental health programs, and other organizations, to coordinate the expenditure of these funds to facilitate the expansion of regionally based substance abuse services for women and children.

Health Choice

Health Choice is North Carolina's health insurance program for uninsured children in low-income families. S.L. 2003-284 provides an additional $30.3 million in state funding for 2003–2005 to increase the number of children enrolled in Health Choice. Special provisions in the appropriations act affecting services covered by Health Choice and required prescription drug copayments are addressed in Chapter 21, "Social Services."

Medicaid Funding

The state's Medicaid program pays area and county mental health programs, hospitals, doctors, nursing homes, pharmacies, and other health care providers for the health care they provide to about one million low-income children, disabled persons, pregnant women, elderly persons, and recipients of public assistance. The Medicaid program accounts for a significant portion of area and county mental health program revenues.

State funding for the Medicaid program (approximately $4.4 billion for 2003–2005) comprises about 15 percent of the state's General Fund budget and about 61 percent of the DHHS budget. State funding pays approximately 32 percent of the Medicaid program's total cost, the federal government pays about 62 percent, and county funding (about $450 million per year) pays about 6 percent of program costs.

In May 2003 Congress enacted legislation (Pub. L. No. 108-27) providing $10 billion in additional temporary emergency federal funding for state Medicaid programs. S.L. 2003-284 makes a one-time reduction of $191.6 million in state Medicaid funding for fiscal year 2003–2004 due to receipt of this additional federal funding. The appropriations act also reduces projected state spending for Medicaid by approximately $213.3 million based on specified cost-containment measures and the elimination of inflation-based increases for specified services, and it authorizes DHHS to use up to $8 million in state Medicaid funds for additional cost-containment activities.

The Senate and House considered, but did not enact, several bills that would have reduced or eliminated the counties' responsibility for paying part of the nonfederal share of the cost of Medicaid benefits provided to county residents (S 55, S 467, H 410, H 411, H 451, H 640). A description of other provisions affecting Medicaid spending is included in Chapter 21, "Social Services."

Laws Affecting Local Program Expenditures

Area Mental Health Administrative Costs

S.L. 2003-284 duplicates a provision in the 2001 appropriations act requiring area authorities and county programs to develop and implement plans to reduce local administrative costs (sec. 21.65 of S.L. 2001-424). Section 10.17 of the 2003 budget act provides that administrative costs for area authorities and county programs must not exceed 13 percent of total expenditures and permits DHHS to implement alternative approaches for establishing administrative cost limitations for area authorities, county programs, and their service providers.

Private Agency Uniform Cost-Finding Requirement

Section 10.18 of S.L. 2003-284 duplicates a provision in the 2001 appropriations act authorizing the Division of MH/DD/SA Services to require private agencies providing contract services to an area authority or county program to complete an agency-wide uniform cost finding. The cost finding is intended to ensure uniformity in rates charged to area authorities and county programs for services paid for with state-allocated funds. DHHS may 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 remain suspended until an acceptable cost finding has been completed by the private agency and approved by the DHHS controller's office.

Prohibition of Rebirthing Technique in Psychotherapy Practice

Effective December 1, 2003, S.L. 2003-205 (S 251) makes it a criminal offense to reenact the birthing process in a manner that includes restraint and creates a situation in which the patient may suffer physical injury or death. Under new G.S. 14-401.21 the practice of rebirthing, whether known as "rebirthing technique" or referred to by another name, is punishable as a misdemeanor for the first offense and a felony for a second or subsequent offense. The legislation also amends G.S. 122C-60(a) to clarify that, although restraint and seclusion of a client is permitted when necessary as a measure of therapeutic treatment, a technique to reenact the birthing process as described in G.S. 14-401.21 is not a measure of therapeutic treatment.

Licensure Violations

In 2002 the General Assembly amended G.S. 122C-23 to prohibit the licensure of a new MH/DD/SA facility or service or the enrollment of any new provider for Medicaid services or Medicaid Home or Community Based services if the applicant for licensure or enrollment owned a licensable facility that had its license revoked, suspended, or downgraded during the preceding five years or had been assessed a penalty for certain specified violations within the preceding five years (S.L. 2002-164). The General Assembly amended the provision this year to reduce the period of time that licensure violations will disqualify an applicant and to provide a qualified exemption for area authorities and county programs. As amended by S.L. 2003-294 (S 926), G.S. 122C-23(e1)–(e3) now provides that the prohibition from licensure or enrollment applies to

1. an applicant that was the owner, principal, or affiliate of a licensable facility under Chapter 122C, Chapter 131D, or Article 7 of Chapter 110 that had its license revoked in the preceding sixty months.
2. an applicant that is the owner, principal, or affiliate of a licensable facility that has been assessed a penalty for a Type A or Type B violation, or any combination of those violations, under G.S. 122C-24.1 and
   - the penalty was assessed in the six months prior to the application,
   - two penalties have been assessed in the eighteen months prior to the application and eighteen months have not passed from the date of the most recent violation,
   - three penalties have been assessed in the thirty-six months prior to the application and thirty-six months have not passed from the date of the most recent violation, or
   - four or more penalties have been assessed in the sixty months prior to the application and sixty months have not passed from the date of the most recent violation.

The new provisions are not applicable to penalties assessed prior to October 23, 2002. However, licensure or enrollment must be denied if an applicant's history as a provider under Chapters 131D or 122C or Article 7 of Chapter 110 leads the Secretary of DHHS to conclude that the applicant will likely be unable to comply with licensing or enrollment statutes, rules, or regulations. Any denial of licensure on this basis, along with appeal rights pursuant to Article 3 of Chapter 150B, must be given to the provider in writing.

S.L. 2003-294 also provides that if an applicant is the owner, principal, or affiliate of a licensable facility whose license was summarily suspended or downgraded to provisional status as a result of violations under G.S. 122C-24.1(a) or Article 1A of Chapter 131D, DHHS may not enroll the applicant as a new provider of Medicaid services or issue the applicant a license for a new MH/DD/SA facility or service until sixty months after the original facility's license is reinstated or restored.

DHHS may enroll a provider that would otherwise be disqualified from enrollment under the foregoing provisions if (1) the applicant is an area authority or county program providing services under G.S. 122C-141 and there is no other provider of the service in the catchment area or (2) the

Secretary finds that the area authority or county program has shown good cause by clear and convincing evidence why the enrollment should be allowed.

S.L. 2003-294 became effective July 4, 2003.

Involuntary Commitment

North Carolina's involuntary commitment statutes set forth a procedure for evaluating an individual for court-ordered mental health or substance abuse treatment. Generally, before the district court may order involuntary commitment, the subject of the order must be examined by two different physicians or psychologists. S.L. 2003-178 (H 883) authorizes the Secretary of DHHS to permit up to five area authorities or county programs to substitute for the physician or psychologist a licensed clinical social worker, master's level psychiatric nurse, or master's level certified clinical addictions specialist to conduct the first examination in the commitment process. This waiver from the statutory requirements is limited to area authorities or county programs that are participating in the first phase of the public mental health system restructuring mandated by the 2001 mental health system reform legislation. Intended as a pilot program, the Secretary's waiver would be in effect for no more than three years or for the duration of the area or county program's business plan for system reform.

To apply for the waiver, an area authority or county program must submit, as part of its business plan approved by the Secretary, a description of

- how the purpose of the statutory requirement would be better served if waived;
- how the waiver will enable the authority or program to improve the delivery or management of services;
- how the services provided by the substituted clinicians are within the clinicians' scope of practice; and
- how the health, safety, and welfare of individuals subject to the examination will continue to be at least as well protected under the waiver as under the statutory requirement.

The Secretary must evaluate the effectiveness, quality, and efficiency of services provided under the waiver and the protection of individuals subject to it and must report his or her findings to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services by July 1, 2006. In addition, DHHS must ensure that clinicians performing commitment examinations under the waiver are trained and privileged to perform the functions associated with the examination.

S.L. 2003-178 became effective July 1, 2003, and expires July 1, 2006.

Consumer Advocacy Program

In 2001 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 2001 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. The funds were not appropriated in 2002, but a special provision of the 2002 budget act amended S.L. 2001-437 to permit the program to become effective if funds were appropriated by the 2003 General Assembly. Unable to appropriate funds this year, the General Assembly once again inserted a special provision in the budget act to amend Section 4 of S.L. 2001-437 so that the consumer advocacy program can become effective if funds are appropriated by the 2005 General Assembly.

Licensed Professionals

Marriage and Family Therapists

Effective October 1, 2003, S.L. 2003-117 (H 462) amends G.S. 58-50-30 and the Marriage and Family Therapy Licensure Act to provide for direct payment to licensed marriage and family therapists for services covered by health insurance policies and plans. The act also amends the Professional Corporation Act to add marriage and family therapists to the list of professionals who may form a professional corporation. Specifically, the law now permits a professional corporation to be formed by or between a physician or psychologist, or both, and a licensed marriage and family therapist, a licensed clinical social worker, a licensed professional counselor, and a certified clinical specialist in psychiatric and mental health nursing, or each of them, to render psychotherapeutic and related services.

Psychological Associates

S.L. 2003-368 (H 1049) amends G.S. 58-50-30, effective January 1, 2004, to permit licensed psychological associates holding permanent licensure to receive direct payment from insurers for services covered by health insurance policies and plans.

Confidentiality

Implementation of Mental Health System Reform

S.L. 2003-313 (H 826) amends the confidentiality provisions of G.S. Chapter 122C to bring them into conformance with the mental health system reform legislation of 2001 (S.L. 2001-437). The changes to the confidentiality statutes permit area and county programs and their provider networks to exchange confidential client information as necessary to perform their respective functions under the new system of services. Under the new system, area and county mental health programs largely shed their roles as service providers and begin to function more as managed care organizations that arrange, approve, monitor, and pay for services provided directly to clients by a network of qualified providers.

Before July 10, 2003, the date the confidentiality amendments became effective, G.S. 122C-55(a) permitted any area facility, state facility, or the psychiatric service of UNC Hospitals to share confidential information regarding any client of that facility with any other area or state facility or the psychiatric service of UNC Hospitals "when necessary to coordinate appropriate and effective care, treatment or habilitation of the client." G.S. 122C-3(14) defined *area facility* to be a facility "operated by or under contract with" the area authority or county program. While these provisions permitted area and county mental health programs to exchange client information for treatment-related activities with an agency providing client services pursuant to a contractual agreement with the area or county program, there was no provision that explicitly permitted sharing confidential information for payment purposes. Nor did the confidentiality provisions permit the exchange of client information for purposes of the area or county program executing its duty to monitor and evaluate the performance of service providers, a duty that has expanded in scope under the mental health system reform measures and new administrative code rules adopted July 1, 2003 (10A NCAC 27G .0600).

To address these and other system reform issues, S.L. 2003-313 makes the following changes:

1. It amends the definition of *area facility* to clarify that the term *contract,* as used in that definition, refers to a contract, memorandum of understanding, or other written agreement whereby the facility agrees to provide services to one or more clients of the area authority or county program. This amendment brings within the scope of the term *area facility* any facility that agrees in writing to provide services to area or county

program clients. Thus the associated agreement need not include the exchange of money or other legal consideration.

2. It clarifies that for purposes of exchanging confidential information to coordinate care and treatment, *coordination* means the provision, coordination, or management of MH/DD/SA services and related services provided by one or more facilities and includes the referral of a client from one facility to another. The new definition clarifies that, even if an area authority is providing no direct care or treatment to a client but simply refers the client to a facility that has agreed to participate in the area authority's provider network, the area authority and provider may exchange client information so that the area authority may perform service management functions related to an individual client. Service management functions include reviewing and authorizing the client's treatment plan, evaluating the plan's effectiveness, and periodically monitoring the coordination of services among the client's direct service providers.
3. It creates new G.S. 122C-55(a2) to permit an area facility, state facility, and the psychiatric service of UNC Hospitals to share information regarding any client of that facility with any other area or state facility or the psychiatric service of UNC Hospitals when necessary to conduct payment activities relating to an individual served by the facility. *Payment activities* are activities undertaken by a facility to obtain or provide reimbursement for the provision of services and may include, but are not limited to,
    - determinations of eligibility or coverage;
    - coordination of benefits;
    - determinations of cost sharing amounts;
    - claims management, processing, adjudication, or appeals;
    - billing and collection activities;
    - medical necessity reviews;
    - utilization management and review;
    - precertification and preauthorization of services;
    - concurrent and retrospective review of services; and
    - appeals related to utilization management and review.
4. It creates new G.S. 122C-55(a4) to permit an area authority or county program and any area facility to share confidential information regarding any client of the area facility when the area authority or county program determines the disclosure of information is necessary to develop, manage, monitor, or evaluate the area authority's or county program's network of qualified providers in accordance with G.S. 122C-115.2 (b)(1)b., G.S. 122C-141(a), the State MH/DD/SA Plan, and the rules of the Secretary of DHHS. The purposes or activities for which confidential information may be disclosed include, but are not limited to,
    - quality assessment and improvement activities,
    - provider accreditation and staff credentialing,
    - contract development and rate negotiation,
    - investigation of and response to client grievances and complaints,
    - practitioner and provider performance evaluation,
    - audit functions,
    - on-site monitoring,
    - consumer satisfaction studies, and
    - collection and analysis of performance data.
5. It adds new G.S. 122C-55(a5) to permit any area facility to share confidential information with any other area facility regarding any applicant for services when necessary to determine whether the applicant is eligible for area facility services. *Applicant* is defined as an individual who contacts an area authority for services. Before this amendment, area facilities were limited to sharing information regarding clients only (*clients* being individuals admitted to and receiving a service from an area facility). Under the mental health system reform, area authorities and county programs must provide screening,

triage, and referral for individuals who contact the public service system for services. This may involve eliciting over the telephone information about the applicant that is protected from disclosure under the confidentiality statutes and then referring the applicant to a contract provider for an assessment of the applicant's need and eligibility for services. Until this assessment is conducted, the applicant for services is generally not yet a client. Thus, the new provision is necessary to permit the area or county program (or an agency contracting to provide screening and referral) to disclose confidential information obtained during the screening process to the network provider to which the applicant is referred for a face-to-face assessment.

6. It adds new G.S. 122C-55(a3) to permit an area facility, state facility, or the psychiatric service at UNC Hospitals to disclose confidential information regarding any client of the facility with the Secretary of DHHS and to permit the Secretary to disclose confidential information regarding any MH/DD/SA client to these facilities when there is reason to believe that a client is eligible for benefits through a DHHS program. This provision permits the disclosure of information necessary to establish initial eligibility for benefits, determine continued eligibility over time, and obtain reimbursement for the costs of services to the client.
7. It amends G.S. 122C-55(g) to permit a facility, when there is reason to believe that a client is eligible for financial benefits through a government agency, to disclose confidential information to a local government agency for the purpose of establishing financial benefits for a client. This provision, which previously permitted disclosures only to state and federal government agencies, now permits disclosures to local departments of social services for establishing Medicaid benefits for a client.

Child Fatality Task Force

G.S. 143B-150.20 establishes a State Child Fatality Review Team to conduct in-depth reviews of any child fatalities that have occurred involving children and families involved with child protective services of a local department of social services within the twelve months preceding the fatality. The statute grants the team access to medical records, hospital records, and records maintained by the state and any county or any local agency, including mental health records, as necessary to execute the purposes of the statute. Pursuant to this statute and G.S. 122C-54(h), mental health facilities must grant the team access to information that is otherwise confidential, except that information confidential under federal regulations governing substance abuse records can only be disclosed as permitted by those regulations.

Effective July 1, 2003, Section 6 of S.L. 2003-304 (S 421) amends G.S. 143B-150.20 to provide that if the team does not receive information within thirty days after requesting it, the team may apply for a court order compelling disclosure. The application must state the factors supporting the need for a court order and must be filed in the district court of the county where the investigation is being conducted. The court has jurisdiction to issue any orders compelling disclosure and subsequent proceedings must be given priority by the appellate courts.

Nurse Privilege

Currently, state law provides that certain communications are privileged, such as those between a physician and a patient, a psychologist and a patient, and a clergyperson and his or her communicants. If a communication is privileged, the possessor of the information—such as the physician—is not required to disclose information about the communications in court proceedings except in limited circumstances. S.L. 2003-342 (H 743) establishes a new privilege for nurses. Under the new law, information acquired while rendering professional nursing services and necessary to providing such services is now privileged. The nurse may not be required to disclose the information unless a court determines that disclosure is necessary to the proper administration of justice and disclosure is not prohibited by any other law.

Jail Health Information

S.L. 2003-392 (S 661) amends G.S. 153A-225 to provide that when a jail transfers an inmate to another jail, the transferring jail must provide the receiving jail with "any health information or medical records" the transferring jail has in its possession pertaining to the inmate.

Sterilization of the Mentally Ill and Mentally Retarded

Article 7 of Chapter 35 of the General Statutes had previously authorized certain public officials or the parent or guardian of a mentally ill or mentally retarded person to petition the district court for the sterilization of that person in the interests of the "public good" or of the "mental, moral, or physical improvement" of the mentally ill or mentally retarded person. Under these provisions the court could order sterilization without holding a hearing, and the sterilization procedure could be performed over the objections of the respondent and the respondent's next of kin. In addition, the provisions for obtaining court-ordered sterilization could apply to any mentally ill or mentally retarded person, regardless of whether a court had declared that person incompetent.

S.L. 2003-13 repeals Article 7 and creates a new sterilization procedure statute limited in application to mentally ill and mentally retarded persons who have been adjudicated incompetent and appointed a guardian of the person. Under new G.S. 35A-1245, a guardian cannot consent to the sterilization of a mentally ill or mentally retarded ward without an order of a clerk of court based on the findings that (1) the procedure is medically necessary and is not being performed solely for the purpose of sterilization or for hygiene or convenience; and (2) either (a) the ward is capable of comprehending the procedure and its consequences and has consented to the procedure or (b) the ward is incapable of comprehending the procedure and its consequences.

Guardianship

Effective December 1, 2003, S.L. 2003-236 (H 1123) amends G.S. Chapter 35A to clarify the clerk of superior court's authority to enter a limited guardianship order allowing an adult who has been adjudicated incompetent to retain certain legal rights and privileges when appropriate based on the nature and extent of the ward's capacity. S.L. 2003-236 also amends G.S. 35A-1107 to require the guardian ad litem appointed to represent an allegedly incompetent adult to

- visit the respondent as soon as possible following the guardian ad litem's appointment;
- make every reasonable effort to determine the respondent's wishes regarding the incompetency proceeding and proposed guardianship;
- present to the clerk the respondent's expressed wishes at all relevant stages of the incompetency and guardianship proceeding;
- make recommendations to the clerk concerning the respondent's best interests if those interests differ from the respondent's express wishes; and
- in cases in which limited guardianship may be appropriate, make recommendations to the clerk concerning the rights, powers, and privileges that the respondent should retain under a limited guardianship.

The Senate and House considered, but failed to enact, legislation (S 273, H 156, S 34, H 674) that would have authorized a study of North Carolina's guardianship law.

Disabled Adults

CAP-DA Audit and Review

Section 10.29B of S.L. 2003-284 requires the State Auditor, contingent on appropriation of state funds, to perform an audit of the Medicaid Community Alternatives Program for Disabled Adults (CAP-DA) to determine whether it is operating within waiver guidelines and program goals. The audit results must be reported to the North Carolina Study Commission on Aging by January 1, 2004. Section 10.29B also requires DHHS to report on the program to the Study Commission on Aging by January 1, 2004. The DHHS report must include a review of compliance with eligibility requirements, the current assessment process for clients, waiting list procedures, quality of care, and program costs.

In-Home Demonstration Project

Section 10.51 of S.L. 2003-284 continues, revises, and expands a demonstration project, established by S.L. 1999-237 and S.L. 2001-237, allowing the payment of State–County Special Assistance benefits to individuals who do not live in adult care homes but would otherwise be eligible to receive assistance under this program. The maximum payment under the demonstration project generally may not exceed 50 percent of the maximum payment provided to adult care home residents who receive State–County Special Assistance benefits. No more than eight hundred individuals may receive assistance under the demonstration project during each fiscal year. DHHS must make the demonstration project available to all counties on a voluntary basis but also must consider, to the extent possible, geographic balance in the distribution of payments under the project. In implementing the project, DHHS must require a functional assessment of participants, ensure that all participants are individuals who need and, but for the demonstration project, would seek placement in an adult care facility, and collect data to compare the quality of life of noninstitutionalized project participants to that of institutionalized recipients of State–County Special Assistance benefits. DHHS must submit a report on the demonstration project to specified legislative leaders by January 1, 2004 and January 1, 2005.

Medicaid Services

Prior Authorization of Services

Section 10.19(i) of S.L. 2003-284 prohibits DHHS from imposing prior authorization requirements or other restrictions with respect to medications prescribed for the treatment of HIV/AIDS or mental illnesses (including schizophrenia, bipolar disorder, and major depressive disorder).

Reduction of Transitional Coverage

Children, families, and elderly or disabled persons who are covered by Medicaid based on their receipt of public assistance (Supplemental Security Income or Work First) remain eligible for "transitional" Medicaid coverage if they lose their eligibility for public assistance due to increased earnings. S.L. 2003-284 reduces the maximum duration of transitional Medicaid coverage from twenty-four to twelve months.

Medicare-Eligible Recipients

The federal Medicaid law requires Medicaid recipients who are also eligible for coverage under the federal Medicare program to apply for Medicare so that Medicare, rather than Medicaid,

will pay some or all of the cost of medical care that is covered under both programs. Section 10.27 of S.L. 2003-284 codifies this requirement in state law by enacting new G.S. 108A-55.1. The new law also provides that if a Medicaid recipient qualifies for Medicare and fails to apply for Medicare, the Medicaid program will not pay for medical care that is covered under Medicare and a Medicaid provider may seek payment from the Medicaid recipient for this care.

Medicaid-Eligible Students with Disabilities

Section 10.29A of S.L. 2003-284 enacts new G.S. 108A-55.2 requiring DHHS to work with the Department of Public Instruction and local educational agencies to maximize funding for Medicaid-related services for Medicaid-eligible students with disabilities.

Fiscal Analysis of Proposed Medicaid Policy Changes

Section 10.19(z) of S.L. 2003-284 prohibits DHHS from changing Medicaid policies related to authorized Medicaid providers or the amount, sufficiency, scope, or duration of Medicaid services (unless federal law requires the change) unless the DHHS Division of Medical Assistance first prepares a five-year fiscal analysis of the cost of the proposed change. If the fiscal impact of the policy change exceeds $3 million, DHHS must submit the policy change proposal and fiscal analysis to the Office of State Budget and Management and the General Assembly's Fiscal Research Division for review and may not implement the change unless a source of state funding for the change is identified and approved by the Office of State Budget and Management. DHHS must provide quarterly reports to the Office of State Budget and Management and the Fiscal Research Division with respect to policy changes with a fiscal impact of less than $3 million.

A description of other provisions affecting Medicaid services is included in Chapter 21, "Social Services."

Insurance

Managed Care Patient Assistance Program

In 2001 the General Assembly established the Managed Care Patient Assistance Program to provide information and assistance to individuals enrolled in managed care plans. Among other things, the program must address consumer inquiries and assist managed care enrollees with grievance, appeal, and external review procedures. S.L. 2003-105 (H 744) directs health insurers to provide information to enrollees about the availability of the program, including the program's telephone number and address. Insurers are required to provide such information in several instances; for example, the information must be included in the member handbook and must be provided to enrollees at several different stages in the insurer's grievance process. S.L. 2003-105 also directs the Commissioner of Insurance to notify individuals of the availability of the Managed Care Patient Assistance Program after receiving a request for external review.

Claims Processing Fees

In general, when a provider submits a claim to an insurer, the insurer charges a fee for processing the claim. S.L. 2003-369 (H 1066) requires each insurer to make available to providers a schedule of the fees associated with the services or procedures for which bills are submitted. Schedules must be made available to contracted providers as well as prospective contracted providers. The law also requires insurers to disclose a description of its policies with respect to claims submission and reimbursement. Insurers must notify providers about changes to the schedule of fees or the claims submission or reimbursement policies. The law specifies two limited exceptions to these requirements. All insurers must submit to the Commissioner of

Insurance a written description of their policies and procedures for complying with the new requirements.

Joint Legislative Oversight Committee Studies and Reports

S.L. 2003-58 (H 80) creates G.S. 120-243 to require DHHS to report to the Joint Legislative Oversight Committee on MH/DD/SA Services whenever it is required by law to report to the General Assembly or the permanent committees or subcommittees of the General Assembly on matters affecting MH/DD/SA services. The act also makes changes to G.S. 122C-5, 131D-42, and 131D-10.6 to require DHHS to submit to the Joint Legislative Oversight Committee on MH/DD/SA Services the reports required by those statutes regarding the use of restraint and seclusion in adult care homes, child care facilities, and MH/DD/SA facilities.

S.L. 2003-396 (S 934) requires the Joint Legislative Oversight Committee on MH/DD/SA Services to study the programs of agencies assessing persons who must obtain a substance abuse assessment and certificate of completion of a substance abuse program for restoration of a driver's license. The study must examine the adequacy of the fees clients pay to assessing agencies for required substance abuse assessments.

Other Legislation

State Institution Settlement of Small Claims

S.L. 2003-285 (S 786) adds new G.S. 143-295.1 to the state's Tort Claims Act to permit a DHHS-operated institution to settle certain small claims without recourse to the procedures provided by the act. Specifically, the new legislation provides that when the property of a resident of the institution is lost, destroyed, or otherwise damaged due to the negligence of the institution and the amount of damages is less than $500, the institution may make a direct payment or provide for the replacement of the item to the resident.

DHHS Administration

Section 10.2 of S.L. 2003-284 directs DHHS to establish an Office of Policy and Planning to promote coordinated policy development and strategic planning for health and human services programs. The director of the office will have the authority to instruct other components of DHHS to conduct periodic reviews of policies, plans, and rules and will advise the Secretary about any recommended changes.

Traumatic Brain Injury Advisory Committee

S.L. 2003-114 (S 704) establishes the North Carolina Traumatic Brain Injury Advisory Committee. The committee is charged with, among other things, studying the needs of individuals with traumatic brain injuries and making recommendations to the Governor, the General Assembly, and the Secretary of DHHS regarding a comprehensive statewide service delivery system for persons suffering from traumatic brain injuries.

Nursing Home Medication Management

S.L. 2003-393 (S 1016), which requires nursing homes to establish medication management advisory committees and to take certain steps to reduce medication-related errors, is addressed in Chapter 20, "Senior Citizens."

Physician Registration to Prescribe Buprenorphine

Effective October 1, 2003, S.L. 2003-335 (S 876) amends the North Carolina Controlled Substances Act to require any physician who prescribes or dispenses Buprenorphine for the treatment of opiate dependence to register annually with DHHS in accordance with rules adopted by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services.

Exemption of Detoxification Facilities from Certificate of Need Requirements

S.L. 2003-390 (H 815) amends G.S. 131E-176 to provide that social setting detoxification facilities and medical detoxification facilities are not chemical dependency treatment facilities for purposes of the Certificate of Need requirements. It also amends G.S. 122C-23 to provide that social setting detoxification facilities and medical detoxification facilities subject to licensure under G.S. Chapter 122C must not deny admission or treatment to an individual solely because of the individual's inability to pay.

DWI Service Providers

G.S. 122C-142.1 requires area authorities to provide, directly or by contract, the substance abuse services needed to obtain a certificate of completion for restoration of a driver's license under G.S. 20-17.6. Although the statute permits private facilities to provide these substance abuse services, S.L. 2003-396 amends the statute, effective October 1, 2003, to require that these facilities obtain DHHS authorization before doing so. Authorization requires the private facility to pay DHHS a fee, based on the number of persons served, for authorizing and monitoring the quality of the facility's services.

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Motor Vehicles

During the 2003 session, the General Assembly considered more than seventy-five bills concerning motor vehicle or highway safety law. Less than one-third of these were enacted, and most of those were of a technical nature of interest primarily to automobile dealers or government officials who regulate various aspects of the automotive and trucking industry. This chapter summarizes the year's motor vehicle legislation that is historically significant or of interest to the general public.

Driver's License Law

License Fee Increase

G.S. 20-7(i) sets the fee for regular (noncommercial) driver's licenses at a specified amount per year for each year the license is valid. Previously a Class A or B regular license was $3.75 per year, a Class C (which most drivers possess) was $2.50. Effective November 1, 2003, these amounts increased to $4.25 for a Class A or B license and $3.00 for a Class C license. Currently most licenses are renewed for a five-year period as provided by G.S. 20-7(f). Thus a person renewing a Class C regular license would pay a total of $15.00 [S.L. 2003-284 (H 397), Sec. 36.1].

Military Driver's Licenses

S.L. 2003-152 (H 1159) adds new G.S. 20-7(q) providing for a military designation for driver's licenses that may be "granted to North Carolina residents on active duty and to their spouses and dependent children." A license with a military designation may be renewed by mail and as such is a permanent license that does not expire when the licensee returns to North Carolina. A license holder who renews by mail under this new provision is exempt from the vision test if he or she is a member of the U.S. armed forces or the National Guard [G.S. 20-7(r)]. This act also amends G.S. 20-39.1 to add "agents of the Department of Defense" to a list of law enforcement personnel that may be issued confidential or fictitious license plates and driver's licenses. Provisions of S.L. 2003-152 concerning licenses for military personnel and their families

become effective January 1, 2004, while the provisions relating to the issuance of confidential or fictitious plates and driver's licenses became effective June 4, 2003.

S.L. 2003-300 (S 936) authorizes the Governor to extend deadlines (and waive penalties and fees) to alleviate hardships created for deployed military personnel serving in Operation Iraqi Freedom. This authority allows the Governor to

1. extend for ninety days from the end of deployment the validity of a driver's license, and
2. waive penalties and fees under G.S. 20-309 for lapsed liability insurance, as long as the vehicle was not operated on the highways during the period the vehicle was uninsured.

This act was appropriately effective July 4, 2003.

Registration and Certificates of Title

Consumer Protection

S.L. 2003-258 (S 558) adds new subsection (a1) to G.S. 20-71.3 (Salvage Vehicles). This new statute provides that any motor vehicle declared a total loss by an insurance company must have its title and registration card marked "TOTAL LOSS CLAIM." In addition, a tamperproof permanent marker stating "TOTAL LOSS CLAIM VEHICLE" will be inserted in the vehicle's doorjamb, and it will be unlawful for any person to remove, tamper with, alter, or conceal this marker. A violation of this provision is a Class I felony, punishable by a fine of not less than $5,000 for each offense.

S.L. 2003-258 also creates new G.S. 20-136.2, making it unlawful for any person to install or reinstall any "object in lieu of an airbag, other than an airbag that was designed in accordance with federal safety regulations for the make, model, and year of the vehicle." A violation of this provision is a Class 1 misdemeanor.

This act became effective December 1, 2003.

Special License Plates

Special license plates, originally intended for vehicles driven by major statewide officeholders, have in recent years become increasingly popular. These plates are now available to many diverse groups, including former prisoners of war, registers of deeds, and members of square dance clubs. The following additional license plates were authorized in 2003:

1. Paramedics. These may be issued to an emergency medical technician-paramedic as defined in G.S. 131E-155. Plates will include the Star of Life logo and the phrase "Professional Paramedic" [S.L. 2003-68 (S 295)].
2. N.C. Coastal Federation. These may be issued to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. Plates will include a phrase used by the N.C. Coastal Federation and an image that depicts the coastal area of the state [S.L. 2003-68 (S 295)].
3. Nurses. These may also be issued in accordance with G.S. 20-81.12 and will include the phrase "First in Nursing." An additional fee of $25 must be paid for this plate, a portion of which will go to a special account to support nursing scholarships [S.L. 2003-11 (H 237)].
4. Alpha Kappa Alpha Sorority. These may be issued to the registered owner of any motor vehicle and will include the sorority's symbol and name [S.L. 2003-10 (H 482)].

Rules of the Road

Speeding and Speedometers

G.S. 20-123.2 provides that motor vehicles operated on the highway must be equipped with a properly functioning speedometer. A violation of this section, however, is only an infraction carrying a $25 penalty, and no driver's license or insurance points are assessed. Most speeding violations (set out in G.S. 20-141) are infractions or misdemeanors carrying $100 fines and result in the assessment of both driver's license and insurance points. G.S. 20-141 does not include exceptions for speeding offenders whose speedometers are not working properly. S.L. 2003-110 (H 510) adds new G.S. 20-141(o) providing that a violation of the aforementioned speedometer law shall be a lesser included offense of a violation of G.S. 20-141. In some cases this could allow a defendant charged with a speeding offense to plead guilty to a lesser offense carrying a small penalty and no driver's license or insurance points. S.L. 2003-110 was effective December 1, 2003; prosecutions for offenses committed before the effective date are not abated or affected by its enactment.

Speed-Measuring Cameras

In recent sessions, many local governments have been authorized to install cameras to aid in the detection of red-light violations. In a variation of this trend, S.L. 2003-280 (H 562) adds new G.S. 160A-300.4 to authorize Charlotte to use cameras to detect speeders on fourteen specified streets. The equipment used must be approved by the state and calibrated and tested in accordance with G.S. 8-50.3. A sworn officer must be present when the equipment is used. Violations are not prosecuted in criminal or infractions court but through a nonjudicial administrative hearing process. The vehicle's owner is responsible for a violation in the vehicle unless he or she provides evidence that someone else was in control of the vehicle. The owner may submit an affidavit indicating who was in control of the vehicle at the time of violation. All charging documents must be in English and Spanish, and persons answering phone inquiries must either speak Spanish or have someone available who can. The clear proceeds of penalties collected will go to the school fund. The law was effective July 1, 2003, and expires June 30, 2006.

Rush Hour Traffic Lanes

Sections of S.L. 2003-184 (S 38) add provisions to G.S. 20-146.2 authorizing high-occupancy vehicle lanes (HOVs) on both the state highway system and in municipalities. One of these provisions allows motorcycles, emergency vehicles, and vehicles designed to transport fifteen or more passengers to use the HOV lanes even if such vehicles do not have the minimum number of passengers on board. These amendments were effective December 1, 2003.

Impaired Driving Offenses

Immediate License Revocation

G.S. 20-16.5 provides for an immediate driver's license revocation in certain DWI cases, typically when the defendant has refused a chemical test or the test reveals a blood alcohol concentration of .08 or more. Usually the magistrate, who will be in possession of the revocation report, handles this matter soon after the defendant is arrested and takes or declines a chemical test. In cases in which a blood test is given, however, the revocation report may go to the clerk of superior court who then mails the defendant a revocation order by first class mail. The statute provides that this report must be filed by the officer making the charge. In some cases these officers fail to send a copy of the blood test results to the clerk. S.L. 2003-104 (S 619) addresses this situation by amending G.S. 20-16.5(f) to provide that "a properly executed report . . . may include a sworn statement by the charging officer along with an affidavit received directly by the

clerk from the chemical analyst." The effect of this law is that the clerk may act to revoke a license even if the officer fails to present the affidavit to the clerk. This act became effective May 31, 2003.

DWI Blood Test

If a charging officer specifies that a blood test be the type of chemical analysis used in a DWI investigation, G.S. 20-139.1(c) provides that only a physician, registered nurse, or other qualified person may withdraw the blood sample. S.L. 2003-95 (S 449) adds wording to this section to provide that evidence "regarding the qualifications of the person who withdrew the blood sample may be provided at the trial by testimony of the charging officer or by affidavit of the person who withdrew the blood sample and shall be sufficient to constitute prima facie evidence regarding the person's qualifications." The act does not address whether the person withdrawing the blood may be subpoenaed and it does not limit its application to district court cases. S.L. 2003-95 became effective December 1, 2003.

Fees in Multiple Assessment Cases

S.L. 2003-396 (S 934) concerns situations in which one person has been charged with multiple DWI offenses. G.S. 20-17.6 requires that a person convicted of impaired driving (and certain other offenses) obtain a substance abuse assessment and complete any recommended treatment before he or she may be relicensed. (A person loses his or her license for at least a year for any DWI conviction.) When a person has more than one outstanding charge at a time, the question arises as to whether he or she should be assessed and treated for each separate charge. This act clarifies the manner in which these assessments are handled. For each charge for which a certificate of completion is required before a person is eligible for license reinstatement, a separate assessment fee is charged. However, the assessing agency need only perform one assessment. If treatment or education is ordered, the person only pays for the treatment or education once.

This act became effective October 1, 2003.

Bills That Failed to Pass

As is the case in most sessions of the General Assembly, several interesting motor vehicle bills were not enacted. These failed bills can be significant because they often reappear a session or two later, sometimes with considerably more support. Some of the more interesting failed proposals include:

1. H 26, which would have amended G.S. 20-63 to prohibit the use of license plate covers designed to interfere with the taking of a clear photograph of the plate by a traffic control system using cameras.
2. H 147, which would have amended G.S. 20-158 to provide for a penalty of up to $1,000 for making a right turn on red without yielding the right-of-way to pedestrians. (Generally, failing to yield to a pedestrian is an infraction punishable by a fine not to exceed $100.)
3. H 623, which would have prohibited a driver from using a cellular or other car phone unless it is equipped with an apparatus allowing the driver to talk and listen without holding the headset.
4. H 1106, which would have created the offenses of felony and misdemeanor "death by vehicle" of an unborn child.
5. S 643, which would have amended G.S. 20-176(b) to increase the penalty for an infraction from $100 to $200.

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Public Personnel

The 2003 session of the General Assembly saw 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 $550 and, for the second year in a row, a grant of an additional ten days of paid annual leave for permanent state employees. The General Assembly also passed legislation that clarifies the availability of workers' compensation and other forms of medical and salary continuation coverage for state and local government employees injured as a result of smallpox vaccination authorized by the federal Homeland Security Act.

Legislation Affecting Both State and Local Government Employees

Amendment to Workers' Compensation Act to Cover Injuries from Smallpox Vaccination

S.L. 2003-169 (H 273) amends the N.C. Workers' Compensation Act at G.S. 97-53 to recognize both infection with smallpox or vaccinia (the virus in the smallpox vaccine) and any adverse medical reaction from smallpox vaccination as occupational diseases covered by workers' compensation. The infection or adverse reaction must be the result of a vaccination administered under the national smallpox vaccination program pursuant to Section 304 of the federal Homeland Security Act [*see* 42 U.S.C. § 233(p)] or the result of a nonvaccinated employee's exposure to another employee who has been vaccinated in accordance with the program.

Vaccination Program for First Responders

S.L. 2003-227 (H 916) requires the Department of Health and Human Services and local health departments to offer a voluntary vaccination program (including, but not limited to, vaccination against hepatitis A, hepatitis B, diptheria, tetanus, influenza, and pneumococci) for first responders who may be exposed to infectious diseases at the site of a bioterrorist attack, terrorist incident, catastrophic or natural disaster, or other emergency.

State Employees

Salary

The General Assembly did not authorize any across-the-board salary increases for state employees this year. Instead, S.L. 2003-284 (H 397), the 2003 appropriations act, provides that state employees who are permanent employees as of October 1, 2003, will receive a one-time compensation bonus of $550. In addition, state employees who are permanent employees as of July 1, 2003, and who are eligible for annual leave will receive an additional one-time grant of ten days of paid annual leave (Special Annual Leave Bonus). 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. Excluded from eligibility for the Special Annual Leave are executive branch department heads, judicial branch officials whose salaries are itemized in Section 30.4 of the 2003 appropriations act, state employees who are on the Teacher Salary Schedule or the School-Based Administrator Salary Schedule, assistant and deputy clerks of superior court and magistrates of superior court receiving statutory step increases for the 2003–2004 fiscal year, and members of the State Highway Patrol receiving automatic increases under G.S. 20-187.3.

Legislation Affecting All State Employee Retirement Systems

The 2003 appropriations act provides for cost-of-living increases of 1.28 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. The appropriations act also provides for transfer of accumulated contributions and creditable service among TSERS, CJRS, LRS, and LGERS for members meeting certain qualifying conditions.

Teachers' and State Employees' Retirement System (TSERS)

S.L. 2003-359 (H 331) amends G.S. 135-1(7a) to define the meaning of the term *compensation* for the purposes of Chapter 135. The act defines compensation to include performance-based compensation; conversion of additional benefits such as health, life, or disability plans to salary; adjustments or increases in salary to compensate for an employee's increased tax liability for benefits provided by the employer; payout of vacation leave; and employee contributions to deferred compensation plans. The act explicitly excludes a number of payments and benefits from the definition of compensation, including, but not limited to, salary supplements paid for the purpose of allowing employees to purchase additional benefits; travel allowances; reimbursement of business, moving, and personal expenses; and payouts for unused sick leave.

State Disability Income Plan

The 2003 appropriations act amends G.S. 135-101(6), 135-105(a), and 135-106(a) to provide that state employees only become eligible for benefits under the Disability Income Plan of North Carolina when they are unable to perform the duties of their own jobs or of any other available jobs with the state. Previously, there was no requirement that participating employees take any available job with the state and employees became eligible for benefits under the plan when they were no longer able to perform their usual occupations. This new requirement applies only to participants who had not yet vested in the Disability Income Plan as of July 1, 2003.

Expansion of Voluntary Shared Leave Plan

S.L. 2003-9 (H 432) amends G.S. 126-8.3, 115C-12.2, and 115D-25.3 to provide that employees of state agencies, community colleges, and public schools may voluntarily share leave with immediate family members who are themselves employed by either state agencies, community colleges, or public schools. This legislation is discussed in more detail in Chapter 8, "Elementary and Secondary Education."

Injuries from Smallpox Vaccination Covered under State Health Plan

S.L. 2003-169 (H 273) amends G.S. 135-40.6(8) to include treatment of infection with smallpox or vaccinia (the virus in the smallpox vaccine) and any adverse medical reaction from vaccination against smallpox as a covered charge under the Teachers' and State Employees' Comprehensive Major Medical Plan (the State Health Plan).

Absences Due to Smallpox Vaccination Not to Count against Sick Leave

S.L. 2003-169 amends Article 3 of G.S. Chapter 126 by adding new section 126-8.4, which provides that employees who suffer adverse medical reactions from smallpox vaccination administered pursuant to Section 304 of the federal Homeland Security Act (Section 304) shall be entitled to an additional 480 hours of paid sick leave to recover from the adverse reaction. In addition, state employees who reside in the same home as a person who has been vaccinated against smallpox pursuant to Section 304 and who suffer an adverse medical reaction due to exposure to the vaccinated person, or who need to care for the vaccinated person while he or she is suffering from an adverse reaction, shall also be granted an additional 480 hours of paid sick leave.

Local Government Employees

Local Government Employees' Retirement System (LGERS)

S.L. 2003-319 (H 1170) amends G.S. 128-27 to provide for cost-of-living increases of 1.5 percent paid to or on behalf of retirees participating in LGERS. This act also adds to G.S. 128-27

- new subsection (b21), which increases the benefits multiplier from 1.82 percent to 1.85 percent for those members of LGERS retiring on or after July 1, 2003;
- new subsection (ddd), which brings the retirement allowance of members who retired prior to July 1, 2003, into line with the new multiplier by increasing by 2.0 percent the allowance payable on June 1, 2003; and
- new subsection (eee), which increases the retirement allowance of those who retired on or before July 1, 1982, by 6 percent, and of those who retired after July 1, 1982, but before July 1, 1993, by 1.1 percent.

S.L. 2003-359 amends G.S. 128-21(7a) to define the meaning of the term *compensation* for the purposes of Chapter 128. The act defines compensation to include performance-based compensation; conversion of additional benefits such as health, life, or disability plans to salary; adjustments or increases in salary to compensate for an employee's increased tax liability for benefits provided by the employer; payout of vacation leave; and employee contributions to deferred compensation plans. The act explicitly excludes a number of payments and benefits from the definition of compensation, including, but not limited to, salary supplements paid for the purpose of allowing employees to purchase additional benefits; travel allowances; reimbursement of business, moving and personal expenses; and payouts for unused sick leave.

Criminal Background Checks of Applicants for Municipal Positions and of Firefighters

S.L. 2003-214 (H 1024) amends G.S. Chapter 160A by creating new section 160A-164.1. The new legislation permits municipalities to request the North Carolina Department of Justice to run a criminal history record check of the state and national repositories of criminal histories on any applicant for municipal employment. In addition, S.L. 2003-182 (S 708) adds to Chapter 114 new section 114-19.12, which authorizes a designated local Homeland Security director or local law enforcement agency to request the Department of Justice to provide a criminal history on any applicant for a paid or volunteer position with a local government fire department.

Smallpox Vaccination Policy Required

S.L. 2003-169 adds two new sections to the General Statutes, G.S. 160A-164.1 and 153A-94.1. The new sections, respectively, direct municipalities and counties that employ firefighters, police officers, paramedics, or other first responders to enact a policy addressing sick leave and salary continuation for employees absent from work due to an adverse medical reaction to smallpox vaccination administered pursuant to Section 304 of the federal Homeland Security Act.

Job Protection for Volunteer Firefighters and Rescue and EMS Workers

S.L. 2003-103 (S 940) amends Article 1 of G.S. Chapter 166A by adding new section 166A-17. The new legislation provides that any volunteer fire department, rescue squad, or EMS member shall have the right to take leave without pay from his or her regular employment whenever that member's services are requested by the Director of the Division of Emergency Management or by the head of a local emergency management agency after a proclamation of a state of disaster by the Governor or General Assembly or upon activation of the State Emergency Response Team at Level 2 or greater. If the employee has accrued vacation or other accrued paid leave, the employee may choose whether to use accrued paid leave to cover this period of absence or to take leave without pay.

Firemen's and Rescue Squad Workers' Pension Fund

S.L. 2003-362 (H 543) amends G.S. 58-86-25 to include county deputy fire marshals, assistant fire marshals, and firefighters among those eligible to participate in the Firemen's and Rescue Squad Workers' Pension Fund.

Public School Employees

The General Assembly's 2003 legislation affecting public school employees is discussed in Chapter 8, "Elementary and Secondary Education."

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Purchasing and Contracting

The most significant legislative change in the purchasing and contracting field this session will allow local school units to make purchases using locally administered procedures under the same laws currently used by cities, counties, and other local governments—rather than through the Department of Administration. The transition to the new system is tied to a continuing requirement for schools to use the state's E-Procurement system and to the process of establishing the technical capacity needed to operate the system through financial systems already in use by school systems throughout the state.

School Purchasing

New School Purchasing Procedures

Currently, G.S. 115C-522(a) requires local school administrative units to purchase all supplies, equipment, and materials in accordance with contracts made by the Department of Administration. This year, in S.L. 2003-147 (S 620), the legislature removed this requirement and made the purchases of local school units subject to Article 8 of Chapter 143. The effect of this change is to make purchasing requirements for schools the same as those for cities, counties, and other local governments. (Schools were already subject to Article 8 for construction and repair work.) This change will become effective no later than April 1, 2004, but may take effect earlier for some units, as described below.

The new law also establishes requirements for phasing in use of the state's E-Procurement Service in local school administrative units. It deletes existing statutory provisions authorizing the state to mandate use of E-Procurement and adds new requirements for its future use in school purchasing.

To facilitate that use, the new law requires the State Board of Education to establish standards for determining when a local unit's purchasing process becomes "E-Procurement compliant."

Achieving compliance will involve efforts by both the school unit and the E-Procurement Service providers to make the technical and process changes necessary for the unit to be capable of making purchases through the system. The shift from purchasing through the Department of Administration to purchasing under the provisions in Article 8 of Chapter 143 becomes effective for each local school administrative unit on the day the Department of Public Instruction certifies that the unit is E-Procurement compliant, or on April 1, 2004—whichever occurs first.

Once they are certified as compliant, local school administrative units will be required to use the E-Procurement system for specified percentages of their purchases. As of the date that a unit is certified as E-Procurement compliant, the unit must expend at least 30 percent of its remaining unencumbered funds for the purchase of supplies, materials, computer software, and other tangible personal property for that fiscal year through the E-Procurement Service. The following year, the expenditure requirement increases to 35 percent, and in the second year following the certification year it rises to 40 percent. The act encourages units to spend at least 50 percent of its funds through E-Procurement during the year after certification and 70 percent in the second year.

The law also establishes a pilot program for four local school units, two of which use the ISIS computer system and two of which use the SunPac computer system, the two systems used by all but the two largest school administrative units in the state. The four units (Cabarrus, Edgecombe, Guilford, and Sampson counties) will work with the E-Procurement Service to become compliant on or before December 1, 2003. The Department of Public Instruction will be required to monitor and report on the progress of the pilot programs. The Charlotte-Mecklenburg and Wake County school systems must be compliant on or before July 1, 2004, and all remaining units must be compliant by January 1, 2005. The law directs the E-Procurement Service to assist units in interfacing their systems and providing training for employees on a regional basis.

Under the new law, the Department of Administration, through the Division of Purchase and Contract, will have the authority to provide services for and make contracts available to local school administrative units, and those units will have authority to make purchases from state contracts. The act amends G.S. 115C-522(a) to require the Secretary of the Department of Administration and the local school administrative units to establish a purchasing user group consisting of representatives from the department and purchasing and finance officers from local school units. The purpose of the user group is to provide for an efficient transition to the new purchasing procedures and to examine issues such as the new relationship between the department and the local school units, appropriate exchange of information, continued efficient use of E-Procurement, appropriate bid procedures, and other necessary technical assistance.

Finally, the law makes changes to various statutes to remove references to the Department of Administration's responsibility for and authority over purchasing by local school administrative units. The department retains its authority to develop, implement, and monitor a pilot program on reverse auctions for public school systems. The law amends G.S. 115C-522(a) to require the State Board of Education to adopt rules governing equipment standards for supplies, equipment, and materials related to student transportation. The State Board is also authorized to adopt guidelines for commodities that require safety features; any such commodity available on a statewide contract must meet those guidelines. The provision in G.S. 115C-264 that exempts from bidding requirements purchases of supplies and food for school food services is retained, as is the requirement in G.S. 143-48(b) to report on purchases from female-, minority-, and disabled-owned businesses.

The effective date provision of the new law as enacted retains a technical error that was to be corrected in the technical corrections bill. The hasty adjournment of the legislature without enactment of the technical corrections bill left this error in place. The intent of the legislature, however, appears clear from the substance of the bill; if called upon to interpret it, a court could easily recognize the error and would be likely to give full effect to the law as intended.

Other Changes Affecting School Purchasing

Competitively bid beverage contracts. A provision in the budget bill [sec. 6.15 of S.L. 2003-284 (H 397)] adds a new statute, G.S. 143-64, which requires local school units, community colleges, and universities to competitively bid contracts that "involve the sale of juice or bottled

water." The act appears to cover contracts for vending machines that sell these types of beverages, as well as concessions and other contracts. The law authorizes these agencies to set quality standards for these beverages and to use those standards to accept or reject bids.

The act applies to contracts bid on or after June 30, 2003, and does not establish specific requirements for competitive bidding. The process should probably include some form of broadly announced notice or advertisement, development of specifications, and a prescribed form for submission of bids.

Preference for high-calcium foods and beverages. S.L. 2003-257 (H 1032) enacts a new statute, G.S. 115C-264.1, which requires school food services to give preference in purchasing contracts to high-calcium foods and beverages. These are defined as "foods and beverages that contain a higher level of calcium and that are equal to or lower in price than other products of the same type or quality." A local school is not required to use the preference in purchasing food for individuals receiving services from the public school food program if the high-calcium food or beverage would interfere with their proper treatment or care. The schools are also not required to apply this preference retroactively to contracts entered into prior to the effective date of the new law (June 16, 2003) if the requirement would change the terms of those contracts.

Replacement school buses. A budget provision, Section 7.25 of S.L. 2003-284, appropriates funds to the State Board of Education for allotments to local schools to replace school buses under G.S. 115C-249(c) and (d). The provision specifies conditions that apply to the use of these funds, including procedures for bidding and contract terms.

Privatization of driver education. The budget also calls for the State Board of Education to study statewide privatization of driver education programs and to report to the legislature on its findings by November 30, 2003 [sec. 29.7 of S.L. 2003-284 (H 397)].

University Purchasing Flexibility

This session the legislature enacted several laws that will increase university purchasing flexibility. S.L. 2003-312 (H 1070) amends G.S. 116-31.10 to increase from $250,000 to $500,000 the amount of the expenditure benchmark that may apply to purchases by constituent institutions of the university. This benchmark determines the process, including the amount of state involvement, each institution must use in making purchases, and the threshold, which may vary according to the institution's internal capabilities and compliance record. The effect of the change is to increase the degree of autonomy constituent institutions may obtain. For institutions that obtain an increase under the new law, purchases between $250,000 and the $500,000 limit must be submitted to the Division of Purchase and Contract for approval or other action; the submission must include information on all offers received and the institution's recommendation for award of the contract or other action. Notice of the division's decision on the purchase will be sent to the institution, which may then award the contract or take other action.

Additional flexibility was provided in S.L. 2003-228 (H 975), which creates an exemption from state oversight for university purchases of personal property or services primarily paid for with moneys other than state-appropriated general funds or tuition. Competitive bidding procedures still apply to these contracts, but state approval and oversight do not. This law also exempts special responsibility constituent institutions from the requirement to purchase from sources certified by the Secretary of Administration on term contracts, subject to certain conditions. This provision accords the university's constituent institutions the kind of purchasing flexibility granted in the past to local school units and community colleges.

Other Purchasing Changes

Use of Recycled Steel Products

The state budget [sec. 6.10 of S.L. 2003-284 (H 397)]) contains a provision designed to promote the use of products made with recycled steel. The new law requires any state agency or agency of a political subdivision of the state (that is, a local government), or any person contracting with any of these agencies with respect to work performed for that contract, to procure products of recycled steel. The requirement is subject to conditions that the product must (1) be acquired competitively within a reasonable time, (2) meet appropriate performance standards, and (3) be acquired at a reasonable price. The Department of Administration is required to report to the legislature on compliance with this provision.

Purchase of Reconstituted or Recombined Milk

A new law, S.L. 2003-367 (H 974), prohibits any department, institution, or agency of the state from entering into a contract for the purchase of any "fluid milk product that is labeled or that is required to be labeled as 'reconstituted' or 'recombined.'" This act became effective October 1, 2003, and applies to any contract entered into on or after that date. This provision does not appear to apply to local school units, since they are not generally considered agencies of the state.

Toner or Inkjet Cartridge Contracts

A new law enacted in S.L. 2003-386 (H 999) limits the use of a provision in any agreement or contract that prohibits reusing, remanufacturing, or refilling of a toner or inkjet cartridge. Under G.S. 75-36, any such provision is void as a matter of public policy. The act does not, however, prevent a vendor from requiring the use of new or specified toners or inkjet cartridges as a condition of the warranty under a maintenance contract. The act becomes effective October 1, 2003, and applies to contracts entered into on or after that date.

Airport Authorities Installment Purchasing Authority

Certain local governments have authority under G.S. 160A-20 to enter into installment purchase agreements that give a security interest in the property to the seller. S.L. 2003-259 (S 652) amended the statute to add to the list of entities that may use this financing method airport authorities created pursuant to a local act of the General Assembly.

Construction Law Changes

County property acquisition for financing school projects. Under G.S. 115C-528, local school units have limited authority to use installment purchasing (in which a security interest in the asset is given to the seller to secure the financing), but most do not have authority under G.S. 160A-20 to finance school construction in this way. Counties have individually sought and obtained authority to acquire property for school projects through installment purchasing, and later to lease or transfer it to the school units, thus financing school projects by using their broad authority under G.S. 160A-20. These local acts have been codified in G.S. 153A–158.1. This year the legislature extended this authority to all one hundred counties by enacting S.L. 2003-355 (S 301).

Public contract surety bonds. A provision included in a bill making a number of changes to the insurance laws limits the authority of public agencies to require a contractor or bidder to obtain a bond (bid, payment, or performance) from a particular surety, agent, producer, or broker [sec. 27 of S.L. 2003-212, (H 276)]. This change became effective October 1, 2003, and is contained in a new statute, G.S. 58-31-66. It is likely that existing language in G.S. 44A-26(b) had already created this

limitation, since that statute requires bonds to be executed by one or more surety companies legally authorized to do business in North Carolina. Under this provision, public agencies arguably did not have authority to restrict a bidder to a particular company as long as the one chosen is authorized to do business in the state. G.S. 143-129(c) does allow public agencies to reject bonds from companies with which the agency has pending claims, and this authority does not appear to be limited by the new provision. Furthermore, the new provision specifically authorizes the public agency to approve the form and sufficiency of the bond and to disapprove, "on a reasonable and nondiscriminatory basis, the surety selected by the bidder . . . because of the financial condition of the surety." A violation of the new provision renders the construction contract void.

Exception for pre-engineered structures. The statute governing when public projects must be designed by an architect or engineer has been amended by S.L. 2003-305 (H 994) to create a limited exception for pre-engineered structures used exclusively by public employees for purposes related to their employment. The new provision, G.S. 133-1.1(c) (5), applies to "garages, sheds and workshops" of up to 5,000 square feet and requires a minimum separation of 30 feet between these structures and other buildings or property lines.

Limited licensure exception. The general contractors licensing law, G.S. 87-1, requires a person who submits a bid to have a license that covers the work involved in the contract being bid. In some cases, however, a project involves the work of multiple trades, which may be subcontracted by the bidding contractor. The State Licensing Board for General Contractors had attempted to adopt a rule allowing a licensed plumbing or electrical contractor to submit a bid for work that also includes general contractor work, as long as the general contracting work does not exceed 25 percent of the total bid price. That rule was objected to during the rules review process and did not become final because the board lacked the authority to change a statutory requirement. A new law, G.S. 87-1.1, enacted in S.L. 2003-231 (S 437), now authorizes the board to adopt a rule effecting this change. It is expected that the board will now adopt the same rule or a similar rule establishing a maximum percentage of general contracting work that may be included in a bid submitted by a plumbing or electrical contractor.

Retailers installing plumbing, heating, or air conditioning. S.L. 2003-31 (S 772) clarifies the circumstances under which retailers can sell certain goods and services without being licensed to install them, as long as licensed contractors do the installation work.

Locksmith licensing exemption. G.S. 74F-26(9) provides that general contractors are not required to have a locksmith license when acting within the scope of their general contractors license. Section 10.1 of S.L. 2003-350 (S 655) amends this statute to extend the exemption to agents or subcontractors of the general contractor when acting within the ordinary course of business.

Security for guaranteed energy savings contracts. Public agencies in North Carolina have authority to enter into guaranteed energy savings contracts under which (1) improvements are made and financed over time, and (2) the energy savings are guaranteed to pay for the cost of the improvements over the period of the contract. As originally enacted, the law required the contractor to provide the governmental unit a bond securing the contractor's obligation under the contract. An amendment to this provision in G.S. 143-64.17B, as enacted by S.L. 2003-138 (H 864), replaces the bond requirement with a requirement that the contractor provide "security to the governmental unit in the form acceptable to the Office of the State Treasurer." This act also adds to the law two provisions applicable only to state agency projects requiring additional audits and reviews of proposals and contracts, and directing the State Energy Office to adopt rules governing their use.

Community college public/private partnerships. S.L. 2003-286 (S 773) adds a provision to G.S. 115D-20 authorizing community colleges to enter into public/private partnerships to develop community college property under the limited conditions specified in the act. Projects undertaken under this authority may be jointly owned and used but may not be financed under a long-term lease or a capital lease in which the private entity is the lessor; in addition, state bonds funds may not be used to pay for the part of the facility to be owned and used by the private entity.

General Contract Law Changes

Electronic Signatures

Two sets of North Carolina statutes deal with electronic contracting. The Electronic Commerce in Government Act, Article 11A of Chapter 66, was enacted first; it established a system applicable to public agencies (including local governments) for certifying electronic signatures used in electronic transactions. Later, the Uniform Electronic Transactions Act (UETA), Article 40 of Chapter 66, was enacted, providing broad authority for the use of electronic transactions by both public and private entities. UETA included particular requirements for the certification of electronic signatures but did not explicitly displace the provisions enacted earlier. The relationship between the two provisions of law has been somewhat uncertain but is now clarified by a revision to the earlier act. S.L. 2003-233 (S 622) amends the Electronic Commerce in Government statute to authorize public agencies to accept electronic signatures pursuant to that act, pursuant to Article 40 (UETA), or pursuant to other law. This means that the procedure for certification of signatures under Article 11A is optional. It is now clear that public agencies, including local governments, can conduct business electronically under any of the methods authorized by law.

Excessive Prices for Emergency Contracts

New provisions have been added to the state's unfair competition laws to prohibit price gouging during states of disaster. Under G.S. 75-36.1, enacted in S.L. 2003-412 (S 963), it is unlawful in an area under a state of disaster to sell or rent any merchandise or services "with the knowledge and intent to charge a price that is unreasonably excessive under the circumstances." The act covers only merchandise or services consumed or used as a direct result of an emergency, including those needed to protect or sustain the life, health, safety, or comfort of persons or their property. The statute lists two considerations to be used in determining whether a price is unreasonably excessive: (1) Is the price charged attributable to additional costs imposed by the seller's supplier or other costs for providing the goods or service during the state of disaster? (2) Did the seller offer to sell or rent the goods or service at a price that was below the seller's average price in the preceding sixty days before the state of disaster? If the seller was not involved in selling the item or service prior to the disaster, the market price is used to evaluate the reasonableness of the price charged. Under the new law, charging an unreasonably excessive price constitutes a violation of G.S. 75-1.1, and remedies for violations may include damages, restoration of money or property and cancellation of the contract, civil penalties, and attorneys' fees.

Local Government Property Disposal

Electronic Auction of Property

Several provisions included in the budget bill authorize electronic auction of surplus property [sec. 18.69 of S.L. 2003-284 (H 397)]. One change amends G.S. 143-64.03 to authorize the State Surplus Property Agency to "sell or otherwise dispose of" surplus property, including motor vehicles, through an electronic auction service. The same authority is provided to counties, municipalities, and other public bodies under a new statute, G.S. 143-64.6(b). This authority duplicates the authority already provided in G.S. 160A-270(c), which applies to cities, counties, local school units, and several other types of local government entities. The existing provision requires compliance with the notice requirements that apply to other auctions of local government property, but the new provision does not specify any procedural requirements. It seems unlikely that the legislature intended to negate the procedural requirements in the existing law when it enacted the new provision, and it is probably safest to assume that the notice procedures in G.S. 160A-270(c) apply—at least with respect to property covered by that statute. Note that under G.S. 160A-266,

personal property valued at $30,000 or more, and all real property, must be sold competitively by sealed bid, upset bid, or auction.

The budget provision also amended Article 2 of Chapter 15, which governs the disposal of seized property. A new statute, G.S. 15-14.1, now allows a local law enforcement entity to sell property through an electronic auction service. This provision requires the entity selling property electronically to comply with the publication and notice requirements in G.S. 15-12 through 15-14.

Honoring Deceased or Retiring Firefighters

New parallel statutes in Chapters 160A (cities) and 153A (counties) of the General Statutes authorize a fire department, at the discretion of the governing board, to award a retiring firefighter or surviving relative of a deceased firefighter, upon request, the firefighter's helmet [S.L. 2003-145 (H 55) enacting G.S. 153A-236; 160A-294.1]. The helmet may be awarded "at a price determined in a manner authorized by the board," which may be less than the fair market value of the helmet.

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Senior Citizens

In the face of the continuing state budget crisis, the General Assembly reduced funding for the state's Division of Aging, mandated additional cost-containment measures in the state's Medicaid program, imposed new license fees on long-term care facilities, made few substantive changes with respect to government programs for senior citizens, and increased the retirement benefits of state and local government retirees. The General Assembly also directed nursing homes to take steps to ensure the safe prescribing, dispensing, and administration of medications to elderly and disabled nursing home patients but failed to enact legislation authorizing a comprehensive study of North Carolina's guardianship law.

Government Programs for Senior Citizens

Home and Community Care Block Grant

S.L. 2003-284 (H 397), the Current Operations and Capital Improvements Appropriations Act of 2003, decreases state funding to the state Division of Aging for the Home and Community Care Block Grant by $1 million per year.

Medicaid

Legislation affecting the state's Medicaid program for elderly, disabled, and low-income persons is discussed in Chapter 21, "Social Services."

Senior Cares Prescription Drug Access Program

Section 10.5 of S.L. 2003-284 authorizes the Department of Health and Human Services to administer the Senior Cares prescription drug access program funded by the Health and Wellness Fund.

Senior Centers

S.L. 2003-284 increases state funding for senior center outreach by $100,000 (to $984,000 per year, partially offsetting a $381,000 per year funding reduction in the previous biennium). Section 10.42 of S.L. 2003-284 requires the Division of Aging to allocate senior center outreach funds by October 1 of each fiscal year. These funds may be used only to pay 75 percent of the reimbursable costs (rather than 90 percent under prior law) of expanding the outreach capacity of senior centers to reach unserved or underserved areas or (with the approval of and financial commitment by the board of county commissioners) to provide start-up funds for new senior centers.

State–County Special Assistance

Legislation affecting the State–County Special Assistance program for adult care home residents is summarized in Chapter 21, "Social Services."

Long-Term Care Facilities

Adult Care Home Licensure

Before July 4, 2003, G.S. 131D-2(b)(1b) prohibited the issuance of an adult care home license to an applicant who was the owner, principal, or affiliate of an adult care home whose license was revoked during the preceding year. S.L. 2003-294 (S 926) amends this statute to prohibit the issuance of an adult care home license to an applicant who was the owner, principal, or affiliate of any facility whose license under G.S. Chapter 122C, G.S. Chapter 131D, or Article 7 of G.S. Chapter 110 was revoked within the preceding year. S.L. 2003-294 also provides that if an applicant for an adult care home license is the owner, principal, or affiliate of any facility whose license was summarily suspended or downgraded to provisional status as a result of violations of G.S. Chapter 122C or Article 1 of G.S. Chapter 131D, or whose license was summarily suspended or denied under Article 7 of G.S. Chapter 110, the Department of Health and Human Services (DHHS) may not issue an adult care home license until six months from the date the facility's license was reinstated, restored, or upgraded. S.L. 2003-294 became effective on July 4, 2003.

Adult Care Home Model for Community-Based Services

Section 10.43 of S.L. 2003-284 (H 397) requires DHHS to develop a pilot model project for delivering mental health, developmental disability, and substance abuse services through adult care homes that have excess capacity. DHHS is required to submit a report regarding the project 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, 2004.

Adult Day Care and Adult Day Health Centers

Section 10.58 of S.L. 2003-284 directs the state Social Services Commission to consider adopting rules to increase the rates for adult day care and adult day health centers but directs that rate increases be implemented using existing funds.

Criminal Record Checks of Adult Care Home and Nursing Home Employees

Section 10.8E of S.L. 2003-284 delays until at least January 1, 2005, the requirements under G.S. 131D-2 and G.S. 131E-265 to conduct national criminal record checks of nursing home employees who do not provide direct patient care and of adult care home employees.

Health Care Facility License Fees

Effective October 1, 2003, S.L. 2003-284 requires the Department of Health and Human Services to charge an annual license fee for licensed adult care homes, nursing homes, home care agencies, and other specified health care facilities. The fee for adult care homes with six or fewer beds is $125; the fee for adult care homes with more than six beds is $175 plus $6.25 per bed. The fee for nursing homes is $225 plus $6.25 per bed. The fee for continuing care retirement communities with licensed nursing home or adult care home beds is $225 plus $6.25 per bed. The fee for home health care agencies is $175. These license fee requirements are codified in G.S. 131D-2(b)(1), 131E-102(b), 131E-138(c), and 131E-138.1.

Long-Term Care Community Service Coordination

Section 10.8F of S.L. 2003-284 directs DHHS to implement a communications and coordination initiative to support the local coordination of long-term care and to pilot the establishment of local lead agencies to coordinate long-term care at the county or regional level. DHHS is required to submit an interim report on the pilot project to the North Carolina Study Commission on Aging by October 1, 2004, and a final report by October 1, 2005.

Nursing Home Financial Assessment

Effective October 1, 2003, Section 10.28 of S.L. 2003-284 (H 397) requires DHHS to impose a financial assessment on skilled nursing facilities licensed under G.S. Chapter 131E and to use the funds generated by this assessment to pay 100 percent of the nonfederal share of Medicaid costs related to implementing the new reimbursement plan for nursing homes and increasing nursing facility rates in accordance with the plan. Funds realized from the assessment may not be used to supplant state funds appropriated for nursing facility services.

Nursing Home Medication Management

Effective January 1, 2004, S.L. 2003-393 (S 1016) requires nursing homes to establish medication management advisory committees to assist in identifying medication-related errors, evaluating the causes of those errors, and taking appropriate actions to ensure the safe prescribing, dispensing, and administration of medications to nursing home patients. The duties of these medication management advisory committees, nursing home quality assurance committees, nursing home administrators, and consulting pharmacists with respect to prevention of medication errors are codified in G.S. 131E-128.1 through 131E-128.4. S.L. 2003-393 also enacts a new statute, G.S. 131E-128.5, which requires the Secretary of Health and Human Services to implement, through contract using available grants and federal funds, a medication error quality initiative to review and analyze annual medication-related error reports submitted by nursing homes.

State and Local Government Retirees

Benefits for Retired State and Local Government Employees

Effective July 1, 2003, Section 30.17 of S.L. 2003-284 provides a 1.28 percent cost-of-living increase for retired state government employees who receive retirement benefits under the Teachers' and State Employees' Retirement System (TSERS), the Consolidated Judicial Retirement System, and the Legislative Retirement System. S.L. 2003-284 does not adjust the multiplier (currently 1.82 percent) that is used, along with an employee's years of service and average final compensation, to determine the amount of full retirement benefits for future retirees under TSERS.

Effective July 1, 2003, S.L. 2003-319 (H 1170) increases from 1.82 percent to 1.85 percent the multiplier that is used, along with an employee's years of service and average final compensation, to determine the amount of full retirement benefits under the Local Government Employees' Retirement System (LGERS) for local government employees who retire on or after July 1, 2003. The legislation also increases the retirement benefits of employees who retired on or before June 1, 2003, by 1.5 percent. S.L. 2003-319 provides a 2 percent cost-of-living increase in the LGERS retirement benefits of persons who retired on or before July 1, 2002; an additional 6 percent cost-of-living increase in the LGERS retirement benefits of persons who retired on or before June 1, 1982; and an additional 1.1 percent cost-of-living increase in the LGERS retirement benefits of persons who retired between July 1, 1982, and June 30, 1993.

Other Legislation of Interest to Senior Citizens and Their Families

Guardianship

Effective December 1, 2003, S.L. 2003-236 (H 1123) amends G.S. Chapter 35A to clarify the clerk of superior court's authority to enter a limited guardianship order allowing an adult who has been adjudicated incompetent to retain certain legal rights and privileges when appropriate, based on the nature and extent of the ward's capacity. S.L. 2003-236 also amends G.S. 35A-1107 to

- require the guardian ad litem appointed to represent an allegedly incompetent adult to personally visit the respondent as soon as possible following the guardian ad litem's appointment;
- make every reasonable effort to determine the respondent's wishes regarding the incompetency proceeding and proposed guardianship;
- present to the clerk the respondent's expressed wishes at all relevant stages of the incompetency and guardianship proceeding;
- make recommendations to the clerk concerning the respondent's best interests if those interests differ from the respondent's express wishes; and
- in cases in which limited guardianship may be appropriate, make recommendations to the clerk concerning the rights, powers, and privileges that the respondent should retain under a limited guardianship.

S.L. 2003-236 also provides that the incompetency and guardianship procedures established under G.S. Chapter 35A do not affect a judge's authority to appoint a guardian ad litem for an allegedly incompetent adult pursuant to North Carolina's rules of civil procedure (G.S. 1A-1, Rule 17). This provision effectively negates the Court of Appeals' decision in *Culton v. Culton*, 96 N.C. App. 620, 386 S.E.2d 592 (1989) [*rev'd on other grounds,* 327 N.C. 624, 398 S.E.2d 323 (1990)].

The Senate and House considered, but failed to enact, legislation that would have authorized a study of North Carolina's guardianship law (S 273, H 156, S 34, and H 674).

Unemployment Compensation

S.L. 2003-220 (S 439) amends G.S. 96-14 to provide that an individual is not disqualified from receiving unemployment compensation based on his or her leaving work solely due to an adequate disability or health condition of his or her aged or disabled parent.

Tax Credit for Long-Term Care Insurance Premiums

In 1998 the General Assembly enacted legislation (G.S. 105-151.28) allowing taxpayers to claim a state income tax credit for long-term care insurance premium payments but provided that the credit expires for tax years beginning on or after January 1, 2004. In 2003 the General Assembly considered, but failed to enact, legislation that would have removed the sunset on the tax credit for purchasing long-term care insurance (H 157 and S 346).

Advocacy Programs

Section 18.2 of S.L. 2003-284 requires the Secretary of Administration, in collaboration with appropriate entities that focus on public policy and business management, to study the function of advocacy programs within the Department of Administration (including the Governor's Advocacy Council for Persons with Disabilities and the Division of Veterans Affairs) to determine their appropriate organizational placement within state government and whether the programs might be more efficiently and effectively performed by a nonprofit organization. The secretary's findings and recommendations must be reported to the General Assembly by May 1, 2004.

Decedents' Estates and Trusts

Article 1A of G.S. Chapter 30 allows a surviving spouse to claim an "elective share" of his or her deceased spouse's estate that is equal to one-sixth to one-half of the total net assets of the estate (as defined) minus the value of property passing to the surviving spouse (as defined). S.L. 2003-296 (H 807) clarifies the provisions of this article regarding the amount of death taxes that may be taken as a claim against the decedent's estate in determining the surviving spouse's elective share, the circumstances under which property held in trust for the surviving spouse must be considered in determining the surviving spouse's elective share, and written waiver of a spouse's right to claim an elective share. S.L. 2003-296 is discussed in greater detail in Chapter 5, "Courts and Civil Procedure."

S.L. 2003-255 (S 502) allows a person who has been given written permission by a lessee or cotenant of a safe-deposit box to open and inventory the safe-deposit box pursuant to G.S. 28A-15-13(c) after the lessee's or cotenant's death. The written permission must have been granted in a manner and form designated by the institution that has possession or supervision of the safe deposit box to which the decedent had access.

S.L. 2003-295 (S 881) enacts a new statute (G.S. 28A-21-3.1) allowing the payment of phase II payments under the National Tobacco Grower Settlement Trust to the heirs or devisees of a deceased tobacco grower without reopening the decedent's estate if there are no unsatisfied creditors of the estate, there are no unsatisfied general monetary bequests, all other assets have been distributed, and the superior court clerk endorses the list of distributees filed by the decedent's personal representative. Phase II payments that covered a time period when the decedent was alive are deemed cash and do not pass by virtue of any devise or inheritance of the decedent's real property.

S.L. 2003-93 (H 656), clarifying the legal procedures for modifying and terminating irrevocable trusts, is discussed in Chapter 5, "Courts and Civil Procedure."

John L. Saxon

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Social Services

In a year of budgetary belt tightening, the General Assembly established a Commission on Medicaid Reform and instituted several measures to contain increasing costs in the state's Medicaid program but did not enact legislation reducing the counties' responsibility for paying part of the cost of Medicaid. The General Assembly approved a revised state plan for Temporary Assistance for Needy Families (TANF) and designated nine "electing counties" for the period October 2003 through September 2005. As regards child welfare, the legislature directed the Division of Social Services to expand the pilot alternative response system of responding to reports of child abuse, neglect, and dependency and to evaluate the program in the existing demonstration counties. It also required that all child welfare services workers receive training specifically related to family-centered services and laws concerning parents' rights.

Children's Services

Child Protective Services

Amendments to the Juvenile Code and other legislation relating to child protection also are discussed in Chapter 3, "Children and Families."

Duty of school principal to report nonattendance. Effective July 4, 2003, S.L. 2003-304 (S 421) amends G.S. 115C-378 to require a school principal to notify the county social services director when

1. a child has accumulated ten unexcused absences in a school year, and
2. the principal determines that the child's parent, guardian, or custodian has not made a good faith effort to comply with the compulsory attendance law.

The social services director then must determine whether to undertake a child protective services investigation.

Social worker entry into home during investigation. S.L. 2003-304 amends G.S. 7B-302, effective July 4, 2003, to provide that a social services director or the director's representative may enter a private residence for purposes of a child protective services investigation only

- if the director has a reasonable belief that a child is in imminent danger of death or serious physical injury,

- with permission of the parent or person responsible for the child's care,
- if accompanied by a law enforcement officer who has legal authority to enter the residence, or
- pursuant to an order from a court of competent jurisdiction.

Determination of child's county of residence. G.S. 153A-257 provides rules for determining a person's residence for purposes of social services programs. Effective July 1, 2003, S.L. 2003-304 rewrites this section to authorize the state Division of Social Services in the Department of Health and Human Services to determine which county is responsible for providing protective services and financial support for a child when two or more social services departments disagree about the child's legal residence in an abuse, neglect, or dependency case.

Prerequisites for appointment of custodian or guardian. S.L. 2003-140 (H 1048), effective June 4, 2003, amends several Juvenile Code sections to require that whenever a court either places a child in the custody of someone other than a parent or appoints someone as guardian of the child's person, it verify that the person being given custody or appointed guardian

1. understands the legal significance of the placement or appointment and
2. will have adequate resources to care appropriately for the child.

Child Fatality Review Team. G.S. 143B-150.20(d) authorizes the state Child Fatality Review Team to obtain the information it needs to carry out its duties. Effective July 1, 2003, S.L. 2003-304 amends this subsection to provide that if the team does not receive information within thirty days of requesting it, the team may apply for an order compelling disclosure. The application must be filed in the district court of the county where the investigation is being conducted.

Assault on court officers. S.L. 2003-140 amends G.S. 14-16.10(1) to provide that the term *court officer*, for purposes of criminal offenses set out in G.S. Chapter 14, Article 5A ("Endangering Executive, Legislative, and Court Officers"), include

- social services department attorneys and employees acting on the department's behalf in juvenile proceedings under Subchapter I of the Juvenile Code,
- guardians ad litem and attorney advocates appointed to represent children in those proceedings, and
- any employee of the Guardian ad Litem Services Division of the Administrative Office of the Courts.

This amendment applies to offenses committed on or after December 1, 2003.

Child Welfare Worker Training

Section 4.2 of S.L. 2003-304 rewrites G.S. 131D-10.6A(b) to require the Division of Social Services to ensure that the mandatory preservice training for all child welfare services workers provides information on family-centered practices and state and federal law regarding individuals' basic rights relevant to the provision of child welfare services, including the right to privacy, freedom from duress and coercion to induce cooperation, and the right to parent. It also requires that annual continuing education for child welfare services workers include an update on these same subjects. Uncodified provisions require the Division of Social Services to (1) ensure that all currently employed child welfare workers receive training in these subjects and (2) report by April 1, 2004, to the chairs of the Senate and House Appropriations Committees and the chairs of the Senate Appropriations Committee on Health and Human Services and the House Appropriations Subcommittee on Health and Human Services regarding the additional training requirements. The act was effective July 4, 2003.

Alternate Response System Pilots

Section 10.56 of S.L. 2003-284 (H 397) directs the Division of Social Services of the Department of Health and Human Services (DHHS) to continue working with county departments of social services to implement an alternative child protection response system in at least ten and no more than thirty-three demonstration areas in the state. If a county specifically requests

inclusion and the division determines that resources are available, the division may exceed that number of demonstration areas. In addition, the act directs DHHS to expand the demonstration project if nonstate funds are identified for that purpose.

The alternative response system involves the use by county social services departments of a family-centered approach to child protective services, family assessment tools, and family support principles when responding to selected reports of suspected child neglect and dependency. The act requires DHHS to evaluate the original pilot demonstration areas to determine the program's impact in the areas of child safety, timeliness of response, timeliness of service, and coordination of local human services and to report on its findings and the program's expansion by April 1, 2004. Any recommended statutory changes in the report will be eligible for consideration in the 2004 session of the General Assembly.

Family Preservation

Section 10.48 of S.L. 2003-284 directs that the Intensive Family Preservation Services Program be developed and implemented statewide on a regional basis to provide intensive services to children and families in cases of abuse, neglect, and dependency where a child is at imminent risk of removal from the home and in cases of abuse where a child is not at imminent risk of removal.

The act requires DHHS

- to review the program with a focus on increasing its sustainability and effectiveness.
- to ensure the application of standardized assessment criteria for determining imminent risk and clear criteria for determining the necessity of out-of-home placement.
- to ensure that any program or entity that receives funding for Intensive Family Preservation Services provides specified categories of data.
- to establish a performance-based funding protocol and fund only those programs and entities that provide the required data.
- to report on the program by April 1, 2004.

Special Needs Adoption Funds

Section 10.45 of S.L. 2003-284 adds new G.S. 108A-50A creating a Special Needs Adoptions Incentive Fund to provide financial assistance for the adoption of certain children who live in licensed foster care homes. The funds are to be used to remove financial barriers to adoption and to be available to foster care families who adopt children with special needs, as defined by the Social Services Commission. The funds must be matched by county funds. The program does not create an entitlement and is subject to the availability of funds. The act directs the Social Services Commission to adopt rules to implement the new section.

Section 10.47 of S.L. 2003-284 directs that $1.1 million of funds appropriated to the Department of Health and Human Services be used to support the existing Special Children Adoption Fund for each year of the 2003–2005 fiscal biennium. It directs the Division of Social Services, in consultation with the North Carolina Association of County Directors of Social Services and representatives of licensed private adoption agencies, to develop guidelines for awarding funds to licensed public and private adoption agencies upon the adoption of children described in G.S. 108A-50 and in foster care. No local match is required as a condition for receipt of these funds. The act requires that 20 percent of the total funds appropriated for the Special Children Adoption Fund each year be reserved for payment to participating private adoption agencies. If those funds have not been spent by March 31, 2004, the Division of Social Services may reallocate them to other participating adoption agencies.

Foster Care and Adoption Assistance Payments

Section 10.46 of S.L. 2003-284 establishes the maximum rates for state participation in the foster care assistance program as follows:

1. $365 per child per month for children aged birth through five;
2. $415 per child per month for children aged six through twelve; and
3. $465 per child per month for children aged thirteen through eighteen.

Of these amounts, $15 is a special needs allowance for the child.

This section also establishes the maximum rates for state participation in the adoption assistance program as follows:

1. $365 per child per month for children aged birth through five;
2. $415 per child per month for children aged six through twelve; and
3. $465 per child per month for children aged thirteen through eighteen.

S.L. 2003-284 provides board payments to foster and adoptive families of HIV-infected children and directs that any unused funds appropriated for this purpose shall be used to provide medical training in avoiding HIV transmission in the home. It sets the maximum rates for state participation in HIV foster care and adoption assistance as follows:

1. $800 per child per month for children with indeterminate HIV status;
2. $1,000 per child per month for children confirmed HIV-infected, asymptomatic;
3. $1,200 per child per month for children confirmed HIV-infected, symptomatic; and
4. $1,600 per child per month for terminally ill children with complex care needs.

Foster Home Licensure and Regulation

Foster home applicant register. Section 5 of S.L. 2003-304 adds new G.S. 131D-10.6C requiring the state Division of Social Services to keep a register of all family foster and therapeutic foster home applicants and to include in the register the following:

- each applicant's name, age, and address;
- date of the application;
- the applicant's supervising agency;
- any mandated training the applicant has completed and dates of the training;
- whether the applicant is licensed and the date of initial licensure;
- the current licensing period;
- any adverse licensing actions;
- any other information the division deems necessary.

The act specifies that the register is a public record under G.S. Chapter 132, but it also requires that information other than the required contents listed above be considered confidential and not subject to disclosure. The act was effective July 4, 2003.

Foster home criminal checks. Effective July 4, 2003, Section 4 of S.L. 2003-304 amends G.S. 131D-10.3A(b) to require that county and state criminal history checks required as part of foster home licensure be repeated upon relicensure, but not necessarily annually as specified previously.

Licensure. G.S. 131D-10.3 sets out the licensure requirements for operating, establishing, or providing foster care services for children as well as for receiving and placing children in residential care facilities, family foster homes, or adoptive homes. Effective July 4, 2003, S.L. 2003-294 (S 926) rewrites the section to expand specified disqualifications (and to add some exceptions) for licensure or for enrolling as a new Medicaid provider.

Out-of-Home Placements

S.L. 2003-294, effective July 4, 2003, requires the Department of Health and Human Services, in conjunction with the Department of Juvenile Justice and Delinquency Prevention and the Department of Public Instruction, to report demographic and other information regarding children who are placed outside their own homes. The act also requires these agencies to report on

the methods used for identifying and reporting child placements outside the family unit and into group homes or therapeutic foster care home settings by April 1, 2004, to the House Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

County Appeal from Payment Orders

The juvenile court may order various kinds of evaluation or treatment for children who have been adjudicated undisciplined or delinquent and may charge the costs, however great, to the county when the juvenile's parent is unable to pay. (The court also may place these children in the custody of a county department of social services.) Previously, counties have not had the right to appeal from these orders. S.L. 2003-171 (H 925) rewrites G.S. 7B-2604 to authorize a county, in delinquency and undisciplined cases, to appeal any order requiring it to pay for medical, psychological, or other evaluation or treatment of a juvenile or the juvenile's parent. The act was effective October 1, 2003, and applies to petitions for appeal filed on or after that date.

Infant Homicide Prevention Act Education and Awareness

Section 10.8B of S.L. 2003-284 directs the Division of Social Services and the Division of Public Health in the Department of Health and Human Services to incorporate education about and methods to promote awareness of the Infant Homicide Prevention Act (S.L. 2001-291) into other state-funded programs at the local level. It requires DHHS to report on its activities to the House Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division by April 1, 2004.

Medicaid

The state's Medicaid program pays hospitals, doctors, nursing homes, pharmacies, and other health care providers for the medical care and medications they provide to about one million low-income children, pregnant women, disabled persons, elderly persons, and recipients of public assistance.

Budget, Cost Containment, and Funding

State funding for the Medicaid program (approximately $4.4 billion for 2003–2005) comprises about 15 percent of the state's General Fund budget and pays approximately 32 percent of the program's total cost. The federal government pays about 62 percent of total Medicaid costs; county Medicaid funding (approximately $450 million per year), pays about 6 percent.

Enhanced federal funding. In May 2003 Congress enacted legislation (Pub. Law 108-27) providing $10 billion in additional temporary emergency federal funding for state Medicaid programs. S.L. 2003-284 makes a one-time reduction of $191.6 million in state Medicaid funding for fiscal year 2003–2004 due to the receipt of this additional federal funding. Section 10.24 of S.L. 2003-284 provides that any state funds that become available as a result of this increased federal funding may be used to increase state funding for Medicaid without any reduction in appropriations. In addition, DHHS may reinstate eligibility policies modified under S.L. 2003-284 if the modified policies would affect state eligibility for enhanced federal financial participation and if the enhanced federal funding would exceed the anticipated savings in state funding resulting from the changes.

County fiscal responsibility. The Senate and House considered several bills (S 55, S 467, H 410, H 411, H 451, H 640) that would have reduced or eliminated the counties' responsibility for paying part of the nonfederal share of the cost of Medicaid benefits provided to county residents. However, none of these bills was enacted.

Cost containment. S.L. 2003-284 reduces projected state spending for Medicaid by approximately $213.3 million based on specified cost-containment measures and the elimination of inflation-based increases for specified services. Section 10.23 of the act authorizes DHHS to use up to $8 million in state Medicaid funds for additional cost-containment activities.

Commission on Medicaid Reform. Section 6.14A of S.L. 2003-284 establishes the North Carolina Commission on Medicaid Reform. The commission will consist of six members (no more than three of whom may be legislators) appointed by the Speaker of the House and six members (no more than three of whom may be legislators) appointed by the Senate President Pro Tempore. The commission will consider methods to responsibly restrain growth in Medicaid spending. It must submit an interim report and recommendations to the General Assembly by April 1, 2004, and a final report by February 1, 2005.

Medicaid trust fund. Section 10.20 of S.L. 2003-284 transfers $125 million from the state's Medicaid Trust Fund and provides that, notwithstanding G.S. 143-23.2(b), the transferred funds will replace reduced General Fund appropriations for Medicaid. S.L. 2003-283 (S 274) provides that cost savings resulting from measures identified by the state's Blue Ribbon Commission on Medicaid Reform must be used to replenish the Medicaid Trust Fund to meet expected obligations for the 2004–2005 fiscal year. If these cost savings are not realized by July 1, 2004, the General Assembly will identify other funds to replenish the Medicaid Trust Fund.

Financial assessment on skilled nursing facilities. Effective October 1, 2003, Section 10.28 of S.L. 2003-284 requires DHHS to impose a financial assessment on skilled nursing facilities licensed under G.S. Chapter 131E and to use the funds generated thereby to pay 100 percent of the nonfederal share of Medicaid costs related to implementing the new reimbursement plan for nursing homes and increasing nursing facility rates in accordance with the plan. Funds realized from the assessment may not be used to supplant state funds appropriated for nursing facility services.

Eligibility and Services

Except as otherwise noted, the provisions of S.L. 2003-284 regarding Medicaid eligibility and services are the same as those under prior law (S.L. 2001-424 as amended by S.L. 2002-126).

Transitional Medicaid coverage for former public assistance recipients. Children, families, and elderly or disabled persons who are covered by Medicaid based on their receipt of public assistance (Supplemental Security Income or Work First) remain eligible for "transitional" Medicaid coverage if they lose their eligibility for public assistance due to increased earnings. S.L. 2003-284 reduces the maximum duration of "transitional" Medicaid coverage from twenty-four to twelve months.

Transfer of assets. Federal law restricts the Medicaid eligibility of some individuals who attempt to qualify for Medicaid by transferring their property, resources, or assets for less than market value. G.S. 108A-58 implemented the federal Medicaid transfer of assets restrictions with respect to transfers made before July 1, 1988. Administrative rules adopted by DHHS apply with respect to transfers made on or after July 1, 1988. Section 10.26 of S.L. 2003-284 amends the Medicaid transfer of assets restrictions contained in G.S. 108A-58 but the amendments have little or no effect because the statute, as amended, applies only to transfers made before July 1, 1988 and therefore is inconsistent with the federal transfer of assets restrictions the amendments attempt to incorporate.

Medicare-eligible recipients. The federal Medicaid law requires Medicaid recipients who are also eligible for federal Medicare coverage to apply for Medicare so that Medicare, rather than Medicaid, will pay some or all of the cost of medical care covered under both Medicare and Medicaid. Section 10.27 of S.L. 2003-284 codifies this requirement into state law by enacting a new statute, G.S. 108A-55.1. The new law also provides that if a Medicaid recipient qualifies for Medicare and fails to apply for Medicare, Medicaid will not pay for medical care covered under Medicare and a Medicaid provider may seek payment from the Medicaid recipient for this care.

Prior authorization of services. Effective until July 1, 2006, S.L. 2003-179 (S 897) prohibits utilization of any prior authorization requirement for antihemophilic factor drugs that are

prescribed for the treatment of hemophilia and blood disorders when there is no generically equivalent drug available. Section 10.19(i) of S.L. 2003-284 prohibits DHHS from imposing prior authorization requirements or other restrictions with respect to medications prescribed for the treatment of HIV/AIDS or mental illnesses (including schizophrenia, bipolar disorder, and major depressive disorder).

Medicaid-eligible students with disabilities. Section 10.29A of S.L. 2003-284 enacts a new statute, G.S. 108A-55.1, requiring DHHS to work with the Department of Public Instruction and local educational agencies to maximize funding for Medicaid-related services for Medicaid-eligible students with disabilities.

Vision screening for children. Section 10.19(aa) of S.L. 2003-284 requires DHHS to convene a work group to determine whether the current Medicaid standards for vision screening are meeting the needs of Medicaid-eligible children. The work group must report its findings and recommendations to the General Assembly's Fiscal Research Division, the Senate Appropriations Committee for Health and Human Services, and the House Appropriations Subcommittee for Health and Human Services by March 1, 2004.

Administration

Fiscal analysis of proposed Medicaid policy changes. Section 10.19(z) of S.L. 2003-284 prohibits DHHS from changing Medicaid policies related to authorized Medicaid providers or the amount, sufficiency, scope, or duration of Medicaid services (unless the change is required by federal law) unless the DHHS Division of Medical Assistance first prepares a five-year fiscal analysis of the cost of the proposed change. If the fiscal impact of the policy change exceeds $3 million, DHHS must submit the policy change and fiscal analysis to the Office of State Budget and Management (OSBM) and the General Assembly's Fiscal Research Division for review and may not implement the change unless a source of state funding for the change is identified and approved by the OSBM. DHHS must provide quarterly reports to the OSBM and the Fiscal Research Division with respect to policy changes involving a fiscal impact of less than $3 million.

Development and adoption of Medicaid coverage policies. Section 10.19(bb) of S.L. 2003-284 requires that before DHHS adopts new or amended Medicaid coverage policies, it must

- consult with the Physician Advisory Group of the North Carolina Medical Society and other health care professionals regarding changes under consideration,
- notify all Medicaid providers about the proposed changes, and
- consider oral or written comments with respect to the proposed changes.

CAP-DA audit and review. Section 10.29B of S.L. 2003-284 requires the State Auditor, contingent on appropriation of state funds, to perform an audit of the Medicaid Community Alternatives Program for Disabled Adults (CAP-DA) to determine whether the program is operating within waiver guidelines and program goals. The audit results must be reported to the North Carolina Study Commission on Aging by January 1, 2004. Section 10.29B also requires that DHHS report on the program to the Study Commission on Aging by January 1, 2004. The DHHS report must include a review of compliance with eligibility requirements, the current client assessment process, waiting list procedures, quality of care received, and program costs.

State–County Special Assistance

The State–County Special Assistance program provides financial assistance to low-income elderly or disabled residents of adult care homes. The program is administered by the state Division of Social Services and county social services departments. The state and counties share equally the cost of the assistance.

Eligibility and Payment Limits

Effective October 1, 2003, S.L. 2003-284 reduces the maximum payment rate and income eligibility limit under the State–County Special Assistance program (except in cases of recipients protected under the law's "grandfather" provisions) from $1,091 to $1,066 per month, subject to further adjustment by DHHS based on authorized cost shifting from the State–County Special Assistance program to Medicaid personal care services for adult care home residents. Section 10.52 of S.L. 2003-284 also allows state funding for the State–County Special Assistance program to be used as the state's match for federal Medicaid funding for personal care services for adult care home residents.

S.L. 2003-284 also provides funding to increase the personal needs allowance (the amount of income a recipient is allowed to retain to pay for personal needs) from $36 to $46 per month.

In-Home Demonstration Project

Section 10.51 of S.L. 2003-284 continues, revises, and expands a demonstration project, established by S.L. 1999-237 and S.L. 2001-237, allowing the payment of State–County Special Assistance benefits to individuals who do not live in adult care homes but who would otherwise be eligible to receive assistance under this program. The maximum payment under the demonstration project generally may not exceed 50 percent of the maximum payment provided to adult care home residents who receive State–County Special Assistance benefits. No more than eight hundred individuals may receive assistance under the demonstration project in each fiscal year. DHHS must make the demonstration project available to all counties on a voluntary basis but also must consider, to the extent possible, geographic balance in the distribution of payments under the project. In implementing the project, DHHS must

- require a functional assessment of participants;
- ensure that all participants are individuals who need, and, but for the demonstration project, would seek placement in an adult care facility; and
- collect data to compare the quality of life of noninstitutionalized project participants compared to institutionalized recipients of State–County Special Assistance benefits.

DHHS must submit a report on the demonstration project to specified legislative leaders by January 1, 2004, and January 1, 2005.

Transfer of Assets, Estate Recovery, and Eligibility Policies

Section 10.53 of S.L. 2003-284 codifies as G.S. 108A-46A the provisions of Section 10.41B of S.L. 2002-126 making the federal Supplemental Security Income (SSI) policies regarding transfer of assets and estate recovery applicable to the State–County Special Assistance program and repeals the former transfer of assets restriction set forth in G.S. 108A-46.

Section 10.53 of S.L. 2003-284 also directs DHHS to continue its review to determine whether state policies governing the State–County Special Assistance 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. DHHS must submit a report regarding this issue 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, 2004.

Temporary Assistance for Needy Families (Work First)

The Temporary Assistance for Needy Families (TANF) program, which replaced the Aid to Families with Dependent Children (AFDC) program in 1996, provides financial assistance and employment-related services to low-income parents and relatives who are caring for dependent children. North Carolina's TANF program is known as "Work First."

"Electing" Counties

Section 10.49 of S.L. 2003-284 designates the following counties as "electing" counties under the state's Work First program for the period October 1, 2003, through September 30, 2005: Beaufort, Caldwell, Iredell, Lenoir, Lincoln, Macon, McDowell, Sampson, Wilkes. G.S. 108A-27.3 and 108A-27.4 allow electing counties to adopt eligibility and benefit criteria for the county's Work First program different from those established under the state's standard Work First plan.

Section 10.50 of S.L. 2003-284 amends G.S. 108A-27.11(c) to delete language requiring DHHS to transmit one-fourth of the state funding for each electing county's Work First block grant to the county at the beginning of each quarter of the fiscal year.

TANF State Plan and Work First Program Reports

Section 10.49 of S.L. 2003-284 approves the TANF state plan as submitted by DHHS on April 28, 2003 (and revised by the General Assembly with respect to funding changes for the enhanced employee assistance program, start-up activities for families, caseload reduction goals, and the Cabarrus County waiver), for the period October 1, 2003, through September 30, 2005.

Section 10.57 of S.L. 2003-284 amends G.S. 108A-27.2 to eliminate several provisions requiring DHHS to submit reports concerning the state's Work First (TANF) program.

Child Support Enforcement

North Carolina's child support enforcement program establishes and enforces child support orders on behalf of custodial parents and other caretakers. The program often is referred to as the "IV-D" program and is administered by the DHHS Division of Social Services and through county child support enforcement agencies.

Additional legislation related to child support and paternity is summarized in Chapter 3, "Children and Families."

Collection of Child Support via Liens on Bank Accounts of Delinquent Obligors

Effective October 3, 2003, S.L. 2003-288 (S 423) allows DHHS or a child support enforcement (IV-D) agency in another state to impose a lien on any account of a parent or other person who owes child support (an obligor) maintained with a financial institution doing business in North Carolina if the obligor (a) is delinquent in paying child support and (b) owes past-due child support arrearages of at least $1,000 or six times his or her current monthly child support obligation, whichever is less. [An obligor is delinquent in paying child support if he or she (a) owes past-due child support and (b) is not in compliance with a court order or agreement specifying the manner in which the obligation to pay the arrearage may be satisfied (usually, by making regular payments on the arrearage in addition to payments for current or ongoing child support). *See* Davis v. Department of Human Resources, 126 N.C. App. 383, 485 S.E.2d 342 (1997), *aff'd in part and rev'd in part,* 349 N.C. 208, 505 S.E.2d 77 (1998).]

To impose the lien, DHHS must certify the amount of the obligor's child support arrearage in accordance with G.S. 44-86(c) and serve a notice of the lien on the obligor and the financial institution in the manner prescribed by G.S. 1A-1, Rule 4. The notice must include

- the obligor's name,
- the name of the financial institution,
- the number of the account on which the lien must be levied,
- the certified amount of the obligor's child support arrearage,
- a copy of G.S. 110-139.2(b1), and
- information on how the obligor may contest or discharge the lien.

Upon receipt of the notice, the financial institution must immediately attach a lien with respect to the account and notify DHHS of the date on which the lien attached and the balance in the account [or notify DHHS that the identified account is not subject to levy under G.S. 110-139.2(b1)]. [The new law does not expressly address (a) the nature or extent of the lien; (b) the lien's priority vis-à-vis outstanding checks, subsequent deposits, subsequent withdrawals or checks, or other claims against the account; (c) the lien's application with respect to accounts maintained or owned jointly by a delinquent obligor and a spouse or other person who is not liable for the obligor's child support arrearage; or (d) the rights of owners or co-owners (other than the obligor) of accounts on which liens are levied. DHHS officials have indicated that they may adopt policies limiting the new law's application to checking accounts or bank accounts with balances less than a specified, but not yet determined, amount.]

If the obligor is not the person subject to the child support order identified in the notice of lien, owes less than $1,000 in past-due child support, or owes child support arrearages in an amount less than six times his or her current monthly child support obligation, he or she may contest the lien within ten days after being served with the notice of lien by sending written notice to DHHS and requesting a hearing before the district court in which the child support order was entered. [The new law does not expressly describe the procedure that should be followed when an obligor wishes to contest a lien imposed by a child support enforcement agency of another state for arrearages owed under a child support order that was not entered by a North Carolina court.]

If the obligor fails to contest the lien in a timely manner, DHHS must notify the financial institution that it must enforce the lien by withdrawing the amount of the child support arrearage from the account, to the extent that sufficient funds are available, and by paying the withdrawn funds to DHHS to be applied against the obligor's child support arrearage. A financial institution is not liable to the obligor or any other person with respect to its good faith compliance with the requirements of G.S. 110-139.2(b1).

Collection of Child Support Arrearages from Deceased Parents' Estates

Effective July 4, 2003, S.L. 2003-288 requires DHHS to attempt to collect child support arrearages owed by a deceased obligor from the obligor's estate if DHHS determines that the obligor's estate contains sufficient assets to satisfy any child support arrearages. Although this requirement is incorporated in G.S. 110-135 (which deals only with public assistance debts owed to the state by the parents of dependent children), it apparently applies to all child support arrearages owed in cases handled by state or local child support enforcement (IV-D) agencies, including those owed with respect to children who have never received public assistance as well as arrearages that have been assigned to the state pursuant to G.S. 110-137 with respect to children who have received public assistance.

Disclosure of Parents' Financial Information

Effective July 1, 2003, S.L. 2003-288 amends G.S. 110-139(b) to provide that DHHS may release the child support payment history of a parent or other person who owes child support (a child support obligor) to the court, the obligor, the person to whom support is owed (the obligee), or the obligee's designee. It also allows DHHS to release information about a parent's income and expenses to the other parent for the purpose of establishing or modifying a child support order.

Occupational License Revocation Procedures

G.S. 110-142.1 establishes an administrative procedure for revoking the occupational licenses of individuals who have failed to pay child support (or have failed to comply with a subpoena) in IV-D child support cases. Effective July 4, 2003, S.L. 2003-288 amends G.S. 93B-13(a) to clarify that state occupational licensing boards that revoke an individual's occupational license pursuant to G.S. 110-142.1 (a) are required to report the revocation to DHHS within thirty days and (b) may

reinstate an individual's licensing privileges upon certification by DHHS that the individual is no longer delinquent or has complied with the subpoena.

Performance Standards for State and Local Child Support Enforcement (IV-D) Agencies

Section 10.44 of S.L. 2003-284 requires DHHS to develop and implement performance standards for state and local child support enforcement (IV-D) agencies. The standards must address: cost effectiveness, consumer satisfaction, location of absent parents, establishment of paternity, establishment of child support orders, collection of child support arrearages, and other performance measures. DHHS must monitor the performance of each IV-D agency, publish an annual performance report, and submit a progress report to the General Assembly's Fiscal Research Division, to the Senate Appropriations Committee on Health and Human Services, and to the House Appropriations Subcommittee on Health and Human Services by May 1, 2005.

Other Legislation Affecting Social Services Programs and Agencies

Health Choice

Health Choice is North Carolina's health insurance program for uninsured children in low-income families. S.L. 2003-284 provides an additional $30.3 million in state funding for 2003–2005 to expand the enrollment of eligible children in Health Choice. Section 10.29 of the act amends G.S. 108A-70.21 to:

- expand the dental services covered by Health Choice;
- allow Health Choice to provide services to children from birth to age five through the Medicaid managed care program;
- require families with incomes that do not exceed 150 percent of the federal poverty level to pay a $1 copayment for each outpatient generic prescription drug and each outpatient brand-name prescription drug for which there is no generic substitution available and a $3 copayment on each outpatient brand-name prescription drug for which a generic substitution is available; and
- require families with incomes that exceed 150 percent of the federal poverty level to pay a $1 copayment for each outpatient generic prescription drug and each outpatient brand-name prescription drug for which there is no generic substitution available and a $10 copayment on each outpatient brand-name prescription drug for which a generic substitution is available.

(Previously a $6 copayment was required for all outpatient prescription drugs.) Section 10.29 also amends G.S. 108A-70.23(c) to allow DHHS to limit services for special needs children after consulting the Commission on Children with Special Health Care Needs.

Energy Assistance and Weatherization

Section 10.3 of S.L. 2003-284 enacts new G.S. 108A-70.30 authorizing DHHS to administer the weatherization assistance program for low-income families and the heating/air conditioning repair and replacement program. The new law does not create any entitlement to assistance nor obligate the General Assembly to appropriate funds for the program. S.L. 2003-284, does, however, allocate funds to DHHS for these programs from the federal Low-Income Energy Assistance Block Grant in addition to $1 million from the state's Special Reserve for Oil Overcharge Funds.

Child Day Care

Legislation regarding the More at Four, Smart Start, and subsidized child day care programs and the licensure and regulation of child care facilities is summarized in Chapter 3, "Children and Families."

Guardianship

Legislation amending North Carolina's incompetency and guardianship law is summarized in Chapter 20, "Senior Citizens."

Sterilization of Incompetent Adults

S.L. 2003-13 (H 36) repeals Article 7 of G.S. Chapter 35 and establishes a new procedure, set forth in G.S. 35A-1245, under which the guardian of a mentally ill or mentally retarded ward may obtain permission from the clerk of superior court to consent to the ward's sterilization in cases of medical necessity. The new law is summarized in Chapter 16, "Mental Health."

Cabarrus County "Work Over Welfare" Program

S.L. 1998-106, as amended by S.L. 2001-354, allows Cabarrus County to operate a demonstration welfare reform program for certain Work First and Food Stamp recipients. S.L. 2003-188 (S 319) makes the following changes in the Cabarrus County program:

- It repeals the program's September 30, 2003, sunset provision.
- It eliminates the program's emphasis on creating job opportunities for child day care workers, nursing home aides, and other human services workers.
- It eliminates the wage incentive or job bonus for Food Stamp households who do not receive Work First benefits.
- It allows social workers to extend the time during which they will monitor the well-being of children in families whose Work First benefits have been terminated due to noncompliance with program requirements.
- It allows the transfer of federal Work First cash assistance funding to the county's federal Social Services Block Grant allocation to pay for the cost of home studies, attorney fees, adoption assistance payments, and other adoption expenses with respect to the adoption of children who reside with relatives other than their parents, receive Work First assistance in "child only" cases, and lack permanent stable homes.

Janet Mason

John L. Saxon

22

State Government

The 2003 General Assembly passed the most significant changes to the North Carolina Administrative Procedure Act since the major reworking of that legislation in 1995. The main thrust of the changes was to alter the process for temporary rule making, by distinguishing temporary rules from emergency rules, by giving the Rules Review Commission (RRC) a gatekeeper role for temporary rules, and by shortening the amount of time required for noncontroversial permanent rules to become effective.

Administrative Procedure Act

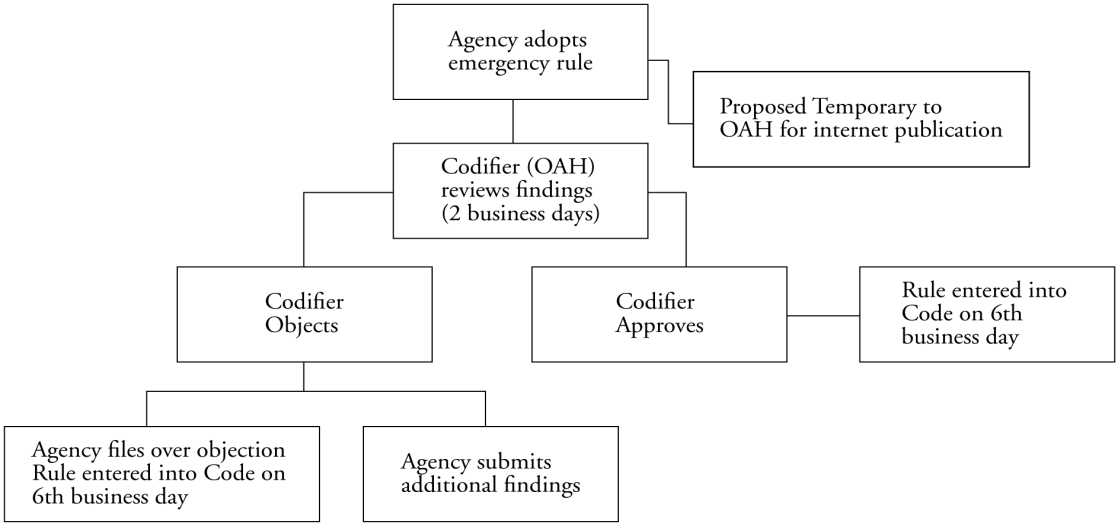
Rule Making

In Chapter 507, Section 27.8, of the 1995 N.C. Session Laws, the legislature substantially changed the process for permanent rule making. The main legislative goals at that time were to slow down the process and give more legislative control over the agencies, particularly regulatory agencies (notably the Department of Environment and Natural Resources) whose work had widespread impact on businesses in North Carolina. The 1995 amendments succeeded in these goals, but at the cost of three important, undesirable consequences. First, the agencies began to push more rules through the temporary rule-making process, which was much less burdensome procedurally, but which offered little or no public input or analysis of regulatory impacts. Second, the entire permanent rule-making process across state government bogged down, to the extent that it became much easier to change state policy through legislative changes than through administrative processes, even when the policy changes were not controversial. Third, the pressure built for agencies to get exemptions, in whole or in part, from the Administrative Procedure Act, and these piecemeal exemptions began seriously to erode the ideal of a consistent rule-making process—a hallmark goal for the Administrative Procedure Act.

In the 2003 regular session, the legislature passed S.L. 2003-229 (H 1151) in an attempt to fix these problems. The new legislation separates rules currently allowed as temporary rules into two categories, temporary and emergency. Only the newly defined emergency rules will be permitted the minimal oversight and process now given to all temporary rules. The emergency rule-making process is limited to rules for which immediate adoption "is required by a serious and unforeseen

threat to the public health or safety." There is also a special exception allowing the Department of Health and Human Services to adopt emergency rules in response to changes in state or federal law pertaining to medical benefits. Emergency rules can be put into place over the objection of the Codifier of Rules and without review by the Rules Review Commission. However, they are subject to challenge in court and expire after no more than sixty days. The Office of Administrative Hearings' unofficial flow chart of the new emergency rule-making process is shown below in Figure 1.

Figure 1. New Emergency Rule-Making Process
Source: Office of Administrative Hearings

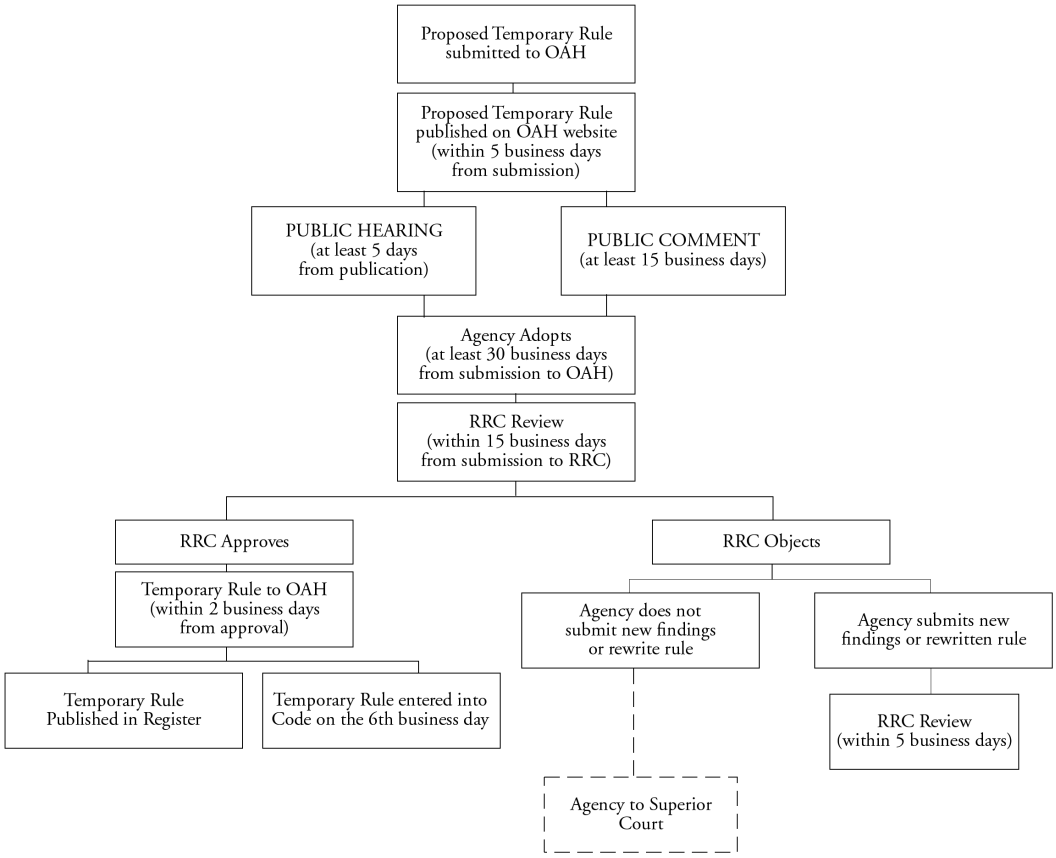


Emergency Rule expires on the earliest of the following dates:

1. The date specified in the rule.
2. The effective date of the permanent rule adopted to replace the temporary rule, if the Commission approved the permanent rule.
3. The date the Commission returns to an agency a permanent rule the agency adopted to replace the temporary rule.
4. The effective date of an act of the General Assembly that specifically disapproves a permanent rule adopted to replace the temporary rule.
5. 270 days from the date the temporary rule was published in the North Carolina Register, unless the permanent rule adopted to replace the temporary rule has been submitted to the Commission.

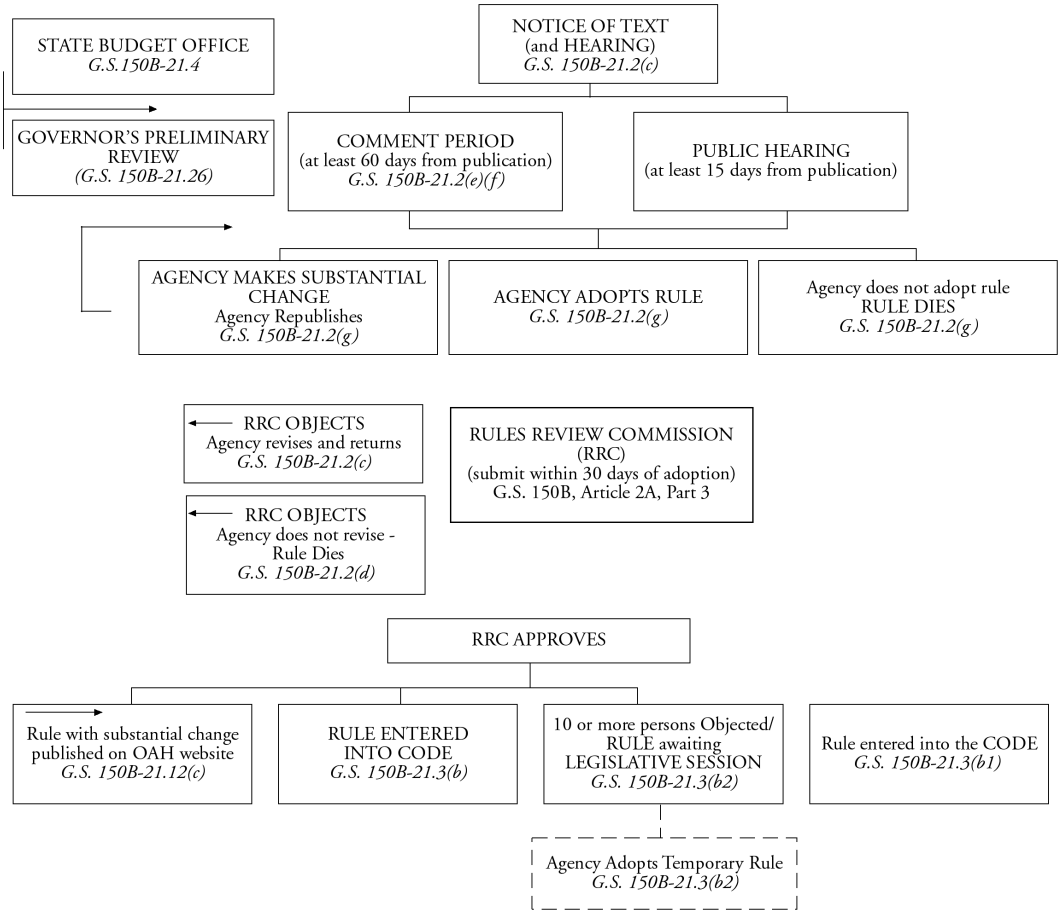
Temporary rules must now be submitted to the Rules Review Commission, which can veto them, and they must also receive at least thirty days' public notice and a public hearing. Temporary rules are defined under the new provisions as they were under prior law, except that federal regulations and court orders that form the basis for temporary rule making must now be recent, and the statute now defines *recent* as, in essence, a change occurring or made effective within the last 210 days before a rule is submitted to the Rules Review Commission. The new law is highly prescriptive regarding the time period and method for review by the Rules Review Commission, in part because the decision need not be made by the full commission, but can instead be made by a panel of at least three of its members. The Office of Administrative Hearings' unofficial flow chart of the new temporary rule-making process is shown below in Figure 2.

Figure 2. New Temporary Rule-Making Process
Source: Office of Administrative Hearings



For permanent rules, the new law makes several changes designed to speed up the time it takes to make most rules effective. It eliminates the Notice of Rule-Making Proceedings, a requirement added in 1995 to give advance notice that an agency was about to revise or create rules so that interested parties could be involved in rule making prior to the time that a proposed rule was drafted. It allows permanent rules to go into effect on the first day of the month following the month in which they are approved by the Rules Review Commission, unless ten or more people file objections to the rules with the commission. In the event of such objections, the effective date would be delayed in the same manner in which it is presently delayed, until the next session of the General Assembly. The bill lowers the threshold for fiscal analyses caused by "substantial economic impact" from the current $5,000,000 to $3,000,000. It also expressly authorizes judicial review of decisions by the Rules Review Commission to reject rules. The Office of Administrative Hearings' unofficial flow chart of the new permanent rule-making process is shown below in Figure 3.

Figure 3. New Permanent Rule-Making Process
Source: Office of Administrative Hearings



Finally, S.L. 2003-229 makes several changes in the statutes governing the Rules Review Commission itself. In addition to giving that commission authority to veto temporary rules, it attempts to clarify the standard of "reasonable necessity" under which the commission reviews rules, and it expressly adds a standard requiring the commission to determine whether a rule was adopted in accordance with the rule-making process in the Administrative Procedures Act. Perhaps most importantly, it opens up permanent rules to future attack on process grounds by stating that Rules Review Commission approval creates only a rebuttable presumption, rather than a conclusive determination, that rules were adopted in accordance with the Administrative Procedure Act. It also attempts to clarify when agencies must reissue a notice and allow further comment on a rule after making changes in response to Rules Review Commission objections.

Sale of Blount Street Property

The Blount Street Historic District in Raleigh runs from the 1891 Executive Mansion north to Peace College, between the Historic Oakwood neighborhood to the east and the state government mall to the west. It developed in the decades following the Civil War as the home of many of Raleigh's industrial and civic leaders. Following a long period of decline in the mid-twentieth century, the district was slated for demolition in the 1960s to make way for an expressway and a new state government complex. Most of the properties were acquired by the state through purchase and condemnation. However, the historic preservation movement of the early 1970s

succeeded in designating the area as an historic district (1976). Today, many of the preserved historic homes are occupied by state agencies. S.L. 2002-186 called for a study of the state-occupied properties to assess their continued viability as office space and parking. S.L. 2003-404 (S 819) authorizes their sale (excluding the Executive Mansion and three other properties), with restrictions to ensure that future use is consistent with the historical and architectural character of the district.

Richard Whisnant

23

State Taxation

The major state tax changes are found in S.L. 2003-284 (H 397), the 2003 appropriations act. They include continuation of the increased rates of the individual income tax and the sales tax and various amendments to the sales tax.

Highway Use Tax

In 1989, the General Assembly enacted the North Carolina Highway Use Tax (G.S. Chapter 105, Article 5A) to provide a major source of revenue for the Highway Trust Fund. The tax rate is 3 percent of the retail value of a motor vehicle for which a certificate of title is issued, and the Division of Motor Vehicles collects the tax.

Under G.S. 105-187.5, a retailer who leases or rents motor vehicles may elect not to pay the highway use tax on a vehicle purchased for lease or rental. Instead, the retailer may elect to pay an alternate gross receipts tax at the rate of 8 percent on the gross receipts of short-term leases or rentals and 3 percent on the gross receipts of long-term rentals. Although the gross receipts tax is imposed on the retailer, it is added to the lease or rental price of the vehicle and is ultimately paid by the person who leases or rents the vehicle. The gross receipts tax is collected by the Department of Revenue. The tax levied at 8 percent is credited to the General Fund, and the tax levied at 3 percent is credited to the Highway Trust Fund.

S.L. 2003-5 (S 235) allows a retailer who leases motor vehicles and who elected to pay the highway use tax on the retail value of the vehicles at the time the retailer obtained a certificate of title for those vehicles to collect the alternate gross receipts tax. In order to collect the gross receipts tax on these vehicles, a retailer must have submitted a written request to the Division of Motor Vehicles and the Department of Revenue by July 1, 2003. The retailer was required to specifically identify the vehicles to which the election applied and the date upon which the retailer would begin collecting the additional taxes and to provide any additional information needed to collect the tax. If a retailer elected to pay the gross receipts tax under this act, that election is irrevocable and does not relieve the taxpayer of liability for any tax previously imposed.

Typical practice throughout the rental car industry is for the highway use tax to be paid on the receipts of the rentals. In most instances, states that impose a tax on the leasing of vehicles impose a gross receipts tax. In North Carolina, however, at least one rental car retailer elected to pay the

highway use tax at the time the retailer obtained the certificates of title for its fleet. To be consistent with other companies in the industry and with standard practice among the various states in which the retailer leases its motor vehicles, the retailer requested authorization to collect the gross receipts tax on its rentals.

Internal Revenue Code Update

S.L. 2003-25 (H 320) updates the reference to the Internal Revenue Code used in defining and determining certain state tax provisions by changing the reference date from May 1, 2002, to January 1, 2003. Part 37-A of S.L. 2003-284 updates the reference date again, to June 1, 2003 (see State and Federal Tax Law Conformity, below, for more details). Updating the Internal Revenue Code reference date makes recent amendments to the Code applicable to the state to the extent that state law previously tracked federal law.

Tax Changes in the 2003 Budget Act

S.L. 2003-284 makes numerous changes in state tax laws, as summarized below.

Local Government Hold-Harmless Payments

Part 37 of S.L. 2003-284 changes from September 15 to August 15 the date that sales tax hold-harmless payments are made to local governments each year. It also provides that the payments will be made in 2003 and 2004 only, but includes language showing intent for the payments to continue through 2012. The Governor's budget would have eliminated the hold-harmless payments beginning in 2003.

In 2001, the General Assembly gave local governments the authority to increase their local sales tax by 0.5 percent, effective upon the repeal of the state's additional 0.5 percent sales tax on July 1, 2003. Also effective July 1, 2003, the state's reimbursements to local governments were repealed, and the state was directed to provide hold-harmless payments to those local governments whose potential gain from the half cent local sales tax increase would be less than their loss from the repealed state reimbursements. State reimbursements were for losses due to the repeal of the property tax on inventories and on poultry and livestock, the repeal of the intangibles tax, the "homestead exclusion" from property tax, and the repeal of local sales and use taxes on food purchased with food stamps.

In 2002, the General Assembly accelerated the repeal of the state reimbursements from July 1, 2003, to July 1, 2002, and accelerated the effective date that local governments could begin levying the additional half cent local tax from July 1, 2003, to December 1, 2002. Part 37 of S.L. 2003-284 also provides that the estimates used to calculate the hold-harmless payments must be updated to reflect legislative changes.

State and Federal Tax Law Conformity

Part 37 of S.L. 2003-284 makes three changes relating to conformity of state tax laws to federal tax laws. These provisions were not in the House or Senate budgets.

Section 37A.1 updates to June 1, 2003, the date used in defining and determining certain state tax provisions. In May 2003, Congress enacted the Jobs and Growth Tax Relief Reconciliation Act of 2003. That act contained two tax changes that affect federal taxable income, which is the starting point for determining state taxable income, and it became effective for the 2003 tax year. The two changes were an increase in the bonus depreciation allowance first enacted after the September 11, 2001, terrorist attacks and an increase in the amount that can be expensed under

section 179 of the Internal Revenue Code.[1] Section 37A.1 of S.L. 2003-284 conforms to both of these provisions. Sections 37A.2 and 37A.3 of the act provide for a bonus depreciation add-back for the 2004 taxable year to offset the second-year losses from the depreciation and expensing provisions.

Sections 37A.4 and 37A.5 delay until July 1, 2005, the phaseout and elimination of the state estate tax that would otherwise occur due to the phaseout and elimination of the federal credit for state death taxes. North Carolina repealed its inheritance tax in 1998, effective for deaths occurring on or after January 1, 1999. It replaced the inheritance tax with an estate tax that is equivalent to the federal state death tax credit allowed on a federal estate tax return. This type of state estate tax is known as a "pick-up" tax because it picks up for the state the amount of federal estate tax that would otherwise be paid to the federal government. In 2001, Congress increased the exclusion amount for the federal estate tax and phased out the state death tax credit over four years by reducing it 25 percent in 2002, 50 percent in 2003, and 75 percent in 2004, and by repealing it entirely in 2005. In 2002, the General Assembly enacted legislation not to conform to the phaseout of the state death tax credit. In other words, the amount of the state estate tax is tied to the federal credit as it existed in 2001 rather than as it currently exists. The 2002 legislation was set to sunset for estates of decedents dying on or after January 1, 2004. Part 37 extends the sunset to July 1, 2005, meaning that the estate tax will continue to be based on the federal credit as it existed in 2001. This part became effective when the act was signed into law by the Governor on June 30, 2003.

State Sales Tax Rate

Part 38 of S.L. 2003-284 delays the sunset of the 0.5 percent increase in the state sales tax from July 1, 2003, to July 1, 2005. In the 2001 appropriations act, the General Assembly increased the state sales tax by 0.5 percent, from 4 percent to 4.5 percent, effective October 16, 2001. This state sales tax increase was to sunset July 1, 2003. Before 2001, the state sales tax rate had last been increased in 1991, from 3 percent to 4 percent.

Upper Income Tax Rate

Part 39 of S.L. 2003-284 delays the sunset of the upper-income individual income tax bracket from January 1, 2004, to January 1, 2006. In 2001, the General Assembly added a new tax bracket that imposed an additional 0.5 percent income tax (a total rate of 8.25 percent) on certain North Carolina taxable income for three years. Under prior North Carolina law, tax was imposed at the following rates on individuals' North Carolina taxable income.

Tax Rate	Married Filing Jointly	Heads of Household	Single Filers	Married Filing Separately
6.0%	Up to $21,250	Up to $17,000	Up to $12,750	Up to $10,625
7.0%	Over $21,250 and up to $100,000	Over $17,000 and up to $80,000	Over $12,750 and up to $60,000	Over $10,625 and up to $50,000
7.75%	Over $100,000	Over $80,000	Over $60,000	Over $50,000

1. Section 179 of the Code allows a taxpayer to treat the cost of certain property as an expense that is not chargeable to a capital account. This allows the taxpayer to take a deduction for the property in the year in which it is placed into service rather than depreciating the property over a number of years.

The 2001 law created a fourth tax bracket for North Carolina taxable income as follows.

Tax Rate	Married Filing Jointly	Heads of Household	Single Filers	Married Filing Separately
8.25%	Over $200,000	Over $160,000	Over $120,000	Over $100,000

This change was estimated to affect approximately 2 percent of North Carolina taxpayers. The provision extending the tax rate for two more years was recommended by the Governor.

Child Tax Credit

Part 39-B of S.L. 2003-284 conforms the state tax credit for children to the federal definition of whether a dependent child is eligible for the federal tax credit for dependent children. The effect of this change is to limit the credit to dependent children under seventeen years of age. The federal credit is limited to dependent children under age seventeen, but the North Carolina credit previously applied to seventeen-year-olds as well as to children over seventeen up to age twenty-three if they were in college. This legislation was part of a provision in the Senate budget that also would have delayed the scheduled increase in the credit. The change is effective beginning with the 2003 tax year.

Insurance Tax Rates on Article 65 Corporations

Before 2004, HMOs and nonprofit medical service corporations, such as Blue Cross/Blue Shield and Delta Dental Corporation, paid a gross premiums tax of 1 percent. Other insurance providers pay a gross premiums tax of 1.9 percent on most insurance contracts. Companies that pay a gross premiums tax are automatically exempt from corporate income and franchise taxes. Part 43 of S.L. 2003-284 increases the gross premiums tax rate on medical service corporations from 1 percent to 1.9 percent, effective January 1, 2004. The tax rate for HMOs (including HMOs directly operated by medical service corporations) remains at 1 percent.

Part 43 also provides that for the 2004 and 2005 tax years only, medical service corporations will make the following estimated payments of the tax: 50 percent on April 15 and 50 percent on June 15. For subsequent tax years, the general law on installment payments of gross premiums tax will apply. This change accelerates the timing of the tax payment to move the revenue gain to an earlier fiscal year.

Part 43 provides a conditional sunset of the increased tax rate. It requires the Commissioner of Insurance to make a certification to the Department of Revenue and the Revisor of Statutes when there are no longer any medical service corporations that offer anything other than dental service plans. Beginning with the first taxable year after that certification is made, Part 43 will expire and the gross premiums tax rate applied to medical service corporations will revert to 1 percent. The effect of this provision would be to reduce the rate on medical service corporations if Blue Cross/Blue Shield completes its conversion to for-profit status. In July 2003, Blue Cross/ Blue Shield announced its intention not to pursue conversion at this time.

The insurance gross premiums taxes are taxes based on the amount of insurance premiums that are paid, or, in the case of certain self-insurers, would have been paid during the year. They presently consist of the following:

- A 1.9 percent tax on most insurance contracts
- A 1 percent tax on HMOs and on nonprofit medical service companies, such as Blue Cross/Blue Shield and Delta Dental, that provide hospital, medical, and dental service plans
- A 2.5 percent tax on workers' compensation premiums and workers' compensation self-insurers

- An additional 1.33 percent tax on premiums for fire and lightning coverage of property other than motor vehicles and boats
- An additional 0.5 percent tax on premiums for fire and lightning coverage of property within a fire district

Use Tax Line Item

Part 44 of S.L. 2003-284 extends for two years the law that provides that consumer use tax is payable on the individual income tax return. The law would otherwise sunset for the 2003 taxable year.

North Carolina levies state and local sales and use taxes. The sales tax applies to purchases made in this state. It is collected by the retailer and remitted to the state. The use tax complements the sales tax by taxing transactions that are not subject to the sales tax because of movement in interstate commerce. The use tax is imposed on the purchaser, and the responsibility for remitting the use tax to the Department of Revenue is also on the purchaser. In 1997, the General Assembly established an annual filing period for the payment of use taxes owed by consumers on mail-order and other out-of-state purchases. This change relieved consumers of the duty to file either monthly or quarterly returns.

In 1999, the General Assembly further simplified use tax collection by providing that the use tax will be declared on taxpayers' income tax returns. An individual who owes use tax on nonbusiness purchases and who must remit a state income tax return must pay the use tax with the income tax return. The income tax return has space on it to indicate the amount of use tax owed. Placing the use tax on the individual income tax return, as opposed to a separate use tax return being sent to the taxpayer with the income tax return, is intended to increase taxpayers' awareness of their responsibility to pay the tax. In 2000, the General Assembly placed a 2003 sunset on this provision, anticipating that as a result of the Streamlined Sales and Use Tax Agreement, use tax collection would be handled by retailers by that time. The 2003 sunset date may have been overly optimistic; Part 44 extends it for two more years.

Streamlined Sales and Use Tax Agreement

In November 2002, the states involved in implementing the Streamlined Sales and Use Tax Project approved a final version of an historic multistate agreement designed to simplify and modernize sales and use tax collection and administration. The multistate agreement is known as the Streamlined Sales and Use Tax Agreement (the Agreement).[2]

To participate in the Agreement, a state must amend or modify its sales and use tax law to conform to the simplifications and uniformity in the Agreement. Part 45 of S.L. 2003-284 makes changes to the sales and use tax statutes to bring North Carolina into conformity with the Agreement. The Agreement becomes effective when at least ten states, representing at least 20 percent of the total population of all states imposing a state sales tax, have petitioned for membership and have been found to be in compliance with the requirements of the Agreement. A certificate of compliance will document each state's compliance with the provisions of the Agreement. As of July 7, 2003, nineteen states, with more than 20 percent of the total population of all states, had enacted legislation to implement provisions of the Agreement.

One objective of the Streamlined Sales and Use Tax Project is to encourage remote vendors to voluntarily collect use tax owed to the states, thereby increasing the states' collections. In a study issued in September 2001, Bruce and Fox of the University of Tennessee, Knoxville, estimated the state and local government revenue loss from sales made via the Internet at $7 billion in 2001, increasing to $24.2 billion by 2006. According to that estimate, North Carolina is currently losing $200 to $300 million a year in uncollected use tax revenues.

2. Currently, forty states and the District of Columbia are involved in the Streamlined Sales and Use Tax Project. In November 2002, thirty-five states and the District of Columbia were involved in the Streamlined Sales and Use Tax Project.

A second objective of the project is to convince Congress or the U.S. Supreme Court to grant collection authority over remote sales to the states that conform their sales tax laws to the uniform provisions in the Agreement, on the premise that the simplifications in the Agreement eliminate the burdens on interstate commerce that have been the justification for denying states that authority. If federal legislation is enacted granting states this authority, it is likely to be linked with proposals to extend the Internet Tax Freedom Act moratorium, which expired on November 1, 2003.

Uniform local sales tax base. Under the Agreement, all local jurisdictions in a state must have a common tax base. The base for the most recent 0.5 percent local sales tax and the 0.5 percent Mecklenburg local transit tax does not include food, while the other local sales and use taxes do. To conform to the Agreement, the base must be consistent. The state is allowed to tax food at a rate different from its general rate of tax. Effective October 1, 2003, section 45.6A of Part 45 finesses the nonuniform local base by stating that the local sales tax on food will be administered as if the local tax on food were zero and the state had a 2 percent tax on food. The state will collect and distribute the 2 percent local tax on food. This change brings North Carolina into compliance with the Agreement without changing the amount of local tax collected. Under S.L. 2003-284, the distribution with respect to food tax proceeds would have to be in proportion to other local sales tax proceeds rather than being based on the actual county of collection. This would have resulted in a shift of revenue in favor of counties that are retail centers. However, Part 45 of S.L. 2003-284 is amended by Section 27 of S.L. 2003-416. Under that act, half of the proceeds of the food tax will be distributed based on county population, with the remaining half being distributed based on the proportion of sales taxes on food collected within the county under Article 39 of Chapter 105 of the General Statutes in the 1997–1998 fiscal year in relation to the total collections under that Article.

Candy, soft drinks, and prepared food. Under the Agreement, if there is a uniform definition for a type of product, a state may not exempt only part of the items included in that definition. Candy, soft drinks, and prepared foods have uniform definitions in the Agreement. Under previous law, North Carolina exempted those items as food only if they were purchased for home consumption. To conform to the Agreement, the products must be treated consistently whether or not they are intended for home consumption. Part 45 of S.L. 2003-284 removes soft drinks and prepared foods from the exemption for food, effective July 15, 2003. The legislation offsets the impact of this change by extending to soft drinks sold in vending machines the 50 percent sales tax reduction currently allowed on other products sold in vending machines, effective January 1, 2004. It also exempts all candy as if it were food, effective January 1, 2004.

Definitions. The Agreement mandates that a state that uses any of the terms defined in the Agreement in its sales and use tax laws must define the terms in substantially the same language as that in the Agreement. To conform to the Agreement, Part 45 modifies and defines the following terms: *computer, computer software, custom computer software, prewritten computer software, delivered electronically, load and leave, direct mail, drug, durable medical equipment, durable medical supplies, electronic, lease or rental, mobility enhancing equipment, over-the-counter drug, prepared food, prescription, prosthetic device, and tangible personal property.* This provision became effective July 15, 2003.

Modifications to prewritten software. As discussed above, the Agreement mandates that a state must either tax or exempt all products within a given uniform definition. Previously, North Carolina taxed prewritten computer software that had not been modified and it exempted both custom computer software and prewritten computer software that had been modified. To conform to the Agreement, the state will tax the prewritten portion of modified computer software and it will exempt the modifications to it if the charges for the modifications are separately stated. Through the use of defined terms, computer software that is delivered electronically or by load and leave will remain exempt from tax. This provision became effective July 15, 2003.

Mobility enhancing equipment. To ensure consistent treatment of products within a uniform definition, Part 45 of S.L. 2003-284 provides that mobility enhancing equipment must be sold by prescription to be exempt from tax. Under previous law, a few items that come within this defined term, such as crutches, did not need to be sold by prescription to be exempt. However,

to preserve the previous tax treatment as much as possible, this part requires mobility enhancing equipment to be sold by prescription in order to be exempt, since previous law required most items in this category to be sold by prescription in order to be exempt. This provision became effective July 15, 2003.

Uniform sourcing principles. North Carolina adopted many of the uniform sourcing principles in 2001. Part 45 codifies additional sourcing principles for periodic rental payments. The codified principles reflect previous practice. This provision became effective July 15, 2003.

Uniform returns, remittances, and notices. North Carolina adopted many of the uniform provisions governing returns, remittances, and notices in 2001. Part 45 adds a few more provisions:

- The collection period for a seller that collects less than $1,000 in state sales tax during a calendar year cannot occur more often than annually. This provision became effective October 1, 2003.
- Monthly returns are due by the twentieth day of the month rather than the fifteenth day of the month. This provision became effective October 1, 2003.
- Catalog sellers must be given at least 120 days' notice of tax changes and tax rate changes. This provision became effective July 15, 2003.

Sales tax holiday. The Agreement sets forth certain conditions for sales tax holidays after December 31, 2003. One of these conditions is that the tax-exempt items must be specifically defined in the Agreement. North Carolina's sales tax holiday exempts printers, printer supplies, educational computer software, and school supplies. None of these items is defined in the Agreement. The implementing states are currently working on a definition of *school supplies*. Effective October 1, 2003, S.L. 2003-284 removes printers, printer supplies, and educational computer software from the exemption. The act also extends the exemption to layaway sales.

Multiple rates, caps, and thresholds. In addition to implementing the sales and use tax modifications made by Part 45 of S.L. 2003-284, North Carolina will need to address the issue of multiple rates, caps, and thresholds in the near future. The Agreement mandates the elimination, after December 31, 2005, of most caps and thresholds. It also mandates a single tax rate per taxing jurisdiction after December 31, 2005. North Carolina currently has a 1 percent tax rate on certain items and a 1 percent rate with an $80 cap on other items. It has a 3 percent rate with a $1,500 cap on mobile classrooms and offices. The state also has a different rate on telecommunications, satellite TV, and spirituous liquor, and it has a $1,500 threshold for the sales tax applicable to funeral expenses.

Tobacco and Alcohol Discounts

Part 45A of S.L. 2003-284 eliminates tax reductions previously allowed to distributors and wholesalers who pay excise taxes on cigarettes, other tobacco products, wine, beer, and spirituous liquor. These discounts were equal to 4 percent of the tax due. The discounts for cigarettes and tobacco products were intended to cover expenses incurred in preparing tax reports and the expense of furnishing a bond. The discounts for alcoholic beverages were intended to cover these expenses as well as losses due to spoilage or breakage.

An amendment to H 1303 would have partially restored these discounts. On July 19, 2003, the Senate passed an amendment that would have reinstated the discounts at a rate of 2 percent rather than 4 percent. That bill passed the Senate and was sent to the House for concurrence. The House adjourned without voting on concurrence.

Revenue Administrative Changes

S.L. 2003-349 (S 236) makes the following miscellaneous changes.

Dividends Received Deduction for RICs and REITs

Part 1 of S.L. 2003-349 (S 236) repeals the dividend deduction provisions that previously applied to regulated investment companies (RICs) and real estate investment trusts (REITs), effective beginning with the 2003 tax year. The effect of the repeal is to conform to the federal dividend deduction for RICs and to the federal disallowance of any dividend deduction for REITs.

The federal dividends received deduction[3] is meant to reduce the negative effects of the double tax on C corporation profits distributed as dividends to corporate shareholders. Subject to certain exceptions and limitations, corporations may deduct 70 percent of the dividends received from another domestic corporation if the receiving corporation owns less than 20 percent of the distributing corporation. The deduction rises to 80 percent of dividends if the corporation owns 20 percent or more of the corporation paying the dividends, and to 100 percent if the corporations are affiliated under the Internal Revenue Code.

Certain investment companies, including mutual funds, may elect to be taxed as RICs. There are several conditions that must be satisfied in order for a company to qualify for the election, including: (1) 90 percent of the corporation's gross income must be derived from dividends, interest, and gains on the sale of stock or securities and (2) the corporation's investments must be diversified as prescribed by Section 851 of the Internal Revenue Code. A qualified RIC is taxed only on its undistributed income and is treated as a partial conduit for the income it earns. The fundamental premise of conduit treatment is that the RIC's income should be taxed only once, at the shareholder level. Dividends received from RICs are eligible for the federal deduction, subject to additional limitations.[4]

A REIT is a corporation or trust that uses the pooled capital of many investors to purchase and manage real estate. REITs are traded on major exchanges just like stocks and are granted special tax considerations. A REIT pays yields in the form of dividends. It is required to pay out at least 90 percent of its income to shareholders and it deducts the amount paid out, so there is no taxation at the REIT level. The shareholders pay tax on the dividends they receive.

Under prior law, G.S. 105-130.7 provided that dividends received by a corporation from a RIC or a REIT were deductible to the extent that income received by that corporation from a RIC or a REIT would not be taxable by North Carolina. Section 1.1 of S.L. 2003-349 repeals G.S. 105-130.7.[5] In 2001, the General Assembly adopted the federal approach to the corporate dividends received deduction by repealing G.S. 105-130.7(b) and G.S. 105-130.5(a)(7), which had provided corporations with an income tax deduction for dividends received by their subsidiaries. Adopting the federal approach simplified tax administration and compliance because the taxpayer is required to make fewer adjustments to taxable income in order to calculate state net income. The repeal under Section 1.1 of S.L. 2003-349 is consistent with this philosophy.

Dividends received from a RIC qualify for the federal dividends received deduction. Therefore, despite the repeal of G.S. 105-130.7, dividends received from RICs will continue to be deductible. The repeal of G.S. 105-130.7 also ensures that dividends received from a RIC are subject to the same rules concerning attribution of expenses as dividends received from other corporations.

Dividends from REITs do not qualify for the federal dividends received deduction. Therefore, under past state law, dividends from REITs were taxed more favorably for state tax purposes than under federal law. The repeal of G.S. 105-130.7 ensures that the state treatment of dividends from REITs is the same as under federal law.

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3. 26 U.S.C. § 243 (2002).

4. Capital gain dividends received from a regulated investment company do not qualify for the deduction.

5. The repeal of G.S. 105-130.5(b)(3) and the changes in Sections 1.2 and 1.3 of the act are conforming changes.

Reporting of Sales of Seized Property

If any tax levied by the state and payable to the Department of Revenue has not been paid within thirty days after the taxpayer was given notice of final assessment of the tax, the department is authorized to collect the tax through the levy upon and sale of the taxpayer's real or personal property. The department may direct the sheriff to levy upon and sell property or it may levy upon the property itself through one of its employees.

Most personal property seized by the Department of Revenue is taken for the payment of unauthorized substance taxes. When the department's employees levy upon the property without the use of the sheriff, the actual sale of the property is conducted by the Department of Administration's State Surplus Property section in accordance with the same notice and bidding procedures that apply to surplus property. The State Surplus Property section provides public information related to bids and sales of seized property both on-line and in written format.

The laws in Article 29B of Chapter 1 of the General Statutes, which apply when the sheriff conducts the levy and sale of property, also apply when the Department of Revenue conducts the levy and sale of property. Among those provisions is G.S. 1-339.63, which states that the sheriff must file a report of sale with the clerk of superior court. Because the Department of Revenue is subject to the same laws governing execution sales, it construed this provision to mean that the department must file a report of all sales of seized property with the clerk of superior court.

Because the Department of Administration makes a report of all property sold through the surplus property sales, the Department of Revenue did not see a need to file a report of sale with the clerk of court as well. Therefore, Section 2 of S.L. 2003-349 amends G.S. 105-242 to provide that the Department of Revenue is not required to file a report of sale of seized property with the clerk of superior court as long as the sale is otherwise publicly reported. This change became effective when the act was signed into law by the Governor on July 27, 2003. In addition to improving efficiency by avoiding duplicative reporting, this change should also reduce costs, several clerks of court having begun charging a fee for filing these reports.

Authority to Use Collection Agencies to Collect In-State Tax Debts

Part 3 of S.L. 2003-349 extends for two years the Department of Revenue's authority to use private collection agencies to collect in-state tax debts. The Department of Revenue has permanent authority to use private collection agencies to collect out-of-state tax debts. The authority to outsource in-state debts was scheduled to expire on October 1, 2003; this act extends it to October 1, 2005. A tax debt is the amount of tax, interest, and penalties due for which a final notice of assessment has been mailed to the taxpayer after the taxpayer no longer has the right to contest the debt.

In 1999, the General Assembly authorized the Department of Revenue to initiate a pilot program whereby the department would contract for the collection of tax debts owed by nonresidents and foreign entities. In September 2000, the Department of Revenue, in conjunction with the Office of the State Auditor, began outsourcing some of its out-of-state tax debts. Between September 2000 and May 2001, it collected in excess of $12 million in out-of-state receivables by using a combination of outsourcing and in-house collection techniques.

In 2001, the Department of Revenue was authorized to outsource out-of-state tax debts permanently and to outsource in-state tax debts for two years. When outsourcing tax debts, the department is required to notify the taxpayer prior to submitting the debt to a collection agency. The taxpayer has thirty days after the notice is sent to pay the tax debt. If the debt remains unpaid at the end of the thirty days, then the debt may be outsourced to a collection agency. The collection agencies that contract to collect tax debts are prohibited from revealing confidential tax information. If a contractor reveals tax information, the contractor is subject to a misdemeanor penalty, its contract is terminated, and it is barred from contracting again for five years.

Division of Motor Vehicles Tax Secrecy Change

Under the tax secrecy law [G.S. 105-259(b)], an officer, employee, or agent of the state who has access to tax information in the course of service or employment by the state may not disclose the information to any other person except for the purposes expressly authorized by statute. One of the authorized purposes is to exchange information with the Division of Motor Vehicles of the Department of Transportation when the information is needed to fulfill a duty imposed on the Department of Revenue or the Division of Motor Vehicles.

In 2002, the General Assembly enacted legislation[6] that transferred to the Department of Crime Control and Public Safety the personnel and functions of the Department of Transportation Division of Motor Vehicles Enforcement Section for the regulation and enforcement of commercial motor vehicles, oversize and overweight vehicles, motor carrier safety, and mobile and manufactured housing. The transfer became effective January 1, 2003. In order to preserve the secrecy provision in existing law, Section 4 of S.L. 2003-349 replaces the phrase "Division of Motor Vehicles of the Department of Transportation" with the phrase "Division of the State Highway Patrol of the Department of Crime Control and Public Safety" because the State Highway Patrol will be performing the functions of the prior Division of Motor Vehicles Enforcement Section.

Local Sales Tax Distributions

Pursuant to G.S. 105-472, the Secretary of Revenue makes distributions of local sales and use tax proceeds to cities and counties. In 2001, the General Assembly accelerated these distributions from quarterly to monthly, effective July 1, 2003. Part 5 of S.L. 2003-349 provides that each monthly distribution will include tax proceeds for which a return has been filed. Proceeds received the month before the related return is expected to be filed will be held until the month the return is filed. Because the return contains information necessary for determining the distribution formula, distributing some taxes before the related return is filed would result in misallocation of the tax proceeds. Part 5 became effective July 1, 2003.

As of January 1, 2002, the threshold for taxpayers required to make semimonthly payments of sales and use tax was lowered from $20,000 to $10,000, substantially increasing the total amount of revenues received semimonthly for processing by the Department of Revenue. For semimonthly filers, sales and use tax revenues collected between the first and fifteenth of the month must be paid by the twenty-fifth of the same month, and sales and use tax revenues collected during the remainder of the month must be paid by the tenth of the following month. The return for the two semimonthly periods is due ten days later, on the twentieth of the month. Consequently, for revenues received for the first half of each month, the return indicating where the funds should be distributed will not be received until the following month.

Part 5 of S.L. 2003-349 amends the local government sales and use tax distribution statute by stating that amounts collected by electronic funds transfer payments are included in the distribution for the month in which the return that applies to the payment is due. Semimonthly taxpayers are required to pay by electronic funds transfer. This amendment ensures that the Department of Revenue will distribute local sales and use tax proceeds only after the department has the necessary information provided on semimonthly returns.

Procedure for Hold-Harmless Calculation

In 2001, the General Assembly authorized all counties of the state to levy a third one-half cent sales tax.[7] The same legislation also provided local governments an annual hold-harmless distribution from the state's General Fund to ensure that none of them would lose money when the

6. S.L. 2002-190, as amended by Section 31.5 of S.L. 2002-159.

7. Effective July 1, 2004, all 100 counties will have adopted the local option third one-half cent sales tax authorized by Section 34.14 of S.L. 2001-424.

local government reimbursements are repealed.[8] The hold-harmless distribution provides that if a county's or city's estimated proceeds from the third half cent tax would be less than the amount it would have gotten under the repealed reimbursements, it will receive a payment equal to the difference. If a county's or city's estimated gain from the third half cent tax exceeds its repealed reimbursement amount, it does not receive a hold-harmless payment from the state. The hold-harmless payment would be the same even if a county had not levied the new tax.

Under prior law, G.S. 105-521(b) directed both the Office of State Budget and Management (OSBM) and the Fiscal Research Division of the General Assembly to submit to the Secretary of Revenue and the General Assembly, by May 1 of each year, a projection of the estimated amount that local governments would be expected to receive from the levy of the third one-half cent local sales and use tax during the upcoming fiscal year. By September 15 of each year, the Secretary of Revenue is required to calculate, based on the projections, the hold-harmless distribution amounts, if any, and to distribute the funds. If the secretary does not use the lower of the two projections when making the calculation, the secretary must report the reasons for this decision to the Joint Legislative Commission on Governmental Operations within sixty days after receiving the projections.

Part 6 of S.L. 2003-349 requires the Department of Revenue, rather than the OSBM, to provide the estimate. The data needed to make the projections are housed within the Department of Revenue. Making this change simplifies the process by eliminating the need for the OSBM to obtain the data from the Department of Revenue and then make the necessary projection.

Filing Fee for Annual Reports

G.S. 55-1-22 sets out the fees for filing certain documents with the Secretary of State, including documents such as corporations' articles of incorporation, articles of dissolution, designation of a registered agent, and so forth. Included on the list is a $20.00 fee for filing an annual report. Each corporation authorized to do business in this state is required to file an annual report, which, unlike the other documents in G.S. 55-1-22, must be delivered to the Secretary of Revenue.[9] The annual report contains the name of the corporation, its address, the name and address of its registered agent, the names and addresses of its principal officers, and a brief description of the nature of its business. Annual reports are due by the due date for filing the corporation's income and franchise tax return. As a practical matter, the annual reports are typically attached to the return along with a check for the filing fee.

Part 7 of S.L. 2003-349 amends G.S. 55-1-22 by adding a new subsection stating that the annual report fee of $20.00 is nonrefundable. This change became effective when the act was signed into law by the Governor on July 27, 2003. The purpose of this change is to codify the Department of Revenue's existing policy that annual report fees are not refundable. G.S. 55-1-22 does not address whether or under what circumstances the filing fees are refundable. However, it is the policy and practice of the Secretary of State to issue refunds for those fees if requested and depending upon the circumstances. Specifically, if the Secretary of State's office has not begun to process or review the document for which the refund is requested, then it will usually refund the filing fee at the filer's request, regardless of whether the fee has been deposited. The Department of Revenue's policy with regard to the annual report is that the fee is nonrefundable.

8. The 2003 General Assembly limited this distribution to two years, 2003 and 2004, but stated the intent that it would continue through 2012. Part 37 of S.L. 2003-284.

9. Nonprofit corporations are exempt from this requirement and insurance companies are required to deliver their annual reports to the Secretary of State.

Eligibility for Research and Development Credit

The William S. Lee Quality Jobs and Business Expansion Tax Credits, in Article 3A of Chapter 105 of the General Statutes, are allowed only to certain types of businesses.[10] For most of the eligible business types, the law specifies that the taxpayer's primary business must be the designated business. For a few of the business types, including computer services, the law requires only that the taxpayer's primary activity at an establishment be the designated business. In addition, to qualify for the credits, the jobs, investment, or activity must be used in the designated business or activity.

One of the credits under Article 3A is for research and development. Generally, a taxpayer that claims a federal income tax credit for increasing research activities under Section 41 of the Internal Revenue Code is allowed a state credit as well for the eligible research activities conducted in North Carolina. The amount of the credit varies, depending upon which type of federal credit is claimed.[11] Under the Department of Revenue's interpretation of Article 3A, to satisfy the eligible business requirements, the jobs, investment, and activity must be located at an establishment where the primary activity is an eligible business or eligible activity.

The question of whether a taxpayer's qualified research expenditures must have occurred on the premises of an establishment that performed an eligible industry activity has arisen. Under the Department of Revenue's past interpretation of the law, the answer was yes. Part 8 of S.L. 2003-349 purports to clarify the original intent of the General Assembly that research and development activities need not be on the same premises as an eligible activity. It extends this clarification to the legislature's recent relaxation of the eligible business requirements surrounding computer services. The act provides that if the primary activity of an establishment of the taxpayer in this state is computer services, then the taxpayer's qualified research expenditures in this state are considered to be used in computer services. For all other taxpayers, the expenditures are considered to be used in the primary business of the taxpayer. These changes are retroactive to the years the related provisions were effective, 2001 and 1996, respectively.

Study of Impact of Consolidated Returns

Whenever study committees discuss tax modernization, an issue that arises is the state's corporate income tax structure. The corporate tax structure has remained substantially unchanged for years. In the course of these discussions, the Fiscal Research Division of the General Assembly and the Tax Research Division of the Department of Revenue have been asked what the fiscal consequences would be if the state allowed consolidated corporate income tax returns. Currently, neither division has enough information to form a credible estimate.

Part 9 of S.L. 2003-349 directs the Revenue Laws Study Committee to establish a study group composed of tax professionals and representatives of the Department of Revenue to gather appropriate data that will allow the department to estimate the fiscal impact of consolidated returns. Part 9 becomes effective with the 2003 tax year and expires in two years.

Motor Fuel Tax Changes

Part 10 of S.L. 2003-349 makes several changes to the motor fuel tax laws, effective January 1, 2004. It provides the Department of Revenue with greater enforcement capabilities; it protects the state's interest with a shorter temporary permit for motor carriers and a higher bond requirement for distributors; and it makes the motor fuel statutes more equitable by extending the inspection tax to dyed diesel fuel. It also makes several technical and administrative changes.

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10. Central office or aircraft facility; air courier services or data processing; manufacturing, warehousing, or wholesale trade; computer services or electronic mail order house; customer service center; or warehousing at an establishment.

11. The credit amount is 5 percent of the state's apportioned share if the taxpayer claims the credit under section 41(a) of the Internal Revenue Code or 25 percent if the taxpayer claims the alternative incremental credit under section 41(c)(4) of the Code.

Enforcement. This part strengthens the Division of Motor Fuel's enforcement capabilities in the following ways:

- Sections 10.3 and 10.4 require a taxpayer that imports motor fuel from an out-of-state terminal into North Carolina to be licensed as a distributor. Past statutes made the distributor's license optional. If the product was being imported, the taxpayer was required to register as a licensed importer, but none of the importer categories fit a taxpayer obtaining tax-paid fuel from an out-of-state terminal. For example, an importer's license requires the taxpayer to file a return on a monthly basis, but a taxpayer obtaining fuel from an out-of-state terminal would not owe tax directly to the Department of Revenue. The Department of Revenue determined that a distributor's license, which allows the taxpayer to import and export the product but does not require periodic returns, was more appropriate. The Department had implemented this change administratively; Sections 10.3 and 10.4 change the statutes accordingly.
- Section 10.5 removes the requirement that an applicant for licensure as a distributor or importer notify the Department of Revenue of any states to which it plans to export or from which it plans to import motor fuel, because there is no means for tracking this information.
- Section 10.7 enables the Department of Revenue to deny a motor fuel license to a taxpayer that fails to file a return or pay any tax debt due under Chapter 105 or 119 of the General Statutes.
- Section 10.10 clarifies the Department of Revenue's authority to investigate illegal use of non–tax-paid fuel for highway purposes. One way the department investigates alleged violations is through undercover operations in which an agent drives a state-owned truck to a retailer and asks to have it filled with dyed (non–tax-paid) fuel. It would be a violation for the retailer to permit the purchase of non–tax-paid fuel for highway use. Technically, however, the fuel in this situation is not taxable, because G.S. 105-449.88 exempts motor fuel sold to the state for its use. This section specifies that it is not a valid defense to a violation of the motor fuel tax statutes that the state is exempt from motor fuel tax.
- Sections 10.12 through 10.14 require kerosene terminal operators to be licensed and to file reports. Currently, jet fuel and kerosene are delivered from the pipeline directly to airports. This method of delivery bypasses the motor fuels terminals and thereby bypasses the record-keeping requirements that help ensure that the Department of Revenue can uniformly enforce the tax statutes. Kerosene terminal operators are currently subject to tax. The Internal Revenue Service licenses these terminals and the terminal operators must report deliveries to the airports. Sections 10.12 through 10.14 do not subject the airports to greater tax liability but rather require them to be licensed and to file reports so that the Department of Revenue can identify the taxpayers and ensure that they are paying the requisite amount of tax. As a result, the state should soon begin collecting inspection tax revenue that was otherwise falling through the cracks.
- Section 10.16 provides a licensed kerosene distributor the same deferred payments and discounts that a licensed motor fuel distributor receives. These sections also reorganize and modernize the language of the kerosene licensing statutes.

Temporary permits. Section 10.1 reduces from twenty days to three days the maximum amount of time that a motor carrier can operate in the state using a temporary permit (rather than obtaining a license). A licensed motor carrier pays tax based on the number of miles driven in the state. The cost of a temporary permit is $50. It would take approximately 1,000 miles to exceed the $50 temporary permit fee in taxes. A motor carrier can drive far more than 1,000 miles in twenty days and thus could get many "free" miles by obtaining a temporary permit. Three days is a better approximation of the time in which a motor carrier would use $50 worth of miles. The Department of Revenue surveyed numerous states and determined that, of the twenty-six states where permit information was available, seven states issued three-day permits, five states issued permits for between four and seven days, five states issued ten-day permits, one state issued a

thirteen-day permit, and one state issued a twenty-day permit. Seven states did not issue temporary permits. Section 10.1 could increase Highway Fund revenues by increasing the number of permits issued or the number of permanent licenses issued. No estimate is available for the permit volume.

Bond cap. Section 10.6 of S.L. 2003-349 increases the cap on the bond amount of motor fuel licensees to $500,000. The most recent bond cap amount, $250,000, was last adjusted in January 1991. The Department of Revenue believes the maximum bond amount should be increased to $1 million. Since 1991, licensees' tax liabilities have increased to a point where 28 percent of the current licensees have a monthly tax liability of more than $250,000 18.3 percent have a liability of more than $500,000, 13.17 percent have a liability of more than$750,000, and 8.48 percent have a liability of more than $1 million. In the last six months there have been four bankruptcy cases, two of which exceeded the taxpayer's bond amount. In one of these cases, the potential loss to the state is in excess of $1 million after payment from the surety company. A survey of the surrounding states shows that South Carolina, West Virginia, Kentucky, and Louisiana do not have caps; Florida has a $100,000 cap; Virginia has a $300,000 cap; Georgia has a $150,000 cap; and Maryland has a $500,000 cap.

Inspection tax. Section 10.15 imposes the inspection tax on dyed diesel. The Department of Revenue estimates that this change will yield an additional $1.2 million in inspection tax revenues per year. The inspection tax is currently imposed on all other fuel types at the rate of one-fourth of one cent per gallon,[12] including dyed kerosene, which, like dyed diesel, is used for heating and other non-highway purposes. The department conducts monthly on-road investigations for the misuse of dyed fuels, including dyed diesel. Each sample of fuel withdrawn must be tested by the Department of Agriculture for evidence of dye in the fuel.

Technical and administrative changes. Part 10 of S.L. 2003-349 makes the following technical and administrative changes:

- Section 10.2 clarifies that the definition of a *tank wagon* includes vehicles designed to carry at least 1,000 gallons of motor fuel. The past definition appeared to exclude those vehicles that can carry a total of more than 1,000 gallons but have individual tanks that are less than 1,000 gallons each.
- Section 10.8 conforms the statutes with the legislative change made last session to exempt local governments from the motor fuel tax.
- Section 10.9 removes the requirement that shipping documents must be machine printed by the operator of a bulk plant. This requirement was imposed inadvertently when the statutes were reorganized. Bulk plant operators do not have the necessary equipment to provide machine-printed documents, nor does the Department of Revenue need them to do so. The act does not change the requirement that terminal operators must machine print shipping documents.

Storage facilities for dyed kerosene. Section 10.11 of S.L. 2003-349 clarifies that storage facilities for dyed kerosene must be clearly marked for nontax use only, just like the storage facilities for dyed diesel fuel. It also provides that the dispensing device for dyed fuel must be clearly marked as nontax use only.

Bad Debt Charge-Offs

Retailers pay sales tax on their gross sales. If accounts of purchasers are found to be worthless and are charged off for income tax purposes, then the retailer may deduct those sales from its gross sales. Municipalities that sell electricity are considered to be retailers, and they pay state sales tax on their gross sales of electricity. The practice of the Department of Revenue has been to allow the municipalities to charge off their bad debts as other retailers are allowed to do. However, municipalities did not technically meet the conditions of the statute because they do not

12. The inspection tax is imposed regardless of whether the fuel is exempt from the per-gallon excise tax. The proceeds of the tax are applied first to the cost of administering the Motor Fuels Tax Division. The remainder is credited to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund and the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund.

pay federal income tax. Part 11 of S.L. 2003-349 conforms the statute to the Department of Revenue's practice by clarifying that municipalities that sell electricity may deduct worthless accounts from their gross sales for sales tax purposes. Accounts are determined to be worthless in the same way that they would be under the Internal Revenue Code if municipalities were taxed. As under current law, the accounts that are collected afterward must be added back to gross sales.

Psychiatric Hospital Financing

The North Carolina Constitution[13] and the North Carolina General Statutes restrict the General Assembly's authority to issue debt. Except in limited circumstances,[14] the General Assembly does not have the power to authorize the issuance of bonds secured by a pledge of the faith and credit of the state without a referendum approved by a majority of the voters in an election. These bonds are referred to as general obligation bonds because the general taxing power of the state secures the bonds. Article 5 of Chapter 159 of the General Statutes authorizes the state to use revenue bonds to finance a project without voter approval, but authorization by specific legislation is required under G.S. 159-88(c). Revenue bonds involve the pledge of nontax revenues related to the project, such as parking fees for parking decks and water and sewer charges for water and sewer projects. In recent years, the state has used security interest indebtedness as a financing tool on a project-by-project basis.[15] S.L. 2003-314 (H 684), as amended by S.L. 2003-284, provides the procedural and regulatory provisions needed to carry out security interest indebtedness. As with revenue bonds, authorization to use security interest indebtedness must be given by the General Assembly through specific legislation under G.S. 142-83, as mandated by this act.

Security interest indebtedness is commonly referred to as "certificates of participation." The act employs the term "special indebtedness" to cover the three forms that this type of debt can take: installment-purchase (with or without certificates of participation), lease-purchase (with or without certificates of participation), and limited obligation bonds. In each case, the debt is nonvoted. The particular form to be used for a given project[16] will depend on its size, the nature of the property and the improvement, and other circumstances. Based on these circumstances, one form or another of security interest debt may be the least expensive and the most practical for the state to utilize.

Under security interest indebtedness, the debt is secured by a lien on or security interest in all or any part of the capital facilities to be financed, including all or part of any land on which improvements are to be constructed. If the project is a renovation, the entire existing facility as well as the improvement could serve as security. The value of the property securing the debt may

13. Article V, section 3, of the North Carolina Constitution.

14. The North Carolina Constitution allows the General Assembly to issue nonvoted general obligation bonds in an amount not to exceed two-thirds of the amount by which it reduced its outstanding general obligation debt in the preceding biennium. Other constitutional exceptions for nonvoted general obligation debt include: to fund or refund an existing debt; to supply an unforeseen deficiency in revenue; to borrow in anticipation of the collection of taxes due and payable within the current fiscal year to an amount not exceeding 50 percent of the taxes due; to suppress riots or insurrections or to repel invasions; and to meet emergencies immediately threatening the public health or safety, as conclusively determined in writing by the Governor.

15. S.L. 2000-143 authorized installment contract financing for a $13.5 million office building and wildlife education center for the Wildlife Commission and a $4 million Eastern Wildlife Education Center. S.L. 2001-84 authorized the state to enter into lease-purchase contracts to finance three prisons. S.L. 2002-161 authorized installment-financing contracts for guaranteed energy savings contracts for state buildings.

16. S.L. 2003-314 specifically defines the capital expenditures that may be financed as any combination of buildings, utilities, structures, and other facilities and property developments, including streets, landscaping, equipment, and furnishing in connection with a building project; additions, renovations, and improvements to existing facilities; land acquisition; infrastructure; and furniture, equipment, vehicles, machinery, and similar items.

exceed the amount of the debt, and the financing of several capital projects may be jointly secured by liens on some or all of the capital facilities being financed.

Because the property serves as the security for the indebtedness, there is no pledge of the state's faith and credit or taxing power. Thus, voter approval is not necessary for the borrowing. If the state defaults on its repayments, no deficiency judgment can be rendered against the state, but the capital facilities that serve as security can be disposed of to generate funds to satisfy the debt. The state could choose not to appropriate funds to repay the debt, but such a decision would have negative consequences for the state's credit rating.

Before special indebtedness can be issued or incurred, the State Treasurer must certify that debt financing may be desirable for a specific project presented to it by the Department of Administration. Next, the Council of State must give preliminary approval. If preliminary approval is obtained, the Council of State must give final approval, setting out details such as the maximum amount to be financed, the maximum maturity, and the maximum interest rates. The maximum maturity may not exceed forty years. The State Treasurer must approve the financing, finding that the amount to be borrowed is adequate and not excessive and will not require an excessive increase in any state revenues to provide for repayment and that the special indebtedness can be incurred or issued on terms favorable to the state. Finally, the State Treasurer must report to the Joint Legislative Commission on Governmental Operations at least five days before any special indebtedness is issued or incurred.

Once it is determined that special indebtedness can be issued or incurred, the funds can be borrowed from a single entity in an installment-purchase or lease-purchase contract; generated by the issuance of limited obligation bonds; or borrowed under an installment-financing contract by the sale of certificates of participation. A certificate of participation represents the holder's undivided interest in the right to receive the installment payments to be made by the state. If certificates of participation are issued, a nonprofit corporation will act as a straw person to facilitate the financing.

S.L. 2003-314 not only provides the statutory framework for special indebtedness as a financing tool of the state; it also provides the specific legislative authorization for up to $110 million of this type of indebtedness to be used for a new psychiatric hospital to be located in Butner. The new facility will consist of approximately 450,000 square feet and contain 432 beds. The indebtedness for this project cannot be incurred prior to July 1, 2004.

The new psychiatric hospital to be built in Butner will replace the current John Umstead Hospital in Butner and Dorothea Dix Hospital in Raleigh. These two psychiatric hospitals are outdated facilities that need extensive repairs and renovations. Even with significant repairs and renovations, according to the Secretary of Health and Human Services the hospitals would still be unable to support the latest mental health treatments. The secretary contends that replacing the two hospitals with one regional facility will save an estimated $40.9 million a year by reducing costs. S.L. 2003-314 directs that any nonrecurring savings in state appropriations realized from the closure of the two current facilities that are in excess of the cost of operating and maintaining the new hospital shall be credited to the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs. The act also directs that any recurring savings realized from the closure of the existing two hospitals shall be used for the payment of debt service on financing contract indebtedness for the construction of the new hospital. The act provides that the State Treasurer may require one or more reports evidencing (1) the savings expected to be realized from the closure of existing psychiatric hospitals that are to be replaced by the project and (2) the feasibility of the financing of the project.

The act also makes the following changes:

- Requires DHHS to maintain research programs currently being conducted at Dorothea Dix Hospital and John Umstead Hospital by the UNC Medical School and the UNC Chapel Hill Psychology Department.
- Authorizes the county chosen as the site for the hospital to acquire the land by eminent domain and to convey the land to the state.
- Creates a study commission to consider the potential disposition of the state-owned real property encompassing the Dorothea Dix Hospital campus. The Dorothea Dix Hospital Property Study Commission must make recommendations to the Joint Legislative Commission on Governmental Operations on the options for sale of the property before any part of the property may be sold to a nongovernmental entity.

Manufactured Housing

S.L. 2003-400 (H 1006) makes numerous changes in the statutes dealing with manufactured housing. The changes regarding definitions and consumer protection are discussed in Chapter 13, "Land Use, Community Planning, Code Enforcement, and Transportation," and the changes affecting the property tax are discussed in Chapter 15, "Local Taxes and Tax Collection." Reviewed here are the changes that affect state taxes.

Under the law before January 1, 2004, the sales and use tax treatment of modular homes depends upon the type of frame of the modular home. According to industry representatives, there are two types of modular homes. "On-frame" modular homes are built on a steel chassis and are typically delivered to the homesite by means of wheels and axles attached to the steel frames. On-frame modular homes are taxed at the same sales and use tax rate as manufactured homes: 2 percent, with a maximum tax of $300 per section. The tax derived from these sales goes to the General Fund. "Off-frame" modular homes are typically delivered to the site on a flatbed truck or other carrier. Off-frame modular homes are taxed at the general sales tax rate of 7 percent (4.5 percent state and 2.5 percent local), with the tax applying to the cost of the materials used by the seller to create the home.

Section 15 of S.L. 2003-400 removes this tax distinction and taxes the sales price of both types of modular homes at a rate of 2.5 percent with no cap.[17] To offset the loss of local sales tax revenue, Section 16 of the act requires that 20 percent of the taxes collected on modular homes must go to counties and be distributed with local sales tax revenue that is not attributable to a particular county. Section 14 of the act defines a *modular home,* for sales and use tax purposes, as a factory-built structure that is designed to be used as a dwelling, is manufactured in accordance with the specifications for modular homes under the North Carolina State Residential Building Code, and bears a seal or label issued by the Department of Insurance. The act defines a *modular homebuilder* as a person who furnishes for consideration a modular home to a purchaser who will occupy the modular home. The purchaser can be a person who will lease or rent the unit as real property. Section 13 of the act amends the definition of *manufactured home* by deleting the reference to modular homes.

Wine Shipper Permits

In the 1930s, at the end of Prohibition, North Carolina adopted laws to regulate the importation of wine and other alcoholic beverages. The state's ABC system is three tiered: out-of-state wine producers may sell their products in North Carolina only to licensed wholesalers, the wholesalers may in turn sell the products to other wholesalers or to licensed retailers, and only licensed retailers may sell the products to consumers.

17. Manufactured homes will continue to be taxed at 2 percent with a $300 cap.

In 1981, the General Assembly enacted an exception to this three-tiered structure. Under the exception, North Carolina wineries were allowed to sell and ship wine directly to North Carolina consumers. The exception did not extend to out-of-state wineries. In 2002, a federal district court held in *Beskind v. Easley*[18] that this exemption violated the Commerce Clause of the United States Constitution because it clearly favored in-state economic interests over out-of-state interests. The court further held that North Carolina's regulatory interests protected under the Twenty-First Amendment did not outweigh the federal government's interest in regulating interstate commerce in this instance. That court ordered the state not to enforce the ban on out-of-state shipments and to collect the excise tax due on the wine shipped from out of state. North Carolina appealed this decision to the federal court of appeals. That court upheld the ruling that the exemption violates the Commerce Clause but allowed the General Assembly to fashion an appropriate remedy.[19] In essence, the General Assembly was left with the choice of repealing the exemption for in-state wineries or allowing shipments from out-of-state wineries on the same basis as for in-state wineries.

S.L. 2003-402 (S 668) establishes a structure through which out-of-state wineries, as well as in-state wineries, may ship wine directly to consumers in North Carolina. Under this act, any winery that holds a federal basic wine manufacturer permit may apply for a North Carolina wine shipper permit for a fee of $100. The annual renewal fee is $25.[20] The permit authorizes the shipment of brands of wine identified in the permit application. The wine shipper permittee may amend the brands identified in the permit at any time. The wine shipper permittee is required to notify any wholesale permittee that had been authorized to distribute those brands in this state of its application to become a wine shipper permittee. If the wine shipper permittee ships more than one thousand cases[21] of wine to addresses in the state during a calendar year, the permittee is required to appoint a North Carolina wholesaler if any North Carolina wholesaler wishes to sell the products.[22] A winery is not required to obtain a wine shippers permit to ship to addresses in North Carolina wine that was bought on the premises of the winery.

A wine shipper permittee may ship up to two cases of wine per month to any person in North Carolina to whom alcoholic beverages may be sold. Shipment of wine may be made by common carrier only. The common carrier is required to have the recipient demonstrate that he or she is over the age of twenty-one and sign an acknowledgment of receipt. The common carrier must refuse delivery when the recipient appears to be below twenty-one years of age and fails to provide sufficient identification.

S.L. 2003-402 also establishes a mechanism for collecting the excise[23] and use[24] taxes due on the wine. Under prior law, the direct shipment of wine escaped the imposition of the state excise tax[25] because the tax was payable by the resident wholesaler or importer. Although the consumer was liable for the use tax due on the purchase of the wine, the winery shipping the wine had no affirmative duty to collect and remit the tax if it did not have nexus in this state. Under the new act, a wine shipper is required to pay the excise tax due on the wine and to collect the use tax due on the wine. Under the Twenty-First Amendment to the United States Constitution, the state has

18. 197 F. Supp. 2d 464 (W.D.N.C. 2002).

19. Beskind v. Easley, 325 F.3d 506 (4th Cir. 2003).

20. G.S. 18B-903 provides that ABC permits are valid for one year, May 1 to April 30, and that the renewal fee is 25 percent of the original application fee.

21. A case is defined as any combination of packages that contains not more than nine liters of wine. Wine purchased by a resident of the state at the premises of the wine shipper permittee and shipped to an address in the state is not included in calculating the total of one thousand cases.

22. The wine shipper permittee does not have to appoint the wholesaler that originally contacted it to serve as its appointee.

23. The excise tax on unfortified wine is 21¢ and the excise tax on fortified wine is 24¢.

24. Wine is subject to a 4.5 percent state sales and use tax and a 2.5 percent local sales and use tax in every county but Mecklenburg County; in Mecklenburg County, the local sales and use tax is 3 percent.

25. Although the state collects the excise tax, the state shares the revenues with the counties and cities in which the retail sale of wine is authorized in the entire county or city: these local governments receive 62 percent of the excise tax collected on unfortified wine and 22 percent of the tax collected on fortified wine.

more authority to regulate alcoholic beverages than it generally has to regulate interstate commerce; thus, it is not as difficult to establish nexus when the product to be taxed is an alcoholic beverage. Because the state will require the out-of-state wineries to obtain a permit to ship to North Carolina addresses, the state will have sufficient nexus with the winery to force the collection of the taxes.

Employment Security Commission Surtax Delay

Unemployment insurance taxes or contributions are paid by employers on a quarterly basis and deposited into the Unemployment Insurance Fund. Pursuant to G.S. 96-6, the Unemployment Insurance Fund is administered by the Employment Security Commission and disbursed by the State Treasurer under the direction of the commission. Three separate accounts are maintained within the Unemployment Insurance Fund: a clearing account, an unemployment trust fund account, and a benefit account. The moneys payable to the fund are initially deposited in the clearing account. After any refunds payable from the fund pursuant to G.S. 96-10(f) are deducted, the money is deposited with the Secretary of the Treasury of the United States to the credit of this state's account in the unemployment trust fund.[26] Funds in the state's account earn interest that is also credited to the account. As money in the state's account is needed to pay benefits, it is transferred to the state and credited to the benefits account of the state Unemployment Insurance Fund to be used to pay benefits to people who lose their jobs through no fault of their own. Federal law prohibits transfer of or payment of refunds from money in the unemployment trust fund account.

There is also an Employment Security Commission Reserve Fund, created in the state treasury and used by the commission to bolster the Unemployment Insurance Fund. The moneys in the reserve fund consist of proceeds from the 20 percent surtax on contributions due.[27] This surtax was suspended in 1992, but the surtax is automatically triggered when the balance of the reserve fund falls below $163 million. Also, under G.S. 96-9(b)(3)d5, the regular unemployment insurance tax or contribution rate of an employer is reduced by 50 percent for any year in which the balance in the Unemployment Insurance Fund equals or exceeds $800 million. After a number of years of paying the contributions at the 50 percent rate, employers began paying at the full rate in 2003. The tax will remain at the full rate until the Unemployment Insurance Fund again reaches $800 million, thereby triggering the half rate.

S.L. 2003-405 (H 1241) states that the 20 percent surtax will not be imposed as long as the Unemployment Insurance Fund balance is at or below $500 million. When the contributions replenish the fund balance to $500 million, the 20 percent surtax will be triggered to start replenishing the reserve fund. When the reserve fund reaches $163 million, the surtax will trigger back off. The intended effect is that the 20 percent surtax, originally scheduled to go into effect January 1, 2004, due to the balance in the Reserve Fund being under $163 million, will not be imposed during the 2004 calendar year.

26. G.S. 96-10(f) provides for the refund of contributions if a court determines that the contributions were invalid, excessive, or contrary to the provisions of Chapter 96 of the General Statutes.

27. G.S. 96-5(f) provides that the moneys in the Employment Security Reserve Fund may be used by the Commission for loans to the Unemployment Insurance Fund, as security for loans from the federal Unemployment Insurance Trust Fund, and to pay any interest required on advances under Title XII of the Social Security Act.

Qualified Business Credit/Ports Credit

S.L. 2003-414 (H 1294) makes several important changes to the Qualified Business Tax Credits and the State Ports Tax Credit.

Qualified Business Tax Credits

The qualified business investment tax credit is allowed for an individual taxpayer who purchases the equity securities or subordinated debt of a qualified business venture or a qualified grantee business directly from that business. The credit is equal to 25 percent of the amount invested and may not exceed $50,000 per individual in a single taxable year. An individual investor may also claim the allocable share of credits obtained by "pass-through entities" of which the investor is an owner. Pass-through entities include limited partnerships, general partnerships, S corporations, and limited liability companies. The credit may not be taken in the year the investment is made. Instead, the credit is taken in the year following the calendar year in which the investment was made, but only if the taxpayer filed an application with the Secretary of Revenue. Any unused credit may be carried forward for the next five years. The total amount of credits allowed to all taxpayers for investments made in a calendar year may not exceed $6 million. The Secretary of Revenue calculates the total amount of tax credits claimed from applications filed with the Secretary of Revenue. If the amount exceeds the cap, then the secretary allows a portion of the tax credits claimed by allocating the total of $6 million in tax credits in proportion to the size of the credit claimed by each taxpayer. In general, a taxpayer forfeits the credit if the taxpayer transfers the securities within one year or the qualified business redeems the securities purchased by the taxpayer within five years after the investment was made.

Qualified business investment tax credit sunset. The qualified business investment tax credit was enacted in August 1987 to promote economic development for North Carolina businesses. The original credits applied to both corporations and individual taxpayers, and there was a $12 million cap on the total amount of all tax credits. In response to a 1996 United States Supreme Court decision in *Fulton Corp. v. Faulkner*[28] that raised the issue of whether the credits unconstitutionally discriminated against out-of-state businesses, the General Assembly reduced the $12 million cap to $6 million, removed the requirement that the qualified businesses be headquartered or operating in North Carolina, and limited the credit to individuals and small pass-through entities. The latter change was based on the theory that these investors are not likely to invest outside a fifty-mile radius of their homes.

S.L. 2003-414 extends the sunset on the qualified business investment tax credit from January 1, 2004, until January 1, 2007. The credit was originally set to expire for investments made on or after January 1, 1999. In 1998, the credit was extended for four additional years, until January 1, 2003. Then, in 2002, it was extended for one additional year, until 2004.

One of the purposes of the sunset is to allow the credit to expire if the state determines that it is being allowed for investments in non–North Carolina businesses. Because the Constitution does not allow the credit to be restricted to North Carolina businesses, there is the possibility that North Carolina tax dollars may actually be subsidizing investments in out-of-state corporations. The Secretary of State's office is required to publish a periodic list of businesses that have registered as qualified businesses. The most recent version of this list indicates that most registered businesses are North Carolina businesses.

Types of qualified businesses. Under current law, in order to be a business in which investments are eligible for a credit, the business must be either a qualified business venture or a qualified grantee business. Both types of businesses must be registered with the Secretary of State. The definition of *qualified business venture* includes several general requirements related to the line of business, gross revenues of the business, and the organization date of the business. A *qualified grantee business* is one that has received a grant or other funding in at least one of the three previous years from one of several types of entities that are generally described in the statute.

28. 516 U.S. 325 (1996).

Those descriptions encompass the following entities, which, before 2002, were specifically named in the statute: the North Carolina Biotechnology Center, MCNC, and the Kenan Institute for Engineering, Technology, and Science.

S.L. 2003-414 further expands one of these descriptions—which currently applies to nonprofits organized to stimulate microelectronics and communications industries—to apply as well to nonprofits and their affiliates organized to conduct research and development in or stimulate the development of technologies. This language is designed to bring in a new entity called MCNC-Research and Development Institute, which is a nonprofit corporation formed to enhance economic development in North Carolina through applied research and technology development and commercialization of those technologies. The new language also covers the MCNC Enterprise Fund, which is owned 50 percent by MCNC and 50 percent by MCNC-RDI.

Additional type of qualified business. S.L. 2003-414 adds a third category of qualified business: a *qualified licensee business*. These businesses must have no more than $1 million in gross revenues annually and must be performing under a contract with a UNC system institution or a doctoral research university to commercialize technology developed by the institution or university.

State Ports Tax Credit

The State Ports tax credit is allowed to a taxpayer that loads or unloads waterborne cargo from an ocean carrier at one of the state-owned port terminals at Wilmington and Morehead City. The credit is allowed against the taxpayer's income tax. The taxpayer may be either an individual (G.S. 105-151.22) or a corporation (G.S. 105-130.41). The amount of the tax credit is equal to the amount of wharfage, handling, and throughput charges paid to the North Carolina State Ports Authority in the taxable year that exceeds the average amount of charges paid to the Authority for the current tax year and the two previous tax years. The credit is limited to 50 percent of the tax imposed on the taxpayer for the taxable year. Any excess credit may be carried forward and applied to the taxpayer's income tax liability for the next five years. The maximum cumulative credit that one taxpayer may claim is $2 million.

In 1992, the General Assembly enacted the State Ports tax credit to encourage exporters to use the two state-owned port terminals in Wilmington and Morehead City. When enacted, the credit applied to amounts paid by a taxpayer on any cargo exported at either port. In 1994, the General Assembly expanded the credit to include all amounts assessed on exported cargo, regardless of who paid the shipping costs. In 1995, the General Assembly expanded the credit to include some imports by allowing a credit for break-bulk cargo and container cargo imported at either Wilmington or Morehead City and for bulk cargo imported at Morehead City. It did not allow a credit for bulk cargo imported at Wilmington. In addition, the credit for bulk exports was then limited to bulk exports at only the Morehead City terminal. In 1996, the General Assembly expanded the State Ports tax credit to include the importing and exporting at either terminal of one specific type of bulk cargo: forest products. All imports and exports of bulk cargo at the Morehead City terminal were already covered, so the effect of this change was to allow a credit for forest product imports and exports at the Wilmington terminal. In 1997, the General Assembly extended the sunset of the State Ports tax credit from February 28, 1998, to the taxable year ending on or before February 28, 2001, and increased the maximum cumulative credit from $1 million to $2 million per taxpayer. In 2001, the General Assembly extended the sunset to January 1, 2003, and in 2002, extended it to January 1, 2004.

Although not defined by the relevant statutes, the various types of cargo differ as follows:

- Bulk cargo is a type of commodity that is loose and usually stockpiled. Typically, bulk cargo is considered material that is picked up in scoops and is not in a bag or some other type of binding. Examples of this type of commodity include cement, coal, fertilizer, fishmeal (used for making pet food), grain, salt, sand (used for golf courses and during ice storms), soybean meal, and wood chips.

- Break-bulk cargo consists of commodities that are packaged and stored on pallets or in cases that must be handled and stacked onto a ship by hand, crane, etc. Break-bulk cargo also includes machinery. Some examples of break-bulk cargo are cotton, lumber, paper, and rubber.
- Container cargo consists of commodities that are packaged in a metal trailer box that can be locked onto a tractor-trailer chassis and then detached and put on a ship without any other handling. Some examples of container cargo include clothing, electronics, frozen poultry, furniture, housewares, meat, seafood, and tobacco.

S.L. 2003-414 extends the sunset on the tax credit for North Carolina State Ports Authority wharfage, handling, and throughput charges for five years (from January 1, 2004, to January 1, 2009). When first enacted, this credit was effective for taxable years beginning on or after March 1, 1992, and ending on or before February 28, 1996. The sunset has been extended five times.

Historic Preservation Credit

North Carolina allows an income tax credit[29] to taxpayers that qualify for the federal historic rehabilitation tax credit.[30] The amount of the credit is equal to 20 percent of the expenses of rehabilitating an income-producing historic structure.[31] A pass-through entity may qualify for the rehabilitation credit and pass the credit on to its owners.[32]

For most state tax credits, a pass-through entity is required to allocate the credit among its owners in the same proportion that other items, such as the federal rehabilitation credit, are allocated under the Internal Revenue Code. Under the Code, tax credits are allocated among S corporation shareholders in accordance with their pro rata share of the corporation, which is determined on the basis of stock ownership,[33] and tax credits are allocated among partners in a partnership in accordance with the partnership agreement.[34] However, in 1999, the General Assembly amended the law to provide for the separate sale of the historic tax credit for income-producing property by allowing a pass-through entity to allocate the tax credit among its owners at its discretion. The allocation of the credit allows the tax credit to be utilized more fully since it can be redistributed to North Carolina investors with state income tax liability. Each year that an allocated credit is claimed, the pass-through entity and its owners must include a statement with their tax return that shows both the allocation made and the allocation that would otherwise have been required under G.S. 105-131.8 and G.S. 105-269.15. This change in the law would have expired for taxable years beginning on or after January 1, 2002. S.L. 2001-476 extended the provision for two years and S.L. 2003-415 (S 119) extends it for four more years, until January 1, 2008.

To further maximize the use of the state historic rehabilitation tax credit for income-producing property, S.L. 2003-415 increases the amount of the credit that a pass-through entity may allocate among its owners. Prior law provided that the credit could be allocated to an owner of the

29. G.S. 105-129.35. The credit may not be taken for the tax year the property is placed in service but must be taken in installments over five years after the historic structure is placed in service. Any unused portion of a credit may be carried forward for a five-year period.

30. The federal tax credit is only available for rehabilitating income-producing historic structures. The federal credit amount is equal to 20 percent of the rehabilitation expenses.

31. North Carolina also allows an income tax credit of 30 percent of the expenses of rehabilitating an historic structure that is not income producing and thus not eligible for the federal income tax credit.

32. A pass-through entity is an entity—such as a partnership, a limited liability company, or a Subchapter S corporation—that is treated as owned by individuals or other entities under federal tax law and the income, losses, and credits of which are reported by the owners on their state income tax returns.

33. State law provides that the tax credit allowed a shareholder in a Subchapter S corporation is based on the percentage of stock held by the shareholder in the corporation. G.S. 105-131.8.

34. State law provides that the tax credit allowed a partner is based on the partnership agreement, which must have substantial economic effect, meaning that the allocation agreement must reflect the economic interest of the partners in the partnership and cannot be based solely on tax consequences. G.S. 105-269.15.

pass-through entity as long as the amount of the credit allocated to the owner did not exceed the owner's adjusted basis in the entity,[35] as determined under the Code. This act provides that the owner's adjusted basis must be at least 40 percent of the credit allocated to that owner. The General Assembly enacted a similar change in the low-income housing tax credit in 2002.[36]

During the finance committee deliberations, the Department of Revenue was asked to report on the amount of income-producing historic rehabilitation tax credits taken in tax years 2000 and 2001. Although the department could extrapolate from outside data the amount of tax credits taxpayers were eligible for each year, it could not determine the percentage of tax credits actually claimed each year. The department's Tax Research Division responded that it could only determine the number of corporate taxpayers that claimed the historic rehabilitation credit because the agency's computer system does not contain information on the individuals that claim the credit. The computer system does not capture data on individual historic rehabilitation credits because the credit is one of a number of credits combined on Form D-400TC as a miscellaneous credit. To remedy this data problem, S.L. 2003-415 directs the Department of Revenue to change the income tax forms to provide separate lines for each tax credit claimed by a taxpayer, effective for tax years beginning on or after January 1, 2003. This change will provide valuable information to legislative and executive branch analysts charged with evaluating and estimating the General Fund revenue loss of tax credits.

State Government Sales Tax Exemption/School Cooperative Refund

State Government Sales Tax Exemption

Currently, all major state agencies except the Department of Transportation[37] are subject to state and local sales taxes. However, the state receives a quarterly refund of the local sales taxes paid by its agencies,[38] with the proceeds of the refund going to the General Fund.

The current refund process is time-consuming for the Office of the State Controller, the agencies, and the Department of Revenue. To relieve the agencies of this burden, the Office of the State Controller recommended changing the refund process to a sales and use tax exemption for state agencies.[39] The term *state agency* is currently defined for sales and use tax purposes as a unit of the executive, legislative, or judicial branch of state government, such as a department, commission, board, council, or the University of North Carolina. The term does not include local boards of education[40] or local boards of trustees for the Community College System.

S.L. 2003-431 (S 100) changes the current refund process to an exemption for state agencies. To qualify for the exemption, items must be purchased by a state agency and the purchase must meet one of the following conditions:

- The items are purchased pursuant to a state agency purchase order that contains the exemption number of the agency and a description of the items purchased.

35. The adjusted basis is determined at the end of the taxable year in which the historic structure is placed in service.

36. S.L. 2002-87.

37. The Department of Transportation is exempt from state and local sales and use tax.

38. Each state agency is supposed to file with the Secretary of Revenue a written application for a refund of the local sales taxes paid by it. The application is due within fifteen days after the end of each calendar quarter. G.S. 105-164.14(e).

39. Refunds for purchases by the North Carolina Low-Level Radioactive Waste Management Authority, the North Carolina Hazardous Waste Management Commission, the constituent institutions of the University of North Carolina paid for with contract and grant funds, and The University of North Carolina Hospitals at Chapel Hill are made on an annual basis and are refunded directly to the state agency. At the suggestion of the Office of State Budget and Management, the act does not change the refund status of these purchases.

40. Local school administrative units are allowed an annual refund of state and local sales taxes paid.

- The items purchased are paid for by a state-issued check, electronic deposit, credit card, procurement card, or credit account of a state agency and the agency provides to or has on file with the retailer the agency's exemption number.

The act incorporates all of the various payment and purchase mechanisms where accounting system controls are in place to verify purchases and prevent possible misuse of the agency's sales tax exemption by its employees. The only type of direct purchase not included within this exemption is employee expense reimbursements.

The sales tax exemption applies only to direct purchases of tangible personal property. State agencies will continue to apply for refunds of local taxes paid on indirect purchases of building materials, supplies, fixtures, and equipment that become part of a structure owned or leased by the state.

A state agency will be liable for items purchased with its exemption number even if it does not use those items. The liability will include not only the tax that should have been paid on the items purchased but also interest calculated from the date the tax should have been paid.

To be eligible for the sales and use tax exemption, a state agency must apply to the Department of Revenue for a sales tax exemption number. The part of S.L. 2003-431 that provides for this application process becomes effective January 1, 2004, in order to allow state government agencies to begin the process of obtaining their exemption numbers from the Department of Revenue. The section of the act granting the exemption becomes effective July 1, 2004, and applies to sales made on or after that date.

S.L. 2003-431 also provides that the Office of State Budget and Management must reduce each state agency's certified budget for fiscal years 2003–2004 and 2004–2005 by an appropriate amount to reflect the tax savings generated by the sales and use tax exemption allowed under this act.

Sales Tax Refund for School Board Cooperatives

Under Chapter 160A of the General Statutes, units of local government[41] may enter into contracts or agreements with each other in order to execute any undertaking. Since 1996, several boards of education in the eastern part of the state have participated in an agreement under the authority of Part 1 of Chapter 160A in order to operate a cooperative program known as the Southeast Cooperative Utilizing Resources Efficiently (SECURE). The purpose of SECURE is to coordinate the acquisition of food service–related materials, supplies, equipment, and services. The school districts in SECURE at present are Wayne, Pitt, Greene, Lenoir, Onslow, Sampson, New Hanover, Guilford, and Cumberland counties.

Local school boards are allowed to seek an annual refund of state and local sales and use taxes. Since SECURE enables several local school boards to join together to increase their buying power, it applied for a sales tax refund on behalf of the school boards. However, the Department of Revenue found that it was not included in the list of entities entitled to a refund because SECURE is not a local board of education and it is not a charitable nonprofit organization.

S.L. 2003-431 allows SECURE—and any other joint agency created by interlocal agreement among local school administrative units to jointly purchase food service–related materials, supplies, and equipment on their behalf—to qualify for an annual refund of state and

41. G.S. 160A-460 includes a local board of education within its definition of *unit of local government.*

local sales and use taxes paid by the agency. The refund request must be made in writing and must include any information and documentation required by the secretary. This section of the act became effective for taxes paid on and after July 1, 2003.

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Wildlife and Boating Regulation

Historically, a great deal of North Carolina's wildlife and boating law has been contained in local acts that apply only to a particular county or other area, rather than in general statewide laws. That pattern continued this year, with the General Assembly enacting about as many local acts as public ones. No significant public bills concerning boating or water safety[1] were introduced during the 2003 session, but S.L. 2003-344 (H 948), dealing with "chronic wasting disease" in the deer population, is of major significance. The local acts for the most part deal with familiar subjects such as hunting from right-of-ways and the creation of no-wake zones.

Public Acts

Chronic Wasting Disease

S.L. 2003-344 attempts to deal with chronic wasting disease (CWD), a problem that could affect the state's deer population. This malady, which is related to mad cow disease, has already infected deer herds in other parts of North America. While there are presently no known cases of CWD in North Carolina, preventive measures were considered necessary. The general assembly enacted new G.S. 113-272.6, which requires the Wildlife Resources Commission to regulate the transportation, importation, and possession of cervids (elk and deer). The commission is required to adopt rules to implement this section, and the rules must include requirements for captivity licenses and permits. These rules will set standards for the care of cervids, including fencing, tagging, and inspection of captive cervid facilities. Any animal (or captivity license or permit) held contrary to the provisions of this section is subject to forfeiture. The State Department of Agriculture and Consumer Services will regulate the production and sale of cervids that are

1. *See* S.L. 2003-332 (S 89), which creates the Lake Lure Marine Commission.

farmed for commercial purposes. S.L. 2003-344 also adds new G.S. 113-294(p) to make possession of black-tailed or mule deer, which may be unsuitable for North Carolina's climate, a Class 1 misdemeanor. New G.S. 113-294(p) was effective October 1, 2003, and the remainder of the act was effective July 27, 2003.

Reptile and Amphibian Protection

Some species are attractive enough to commercial interests that they require protection, even though they do not meet the criteria for protection (endangered or threatened species) listed under G.S. 113-334. Thus S.L. 2003-100 (S 825) provides that "the commercial taking of any turtle or terrapin within any of the species of the Emydidae and Trionychidae families" is prohibited until the Wildlife Commission adopts rules to regulate the taking of terrapins or turtles within these families. A violation of this section is a misdemeanor punishable as provided in G.S. 113-135. These new provisions became effective July 1, 2003.

Controlled Hunting Preserves

G.S. 113-273(g) authorizes privately owned "controlled hunting preserves" where either game birds or foxes may be taken. S.L. 2003-96 (S 245) amends this section to authorize hunting preserves on which "foxes and coyotes may be hunted with dogs only." Operators of hunting preserves may purchase live coyotes from licensed trappers. New G.S. 113-294(o) makes it unlawful to transport live coyotes into North Carolina for any purpose or to breed coyotes in this state. Any person violating this provision is guilty of a Class 1 misdemeanor, and upon conviction the Wildlife Commission must suspend any controlled hunting preserve operator's license issued to that person for a period of two years. S.L. 2003-96 was effective October 1, 2003.

Hunting with Pistols

G.S. 113-291.1 permits the hunting of certain species, including rabbits, squirrels, and opossums, with a .22 caliber pistol "not less than 6 inches in length and loaded with long-rifle ammunition." G.S. 2003-160 (H 1158) amends this provision to authorize a .22 caliber pistol "with a barrel length of not less than five and one-half inches." This act was effective October 1, 2003.

Local Acts

As is the case in just about every session, a significant portion of the wildlife and boating legislation consisted of local acts. The local bills enacted in 2003 are listed below in alphabetical order by county.

Chowan County

S.L. 2003-189 (H 655) makes it unlawful to operate a vessel at greater than a "no-wake speed" on certain described portions of Pembroke Creek located in Chowan County. The county or its designee is authorized to maintain markers designating the no-wake zone in accordance with the Uniform Waterway Marking System. This act is enforceable under G.S. 75A-17 and violation is a Class 3 misdemeanor. The above provisions became effective June 12, 2003, and may be enforced after appropriate markers are placed in the water.

Columbus County

S.L. 2003-21 (H 581) authorizes the use of a hand-operated device that generates an electric current for the taking of catfish. (Under the general law, as contained in G.S. 113-262, the taking of fish with electricity is a Class 2 misdemeanor.) Any person doing "electrofishing" must hold a current and valid special device license as defined in G.S. 113-272.2. This act, which became effective July 1, 2003, applies only to those portions of the Waccamaw River and the Lumber River that are located in Columbus County.

Craven County

S.L. 2003-164 (H 550) makes it unlawful to hunt any wild animal or bird on or from the right-of-way of State Road 1459 (Riverside Road) from Riverside Church north to its intersection with State Road 1460 (St. Johns Road), or on or from the right-of-way of State Road 1460 from its intersection with State Road 1459 west to the Pitt County line. This act is enforceable by law enforcement officers of the Wildlife Commission as well as by sheriffs, deputy sheriffs, and other peace officers with general subject matter jurisdiction. S.L. 2003-164 became effective October 1, 2003.

Currituck County

S.L. 2003-16 (H 646) amends Section 5, Chapter 1436, of the 1957 Session Laws (as amended by Chapter 622 of the 1981 Session Laws) to change the manner of choosing the members of the Currituck Game Commission. Previously, this five-member commission had been selected by the board of county commissioners on the basis of districts. This act provides that, effective June 1, 2003, one member shall be chosen from each of the four townships of the county and one member appointed to serve at large. Present members will complete their terms.

Transylvania County

S.L. 2003-119 (H 13) makes it unlawful to hunt or take any wild animal or wild bird from, on, or across the right-of-way of any public road or other "public vehicular area" in Transylvania County. (This section does not apply to the public vehicular areas located in the Pisgah, Nantahala, or Toxaway game lands outside of designated safety zones.) The act also makes it unlawful to hunt on the land of another without having that person's written permission dated within the last twelve months. A violation of S.L. 2003-119 is a Class 3 misdemeanor and is enforceable by wildlife officers as well as by sheriffs and other police officers with general subject matter jurisdiction. This act became effective October 1, 2003, and applies to offenses committed on or after that date.

Ben F. Loeb Jr.