Table of Contents

Editor's Preface

The 1999 edition of *North Carolina Legislation* is the thirty-sixth periodic summary of legislation published by the Institute of Government. From 1955 through 1973 these summaries were published in a special issue of *Popular Government*. Since 1974 the summary has been published annually as a separate publication.

North Carolina Legislation 1999 is a comprehensive summary of legislation enacted by the North Carolina General Assembly. It is intended to cover all legislation of interest and importance to state and local government officials. The book is organized by subject matter and divided into twenty-seven chapters. In some instances the same legislation is discussed in more than one chapter in order to provide differing emphases or points of view. Each chapter in this book was written by an Institute of Government faculty member with expertise in that particular field. The only exception is Chapter 25, State Taxation. It was written by members of the General Assembly's professional staff.

The final text of all bills discussed in this book may be viewed on the Internet at the General Assembly's Web site: http://www.ncga.state.nc.us. This site also includes a detailed legislative history of all action taken on each bill and, for some bills, a summary of the fiscal impact of the bill.

While comprehensive, this book does not summarize every legislative enactment of the 1999 General Assembly. For example, some important topics that do not have a substantial impact on state or local governments, such as business regulation or insurance, are not discussed at all. Local legislation of importance to a single jurisdiction is often given only brief coverage. Readers who may need information on public bills not covered in this book may wish to consult *Summaries of Substantive Ratified Legislation, 1999 General Assembly*, which contains brief summaries of all public laws enacted during the 1999 session. That compilation is published by the General Assembly's Research Division and is posted on the Internet at http://www.ncga.state.nc.us/html1999/ncinfo/directories/rd/reports/99summaries.html. An on-line list of General Statutes affected by 1999 legislation, prepared by the General Assembly's bill drafting staff, can be viewed at: http://www.ncga.state.nc.us/html1999/billInfo/bill_reports/gsaffect99.html.

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 1999. These publications can be purchased through the Institute's Publications and Marketing Division (phone 919-966-4119, e-mail khunt@iogmail.iog.unc.edu).

Each day that the General Assembly is in session, the Institute's Legislative Reporting Service publishes the *Daily Bulletin*. It includes summaries written by Institute of Government faculty members of every bill and resolution that is introduced in the state House or Senate, summaries of all amendments and committee substitutes adopted by the House or Senate, a daily report of all actions taken on the floor of both chambers relative to legislation, and a calendar of legislative committee meetings and agenda for floor action for the next legislative day. The *Daily Bulletin* is available by paid subscription, with delivery via U.S. mail, telefax, or the World Wide

Web. For information on subscriptions, contact the Institute's Publications and Marketing Division (phone 919-966-4119, e-mail khunt@iogmail.iog.unc.edu).

Throughout this book, references to legislation enacted during the 1999 legislative session are cited by the Session Law number of the act (for example, S.L. 1999-237), followed by a parenthetical reference to the number of the Senate or House bill (for example, H 168) that was enacted. As a general rule, the effective date of new legislation is not noted if it is prior to the production of this book. References to the General Statutes of North Carolina are abbreviated as G.S. (for example, G.S. 160A-385).

David W. Owens

1

The General Assembly

The 1999 session of the North Carolina General Assembly was in many respects an efficient and businesslike session. It was the briefest "long" session since the General Assembly initiated annual sessions in 1973. The 1999 session ran just over one hundred legislative days, some fifteen working days less than the average length of "long" sessions between 1973 and 1999 and 20 percent shorter than the 1997 session. Also, for the first time in two decades, work on the biennial state budget was completed prior to the start of the budget's first fiscal year.

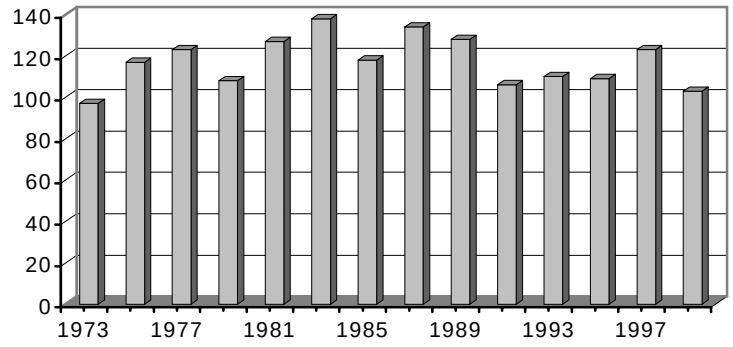
This is not to say that the session was without drama and controversy. A spirited election for the House Speakership on opening day was decided by a one-vote margin. A controversy over financing major capital improvements in The University of North Carolina system dominated the closing days of the session. In between there were debates over issues as diverse as allocation of funds from the tobacco settlement, the timing of repayment of illegally collected taxes, the scope of incentives for economic development, and the equity of the state's ABC permitting system. Still, for the most part the 1999 session was marked by a sense of steady, quiet work rather than heated controversy.

Overview of the 1999 Legislative Session

The North Carolina Constitution (art. II, sec. 11) provides for a biennial session of the General Assembly that convenes in every odd-numbered year. Until 1973, the General Assembly held a single, regular session, convening in each odd-numbered year, meeting several months, and then adjourning *sine die*. Beginning with the 1973–75 biennium, the General Assembly adopted the practice of holding annual sessions. The General Assembly convenes in January of odd-numbered years. In these "long" sessions, which generally run through mid-summer, a biennial budget is adopted and any legislative business may be considered. In even-numbered years, the General Assembly convenes for a "short" session, which generally runs from May through mid-summer. In the short session the General Assembly generally considers adjustments for the second year of the biennial budget, bills that have passed one but not both houses of the legislature, and a limited number of additional noncontroversial matters. Legally the "short" session is a continuation of the "long" session.

The 1999 session of the General Assembly convened on January 27, 1999, and adjourned July 21, 1999 (to reconvene on May 8, 2000). The Senate met for 101 legislative days, the House of Representatives for 103. This made 1999 the briefest "long" session since 1973, the first year the General Assembly went to annual sessions. Since initiating annual sessions, the "long" session has averaged meeting for about 117 legislative days (using the longer session if the two houses met for a differing number of days). Chart 1-1 below illustrates this fact. The length of the session was also in marked contrast to the 1998 session, which was by far the longest "short" session on record, not adjourning until the end of October. In 1999 the General Assembly continued its practice of meeting Monday evenings through Thursday afternoons, with occasional Friday sessions (art. II, sec. 20 of the North Carolina Constitution provides that once in session, either house may adjourn on its own motion for a period not in excess of three days).

Chart 1-1. Length of Session (in Legislative Days)



During the 1999 session, the volume of legislative activity was generally consistent with trends established in past years. The number of bills introduced was somewhat larger than average. 1,175 bills were introduced in the Senate and 1,489 in the House of Representatives. This total of 2,664 introductions was the fourth highest total since 1973. Chart 1-2 illustrates this trend. Included within this total, however, was a substantial number of "blank bills," bills that have no substantive provisions at the time of introduction. Of the bills introduced, 535 (20 percent of the total) were blank bills; of these blank bills, 397 were local bills, 112 public bills, and 26 appropriation bills. Substantive provisions were later added to some of these bills, but the majority remained blank.

While the total number of introductions was higher, the rate at which bills were introduced was slower than in most years in the 1990s. Chart 1-3 illustrates that for the first twenty-five days of the session, the number of bill introductions was below average, but by the seventieth legislative day (after the bill introduction deadlines), the number of introductions was well above average.

Still, as Chart 1-4 illustrates, the number of session laws enacted continued a two-decade declining trend: 471 new session laws were enacted, the lowest total since annual sessions were initiated.

Tables 1-1 and 1-2, reproduced at the end of this chapter, provide more detailed statistical information of the 1999 session.

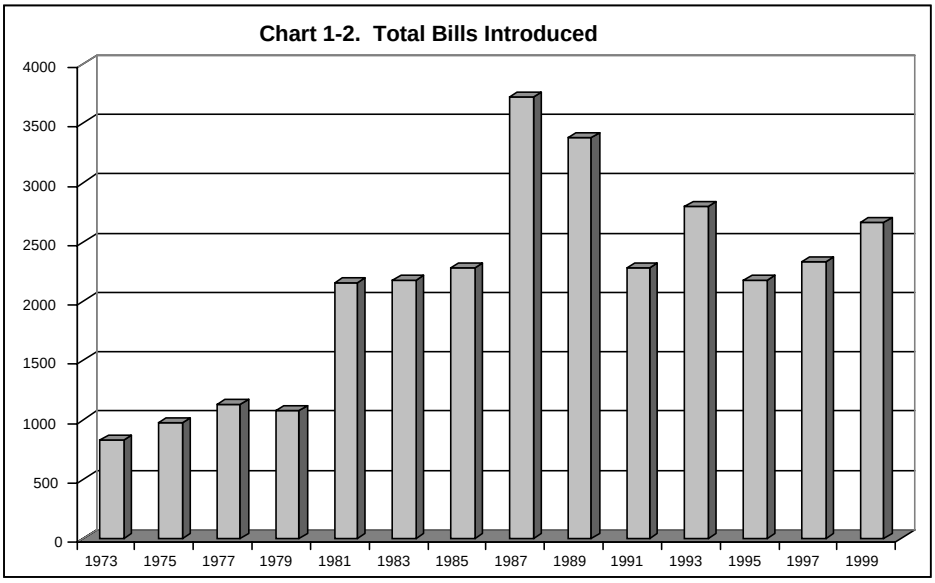


Chart 1-2. Total Bills Introduced
4000
3500
3000
2500
2000
1500
1000
500
0
1973
1975
1977
1979
1981
1983
1985
1987
1989
1991
1993
1995
1997
1999

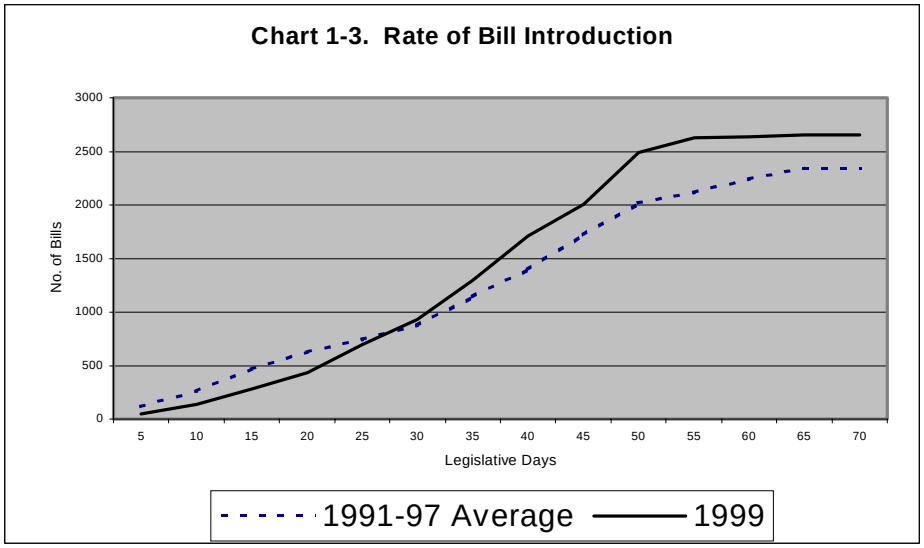


Chart 1-3. Rate of Bill Introduction
No. of Bills
3000
2500
2000
1500
1000
500
0
5
10
15
20
25
30
35
40
45
50
55
60
65
70
Legislative Days
1991-97 Average
1999

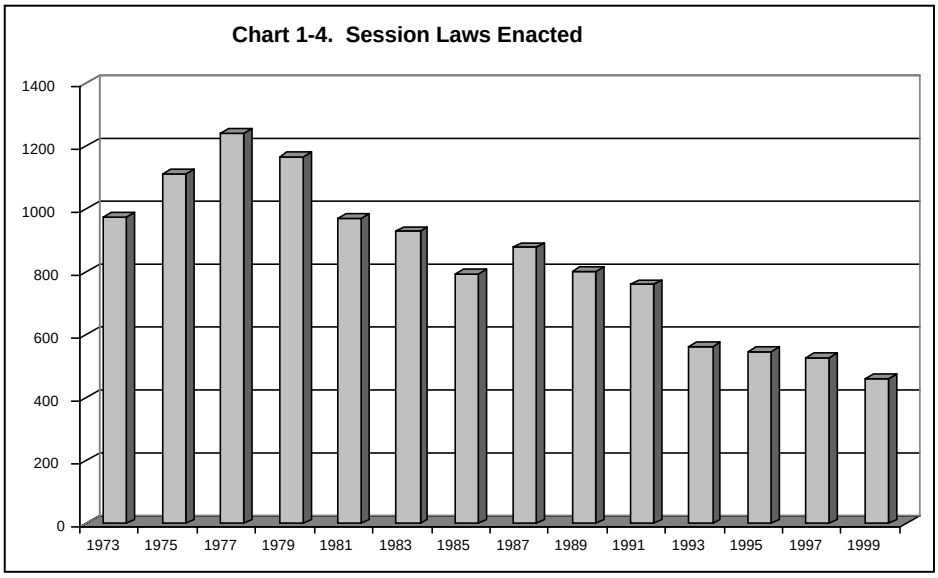


Chart 1-4. Session Laws Enacted
1400
1200
1000
800
600
400
200
0
1973
1975
1977
1979
1981
1983
1985
1987
1989
1991
1993
1995
1997
1999

Major Legislation Enacted in 1999

Among the major pieces of legislation enacted this session are the following, each of which is discussed in some detail in the indicated chapter:

- adoption of the biennial state budget (operating, expansion, and capital) prior to the start of the 1999–2000 state fiscal year (Chapter 2)
- legislation to implement recommendations made by the Governor's Domestic Violence Task Force (Chapter 4)
- creation of the State Judicial Council and new judicial trial court divisions (Chapter 6)
- revisions in campaign finance laws, including a "Stand by Your Ad" requirement and institution of "no-excuse" absentee voting for some elections (Chapter 8)
- continuation of substantial salary increases needed to bring North Carolina teacher salaries up to the national average (Chapter 9)
- increases in the consequences for students engaging in school violence and establishing potential financial liability for parents (Chapter 9)
- creation of institutions and policies regarding distribution of substantial funds expected to be received from tobacco companies that are being paid to settle suits brought by the states (Chapters 2, 10, and 11)
- adoption of new air and water quality protections, including new requirements for auto emissions testing and a continuation of the moratorium on new swine farms (Chapter 10)
- strengthening of the requirements for incorporation of new cities and the requirements for municipalities to become eligible to receive state shared revenues (Chapter 15)
- strengthening of provisions on impaired driving (Chapter 18)
- numerous revisions in statutes regulating adult care facilities (Chapter 21)
- expansion of the Smart Start program of early childhood education to all counties in the state (Chapter 23)
- extension of existing economic development tax credits and creation of new tax incentives for economic development, community development, provision of low-income housing, and historic preservation (Chapter 25).

In several key policy areas the General Assembly did not reach consensus on legislation. The General Assembly did refer a number of these important topics to study commissions, legislative committees, or the Legislative Study Commission for further consideration. In most instances reports from these studies can be made either during the 2000 legislative session or to the 2001 General Assembly. Among these topics (and the chapters where they are discussed in detail) are:

- a special legislative committee to review potential increases in the homestead property tax for low-income elderly and disabled persons (Chapter 21)
- a study commission to examine state and local tax structure (Chapter 16)
- a study commission to examine urban growth management issues (Chapter 14)
- a blue ribbon study commission on financing state transportation needs (Chapter 14)
- a study commission to undertake a comprehensive review of state election laws (Chapter 8).

The Legislative Institution

Party Composition and Demographics

All members of the General Assembly are elected to two-year terms that commence in odd-numbered years. The number of Democrats in the General Assembly substantially increased in 1999, while the demographics remained relatively constant The number of women members increased by two, the number of African-American members decreased by one, and the number of Native American members was unchanged.

In the 1999 session the Senate had thirty-five Democrats and fifteen Republicans. There were seven female and seven African-American members of the Senate. This twenty-seat margin for the Democrats doubled their 1997 majority (which was an increase from a two-seat Democratic margin in 1995).

The House of Representatives had sixty-six Democrats and fifty-four Republicans. There were twenty-four female, sixteen African-American, and one Native American members of the House of Representatives. The Republicans had held a majority of seats in both 1995 (a twelve-seat margin) and 1997 (a two-seat margin), so this shift resulted in a change in legislative leadership.

Legislative Leadership

House of Representatives. The 1999 session of the General Assembly opened with an unexpectedly close race for the position of Speaker of the House of Representatives. After two sessions with a Republican Speaker, the position appeared to be safely in Democratic hands as the Democrats held a twelve-seat margin in the House. Prior to the session, the Democratic caucus had elected Rep. Jim Black of Charlotte, who served as Minority Leader in the 1997 session, as their nominee for Speaker. However, what was expected to be a routine election on opening day turned out to be perhaps the most exciting vote of the entire session. Rep. Harold Brubaker, the Republican Speaker for the 1995 and 1997 sessions, nominated former Speaker Dan Blue for the post. Rep. Blue, a Raleigh Democrat, had served as Speaker in 1991 and 1993 (and was the state's first African-American Speaker). This unlikely coalition, which did not become public until the voting began, very nearly pulled off the surprise of the session as Rep. Blue came within a single vote of being elected. The repercussions of the Democratic defections on this leadership vote continued to be felt during much of the session.

Other officers of the House of Representatives were as follows: Rep. Joe Hackney served as Speaker Pro Tempore. Denise Weeks was the Principal Clerk and Robert Samuels the Sergeant-at-Arms. Other House leaders included Rep. Phillip Baddour as Majority Leader, Reps. Beverly Earle and Andy Dedmon as Majority Whips, Rep. Leo Daughtry as Minority Leader, Rep. Julia Howard as Minority Whip, and Rep. Carolyn Russell as Minority Joint Caucus Leader. Rep. Daughtry relinquished his post as Minority Leader late in the session to focus on a bid for the Republican gubernatorial nomination; he was replaced in that position by Rep. Richard Morgan. The chairs of the Appropriations Committee were Reps. Ruth Easterling, Thomas Hardaway, and David Redwine. Rep. William Culpepper chaired the Rules Committee. Reps. Baddour, Cunningham, Dedmon, Earle, and Hackney were ex officio members of all committees.

Senate. In the Senate, Sen. Marc Basnight was elected to his fourth term as President Pro Tempore of the Senate. Sen. Frank Balance was elected Deputy President Pro Tempore. Janet Pruitt was Principal Clerk, LeRoy Clark Reading Clerk, and Cecil Goins Sergeant-at-Arms. Sen. Roy Cooper served a second term as Majority Leader, and Sen. Luther Jordan was the Majority Whip. The Republicans had new leadership in this session. Sen. Patrick Ballentine was the Minority Leader and Sen. James Forrester the Minority Whip. The Base Appropriations Committee chairs were Sens. Fountain Odum, Beverly Purdue, and Aaron Plyler. Sen. Tony Rand continued to serve as chair of the Rules Committee.

Legislative Salaries and Benefits

Legislative Retirement. Section 28.22(b) of the 1999 Appropriations Act, S.L. 1999-237 (H 168), increased the state's employer contribution to the Legislative Retirement System from 21.70 percent to 22.70 percent.

Staff Salaries. Effective July 1, 1999, S.L. 1999-237 (H 168) increased the salaries of various legislative staff members. Section 28.7 increased the salaries of the principal clerks of the Senate and House of Representatives from $81,696 to $84,147; Section 28.8 increased the salary of the sergeant-at-arms and the reading clerks in each house from $266 per week to $274 per week. Section 28.9 raised other legislative staff annual salaries by 3 percent.

Legislative Procedure

Senate Rules. The Senate rules of procedure, set by S 1, were similar to the 1997 Senate rules. New provisions included the following: The rules prohibited operation of wireless telephones on the Senate floor or galleries while the Senate is in session and required that a motion by a Senator to change his or her vote must be made on the same legislative day that the vote is taken.

The Senate established the following standing committees: Agriculture, Environment, & Natural Resources; Appropriations & Base Budget; Appropriations on Department of Transportation; Appropriations on Education & Higher Education; Appropriations on General Government; Appropriations on Human Resources; Appropriations on Justice & Public Safety; Appropriations on Natural & Economic Resources; Children & Human Resources; Commerce; Education & Higher Education; Finance; Health Care; Information Technology; Insurance; Judiciary I; Judiciary II; State & Local Gov't; Pensions & Retirement & Aging; Rules & Operations of the Senate; Transportation; Ways & Means. The Senate also established the select committee on Tobacco Settlement Issues. Under the rules, neither select nor standing committees could hold closed meetings.

The Senate's bill filing deadlines were as follows: March 31, 1999, for local bills and April 14, 1999, for public bills and resolutions (other than memorial and adjournment resolutions). April 29, 1999, was set as the "cross over" deadline for consideration of House bills (other than bills required to be referred to the Senate Appropriations or Finance committees) during the 1999 or 2000 sessions. The 1999 rules deleted provisions allowing a member to file bills in draft form that were not prepared by the Legislative Services Office and added a provision that the Rules Committee must approve the form of bills established by the Legislative Services Office.

Other miscellaneous rule changes included the following: adding the chair of the Rules Committee to those who may make a motion to move a bill to another committee; prohibiting the subject of a defeated amendment from being included in another bill; clarifying that the Deputy President Pro Tempore can sign bills when presiding; and deleting the requirement that the chair of the committee that a bill went through must be on a conference committee on that bill.

House Rules. The rules of procedure for the House of Representatives were initially adopted as temporary rules by H 1 and then as permanent rules by H 51. The rules were similar to the 1997 House rules.

The most significant rule changes involved those regarding scheduling bills for action and moving bills between committees. Rule 36(a) required that the chair of the Rules Committee place a bill on the calendar no later than four legislative days after the date of the committee report on the bill, unless the bill is re-referred by the Speaker to another committee. The rules deleted a provision allowing a discharge petition to force a vote on removing a bill from committee but retained a provision allowing a motion to remove a bill from committee after proper notice is given. The rules allowed the Speaker to move a bill from one committee to another after it has been in the committee for ten legislative days (provided three days notice is given to the committee chair). The rules provided that the Rules Committee chair cannot place a favorably reported bill on the calendar if, before the bill is placed on the calendar, the Speaker refers the bill to another committee. Finally, the rules deleted Rule 39.2(b), which allowed the Speaker to re-refer a bill to another committee if a committee has failed to report the bill after ten legislative days of referral.

The House rules established forty-one standing committees and ten standing subcommittees. The 1999 committee structure is similar to that of the 1997 session, except as follows. New committees included: Aging (was a Human Resources subcommittee); Alcoholic Beverage Control; Children, Youth, & Families (was a Human Resources subcommittee); Cultural Resources; Economic Growth & Community Development; Financial Institutions (was a Commerce Subcommittee); Health (was an Insurance subcommittee); Highway Safety; Judiciary III; Judiciary IV; Law Enforcement; Marine Fisheries; Mental Health; Military, Veterans & Indian Affairs (was a State Gov't subcommittee); Occupational Safety & Health; Public Health; Public

Utilities (was a Commerce subcommittee); Small Business; State Parks & Properties (was a State Gov't subcommittee); State Personnel (was Public Employees); Travel & Tourism (was a Commerce subcommittee); UNC Board of Governors Nominating; Wildlife Resources. The rules deleted the Finance, Local, Regional, & State Revenues Subcommittee. In further changes regarding committees, the rules allowed two majority whips to serve on all committees, allowed the Speaker (when he or she appoints standing committee chairs) to designate one additional person who can serve on all committees, and provided that no more than four of the five additional committee members designated under Rule 26 may vote at any one committee meeting based on their status as additional members.

The House established the following deadlines for filing bills. Local bills: March 31, 1999. Public agency and study commission bills: March 3, 1999. Appropriations bills: April 28, 1999. Public finance bills: May 12, 1999. Other public bills: April 14, 1999. April 29, 1999, was established as the "cross over" deadline for consideration of Senate bills (other than bills required to be referred to the House Appropriations or Finance committees) during the 1999 or 2000 sessions. The 1999 rules deleted a provision limiting to ten the number of public bills that may be introduced by a member. The rules provided that there can be no more than four principal sponsors for a bill.

Other miscellaneous rule changes included deleting provisions regarding the consent calendar. The 1999 rules also allowed the Speaker Pro Tempore, as well as the Rules chair, the majority leader, and other designated members, to move the previous question.

2000 Session

The General Assembly will reconvene at noon on Monday, May 8, 2000. Only the following matters may be considered during that session:

- bills directly affecting the budget for fiscal year 2000–2001, provided the bill is introduced by May 25, 2000;
- bills introduced in 1999 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 such are introduced by May 17, 2000;
- non-controversial local bills, provided such are introduced by May 24, 2000;
- 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 such are introduced by May 24, 2000; and,
- resolutions regarding state government reorganization, memorial resolutions, adjournment resolutions, resolutions disapproving administrative rules, and resolutions regarding constitutional amendments.

Blank bills may not be introduced in the House of Representatives during the 2000 session.

In addition to the regular "short" session, Governor Hunt has indicated that a special legislative session may be called to address the impacts of Hurricane Floyd.

Constitutional Amendment Proposals

The 1999 session considered fifteen proposed amendments to the Constitution of North Carolina, covering a range of subjects from state legislative organization to paternity determinations. Four bills were passed by their house of origin. One of those four was defeated in the second house, and the other three remain in committee in the second house. Eleven bills remain in committee in their house of origin.

Under the adjournment resolutions of recent odd-year regular sessions, constitutional amendment bills not passed by either house by the time of adjournment died. The adjournment resolution (Res. 22) this year, however, simply provided that "[c]onstitutional amendments" (not otherwise defined) are eligible for consideration in the 2000 regular session. Apparently, then, all constitutional amendment bills not disposed of by rejection on the floor of either house remain eligible for further consideration and action in 2000.

Greatest attention was paid to S 12, calling for the appointment by the Governor of all supreme court justices and court of appeals judges, subject to nonpartisan voter confirmation at the next general election held more than eighteen months after the appointment and further subject to voter confirmation at eight-year intervals thereafter. Passed by the Senate, S 12 failed on its second reading in the House of Representatives.

A second courts bill, H 96, would authorize the General Assembly to prescribe that superior court judges be elected by the voters of their judicial divisions (now they are elected by the voters of each judicial district).

The General Assembly itself is the focus of four amendment proposals.

S 9, passed by the Senate and now in the House Rules Committee, would limit the length of legislative sessions. It is one more attempt to curb the tendency to stretch legislative sessions in both years to inconvenient lengths. Odd-year regular sessions would be limited to 135 calendar days or 145 days if extended by joint resolution. Even-year regular sessions would be limited to 60 calendar days or 70 if extended by joint resolution. Extra sessions called by the Governor are excluded from these calculations.

A second bill on the same subject, S 63, posing somewhat longer permissible session lengths, remains in the Senate Judiciary I Committee.

H 98, extending the terms of House and Senate members from the present two years to four years, remains in the House Rules Committee.

H 1180, another manifestation of the idea that the voters should be barred from re-electing their legislators without limit, would cap legislative service after 2001 at four consecutive terms in the Senate and four consecutive terms in the House. The bill remains in the House Elections Law Committee. Fifty of the 120 House members serving in 1999 have already completed four or more House terms.

S 409 calls for an amendment creating an Independent Redistricting Commission of nine members. Three members would be selected by the Governor, two members by the Chief Justice, two by the President Pro Tempore of the Senate, and two by the Speaker of the House of Representatives. The Commission would be charged with the duty of redistricting and reapportioning the Senate and House of Representatives and redrawing the congressional districts every decade. The General Assembly would lose all authority on those matters.

Two bills, H 1161 and S 79, propose amendments to require that candidates for governor and lieutenant governor run jointly (as do candidates for president and vice president) so that a single vote would be cast for the voter's preferred team.

When the constitution was earlier amended to recognize the right of eighteen-year-old citizens to vote, it retained twenty-one as the minimum age for holding popularly elected public office. H 930 would lower the elective office-holding age to eighteen, except where the constitution specifically requires an older age—for example, a person must be thirty to be governor, twenty-five to be a state senator. Passed by the House, it awaits action in the Senate in 2000.

Following the lead of California and a few other states, H 1467 would require voter approval of every "law levying a tax upon the people of the State," unless an emergency not exceeding four years in duration is declared by the Governor.

The homestead exemption was an active topic of legislative concern because of the negative impact of rising property values on the tax bills of low-income homeowners, especially elderly homeowners. H 130 would authorize the General Assembly to empower each county to increase the homestead exemption and to define the qualifying homeowner's income in that county. S 286, pending in the House Rules Committee after passage in the Senate, is identical to H 130.

S 342 would eliminate the constitutional right of jury trial "in civil cases in which paternity is contested." The apparent impetus for this proposal is a requirement of the 1996 federal welfare reform law tied to federal welfare and child support funding for the states.

Finally, H 1396 would make the remarkably far-reaching declaration that "[h]ealth care is an essential safeguard of human life and dignity, and there is an obligation for the State to ensure that every resident is able to realize this fundamental right." The General Assembly would be required to provide for a universal health insurance plan by May 31, 2004.

Statistics for 1999 Session

Table 1-1. Length of Legislative Sessions

	1999	1997	1995	1993	1991
Date convened	Jan. 27	Jan. 29	Jan. 25	Jan. 27	Jan. 30
Date adjourned	July 21	Aug. 28	July 29	July 24	July 16
Senate legislative days	101	123	109	109	99
House legislative days	103	123	108	110	106

	1989	1987	1985	1983	1981
Date convened	Jan. 11	Feb. 9	Feb.5	Jan. 12	Jan. 14
Date adjourned	Aug. 12	Aug. 14	July 18	July 22	July 10
Senate legislative days	128	125	118	137	126
House legislative days	128	134	118	138	127

	1979	1977	1975	1973	*Mean 1973–99*
Date convened	Jan. 10	Jan.12	Jan. 15	Jan. 10	—
Date adjourned	June 8	July 1	June 26	May 24	—
Senate legislative days	108	123	117	97	*115.7*
House legislative days	108	123	117	97	*117.1*

Table 1-2. Statistical Analysis of Legislative Sessions

	1999	1997	1995	1993	1991
Senate bills introduced	1,175	1,089	1,103	1,299	966
House bills introduced	1,489	1,245	1,070	1,499	1,314
Total bills introduced	2,664	2,334	2,173	2,798	2,280
Session Laws enacted	462	528	546	563	761
Vetoes	0	0	—	—	—
Joint resolutions ratified	22	33	15	31	30
Simple resolutions adopted	24	11	7	7	7
Total measures passed	508	572	568	601	798
% measures passed	19.0%	24.5%	26.1%	21.5%	35.0%

	1989	1987	1985	1983	1981
Senate bills introduced	1,337	1,557	854	701	772
House bills introduced	2,038	2,166	1424	1,476	1,384
Total bills introduced	3,375	3,723	2,278	2,177	2,156
Session Laws enacted	802	879	793	929	970
Vetoes	—	—	—	—	—
Joint resolutions ratified	34	37	34	55	66
Simple resolutions adopted	24	9	12	8	12
Total measures passed	860	925	839	992	1,048
% measures passed	25.5%	24.8%	36.8%	45.5%	48.6%

	1979	1977	1975	1973	*Mean 1973–99*
Senate bills introduced	945	917	952	955	
House bills introduced	1,535	1,534	1,284	1,362	
Total bills introduced	2,480	2,451	2,236	2,317	*2,532*
Session Laws enacted	1,077	1,131	975	826	*803*
Vetoes	—	—	—	—	*0*
Joint resolutions ratified	84	99	121	117	*56*
Simple resolutions adopted	6	11	15	31	*13*
Total measures passed	1,167	1,241	1,111	974	*872*
% measures passed	45.2%	50.6%	49.7%	46.8%	*35.7%*

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2

The State Budget

This chapter summarizes in broad terms the fiscal provisions of the 1999–2001 state budget and legislation affecting the budget process. More detailed information regarding budgetary actions affecting specific state departments and programs is included in following chapters.

The Budget Process

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

The state budget process begins with the formulation of budget recommendations by the Governor, who by virtue of the state constitution is director of the budget. At the beginning of the first regular session of the General Assembly in each odd-numbered year, the Governor presents comprehensive budget recommendations for each of the two fiscal years of the biennium. The Governor's recommendations include estimates of the amount of revenues available for expenditure, estimates of the amount of appropriations needed to continue existing programs at their current level, and recommended appropriations for expansion of programs and for capital improvements. Governor James B. Hunt, Jr., submitted his recommended budget to the General Assembly in February 1999. A copy of the Governor's budget recommendations for 1999–2001 is available through the Internet at http://www.osbm.state.nc.us/osbm/bgt9901.html.

In recent years, while the House and Senate Appropriations Subcommittees initially met jointly to review the Governor's proposals, each house developed its own version of the state budget. The budget has tended to be split into several bills, with, for example, one bill continuing existing programs, a second dealing with expansion of programs, and a third focusing on capital improvements. After each house has adopted its version of the budget, a conference committee must resolve the different program priorities and policy considerations. The conference committee report incorporating the budget agreement must then be adopted by both chambers and submitted to the Governor for approval. Given the differing priorities of the House and Senate, this can be a lengthy process. When the leadership of the two chambers are not members of the same political party, the varying budget priorities can be especially hard to resolve, thus adding even more time

to the process. In 1998, for example, the widely divergent approaches of the two chambers resulted in a budget process that stretched over five months, running until late October.

The 1999 session marked a substantial departure from these recent trends. With the leadership of both chambers in the hands of a single political party, the opportunity existed for a more expeditious agreement on the state budget (though in the past this possibility has often been thwarted by the different approaches taken by the two chambers on other than partisan bases). Still, Speaker Black early in the session announced the goal of completing work on the state budget in June. Senate President Pro Tempore Basnight pledged cooperation in attempting to meet that goal. Considerable skepticism greeted this announcement, in large part based on recent experience. In the period between 1981 and 1997, the General Assembly usually completed its work on the biennial budget in late July to mid-August (the completion dates being Aug. 28 in 1997, July 28 in 1995, July 24 in 1993, July 13 in 1991, Aug. 10 in 1989, Aug. 14 in 1987, July 18 in 1985, July 22 in 1983, and July 8 in 1981). Not since 1979 had all of the budget bills been adopted prior to the start of the fiscal year. However, both chambers adopted the conference report for the entire 1999–2001 state budget on June 30, 1999.

Several adjustments in the budget process facilitated this accomplishment. First, rather than developing substantially differing budgets and then meeting to negotiate the differences, the House and Senate worked to develop consensus on major budget issues during the budget development process. The House and Senate Appropriations Subcommittees met jointly throughout the spring, splitting only when the final budget bills of the respective chambers were to be approved. Second, many of the Joint Appropriations Subcommittees met twice a day for much of the session. Third, although hundreds of individual appropriation bills were introduced, the entire state budget was consolidated into a single consensus bill (H 168). Fourth, also avoided in 1999 was the practice of including as "special provisions" within the budget bill substantive provisions that are unrelated to the budget. In fact, after a question was raised about welfare reform provisions that were included in the budget bill reported to the House Appropriations Committee, those provisions were removed from the budget bill and subsequently considered as a separate bill.

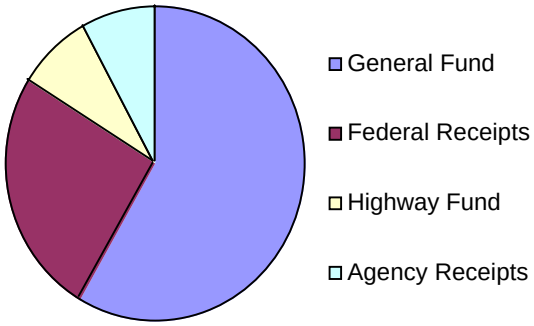
By tradition the House and Senate alternate the responsibility for initially passing a bill making appropriations. In 1999 the House of Representatives took the lead in adopting the budget. The House Appropriations Committee reported its omnibus appropriations bill, H 168, on June 1. The bill was considered and adopted on the House floor on June 2. Forty-one amendments were considered, and seventeen were adopted. The Senate Appropriations Committee reported its substitute for the House budget on June 16. This Senate budget reflected the consensus developed in the joint committee work and was substantially similar to the bill reported by the House Appropriations Committee. On June 17 this bill was considered and adopted on the Senate floor, where ten amendments were offered and six adopted.

Conferees were appointed by the House on June 17 and by the Senate on June 21. The conference report was submitted on June 29 and was adopted by both chambers on June 30. The conference report resolved two of the more controversial points of disagreement—proposals to increase the homestead property tax exemption for elderly homeowners and to allow The University of North Carolina to increase tuition—by sending them to study committees. The conferees also rejected the House proposals adopted as floor amendments to shift $3 million in funding from small school systems to low-wealth school systems and to shift $1.5 million from research universities' overhead receipts to the equipment and furnishing of a biotechnology research facility at North Carolina Central University. All capital improvement projects proposed by each chamber were included in the final bill. The bill (S.L. 1999-237) was signed into law by Governor Hunt on July 1.

The 1999–2001 Budget

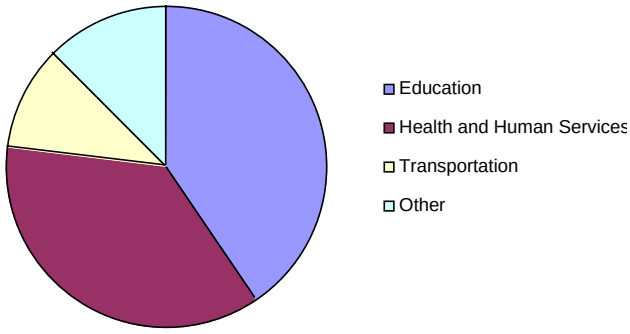
The state budget is supported by four major sources of funding: (1) the General Fund, (2) the Highway Fund and Highway Trust Fund, (3) federal funds (including matching funds, categorical grants, and block grants), and, (4) other receipts (such as tuition payments to state universities). Appropriations from the General Fund and nontax revenues support nearly 60 percent of the total state budget, federal funds pay for just over 25 percent, and the remaining 15 percent of the total state budget is supported by highway funds and agency receipts. These figures are illustrated in Chart 2-1.

Chart 2-1. Source of Funds



The total state budget for 1999–2000, considering all of these funding sources, is approximately $23.4 billion. Spending for education (public schools, community colleges, and universities) accounts for about 40 percent of the total state budget (approximately $9.5 billion in 1999–2000). Health and human resources programs account for about 35 percent (some $8.5 billion), and transportation programs account for about 10 percent ($2.5 billion). This allocation of funding by general purpose is illustrated in Chart 2-2.

Chart 2-2. Allocation of Funds



The General Fund

The General Fund consists of state tax revenues (other than the motor fuels tax), nontax revenues (such as court fees and investment income from state funds), transfers from the Highway Trust Fund, and the unreserved General Fund balance from the prior fiscal year. Appropriations from the General Fund support virtually all state government programs and services other than highway construction and maintenance.

Revenue Availability. The General Assembly was presented with good financial news as the 1999–2001 budget preparations began. A strong state economy produced almost $334 million in

tax revenues for 1998–99 above projections for that fiscal year. When combined with an additional $106 million in unexpended appropriations from that year, the state was able to begin the 1999–2000 fiscal year with a substantial surplus. Table 2-1 summarizes the funds available.

However, several factors reduced the apparent flexibility that this presented to the General Assembly. First, because of prior legislative commitments, a portion of the fund balance had to be directed to designated programs. Accordingly, $150 million was transferred to the Reserve for Repair and Renovations, $30 million to the Clean Water Management Trust Fund. The General Assembly opted not to make additional transfers to the state Savings Reserve Account (or Rainy Day Fund) established under G.S. 143-15.3. Second, the state had to make its second major refund payment to federal, state, and local government retirees for illegally taxed retirement benefits (an obligation flowing from the *Bailey*/*Emory*/*Patton* litigation discussed below). The state's 1999 obligation was $399 million. These commitments, combined with tax reductions in previous years, left the General Assembly with fewer spending options in 1999–2001 than otherwise would have been the case.

Table 2-1. 1999–2001 General Fund Budget Availability

	1999–2000 ($ Millions)	**2000–2001 ($ Millions)**
Unappropriated Balance	0.2	
Revenue Collections in 1998–99 in Excess of Authorized Estimates	333.9	
Unexpended Appropriations during 1998–99	106.3	
Transfer to Savings Reserve	0	
Transfer to Reserve for Repair and Renovations	(150.0)	
Transfer to Clean Water Management Trust Fund	(30.0)	
Ending Fund Balance	260.4	
Beginning Unrestricted Fund Balance	260.4	0
Revenues Based on Existing Tax Structure	12,368.4	13,105
Revenues-Gains on Asset Sale (RJR)	69.0	—
Nontax Revenues	523.8	550.5
Disproportionate Share Receipts	105.0	105.0
Transfer from Highway Trust Fund	170.0	170.0
Highway Fund Transfer	13.6	13.8
Transfer from Disproportionate Share Receipts Reserve	20.0	0.0
Transfer from Flexible Benefit Reserve	1.3	0.0
Total Availability	13,531.5	13,944.3

Appropriations from the General Fund. The 1999–2000 budget appropriates $13.055 billion from the General Fund for current operations.

Included in this amount are the following appropriations above $500 million:

- $5.26 billion for the Department of Public Education
- $1.64 billion for the University System
- $0.58 billion for the Community College System
- $2.78 billion for the Department of Health and Human Services
- $0.89 billion for the Department of Correction.

The 1999–2000 budget includes $397.6 million for compensation increases for state employees. As of July 1, 1998, the state budget supported 254,837 state employees (including 134,098 employees in the public school system, 31,432 in the University System, 11,007 in the Community College System, and 78,300 in state departments). For most state employees the compensation increase took the form of a 3 percent raise (2 percent for career growth and 1 percent for cost of living) and a one-time $125 bonus. Salaries for public school teachers were increased by 7.5 percent.

The General Fund appropriations also include $77 million in capital improvements. These capital projects are summarized in Table 2-2.

Table 2-2. 1999–2000 Capital Improvements—General Fund

Department of Administration	
Indian Cultural Center Land Acquisition Reserve	$250,000
Department of Agriculture and Consumer Services	
State Fairgrounds Multipurpose Building	9,500,000
Eastern Agricultural Center	1,000,000
Western NC Farmers Market	250,000
Southeastern Farmers Market and Agricultural Center	500,000
Vernon James Research and Extension Center	827,168
Department of Community Colleges	
Grants for Repairs and Renovations	14,500,000
Department of Cultural Resources	
Museum of Art Expansion and Renovation	1,000,000
Department of Environment and Natural Resources	
Water Resources Development Projects	9,245,000
Museum of Natural Sciences—Upfit and Exhibits	4,000,000
Reserve for Forestry Headquarters	2,000,000
Museum of Forestry—Capital Projects	250,000
Department of Health and Human Services	
Whitaker School—Construction	5,400,000
Eastern Vocational Rehab Facility Repairs and Renovations	2,000,000
Office of Juvenile Justice	
Stonewall Jackson School—Demolition and Removal of Old Homes	337,000
State Ports	
Continued Development of Facilities	6,000,000
University of North Carolina	
Focused Enrollment Growth Supplemental Repairs and Renovations Funding	20,000,000
Total Capital Improvements—General Fund	$77,059,168

The Highway Fund and Highway Trust Fund

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

The 1999 Appropriations Act allocates $1.15 billion from the Highway Fund for current operations and expenses. This includes about $120 million in highway construction and $463 million in state road maintenance. Just over $100 million is devoted to NCDOT administration and operations, some $84.8 million is provided as state aid to cities, and just over $57 million is for state aid for public transportation and railroads.

The 1999 Appropriations Act also allocates $880 million from the Highway Trust Fund. Of this, just over $401 million is devoted to the Interstate System, $162.2 million to urban loops, $75.9 million to secondary roads, and $42 million to state aid to cities.

Federal Block Grants

The 1999 Appropriations Act allocates more than $804 million in federal block grants to a number of state programs, primarily in the area of human services. Table 2-3 summarizes the amounts of the various block grants available to the state.

Table 2-3. 1999–2000 Block Grant Allocations

DHHS Block Grant Provisions	
Community Services Block Grant	$13,030,672
Social Services Block Grant	$74,911,329
Low-Income Energy Block Grant	$19,920,759
Mental Health Services Block Grant	$6,498,831
Substance Abuse Prevention and Treatment Block Grant	$38,579,723
Child Care and Development Fund Block Grant	$194,680,226
Temporary Assistance to Needy Families (TANF) Block Grant	$364,119,968
Maternal and Child Health Block Grant	$16,784,030
Preventive Health Services Block Grant	$5,599,783
NER Block Grants	
Welfare to Work Block Grant	$23,663,882
Community Development Block Grant	$45,000,000

Tax Refunds

Judicially mandated refunds of previously collected taxes continued to have a significant impact on state budget making in 1999.

Government Employee Retirement Benefits. In 1998 the state supreme court held that the state had improperly taxed the retirement benefits of federal, state, and local government retirees. Bailey v. State of North Carolina, 348 N.C. 130, 500 S.E.2d 54 (1998). This settlement and those of two related cases, referred to collectively as the *Bailey*/*Emory*/*Patton* settlement, produced a state liability of approximately $799 million in tax refunds or credits. $400 million of this was

provided for in the 1998 budget (S.L. 1998-164). Section 6(c) of S.L. 1999-237 funded the remaining $399 million of this obligation.

Intangibles Tax. A second tax refund liability arose in 1999. G.S. 105-203 (now repealed) imposed an intangibles tax on shares of stock and provided a taxable percentage deduction reducing a taxpayer's liability for this tax in proportion to the issuing company's income taxed in North Carolina. In 1997 the North Carolina Supreme Court held the statute unconstitutional because it violated the Commerce Clause by discriminating against out-of-state companies. Taxpayers then sued for refunds on behalf of taxpayers who had paid intangibles tax on stocks for the 1990 to 1994 tax years without protest or timely requests for refunds. In December 1998, the North Carolina Supreme Court held, in *Smith v. State of North Carolina*, 349 N.C. 332, 507 S.E.2d 28 (1998), that these refund claims should not have been dismissed. As a result, on May 25, 1999, the Superior Court of Wake County held the state liable for $360 million in refunds and interest for the 1991 to 1994 tax years. The court later held that the state was liable for an additional $110 million in refunds and interest for the 1990 tax year.

S.L. 1999-327 (S 1043) approves a settlement agreement executed by the Speaker of the House of Representatives and the President Pro Tempore of the Senate on July 8, 1999. It appropriates $200 million from the Savings Reserve Account for fiscal year 1999–2000 to a settlement fund to pay tax refunds. It further directs the General Assembly to allocate the remaining $240 million to the settlement fund by July 10, 2000.

Within the settlement fund, 85 percent of the funds will be allocated to the "Smith/Shaver Claims Fund Account," and 15 percent will be allocated to the "Smith/Shaver Administration Account." Interest and earnings on all proceeds will be added as principal to the taxpayers' Claims Fund Account. The state is immune from any further liability for claims brought by taxpayers regarding the payment of intangibles tax.

Tobacco Settlement

Phase I Settlement

In late 1998, forty-six states, including North Carolina, and four tobacco manufacturers (Phillip Morris, Inc., R. J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation, and Lorillard Tobacco Company) signed the Master Settlement Agreement to settle existing and potential claims of the states against the manufacturers for damages arising from the tobacco products of the manufacturers. The manufacturers agreed to make payments to the states totaling $206 billion through the year 2025. The amount that North Carolina will actually receive remains uncertain, but projections are that the state will receive some $4.6 billion over the next twenty-five years from this settlement.

Pursuant to the terms of the Master Settlement Agreement, North Carolina and the four tobacco manufacturers entered into a consent decree, filed in Wake County Superior Court on December 21, 1998. This consent decree directed the Attorney General to create a nonprofit corporation for purposes of receipt and distribution of 50 percent of the funds allocated to North Carolina under the Master Settlement Agreement. The consent decree also required that the creation of the corporation had to be approved by the General Assembly by March 15, 1999.

One of the first acts of the 1999 General Assembly was approval of legislation to implement this agreement, generally referred to as Phase I of the settlement. S.L. 1999-2 (S 6) approves the creation of a nonprofit corporation to receive and distribute 50 percent of funds allocated to North Carolina. S.L. 1999-2 directs that these funds be used for the public charitable purposes of providing economic-impact assistance to economically affected or tobacco-dependent regions of the state.

Board of Directors. The act approves the governance of the nonprofit corporation by a fifteen-member board of directors who will hold four-year staggered terms. Five members will be appointed by the Governor, five by the President Pro Tempore of the Senate, and five by the

Speaker of the House. The Governor is to appoint the initial chair, with subsequent chairs to be elected by the directors. Members of the General Assembly are not eligible for service on the board during their legislative term of office.

Reports and Operations. The nonprofit corporation must consult with the Joint Legislative Commission on Government Operations prior to the adoption of the corporation's bylaws and its annual operating budget. The corporation is also required to make an annual report on its activities and expenditures to the commission. The nonprofit corporation is subject to North Carolina's open meetings law. It may not dispose of its assets without approval of the General Assembly. The charter of the nonprofit corporation may be repealed and the corporation dissolved by the General Assembly at any time.

Future Funds. S.L. 1999-2 further states the intent of the General Assembly to allocate the remaining 50 percent of the Phase I settlement funds as follows: 25 percent is to go to a trust fund to be established by the General Assembly for the benefit of tobacco producers, tobacco allotment holders, and persons engaged in tobacco-related businesses, and 25 percent is to go to a trust fund to be established by the General Assembly for the benefit of health. The General Assembly did not establish these additional trust funds for the remaining 50 percent of the Phase I settlement funds prior to adjournment in 1999.

Phase II Settlement

The Master Settlement Agreement contains provisions that are expected to result in a decline in demand for tobacco products. The four tobacco manufacturers acknowledged the adverse effect that the terms of the agreement would have on tobacco growers and agreed to address the economic concerns of tobacco growers and tobacco quota holders. The manufacturers agreed to establish a trust called the National Tobacco Grower Settlement Trust. They agreed to pay up to $5.15 billion over the next twelve years into the Trust, referred to as Phase II settlement funds. Proceeds of the Trust would be allocated directly to tobacco growers and tobacco allotment holders in fourteen grower states, including North Carolina, based on a plan developed by a nonprofit corporation in each state composed of government leaders and public members.

S.L. 1999-333 (H 74) provides for the management and distribution of the Phase II funds.

Board of Directors. The act provides for the appointment of a board of directors of the nonprofit corporation that is to distribute money to tobacco growers and allotment holders in North Carolina. It authorizes the Speaker of the House of Representatives to appoint one State Representative and the Senate Pro Tempore to appoint one State Senator to the certification board. The other members of the board are the Governor, the Commissioner of Agriculture, the Attorney General, two members of the North Carolina congressional delegation selected by the delegation, and four to seven citizens appointed by the Governor.

Immunity for Board. The act provides for limited immunity from liability for the members of the board while performing their duties on behalf of the board. Immunity is not provided for intentional wrongdoing, willful or wanton misconduct, or motor vehicle accidents. Since the board will be a private board, not a state agency, its members will not be covered by the liability insurance coverage that the state obtains for its officers and employees.

Tax Exemption and Credits. The act provides an income tax exemption for the interest, investment earnings, and gains of the trust established to compensate those who suffer economic loss as a result of the settlement agreement. A comparable corporate and trust income tax deduction is provided in the event that the trust does not qualify for the exemption.

The act also creates a corporate income tax credit for manufacturers who produce cigarettes for export to a foreign country. The amount of the credit varies depending upon the amount of cigarettes exported in the tax year compared to the amount exported in 1998. This credit is effective for taxable years beginning on or after January 1, 1999. It will not apply to cigarettes exported on or after January 1, 2005.

The tobacco export credit and tax exemption for the earnings of the settlement trust fund are expected to reduce General Fund revenues by $8.7 million in fiscal year 1999–2000, $9 million in

fiscal year 2000–2001, $9.3 million in fiscal year 2001–2002, $9.6 million in fiscal year 2002–2003, and $9.9 million in fiscal year 2003–2004.

Export Sales. S.L. 1999-333 also makes it unlawful to sell cigarettes in North Carolina if the cigarettes were originally manufactured for export to a foreign country. The Secretary of Revenue is authorized to cancel the license or certificate of registration of a person who violates this law. A violation of this law is a Class A1 misdemeanor and an unfair trade practice. A package of cigarettes that violates this law is considered contraband and may be seized by a law enforcement officer. The Secretary of Revenue is authorized to cancel the license or the certificate of registration, whichever is applicable, of a person who violates this law.

Judicial Approval. The Superior Court of Wake County must approve the Trust and the payments made under it. A court settlement was signed in Wake County Superior Court on August 20, 1999, approving the settlement of the Phase II funds and the distribution of the payments out of these funds to the fourteen grower states.

David W. Owens

3

Alcoholic Beverage Control

The Alcoholic Beverage Control (ABC) bills enacted this session dealt primarily with two subjects: local sales and use of alcoholic beverages and consumption by those under twenty-one years of age.

For more than a decade the General Assembly has been adding to the public law provisions of G.S. Chapter 18B stipulations that are essentially local in application. The growing practice of writing local legislation into the state's general law stems from a section of the N.C. Constitution (art. II, sec. 24) that prohibits "local acts regulating trade." As a result ABC permits are now authorized for tourism establishments, ski resorts, beautification districts, and other locations—none of which could hold an election or otherwise qualify for ABC sales under the general provisions of G.S. Chapter 18B. A recent lawsuit filed in Yancey County challenged the constitutionality of the type of legislation that creates "residential private clubs." See Mountain Air Development Corp. v. State of North Carolina, 99 CVS 65 (filed March 14, 1999). Even after it is decided, this case probably will be appealed, so a final determination of the issue could be at least a year or two away. Despite this court challenge, new exceptions to the general law were added in 1999.

Historic ABC Establishments

S.L. 1999-462 (S 607) amends G.S. 18B-603(f), concerning the issuance of permits without an election, to authorize permits for malt beverages, wine, and mixed beverages for "historic ABC establishments" as defined by G.S. 18B-101. The complicated definition of a historic ABC establishment includes a requirement that the structure be on the National Register of Historic Places, be located within 1.5 miles of an intersection on a North Carolina scenic bypass, and be within 15 miles of a national scenic highway. The establishment must also be in a county in which two or more cities authorize the on premises sale of malt beverages and unfortified wine. This provision probably was intended to benefit certain establishments in Watauga County.

National Historic Landmarks

Another provision of S.L. 1999-462 authorizes liquor by the drink, without approval through an election, for qualified hotels and restaurants located within a "national historic landmark." To qualify the establishment must be in a county that has a population of at least 150,000, has approved the sale of beer and wine, and has at least one city with ABC stores and mixed beverage sales. This description probably means the Biltmore Estate in Buncombe County.

Tourism Resorts

S.L. 1999-461 (S 17) amends G.S. 18B-603(f) to allow permits without an election for malt beverages, wine, and mixed drinks in "tourism resorts." A provision is added to G.S. 18B-101 to define a *tourism resort* as: any restaurant and lodging facility owned and operated as a resort, offering food, beverage, lodging, and meeting facilities and "featuring one or more golf courses and two or more tennis courts"; or any restaurant owned and operated as a resort property, offering food and beverage to travelers and featuring an equestrian center as well as two or more tennis courts. This act, while of limited application, does appear to be a real statewide law.

Urban Redevelopment Areas

S.L. 1999-322 (S 812) adds a new G.S. 18B-309 to provide that a food business, a retail business, or an eating establishment (as defined in G.S. 18B-1000) located in a designated "urban redevelopment area" may not have alcohol beverage sales in excess of 50 percent of the business's total annual sales. A permittee in violation of this provision may have its permit suspended or revoked by the state ABC Commission. Several cities have urban redevelopment areas under Article 22 of G.S. Chapter 160A. Property owners and residents in or near these areas have expressed concern about alcohol-related problems, and this act appears to be a first step toward addressing that concern. This law is discussed in more detail in Chapter 14 (Land Use Regulation, Planning, Code Enforcement, and Transportation).

Sales to and Purchases by Underage Persons

The continuing concern about alcohol use and abuse by persons under twenty-one years of age led in 1999 to the enactment of two bills that address the problem. S.L. 1999-433 (S 120) adds a new G.S. 18B-302A to provide that a person selling or giving any alcoholic beverage to a person under twenty-one, in violation of G.S. 18B-302(a), is guilty of a Class 1 misdemeanor. Further, if the court imposes a sentence that does not include active punishment, it must include among the conditions of probation a requirement that the defendant pay a fine of at least $250 and complete at least twenty-five hours of community service. If a defendant has a previous conviction for this offense within the four years immediately preceding the date of the current offense (and the sentence does not include active punishment), then the court must include among the conditions of probation a requirement that the person pay a fine of at least $500 and complete at least 150 hours of community service.

This act also provides that a person violating G.S. 18B-302(c)(2), by aiding and abetting an underage person with regard to sale or purchase of alcoholic beverages, is guilty of a Class 1 misdemeanor; and (if not receiving an active punishment) must pay a fine of at least $500 and complete twenty-five hours of community service. A second conviction within four years will result in a fine of at least $1,000 and 150 hours of community service. S.L. 1999-433 (S 120) became effective December 1, 1999.

The teenage-drinking problem was also addressed by S.L. 1999-406 (H 1135), which implemented the recommendations of the Governor's Driving While Impaired (DWI) Task Force. This act provides that the purchase or possession of alcoholic beverages by a nineteen- or twenty-year-old in violation of G.S. 18B-302(b), previously an infraction only, is now a Class 3 misdemeanor. The new provision became effective December 1, 1999. Other provisions of S.L. 1999-406 are discussed in Chapter 19 (Motor Vehicles).

Bills That Failed to Pass

As is the case in most years, several interesting proposals did not receive a favorable committee report or otherwise failed to pass both houses. Among these was H 1382, which would have required that an applicant for a retail ABC permit obtain a "certificate of suitability" from the relevant city or county before requesting a retail permit from the state ABC Commission. Under current G.S. 18B-901, the state ABC Commission determines suitability for a retail permit after considering certain listed factors. The city or county in which the establishment will be located can file written objections to the issuance of the permit, but those objections will not necessarily stop the ABC Commission from acting favorably on the permit application.

H 1043, entitled "Eliminate Brown-Bagging Permits," would have authorized mixed-beverage permits without an election in all areas of the state. It also would have allowed any county that does not currently allow the sale of mixed beverages to opt out (and continue to prohibit sales) if action was taken before June 1, 2000.

Ben F. Loeb, Jr.

4

Children and Families

The 1999 General Assembly enacted legislation to aid in the enforcement of child support orders, to adopt the new Uniform Child Custody Jurisdiction and Enforcement Act, and to further assist victims of domestic violence. The legislators continued the work of the last session of the General Assembly by enacting legislation to clarify and fully implement the Juvenile Justice Reform Act of 1998. This chapter summarizes actions by the 1999 General Assembly with respect to family law, including child support, child custody, domestic violence, abuse and neglect, and juvenile delinquency. Related provisions, including legislative actions regarding child care and early childhood development programs, are discussed in Chapter 23 (Social Services).

Child Support and Paternity

Voluntary Acknowledgment of Paternity

Under G.S. 110-132 (enacted in 1975), the mother and father of an illegitimate child may legally establish the child's paternity by executing affidavits in which they voluntarily acknowledge the child's paternity. Until 1997, G.S. 110-132 required that a district court judge formally approve these voluntary paternity acknowledgments and provided that, once approved by a district court judge, a voluntary paternity acknowledgment constituted a binding legal determination of paternity. In 1997 the General Assembly repealed the portions of G.S. 110-132 that required judicial approval of voluntary paternity acknowledgments and amended the statute to provide that, unless rescinded by either parent within a specified period of time, a voluntary paternity acknowledgment constituted a legal admission, rather than a legal determination, with respect to the child's paternity.

S.L. 1999-293 (H 302) amends G.S. 110-132 to provide that, for purposes of establishing a child support obligation, a voluntary paternity acknowledgment has the same effect as a judgment establishing the child's paternity, without the necessity of judicial review or approval, subject to the right of either parent to rescind his or her acknowledgment within the time limits imposed by the 1997 legislation.

Verification of Income in Child Support Cases

S.L. 1999-293 enacts a new statute, G.S. 110-136.3(d1), providing that a written statement or employee verification form that indicates the amount of an obligor's gross income and is signed by the obligor's employer or the employer's designee is admissible as evidence in any case involving the establishment or modification of a child support order and may be used to establish the amount of the obligor's gross income.

Court-Ordered Child Support Payments

S.L. 1999-293 amends G.S. 50-13.4(c) to require that the amount of an obligor's court-ordered child support obligation be established on a monthly basis and to provide that child support payments become due and payable on the first day of each month. This amendment, however, does not affect the provisions of G.S. Chapter 110, allowing income withholding for child support payments based on an obligor's weekly, biweekly, semimonthly, or other pay period.

Medical Support for Children

G.S. 108A-69 and G.S. 58-51-115 require certain employers and health insurers to enroll a child in a health benefit plan when a court has ordered the child's parent to provide medical support for the child by covering the child under a health benefit plan and the child's parent is eligible for family benefit coverage under the health benefit plan. S.L. 1999-293 amends these statutes to clarify that their provisions apply with respect to the Teachers' and State Employees' Comprehensive Major Medical Plan. This provision was probably enacted in response to a 1995 opinion by the Attorney General stating that these statutes did not apply to the state insurance plan for teachers and other state employees.

Centralized Collection and Distribution of Child Support Payments

Child support enforcement provisions contained in the 1996 federal welfare reform law required North Carolina to establish, by October 1, 1999, a statewide, centralized child support collection unit to collect and distribute child support payments in all cases handled by child support enforcement agencies (termed IV-D agencies) and in all non–IV-D cases in which both (a) a child support order was initially entered on or after January 1, 1994, and (b) child support payments are made through income withholding. The General Assembly enacted G.S. 110-139(f) in 1997 to implement this federal requirement, effective October 1, 1999. That law, had it not been amended in the 1999 session, would have required that child support payments in IV-D cases and in some non–IV-D cases be paid through the centralized child support collection unit rather than through the offices of clerks of superior court. Clerks of superior court would have remained responsible for collecting and distributing child support payments in tens of thousands of non–IV-D child support cases, including some cases in which child support payments were made through income withholding.

S.L. 1999-293 amends G.S. 110-139(f), effective October 1, 1999, to require that child support payments in IV-D cases and *all* non–IV-D cases be paid through the centralized child support collection unit operated by a private vendor under contract with the state Department of Health and Human Services (DHHS), unless (1) child support is not paid through income withholding and (2) the court has ordered the obligor to make payments directly to the obligee.

The 1999 Appropriations Act, S.L. 1999-237 (H 168), transfers from the Judicial Department to DHHS $2 million in recurring funding for state fiscal year (SFY) 1999–2000 and $3.3 million for SFY 2000–01 to pay the cost of collecting and disbursing child support payments in the additional non–IV-D cases in which payments will have to be made through the centralized collection unit.

As a result of this change, effective October 1, 1999, clerks of superior court will no longer accept child support payments from obligors or maintain child support payment records. Clerks,

however, will continue to receive payments that are made to purge civil contempt or to satisfy child support liens or judgments and will forward these to the central collection unit. With respect to non–IV-D cases, clerks of superior court will also retain their responsibilities under G.S. 50-13.9(d) for notifying obligors when they are delinquent in making child support payments and for initiating child support enforcement proceedings to collect delinquent child support. To enable clerks of superior court to carry out these duties and provide courts with accurate information regarding obligors' payment of child support, S.L. 1999-293 requires that the new centralized collection unit provide payment information in non–IV-D child support cases to the clerk of superior court for purposes of judicial proceedings and enforcement.

Using Civil and Criminal Contempt to Enforce Child Support Orders

Courts frequently enforce child support orders through proceedings for civil and criminal contempt based on an obligor's willful failure to make court-ordered child support payments. S.L. 1999-361 (S 170) makes several changes with respect to North Carolina's statutes governing civil and criminal contempt proceedings. The act

- makes it clear that a person may be held in civil contempt only if his or her failure to comply with a court order is "willful";
- allows proceedings for civil contempt to be initiated by a motion, affidavit, and notice to appear filed by an aggrieved party (for example, the obligee who has failed to receive court-ordered child support payments) rather than by a show cause notice or order issued by a judicial official;
- provides that, in civil contempt proceedings initiated by the motion of an aggrieved party (without a probable cause finding by a judicial official), the burden of proof at the hearing for civil contempt is on the aggrieved party rather than the alleged contemnor;
- provides that the order in a civil contempt proceeding must contain findings of fact for or against the alleged contemnor with respect to each of the statutory elements of civil contempt; and
- provides that a person may not be held in both civil and criminal contempt with respect to the same conduct.

S.L. 1999-361 also limits the period of time that a person may be incarcerated for civil contempt in certain types of cases. These time limits, however, do *not* affect civil contempt proceedings based on an obligor's willful and continuing failure to pay child support. If an obligor is found in civil contempt for failing to make court-ordered child support payments, he or she may be incarcerated as long as the contempt continues (that is, until the obligor purges himself or herself of contempt by paying the portion of the unpaid child support that the court has found the obligor able to pay).

License Revocation for Failure to Pay Child Support

In 1997 the General Assembly enacted legislation (G.S. 110-142.2) allowing the court to revoke an obligor's driving, hunting, fishing, or trapping licenses and to order the state Division of Motor Vehicles to refuse to register the obligor's motor vehicle, if the obligor is delinquent in making child support payments.

S.L. 1999-293 amends G.S. 110-142.2 to *require* the court to order one or more of those sanctions if the obligor is found in civil or criminal contempt for a third or subsequent time for failing to pay court-ordered child support. S.L. 1999-293 further requires that a court-approved plan for payment of child support arrearages ordered as a condition of staying one or more of these sanctions

1. consider the amount of the arrearage and the obligor's financial ability to make payments on it;
2. provide for payment of the arrearage within a reasonable period of time;

3. require the obligor to make an immediate payment of $500 or 5 percent of the arrearage, whichever is less, toward the arrearage; and
4. provide that payments may not exceed the applicable percentage of the obligor's disposable wages set forth in G.S. 110-136.6(b), which limits withholding to a maximum of 40 percent, 45 percent, or 50 percent of an obligor's disposable wages.

Interstate Withholding of Unemployment Benefits

The Uniform Interstate Family Support Act (G.S. Chapter 52C) allows enforcement in North Carolina of a child support income withholding order issued by an agency or a court of a sister state. The order may be sent directly to the North Carolina employer of the person who owes child support. The North Carolina employer is required to withhold child support from the obligor's disposable wages in essentially the same manner as if the order were issued by a North Carolina court or agency.

S.L. 1999-293 amends G.S. 52C-5-501 to also allow this type of "direct" enforcement of child support income withholding orders of other states with respect to unemployment compensation benefits paid by the Employment Security Commission (ESC) to unemployed obligors who owe child support. The ESC may withhold no more than 25 percent of the obligor's unemployment benefits for child support payments under an income withholding order issued by a sister state's tribunal.

Automated Administrative Child Support Enforcement

S.L. 1999-293 enacts a new statute, G.S. 110-139.3, requiring the Department of Health and Human Services to use high-volume, automated administrative child support enforcement methods to collect child support in interstate child support enforcement cases.

Child Custody

Uniform Child Custody Jurisdiction and Enforcement Act

In 1997 the Commissioners on Uniform State Laws adopted the Uniform Child Custody Jurisdiction and Enforcement Act (the UCCJEA) to replace the Uniform Child Custody Jurisdiction Act (the UCCJA) of 1968. With the enactment of S.L. 1999-223 (H 494), North Carolina joins at least eleven other states that have adopted the new uniform act. S.L. 1999-223 completely rewrites G.S. Chapter 50A as the UCCJEA, effective October 1, 1999, and makes the new law applicable to all causes of action filed on or after that date.

Like the UCCJA, the UCCJEA regulates the exercise of jurisdiction by courts in child custody cases for the purposes of reducing interstate conflicts in matters of child custody and promoting cooperation among states concerned with the same child. The ultimate goal of both the UCCJA and the UCCJEA is to reduce the incidence of parental kidnapping by eliminating the incentive for a parent to flee with a child to another state to avoid compliance with a custody determination. The new uniform act clarifies ambiguities that made application of the UCCJA less uniform throughout the country than originally anticipated, adds protections for victims of domestic violence, and attaches specific procedures regulating the enforcement of custody determinations made by courts with appropriate jurisdictional authority.

Jurisdiction Clarifications. Under the UCCJA, which remains the law in many states, a court may exercise jurisdiction in a child custody proceeding in four alternative situations:

1. The state is the child's home state, meaning the child has resided in the state for at least six months.

2. The child and the child's caretaker have a substantial connection to the state, and there is significant evidence in the state regarding the child's care, protection, training, and personal relationships.
3. The child is present in the state and there are emergency circumstances that require the court to exercise jurisdiction in order to protect the child.
4. No other state has jurisdiction.

Because these grounds are listed in the alternative, with no legislative priority given to one ground, it is possible for more than one state to properly exercise jurisdiction under the UCCJA. The most common conflict involves the first two grounds. The home state may claim jurisdiction while another state may have substantial connection/evidence jurisdiction, thus creating the possibility for conflicting orders relating to the same child.

To address this conflict, Congress enacted the Federal Parental Kidnapping and Prevention Act (the PKPA) in 1981. This federal law provides a clear preference for home state jurisdiction and allows a state to exercise jurisdiction based on the substantial connection/evidence ground only when no home state is identified. The UCCJEA conforms state law to the PKPA. G.S. 50A-201 provides that a North Carolina court may exercise jurisdiction based upon the substantial connection/evidence ground only if no state meets the definition of home state.

The UCCJEA also clarifies the proper exercise of emergency jurisdiction. G.S. 50A-204 provides that emergency jurisdiction is a temporary measure designed to enable a court of any state to enter orders necessary to ensure the protection of a child found within the state. This section of the UCCJEA allows a court to enter a temporary order if a child is present in the state and has been abandoned or is subjected to or threatened with mistreatment or abuse. As protection for victims of domestic violence, this section also allows the exercise of jurisdiction when a parent or sibling of the child faces a threat of mistreatment. However, emergency jurisdiction is intended as a temporary exercise of jurisdiction only. The court is required to order the parties to return to the state with appropriate jurisdiction in order to receive a more permanent determination.

The UCCJA, the older uniform act, also conflicts with the PKPA in regard to jurisdiction to modify custody orders from other states. As rewritten, G.S. Chapter 50A adopts the federal provision granting continuing exclusive jurisdiction to a state that enters an appropriate custody determination. G.S. 50A-202 and -203 define *continuing exclusive jurisdiction* to mean that, once a state enters a custody determination in accordance with the jurisdictional requirements of the UCCJEA, no other state may modify that order as long as at least one parent continues to reside in the issuing state or until the issuing state decides that the other state is a more appropriate forum.

G.S. 50A-105 clarifies that Indian tribes and foreign countries are treated as states for purposes of application of the UCCJEA.

The UCCJA requires a party filing a request for a custody determination to provide information about the past and present locations of the involved children. In recognition of the potential danger associated with the disclosure of this information about victims of domestic violence, G.S. 50A-209 requires that the required information be sealed immediately if the party alleges that disclosure of the information would jeopardize the health or safety of the children or the party.

Enforcement Provisions. The UCCJEA expands the scope of the jurisdictional statute by legislating uniform and expedited enforcement procedures. (The UCCJA does not contain specific provisions regulating the enforcement of custody orders.) G.S. 50A-305 provides for the registration of out-of-state custody orders with the clerk of court. At the time of registration, notice allowing twenty days for an objection to registration is sent to the parties. All objections, including objections to the jurisdiction of the issuing state, must be raised within those twenty days. If no objection is filed, the order is confirmed and subject to enforcement within the state as if it were an order of a North Carolina court.

G.S. 50A-308, -309, and -310 provide for the expedited court hearing of a request for enforcement of a custody determination. Upon the filing of a petition seeking enforcement, the court must enter an immediate order directing the other party to appear for a hearing. The court also may direct that the child be brought to the hearing. The hearing must be scheduled on the first possible judicial day following the filing of the petition, and at the hearing the judge must enforce

the existing custody order unless the respondent can show the order has been vacated or modified by the issuing court.

G.S. 50A-311 clarifies the court's authority to enlist the aid of law enforcement officers in the enforcement of custody orders. This provision allows a court to issue a *warrant* (defined as a court order) directing a law enforcement officer to take immediate physical custody of a child if a petitioner alleges that the child is in danger or the child is about to be removed from the state.

Domestic Violence

In October 1998 Governor James B. Hunt convened the Governor's Domestic Violence Task Force to study North Carolina's response to domestic violence. The task force made forty-four recommendations, most dealing with nonlegislative matters, such as collection of domestic violence statistics, training of governmental officials who deal with domestic violence, and increasing public awareness. Of the eleven task force recommendations that required legislative action, eight were enacted.

Domestic Violence Commission

Government-sponsored commissions on domestic violence exist in twenty-nine states. The Governor's Domestic Violence Task Force recommended the creation of a commission in this state to serve as the overarching agency in developing a statewide approach to domestic violence issues.

> Currently in North Carolina many different state agencies have responsibility for disbursing federal domestic violence funds and additional agencies incorporate domestic violence policy and programmatic initiatives into their work. . . . In addition, our state has a history of local control over how each county responds to domestic violence. Although this diversity at both the state and local levels is a strength of our state's response, it has the potential to lead to gaps in services, duplication of services, and unmet needs. The existence of a statewide commission as proposed here, that includes representation from the diverse individuals, agencies and communities involved in this work, would build on this existing statewide capacity and add to our state's ability to respond by providing a needed forum for the exchange of knowledge and information that can minimize gaps, duplications and maximize a consistent and effective statewide approach. (*Governor's Task Force on Domestic Violence: Final Report*, Jan. 1999, p. 26)

Section 24.2 of S.L. 1999-237 (H 168) establishes a permanent Domestic Violence Commission of thirty-nine members to assess statewide needs related to domestic violence; to assure that necessary services, policies, and programs are provided; and to coordinate and collaborate with the North Carolina Council for Women in strengthening domestic violence programs. The membership includes the heads of various state departments that have some connection to domestic violence issues, court officials who handle domestic violence cases, law enforcement officers, representatives from victims' assistance programs, representatives from offender treatment programs, a member of the medical community, attorneys representing the private bar and legal services, a member of the N.C. Coalition against Domestic Violence, a former victim of domestic violence, and members of the General Assembly.

The commission is charged with specific responsibilities, including encouraging adequate funding to promote victim safety and the accountability of perpetrators; developing and recommending training initiatives for law enforcement officials, judicial officials, and persons who provide treatment and services to domestic violence victims; designing a statewide public awareness program; and designing and coordinating improved data collection efforts for criminal domestic violence charges.

Full Faith and Credit for Out-of-State Orders

S.L. 1999-23 (S 197) includes seven substantive law changes recommended by the task force. The task force concluded that no changes needed to be made regarding persons eligible for domestic violence protective orders or the procedure for getting an order. Clarification of the manner in which North Carolina would treat protective orders issued by other states and strengthening of the enforcement of protective orders were needed. In accordance with the federal requirements that North Carolina give full faith and credit to out-of-state protective orders (Violence against Women Act, 18 U.S.C. § 2265), G.S. 50B-4(d) has provided that "protective orders entered by the courts of another state or an Indian tribe shall be accorded full faith and credit by the courts of North Carolina and shall be enforced by the law-enforcement agencies of North Carolina." States are permitted to determine the procedure they will apply to give out-of-state judgments full faith and credit. The problem in North Carolina has been that the domestic violence law itself set no specific procedure for granting full faith and credit. The general law for granting full faith and credit to out-of-state judgments, G.S. 1C-1701 *et. seq*., requires that judgments be registered with the clerk of superior court, requires that notice be given to the defendant, and prohibits enforcement until thirty days after notice is given. Thus there was considerable confusion in North Carolina about whether an out-of-state domestic violence protective order could be enforced in North Carolina without compliance with the registration provisions of G.S. Chapter 1C. As a policy matter, many domestic violence advocates were concerned about victims having to comply with the registration requirements. The major concerns were (1) that a victim, who in many cases would have fled to North Carolina to avoid being found, would have to notify the defendant of her whereabouts in order to register the order in North Carolina and (2) that the victim (who had given the defendant due process notice and an opportunity to be heard in the state where the protective order was issued) would not be protected in North Carolina from a defendant who violates the order until thirty days after the order was registered in this state. Also the intention of the federal Violence against Women Act was to make it easy to enforce protective orders anywhere in the United States. S.L. 1999-23 provides that, effective December 1, 1999, the Foreign Judgment Enforcement Act of G.S. Chapter 1C does not apply to domestic violence protective orders. Effective February 1, 2000, it provides that an out-of-state protective order must be accorded "full faith and credit by the courts of North Carolina whether or not the order has been registered and . . . enforced by the law enforcement agencies of North Carolina as if it were an order issued by a North Carolina court." Thus an out-of-state protective order will be immediately enforceable in North Carolina.

Even though registration is not required, S.L. 1999-23 allows a protective order to be registered in North Carolina if the person protected by the order wishes to register it. The order is registered by filing with the clerk of superior court a copy of the protective order and an affidavit by a person protected by the order that, to the best of that person's knowledge, the order is presently in effect as written. Notice of registration is not given to the defendant. Upon registration the clerk must forward a copy of the order to the sheriff for entry into the domestic violence protective order registry.

Enforcement of Protective Orders

S.L. 1999-23 makes several changes intended to simplify the enforcement of protective orders. A history of the law is instructive to understand the new law. G.S. 50B-4 provided that a civil protective order may be enforced in two ways. First, the plaintiff in the case may file a motion with the clerk of superior court for the defendant to be held in contempt for a violation of the order. If the clerk finds probable cause from the motion that a violation occurred, the clerk sets the date for a contempt hearing before a district court judge. The clerk issues to the defendant an order to appear at the hearing and show cause why he or she should not be held in contempt. This is the normal procedure for holding a defendant in contempt for violation of a civil order.

Because of the concern about certain potentially violent acts, the original domestic violence law provided a second, unique method of enforcement for contempt. It requires a law enforcement

officer to arrest a defendant without a warrant and to take the defendant into custody if the officer has probable cause to believe that the defendant violated the protective order excluding the defendant from the residence occupied by the victim or directing the defendant to refrain from threatening, abusing, following, harassing, or otherwise interfering with the other party and if the officer determines that a protective order exists. The officer takes the person arrested before a magistrate, who sets a date for a contempt hearing before the district court judge and issues a show cause order to the defendant to appear at that contempt hearing. Conditions of pretrial release must be set for the defendant, but only a judge may set those conditions during the first forty-eight hours after the arrest.

In 1997 the General Assembly added G.S. 50B-4.1, making it a crime to violate a protective order entered by a North Carolina court, thereby creating a third mechanism for enforcing the order. Many law enforcement officers were uncomfortable with the mandatory arrest for contempt rather than charging a crime and were not sure of the procedure to follow. With the enactment of the crime of violating the protective order, the unique provision of arrest for a contempt hearing was no longer necessary to take the defendant into custody; in practice, most officers began charging the crime. S.L. 1999-23, effective February 1, 2000, repeals the provision requiring officers to arrest for the purpose of setting up a contempt hearing and leaves two methods of enforcement of protective orders:

1. The person protected may use the normal contempt procedure of filing a motion with the clerk of superior court, who then will send the defendant a notice to appear at a contempt hearing.
2. The defendant may be charged with the crime of violating the protective order.

The new law strengthens a law enforcement officer's responsibilities with regard to enforcing the crime of violating the protective order. It *allows* an officer to make an arrest without a warrant if the officer has probable cause to believe the defendant has violated any provision of the order, and it *requires* an officer to arrest the defendant without a warrant if the officer has probable cause to believe the defendant has knowingly violated a valid protective order by returning to the victim's residence or by threatening, abusing, following, harassing, or otherwise interfering with the other party. In effect, the new law also transfers the mandatory arrest provisions that previously applied to the arrest for contempt to the crime of violating the order. In determining whether an outstanding protective order is valid, the officer may rely on a copy of the protective order that is provided to the officer and a statement of the person protected that the order remains in effect. S.L. 1999-23 also amends G.S. 50B-4.1 to extend the crime of violating a protective order to the violation of a protective order entered by the court of another state or of an Indian tribe as well as to orders entered by North Carolina courts. A defendant who, in this state, violates a protective order entered in another state commits a crime in North Carolina.

Finally, the act eliminates the provision that permits a law enforcement agency not to respond to a domestic violence call if the agency already has responded multiple times in the previous forty-eight-hour period. Law enforcement officers must respond to any request for assistance from a domestic violence victim as soon as is practicable.

Funding for Domestic Violence Programs

For the past two years, the General Assembly has appropriated $1 million in non-recurring funds for domestic violence programs. The task force recommended that the funds be placed into the continuation budget so those local programs would have a more dependable funding source. The task force also recommended allocating up to $50,000 per program as one-time start-up grants to provide domestic violence services in the twenty-six counties currently without programs. Neither recommendation was enacted, although the General Assembly did re-appropriate the $1 million in non-recurring funds.

The General Assembly did provide additional funding for domestic violence programs by allocating $1 million from Temporary Assistance to Needy Families (TANF) Block Grant funds to the Department of Health and Human Services, Division of Social Services, to develop a grant

program to support community-based domestic violence services that demonstrate the ability to collaborate and coordinate services with other local human services organizations to serve children and families where domestic violence occurs [sec. 5.(q) of S.L. 1999-237 (H 168)]. The Division of Social Services must consult with the North Carolina Council for Women, the Governor's Crime Commission, local domestic violence programs, and other human services organizations in developing the process to award grants.

Court Procedure in Family Law Cases

Family Court Pilot Programs

Funding and Expansion. Section 25 of S.L. 1998-202 required the Administrative Office of the Courts (AOC) to establish a specialized family court as a pilot project in three judicial districts. The three districts chosen by the AOC were District 26 (Charlotte), District 14 (Durham), and District 20 (Stanly, Union, Anson, and Richmond Counties). The 1999 budget, S.L. 1999-237, provides funding for the three pilot districts on a continuing basis and directs expansion of the project into up to three additional districts by January 1, 2000. The AOC is directed to choose the additional districts.

Parent Education. Section 17.16 of S.L. 1999-237 directs the AOC to establish a program to educate parents who are separating or divorcing about the effects of separation and divorce on children. The programs are to be established in the districts participating in the family court pilot projects.

Family Law Arbitration Act

S.L. 1999-185 (H 495) creates the Family Law Arbitration Act, G.S. 50-41 through -60. The act allows parties to agree in writing to submit all issues incident to the breakup of a marriage, except the divorce itself, to binding arbitration. The written agreement to arbitrate is enforceable against the parties and is irrevocable absent the consent of both parties. The act provides for arbitration of all issues, including equitable distribution, alimony, child custody, and child support. Arbitration pursuant to the act results in a binding award that is filed with the court and enforced as any other court order; however, a court can vacate an arbitrator's award of child custody or child support if the court finds that the award is not in the best interest of the child. The act allows a court or an arbitrator to modify an arbitration award regarding child support or custody upon a finding that there has been a substantial change of circumstances since the initial arbitration award. Unless the parties agree otherwise, alimony awards also are subject to modification. This act applies to agreements made on or after October 1, 1999.

Unemployment Benefits for Workers with Child Care Responsibilities

S.L. 1999-196 (H 277) amends North Carolina's unemployment compensation law (G.S. 96-8) to provide that an unemployed worker may not be disqualified from unemployment benefits when the individual's bona fide permanent employment would result in an acceptance of undue family hardship or when the individual's separation or discharge is due solely to an inability to accept work during a particular shift as the result of an undue family hardship. Under the new law *undue family hardship* includes an individual's inability to accept employment during a particular shift because he or she cannot obtain child care during the shift for a child fourteen years old or younger. The new law applies to unemployment compensation claims filed on or after July 1, 1999; however, the law expires on June 30, 2001.

Other legislation relating to child care is discussed in Chapter 23 (Social Services).

Abused, Neglected, and Dependent Juveniles

Applicability of G.S. Chapter 7B, the New Juvenile Code

The 1998 Juvenile Justice Reform Act (S.L. 1998-202) provided that G.S. Chapter 7B, the new Juvenile Code, became effective July 1, 1999, and applied to offenses committed on or after that date. That applicability language worked well in relation to cases involving delinquent or undisciplined juveniles; however, it did not provide adequate guidance as to the new code's applicability to cases involving abuse, neglect, dependency, or termination of parental rights. Section 60 of S.L. 1999-456 (H 162) addresses that problem by providing that Articles 1 through 11 of Subchapter I of G.S. Chapter 7B became effective July 1, 1999, and apply to abuse, neglect, and dependency reports received, petitions filed, and reviews commenced on and after that date.

Children in Institutions

Section 1 of S.L. 1999-190 (H 262) amends the Juvenile Code's definition of *caretaker* in G.S. 7B-101(3) to specify that a "person responsible for a juvenile's health and welfare [in a residential setting]" includes "any employee or volunteer of a division, institution, or school operated by the Department of Health and Human Services."

Section 2 of the act amends G.S. 7B-302(b) to address the responsibility of a county department of social services when it receives a report of suspected abuse, neglect, dependency, or death from maltreatment relating to a juvenile in an institutional setting, such as a residential child care or educational facility. In those cases the department must ascertain immediately whether or not other juveniles remain in the facility subject to the alleged perpetrator's care or supervision. If they do remain, the department must assess the circumstances of those juveniles to determine whether they require protective services or whether their immediate removal from the facility is necessary for their protection.

Response to Physical Abuse

S.L. 1999-318 (H 1159) amends several sections of Subchapter I of G.S. Chapter 7B, the Juvenile Code, to impose additional requirements on county social services directors in cases involving physical abuse. (Like many other statutory obligations of county social services directors, these are likely to be carried out by authorized staff of the county department of social services.) The act is effective October 1, 1999, and applies to petitions filed on or after that date.

Review of Perpetrator's Background. The act amends G.S. 7B-302 to require the director to conduct a thorough review of the background of the alleged abuser whenever, due to physical abuse, a juvenile is removed from the home of a parent, guardian, custodian, stepparent, or adult relative entrusted with the juvenile's care. The review must include a check of the person's *criminal history*, which a new provision, G.S. 7B-101(7a), defines as "a local, State, or federal criminal history of conviction or pending indictment of a crime, whether a misdemeanor or a felony, involving violence against a person."

Unlike most other statutes dealing with criminal history checks, this new law does not include any provision specifically giving social services directors access to records of the State Bureau of Investigation (SBI) (or other records that are not public records) or requiring the SBI or others to assist in the criminal history checks. [Compare this act, for example, to S.L. 1999-214 (S 1068), which provides for criminal record checks for volunteers for the McGruff House Program. For a thorough discussion of criminal history checks, see James C. Drennan, "Obtaining Record Checks to Reduce Risk," *Popular Government* 64, No. 2 (Winter 1999): 30–39.] The director's review also must include a review of any "available" mental health records. Generally a person's mental health records will not be available absent that person's consent.

In obtaining the needed information, social services directors may rely on existing wording in G.S. 7B-302(e), which gives the director broad authority to obtain information he or she needs in the performance of "any duties" related to the investigation of abuse, neglect, or dependency

reports or to the provision of or arrangement for protective services. It authorizes the director to consult with agencies or individuals, including state or local law enforcement officers, and requires those persons or agencies to assist in the investigation when asked to do so by the director. In addition the director may make a written demand for any information or reports, whether or not confidential, that the director believes may be relevant to the investigation or to the provision of protective services. A person or agency receiving such a request must give the director access to and copies of the requested information or reports

- to the extent permitted by federal law and regulations,
- unless they are protected by the attorney-client privilege, and
- subject to the right of a custodian of criminal investigative information or records to seek a court order to prevent disclosure, based on a belief that disclosure would jeopardize the state's right to prosecute a defendant or the defendant's right to receive a fair trial.

Petition and Order for Mental Health Evaluation. If the director's review reveals that the alleged abuser has a history of violent behavior against people, G.S. 7B-302(d1) requires the director to petition the court to order the alleged abuser to submit to a complete mental health evaluation by a licensed psychologist or psychiatrist. It is not clear whether this "petition" begins a new type of proceeding in juvenile court or is, in effect, a motion in the case of the juvenile who was removed from the home. The latter seems more likely, since the alleged perpetrator almost certainly is a party to that proceeding.

The act amends G.S. 7B-503 to require the court to rule on the petition before returning the child to a home where the alleged abuser is or has been present. If the court finds that the alleged abuser has a history of violent behavior against people, the court must order the alleged abuser to submit to a complete mental health evaluation and may order the alleged abuser to pay the cost of the evaluation. An amendment to G.S. 7B-506 requires the court, in determining whether the juvenile's continued nonsecure custody is warranted, to consider the opinion of the mental health professional who performed the evaluation.

The results of the mental health evaluation must be included in the evaluation the social services director prepares pursuant to G.S. 7B-304 for presentation to the court following adjudication. In addition, at disposition under G.S. 7B-903 or G.S. 7B-1003 (disposition pending appeal), if the court has found that the juvenile suffered physical abuse and that the responsible individual has a history of violent behavior against people, the court must consider the opinion of the mental health professional who performed the evaluation before returning the juvenile to that person's custody.

Guardian ad Litem Amendments

S.L. 1999-432 (S 25) rewrites G.S. 7B-601 regarding guardians ad litem who are appointed to represent children alleged to be abused, neglected, or dependent in juvenile court proceedings. As amended the section provides that appointments of guardians ad litem and attorney advocates terminate when a permanent plan has been achieved for the juvenile and approved by the court. The act rewrites the description of the guardian ad litem program's role to include (1) conducting follow-up investigations to insure that court orders are properly executed and (2) reporting to the court when the juvenile's needs are not being met. Previously the court was authorized to order the guardian ad litem program or the county department of social services to do those things.

Most significantly the statute now gives the guardian ad litem authority to obtain any information or reports (except those protected by the attorney-client privilege), whether or not confidential, that in the guardian ad litem's opinion may be relevant to the case. Previously the guardian ad litem had this authority, or some limited version of it, only if the court specifically granted it in the order appointing the guardian ad litem. Finally, the new law provides that in all actions under Subchapter I of the Juvenile Code, the juvenile is a party.

Dispositional Authority over Parents and Others

G.S. 7B-904 describes the court's authority at a dispositional or subsequent hearing in an abuse, neglect, or dependency proceeding to require parents to do specified things. S.L. 1999-318 rewrites the section to give the court most of the same authority in relation to: the juvenile's guardian, custodian, or stepparent; an adult member of the juvenile's household; or an adult relative entrusted with the juvenile's care. Under the new law, which is effective October 1, 1999, and applies to petitions that are filed on or after that date, the court may order those persons as well as the juvenile's parents to

- participate in the juvenile's medical, psychiatric, psychological, or other treatment.
- undergo psychiatric, psychological, or other treatment or counseling designed to remedy behaviors or conditions that led to or contributed to the juvenile's adjudication or removal from that person's custody. This may be a direct order or a condition of the person's having custody of the juvenile.

- pay, if able to do so, for treatment the court orders the person to undergo. If the person is not able to pay, the court may order the county to pay the cost of the treatment.

The act did not amend G.S. 7B-406, which requires that the summons in a juvenile case include specific notice that the court may direct these orders to parents.

Termination of Parental Rights

S.L. 1999-309 (S 310) amends G.S. 7B-1112 to provide that notice of appeal from an order in a proceeding to terminate parental rights must be given in open court at the time of the hearing or in writing within ten days after entry of the order (instead of ten days after the hearing). The timing of the entry of the order is governed by Rule 58 of the North Carolina Rules of Civil Procedure.

State Child Fatality Review Team Findings

Section 4 of S.L. 1999-190 amends G.S. 143B-150.20 to provide that findings of the State Child Fatality Review Team following a fatality review are not admissible as evidence in any civil or administrative proceeding against an individual or entity that participates in a child fatality review conducted pursuant to the section.

"Kids First" Registration Plates

S.L. 1999-277 (S 235) amends G.S. 20-79.4(b) to authorize the Division of Motor Vehicles to issue a special "Kids First" vehicle registration plate and amends G.S. 7B-1302 to provide that a portion of the fee for the special plate will be allocated to the Children's Trust Fund. That fund is used by the State Board of Education to fund abuse and neglect prevention programs.

Felony Child Abuse

S.L. 1999-451 (H 160), effective December 1, 1999, rewrites G.S. 14-318.4 to increase the criminal penalty for child abuse that results in serious bodily injury or permanent loss or impairment of any mental or emotional function of the child. This change is described more fully in Chapter 7 (Criminal Law and Procedure).

Other Legislation Relating to Child Welfare

Other legislation relating to child welfare is discussed in Chapter 23 (Social Services).

Delinquent and Undisciplined Juveniles

Placement in Nonsecure Custody with a Relative

G.S. 7B-1905(a) requires the court, when placing a juvenile alleged to be undisciplined or delinquent in nonsecure custody, to order the child placed with a relative if the court finds that the relative is willing and able to provide proper care and supervision. As amended by Section 14 of S.L. 1999-423 (H 1216), the section provides an exception to that requirement if the court finds that placement with the relative would be contrary to the juvenile's best interest. S.L. 1999-423 also makes a number of technical corrections to the Juvenile Code, G.S. Chapter 7B, and to several related statutes.

Appeal from Transfer Order

S.L. 1999-309 amends G.S. 7B-2603 to provide that notice of appeal to superior court from an order transferring a juvenile's case to superior court for trial as an adult must be given in open court at the time of the hearing or in writing within ten days after entry of the order (instead of ten days after the transfer hearing). The timing of the entry of the order is governed by Rule 58 of the North Carolina Rules of Civil Procedure. This change applies to actions filed on or after October 1, 1999.

Predisposition Report; Risk and Needs Assessment

S.L. 1999-423 restores a provision from prior law relating to the timing of predisposition reports that had not been included in the new Juvenile Code that became effective July 1, 1999. The act amends G.S. 7B-2413 to provide that, when a juvenile is alleged to be delinquent or undisciplined, no predisposition report or risk and needs assessment may be done before the juvenile is adjudicated delinquent or undisciplined, unless the juvenile or the juvenile's parent, guardian, custodian, or attorney files a written statement with the court counselor granting permission and giving consent to the predisposition report or risk and needs assessment.

"Level 2" Community Service Disposition

S.L. 1999-444 (H 661) amends one of the Level 2 dispositions described in G.S. 7B-2506 for delinquent juveniles to authorize the court to order the juvenile to perform up to 200 hours of supervised community service. Previously G.S. 7B-2506(23) provided for at least 100 hours but not more than 200 hours of community service.

Registration of Juvenile Sex Offenders

G.S. 14-208.26 authorizes the court to order certain juveniles who are adjudicated delinquent for committing specified sex offenses to register with the county sheriff as sex offenders. Offenses covered by the section are first-degree rape, second-degree rape, first-degree sexual offense, second-degree sexual offense, and attempted rape or sexual offense. S.L. 1999-363 (S 331) amends the section, effective December 1, 1999, to state that those listed offenses include

- the commission of any of those offenses;
- the attempt, conspiracy, or solicitation of another to commit any of those offenses; and
- aiding and abetting any of those offenses.

Office of Juvenile Justice

Program Evaluations. Section 21(b) of S.L. 1999-237 requires the Office of Juvenile Justice (OJJ) to evaluate wilderness camp programs, the Governor's One-on-One Programs, the On Track Program, the Guard Response Alternate Sentencing Program, and multipurpose group homes. It

directs OJJ to report the results to the chairs of the House and Senate Appropriations Committees and the chairs of the Subcommittees of Justice and Public Safety of the House and Senate Appropriations Committees by March 1 of each year.

Staffing Study. Section 21.4 of S.L. 1999-237 authorizes OJJ to use up to $75,000 to contract with consultants for a study of staffing in training schools and detention centers. The consultant must consult with OJJ, the Office of State Personnel, and the Fiscal Research Division of the General Assembly in developing objectives and a work plan for the study. OJJ must report the results of the study, including a staffing plan by shift for each training school and detention center, by April 1, 2000.

Local Grant Reporting. Section 21.5 of S.L. 1999-237 requires OJJ, by October 1, 1999, and by May 1 each year thereafter, to report to specified legislative committees a list of and information about recipients of grants awarded or preapproved for award from funds appropriated to OJJ for local grants.

Transfer of Positions. Section 21.7 of S.L. 1999-237 authorizes the transfer to OJJ of three specified positions (executive director of the Criminal Justice Partnership Act; accountant III; and administrative secretary III) from the Department of Correction and one position (research and planning administrator) from the Administrative Office of the Courts.

Transfer of Programs and Funds. Section 21.9 of S.L. 1999-237 transfers from the Judicial Department to OJJ program responsibility and funding for Project Challenge North Carolina, Inc., teen court programs funded through the budget of the AOC, and the Juvenile Assessment Center Project of District Court District 12. The transfers became effective June 30, 1999, and the funds did not revert. The section also requires OJJ to report to specified legislative committees on each of these programs by April 1 each year.

Local Boys and Girls Clubs. Section 21.10 of S.L. 1999-237 requires OJJ to develop a pilot program that grants funds to the local organizations of the Boys and Girls Club in the ten counties with the highest rate of training school commitments in state fiscal year 1997–1998. The local organizations must provide matching funds. The section authorizes the use of $500,000 for the pilot program in 1999–2000 and requires OJJ to report on the program by April 1, 2000.

Juvenile Facilities

Mecklenburg Secure Facilities. Section 21.1 of S.L. 1999-237 directs that $1.1 million, which had been allocated to OJJ for the construction of beds for female offenders at Gatling Detention Center in Mecklenburg County, be used to construct an eight-bed secure group home for female offenders in Mecklenburg County and to upgrade the Gatling Detention Center to meet fire marshal standards.

Training School and Detention Sites. Section 21.12 of S.L. 1999-237 requires OJJ to report to the Joint Legislative Commission on Governmental Operations before finalizing site selection for new training school beds and detention beds. It also requires that consideration be given to the renovation of existing units and to the need for additional beds in particular areas of the state.

Multifunctional Juvenile Facility. Section 21.13 of S.L. 1999-237 requires OJJ, if it determines that doing so would most economically and effectively promote the purposes served by OJJ, to establish a pilot program in Eastern North Carolina to provide certain juveniles with custodial, rehabilitation, treatment, and program services, including substance abuse and sex offender services. It requires OJJ to contract, according to law, with a for-profit or nonprofit firm for the construction and operation of a multifunctional juvenile facility with up to one hundred beds. If the surrounding communities demonstrate local interest and commitment, the facility must have the capacity to provide community-based programs, including day-reporting centers, transitional group homes, emergency shelter care, alternative education programs, and outpatient family counseling and substance abuse treatment. The section sets requirements for contracting, construction, employee training, and related matters. Of funds appropriated to OJJ for 1999–2000, the section allocates $2.5 million for the purchase of custodial, rehabilitation, treatment, and program services, including substance abuse and sex offender services.

Stonewall Jackson. Section 29.6C of S.L. 1999-237 directs that of funds appropriated to OJJ for 1999–2000, $337,000 be used to relocate or demolish buildings located on the grounds of the Stonewall Jackson Training School (in Cabarrus County) that contain hazardous asbestos materials and pose safety threats to the school's students and staff. The section also provides that, notwithstanding G.S. 146-30, the Stonewall Jackson Training School may retain and use for capital improvements at the school the net proceeds from the sale or lease of historic properties at the school.

Studies and Reports

Juvenile Crime and Delinquency. Section 2.1 of S.L. 1999-395 (H 163) authorizes the Legislative Research Commission to study the causes and prevention of juvenile crime and delinquency. If the commission chooses to undertake this study, it may report to the General Assembly in the 2000 session or to the 2001 General Assembly.

School Violence. S.L. 1999-257 (H 517), as amended by S.L. 1999-387 (H 1154), directs the Joint Legislative Education Oversight Committee, in consultation with the State Board of Education, the Office of Juvenile Justice, the Center for the Prevention of School Violence, local boards of education, and the North Carolina Congress of Parents and Teachers, to examine the issue of students who threaten to commit or who carry out acts of violence directed at schools. The committee is authorized to make recommendations to the 2000 session.

Juvenile Justice Information System Report. Section 21.8 of S.L. 1999-237 requires the Criminal Justice Information Network Governing Board to evaluate annually the status of the juvenile justice information system and to report by April 1 of each year to specified legislative committee chairs and the Fiscal Research Division of the General Assembly.

Legislation Affecting Other Laws Relating to Minors

Emancipation—Notice of Appeal

S.L. 1999-309 amends G.S. 7B-3508 to provide that notice of appeal from an order in a proceeding for emancipation of a juvenile must be given in open court at the time of the hearing or in writing within ten days after entry of the order (instead of ten days after the hearing). The timing of the entry of the order is governed by Rule 58 of the North Carolina Rules of Civil Procedure. This change applies to actions filed on or after October 1, 1999.

Juvenile Crime Prevention Councils

Section 16 of S.L. 1999-423 amends G.S. 147-33.64 to require local Juvenile Crime Prevention Councils to meet at least bimonthly (instead of monthly). Section 15 of the act amends G.S. 147-33.62 to clarify the length of terms of members of the local councils and to state that, after the specified initial terms, all terms of appointment begin on July 1.

Section 21.2 of S.L 237 requires each county in which programs receive Juvenile Crime Prevention Council grant funds from OJJ to certify annually, through the local council to OJJ, that the grant funds are not used to duplicate or supplant other programs in the county.

Governor's Crime Commission Membership

Section 11 of S.L. 1999-423 amends G.S. 143B-478 to increase the membership of the Governor's Crime Commission from forty to forty-two members by (1) adding the director of the Office of Juvenile Justice as a voting member and (2) adding as nonvoting members, in place of a

representative of the Office of Juvenile Justice, the assistant director of the Intervention/ Prevention Bureau and the assistant director of the Detention Bureau of the Office of Juvenile Justice.

Parental Liability for School-Related Offenses by Unemancipated Minors

Section 5 of S.L. 1999-257 (H 517), as amended by S.L. 1999-387, adds a new section, G.S. 1-538.3, that allows a school entity to recover monetary damages from the parent or individual legal guardian who has the care, custody, and control of an unemancipated minor who commits certain offenses. To recover under the section, the school entity must prove by clear, cogent, and convincing evidence that the minor committed one of the following offenses on school property:

- malicious use of explosive or incendiary [G.S. 14-49],
- malicious damage of occupied property by use of explosive or incendiary [G.S. 14-49.1],
- making a false report concerning destructive device [G.S. 14-69.1(c)],
- perpetrating hoax by use of false bomb or other device [G.S. 14-69.2(c)],
- possession or carrying of any dynamite cartridge, bomb, grenade, mine, or powerful explosive on educational property or causing, encouraging, or aiding a minor to do so [G.S. 14-269.2(b1) and (c1)],
- a felony offense involving injury to persons or property through the use of a gun, rifle, pistol, or other firearm of any kind as defined in G.S. 14-269.2(b).

In order to recover, the school entity also must prove by clear, cogent, and convincing evidence that the parent or individual legal guardian who has the care, custody, and control of the unemancipated minor

1. knew or reasonably should have known of the minor's likelihood to commit such an act;
2. had the opportunity and ability to control the minor; and
3. made no reasonable effort to correct, restrain, or properly supervise the minor.

If the school entity prevails, it can recover actual compensatory and consequential damages of (a) up to $50,000 for damages to educational property resulting from the discharge of a firearm or detonation or explosion of a bomb or other explosive and (b) up to $25,000 for damages resulting from the disruption or dismissal of school or the school-sponsored activity arising from a false report, a hoax, or bringing or possessing a bomb or other explosive device onto educational property or to a school-sponsored activity.

The act also amends various criminal statutes relating to bomb threats, perpetrating hoaxes, and bringing weapons or other prohibited items onto school property or to school-sponsored events, and it amends G.S. 115C-391 to require a one-year suspension of students who commit specified offenses. These changes are discussed in Chapter 7 (Criminal Law and Procedure).

Lose Control, Lose Your License

The 1997 General Assembly enacted legislation, which went into effect in August 1998, connecting the driver's license privilege of a person under age eighteen to his or her school status. Under that law, G.S. 20-11(n), if the young person does not have a high school diploma or its equivalent, he or she must have a "driving eligibility certificate" showing (1) that he or she is enrolled in school and making progress toward a high school diploma or its equivalent, or (2) that the denial of a certificate would place a substantial hardship on the person or his or her family, or (3) that the person cannot make progress toward a high school diploma or its equivalent.

Effective July 1, 2000, S.L. 1999-243 (S 57), as amended by Section 4 of S.L. 1999-387, adds a new section, G.S. 20-11(n1), which makes students ineligible for the driving certificate if they are subjected to disciplinary action for certain enumerated student conduct. "Disciplinary action" includes (1) expulsion, (2) suspension for more than ten consecutive days, or (3) assignment to an alternative educational setting for more than ten consecutive days. Behavior that constitutes

"enumerated student conduct" includes any of the following that occur after July 1 before the school year in which the student enrolled in the eighth grade or after the student's fourteenth birthday, whichever is earlier:

- the possession or sale of an alcoholic beverage or an illegal controlled substance on school property;
- the bringing, possession, or use on school property of a weapon or firearm that resulted in a 365-day suspension under G.S. 115C-391(d1) or that could have had that result if the behavior had occurred in a public school;
- the physical assault on a teacher or other school personnel on school property.

The definition of *school property* includes school-sponsored curricular or extracurricular activities that occur on or off the physical premises of the school.

A person who loses his or her eligibility for a certificate under this new provision becomes eligible for a certificate when the school administrator determines that the student has exhausted all administrative appeals connected to the disciplinary action and that one of the following conditions is met:

1. The enumerated student conduct occurred before the student reached age fifteen, and the student is now at least sixteen.
2. The enumerated student conduct occurred after the student reached age fifteen, and it is at least one year after the date the student exhausted all administrative appeals connected to the disciplinary action.
3. The student needs the certificate in order to drive to and from school, a drug or alcohol treatment counseling program, or a mental health treatment program, and no other transportation is available.

In addition a student whose permit or license is denied or revoked due to ineligibility for a certificate under the new provision may be eligible for a certificate if, after six months from the date of ineligibility, the school administrator determines that

- the student has returned to school or has been placed in an alternative educational setting and has displayed exemplary student behavior, as defined by the applicable state entity, or
- the disciplinary action was for the possession or sale of an alcoholic beverage or an illegal controlled substance on school property and the student subsequently attended and successfully completed a drug or alcohol treatment counseling program, as appropriate.

The act also requires the State Board of Education (for public schools or charter schools), the Secretary of Administration (for home schools or nonpublic schools), and the State Board of Community Colleges (for community colleges) to develop forms for parents, guardians, emancipated minors, or other appropriate individuals to provide their written, irrevocable consent for a school to disclose to the Division of Motor Vehicles limited information from the student's school records relating to the student's eligibility for a certificate.

This act is also discussed in Chapter 9 (Elementary and Secondary Education) and Chapter 18 (Motor Vehicles).

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5

Community Development and Housing

The 1999 General Assembly modified recent community development and housing legislation to make those tools more effective. The General Assembly also provided new resources for expanding affordable housing and stimulating economic development. Most of the major initiatives addressed involve the use of tax credits, effective for tax years beginning January 1, 2000, to encourage private investment in community development and housing. The General Assembly passed An Act to Provide for Widely Shared Prosperity, which expanded eligibility for tax credits under the William S. Lee Quality Jobs and Business Expansion Act, tightened the requirements for designation as a state development zone, provided tax credits to those making contributions to improvement projects in state development zones, and created a state affordable housing tax credit program.

Community and Economic Development

Changes to the William S. Lee Quality Jobs and Business Expansion Act

Under the William S. Lee Quality Jobs and Business Expansion Act, first adopted by the General Assembly in 1996, companies receive tax credits for jobs they create. The amount of the credit is based on the designation (Tier One through Tier Five) of the county in which the jobs are created: The poorer the county (i.e., the lower the tier number), the larger the tax credit.

The procedure for designating a county's tier was set out in the original legislation. The ten poorest counties are assigned as Tier One, the next fifteen are assigned as Tier Two, and the twenty-five richest are in Tier Five. The fifty remaining counties are divided equally by level of poverty between Tier Three and Tier Four. A county's level of poverty is determined by its rate of

unemployment, average per capita income, and percentage growth in population. In prior years, a special exception to the classification scheme was made to ensure that a Tier One county could not be reclassified to a higher designation until it had received Tier One designation for two consecutive years. S.L. 1999-360 (S 1115) further modified the procedure for tier designation by excepting certain small counties from the scheme. Under this exception, counties with (1) populations of less than 10,000, 16 percent or more of which live in poverty, will be designated as Tier One; (2) populations of less than 50,000, 18 percent or more of which live in poverty, will be designated on a tier level below the designation that they would otherwise receive; and (3) populations of less than 25,000 will be designated as Tier Three. The counties potentially impacted by this small-county provision are Alleghany, Ashe, Beaufort, Bladen, Camden, Cherokee, Clay, Currituck, Duplin, Greene, Hoke, Jones, Madison, Pamlico, Pasquotank, Perquimans, Polk, Scotland, Vance, Watauga, and Yancey.

In 1997 and 1998 the General Assembly expanded the types of businesses eligible for tax credits. S.L. 1999-360 further expands eligibility by including customer service centers located in Tier One and Tier Two counties, data processing (computer systems design and related services, software publishers, software reproducing, data processing services, online information services), and an electronic mail-order house. Other changes in 1999 add a state affordable housing tax credit (see discussion under "Housing"), credits for insurance companies against the gross premiums tax, enhanced credits for "high quality jobs," research and development credit provisions, a requirement for environmental certification, and a new fee structure. The sunset date for the William S. Lee Act was extended from tax year 2002 to January 1, 2006.

See Chapter 25 (State Taxation) for information on additional changes to the William S. Lee Act.

State Development Zones

In 1998 the General Assembly complemented the William S. Lee Act by giving companies an additional $4,000 tax credit for jobs created in state development zones. A *development zone* was defined as contiguous census tracts or block groups in which the poverty level exceeded 20 percent. No maximum size limit was set for a development zone, but to qualify the area had to have a population of 1,000 or more and be located, at least in part, in a city with a population of 5,000 or more. The definition of the development zone was modified by S.L. 1999-360. Every census tract and census block group within a development zone must now be located in whole or in part within the primary corporate limits of a city. Moreover every census tract and census block group in the zone must meet at least one of the following criteria: (1) more than 10 percent of its population was below the poverty level at the time of the last decennial census, or (2) it is immediately adjacent to another census tract or census block group with a 20 percent or higher poverty level at the time of the last decennial census. The purpose of the change is to ensure that development zones focus on urban, low-income areas rather than rural or suburban extensions of a municipality.

S.L. 1999-360 provides that a taxpayer is eligible for a credit for creating jobs or for worker training only if the taxpayer provides health insurance for the positions for which the credit is claimed. A taxpayer is considered to have provided health insurance if the enterprise pays at least 50 percent of the premiums for the health care coverage.

The state development zone legislation has new reporting requirements. An application must state the number of full-time jobs to be created in the development zone, the number of full-time jobs expected to be filled by employees who live in the development zone, and the number of full-time jobs expected to be filled by employees who live in census tracts or census block groups with 20 percent or more of the population living in poverty.

Beginning January 1, 1999, a development zone designation is effective for twenty-four rather than forty-eight months. Therefore the fifty-eight currently approved development zones will expire December 31, 2000.

The 1999 General Assembly also provided a new tax credit for development zone projects. A taxpayer who contributes cash or property to a development zone agency for an improvement

project in a development zone is allowed a credit equal to 25 percent of the value of the contribution. Qualified development zone agencies are community-based development organizations, community action agencies, community development corporations, community development financial institutions, community housing development organizations, and local housing authorities. *Improvement projects* are defined as efforts to acquire or improve real property for community development purposes. The total amount of all tax credits allowed to taxpayers in a calendar year may not exceed $4 million.

A proposal to develop enterprise zones (S 136; H 142) did not pass. An *enterprise zone* was defined as a census tract in the most recent decennial census that (1) is located in a city with a population of 25,000 or more and (2) has more than 30 percent of its population below the poverty level. The objective was to encourage business development in these zones by providing the following incentives: (1) income tax exclusion for gain from appreciation of zone property, (2) income tax credit for property tax increase due to improvements within the zone, (3) income tax credit for installation of machinery and equipment within the zone, (4) state sales tax refund for a zone corporation's purchases (effective Jan. 1, 2000, with respect to taxes paid on or after that date), (5) income tax credit for creating jobs in the zone, and (6) Industrial Development Fund financing for local government projects within the zone.

Work Force Development

S.L. 1999-237 (H 168) establishes a Workforce Development Commission within the Department of Commerce to provide employment and training grants to be administered through local workforce development boards.

Community Development Block Grants

S.L. 1999-237 provides that at least 20 percent of any increase in federal community development block grant dollars must be spent on economic development. Any remaining increase not otherwise obligated may be allocated to the Housing Development program category.

The legislation also provides that any 1999 funds remaining in the Community Empowerment category may be used for nonprofit capacity building. These funds would be available to nonprofits to design and develop community development projects in partnership with local governments.

Efforts to reallocate Community Development Block Grants on a regional basis (H 1226) failed. H 1226 would have directed the Department of Commerce to establish regions in the state and allocate funds to each region based on the number of persons in poverty and the number of substandard housing units, excluding bonus points for Tier One counties and projects seeking to eliminate pit privies.

Housing

Affordable Housing Tax Credit

S.L. 1999-360 creates a state affordable housing tax credit program patterned after the federal Low Income Housing Tax Credit. The federal program provides about 50 percent investor equity of the cost of a typical rental development, which still results in rents that are too high for many low-income North Carolinians.

The new state program provides 8 to 25 percent more investor equity for these rental developments. In Tier One and Tier Two counties (see the earlier discussion on the William S. Lee Act), the state credit is 75 percent of the total federal credit. In all other counties the state credit is 25 percent of the total federal credit.

Qualified projects in Tier One and Tier Two counties are all those that qualify for the federal tax credit. Projects in Tier Three and Tier Four counties are entitled to a state credit if 40 percent of the residential units are rent restricted and occupied by individuals with incomes at 50 percent or less of the area's median income. Projects in Tier Five counties are entitled to the 8 percent credit if 40 percent of the residential units are rent restricted and occupied by individuals with incomes at 35 percent or less of the area's median.

The state tax credit is not intended to generate any additional units of affordable housing. It will generate units with deeper subsidies, however, which should increase the stock of housing targeted to lower-income households. [See Chapter 25 (State Taxation) for more information on the Affordable Housing Tax Credit.]

The Housing Trust Fund

The Housing Trust Fund received $11.3 million for fiscal year 1999–2000 and $5.3 million for fiscal year 2000–2001. S.L. 1999-237 directs the Housing Finance Agency, which administers the Trust Fund, to give first priority to projects in Tier One, Tier Two, and Tier Three counties and second priority to projects that benefit persons and families whose incomes are 50 percent or less of the median family income for the local area. The agency must spend $2.5 million of its funds for 1999–2000 and $500,000 for 2000–2001 for housing for the elderly.

Public Housing

Although public housing authorities in North Carolina have routinely reserved at least one seat on the housing authority commission for a tenant of the authority or a recipient of housing assistance, they have not been required by state law to do so. In fact almost half of the counties were barred from allowing a tenant to serve as a commissioner. S.L. 1999-146 (H 951) makes it mandatory for housing authorities, including regional authorities, to have at least one appointee who is directly assisted by the public housing authority. The only exception provided is rather limited. Exempted are those authorities operating fewer than 300 public housing units that, after reasonable notice of a vacancy and a reasonable waiting period, receive no indication from a resident advisory board that anyone is willing to serve. The new law specifies that, unless the authority's rules require that the representative be selected by other persons receiving assistance from the authority, the mayor (of a city authority) or the commissioners (of a regional authority) will appoint the person. In addition S.L. 1999-146 amended G.S. 157-5 to increase from nine to eleven the maximum number of members that may be appointed to a housing authority board.

The General Assembly clarified that housing authorities are exempt from real estate licensure requirements. Under S.L. 1999-409 regular, salaried employees of housing authorities may engage in real estate transactions involving property owned or leased by the housing authority without a real estate license. However, the exemption does not extend to those contracting with housing authorities to sell or manage property owned or leased by the housing authority.

County Authority for Affordable Housing

Counties are authorized by S.L. 1999-366 (S 708) to appropriate and expend funds for residential housing construction (new and rehabilitated) for sale or rental to persons or families of low and moderate income. A county may develop a mixed-income housing project that serves persons not of low or moderate income if at least 40 percent of the units are exclusively reserved for persons of low or moderate income. Counties may levy taxes or borrow funds for these purposes. However, no rent subsidy may be paid from bond proceeds.

Close Loophole in Minimum Housing Standards

S 414 would have authorized local governments to order repair or demolition of structures for which a repair or vacate order had previously been issued but which remained boarded up after a

year. The bill passed both the House and the Senate but remained in conference when the 1999 session ended. A related bill, S 1152, which authorized the demolition of nonresidential abandoned structures, passed the Senate and remains eligible for consideration in the 2000 session.

Duty to Provide Heat for Rental Properties

Over the years it has been unclear whether local governments could require landlords to provide a permanent source of heat for rental dwellings. The General Assembly has resolved the issue by directing, rather than authorizing, some cities to obligate landlords to provide heat to rental property. Cities with a population of 200,000 or more at the time of the most recent decennial census will have to adopt ordinances requiring every dwelling unit leased as rental property within the city to have a heating system by January 1, 2000. Acceptable heating systems include a central or electric heating system or chimneys, flues, or gas vents with heating appliances connected. The system must be sufficient to heat at least one habitable room, excluding the kitchen, to a minimum of 68 degrees Fahrenheit. S.L. 1999-14 makes it clear that although portable kerosene heaters may serve as a supplementary source of heat, they may not serve to discharge a landlord's obligation to provide a permanent source of heat.

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6

Courts and Civil Procedure

The 1999 legislative session, insofar as it dealt with court administration issues, was dominated by the recommendations of the Commission on the Future of Courts and Justice in North Carolina (Futures Commission). As usual the budget occupied its important place in the court's legislative agenda. The long-standing issue of control over the scheduling of criminal cases was also addressed this session in more detail than ever before. Apart from those major topics, no other major bills were enacted this session, although several bills that affect the day-to-day operations of the courts were enacted. Changes include legislation to clarify the procedures used by clerks of court in hearing civil and estate matters and by judges in hearing appeals from those matters. For the first time journalists will have a limited statutory exemption from testifying about material they gather as journalists.

The Futures Commission, appointed by former Chief Justice James Exum in 1994 to study the organization of the courts and to make recommendations to prepare the court system to meet its anticipated future needs, in 1997 released its recommendations for reorganizing the court system in North Carolina. The commission's report recommended sweeping changes in the structure of the courts as well as different organizational practices that the commission believed would make the courts more accountable, flexible, uniform, and independent. With the exception of the creation of a pilot family court, the commission's recommendations were not acted upon in the 1997 or 1998 sessions, although they were introduced and referred to a study committee. Those recommendations, however, became the foundation for nearly all of the court administration initiatives that were considered in the 1999 legislative session. Two bills that were based on the commission's recommendations were passed, another (providing for appointment of appellate judges) passed the Senate and failed in the House, one came to the House floor and was sent back to committee, and one remains alive for consideration by the 2000 session.

One of the changes that was enacted creates the State Judicial Council to assist the Chief Justice and the Administrative Office of the Courts in addressing statewide management issues. The other redraws the boundaries for the units in which superior court judges ride circuit and authorizes a pilot to try new methods of providing administrative direction to local court districts.

The budget increases this year were smaller than in recent years (and the cuts made to existing budget categories were larger), and they continued the emphasis placed in recent years on personnel expansion instead of technology.

The recurring debate on whether judges should be appointed or elected continued. S 12 would have amended the N.C. Constitution to replace the current partisan election system for appellate judges with a system of gubernatorial appointments and retention elections. This legislation passed the Senate but, as has been the case with similar bills in the recent past, failed in the House. In fact it failed to get even a simple majority, much less the three-fifths majority that would be needed to pass a proposed constitutional amendment. A bill to change the method of election of district court judges from partisan to nonpartisan elections passed the Senate but was not acted on by the House. It remains eligible for consideration in 2000.

In addition significant bills changing the criminal, domestic relations, domestic violence, juvenile, motor vehicle, and social services laws are discussed in other chapters in this book. Most of those acts affect the manner in which courts do their work and should be consulted for a complete view of how the courts have been affected by the 1999 legislative session.

Futures Commission Recommendations

Judicial Council

S.L. 1999-390 (H 1222) establishes a seventeen-member State Judicial Council. The members are

- the Chief Justice, who serves as chair,
- the Chief Judge of the court of appeals,
- one district attorney,
- one public defender,
- one superior court judge,
- one district court judge,
- one clerk of court,
- one magistrate,
- five attorneys, with the State Bar Council, Chief Justice, Governor, House Speaker, and Senate President Pro Tem each appointing one,
- four nonattorneys, with the Chief Justice, Governor, House Speaker, and Senate President Pro Tem each appointing one.

No incumbent General Assembly member or judicial official, unless he or she serves as a representative of a peer group, may serve on the council. Terms are for four years, although initial terms of several members are shorter than that to ensure that in the future, terms will be staggered. The appointing authorities must confer with each other to maximize fair representation from each area of the state, both genders, and each major racial group.

The council has several duties assigned by the statute. It must study the entire judicial system and report periodically to the Chief Justice on its findings. It must advise the Chief Justice on funding priorities and review the proposed budget for the courts each year. It must make recommendations on appropriate levels of salaries and benefits for court officials. It must consider any improvements in case management and uses of alternative dispute resolution. It may recommend changes in district or division lines.

The duty that generated the most discussion and concern among court officials is the duty to recommend performance standards for all courts and judicial officials and to recommend procedures to conduct periodic evaluation of the courts and of individual court officials. Evaluation of judges must include assessments by other judges, litigants, jurors, and the judge. Summaries of the data collected are to be made available to the public, but the raw data used to compile the summaries are not public record.

Finally, in its most global responsibility, the council must monitor "the administration of justice and assess the effectiveness of the Judicial Branch in serving the public." The law creating the council becomes effective January 1, 2000.

The Futures Commission report, in recommending the creation of a Judicial Council, noted:

> If the chief justice's role is to be strengthened, that office will need assistance. We believe that a council composed of both lawyers and lay members can best provide the perspective of other parts of the court system and of the general public. A council with experienced judges, lawyers, civic leaders, business and professional people can also be a sounding board for managing the courts. The council will not interfere with the independent performance of judicial functions, but it can provide the General Assembly with comfort that the system will be governed in a manner that truly is sensitive to the broad public interest. . . .
>
> It is intended that the State Judicial Council be an important, influential body. . . . It can guarantee that the judicial branch will not lose sight of its mission to serve the public. It can provide the chief justice with invaluable counsel. And the Council can be an effective advocate for the courts in the legislature and with the public. ("*Without Favor, Denial, or Delay*." Report of the Commission for the Future of Justice and the Courts in North Carolina, Dec. 1996, pp. 34–35.)

Division Reorganization, Pilot Management Programs

The other bill that was based on Futures Commission recommendations was S.L. 1999-396 (S 1025). Some background information is necessary to put it in context. A central recommendation of the Futures Commission is that the district and superior courts be merged into a new circuit court. In addition to consolidation of the subject matter jurisdiction of the existing courts, the circuit court proposal also would change the geographic area in which each judge serves. Under current law district judges serve in districts (of which there are thirty-nine), and superior court judges rotate, or ride circuit, throughout a division that is composed of several districts. Currently four divisions serve this purpose.

The Futures Commission recommended that circuits be sized somewhere in between districts (the largest of which has seven sparsely populated, rural counties) and divisions (the smallest of which has twenty counties and extends from South Carolina to Virginia). Under this plan a judge generally would hold court in all parts of the circuit over time. The commission did not suggest any specific boundary lines or circuits, but it did recommend dividing the state into fourteen to sixteen circuits. Moving to a circuit court system, however, requires a constitutional amendment.

That presented a problem. Futures Commission advocates apparently decided in 1997 that constitutional amendments to reform the structure of the court system were unlikely to obtain legislative approval. As a result, with one exception (selection of appellate judges), they focused their efforts in 1998 and 1999 on changes that could be accomplished by statute. That meant that the more comprehensive changes, such as the establishment of circuits, were left for future sessions to consider.

As an alternative, in 1998 the General Assembly enacted legislation (S.L. 1998-212, sec. 16.17A) requesting that the Chief Justice convene a task force of judicial officials to do two things: one, make recommendations for the reorganization of the Superior Court Division into no fewer than eight and no more than twelve divisions and, two, recommend the steps necessary to establish pilot programs in up to three new judicial divisions to approximate, as closely as possible in the district/superior court organizational model, the operation of a "circuit court" as envisioned by the Futures Commission. The Chief Justice appointed the task force, which made several recommendations to the General Assembly. The task force concluded that it could not make recommendations on how to implement a circuit court, but it did recommend dividing the state into eight divisions for the purpose of superior court rotation. With respect to the circuit pilots, the task force requested more information about exactly which parts of the Futures Commission's ideas should be included. It declined to recommend any specific action to establish pilots.

S.L. 1999-396 was introduced as a result of the task force report. The legislation divided the state into eight judicial divisions, and it authorized pilot court management programs.

The eight divisions are

- Division 1—Districts 1, 2, 3A, 6A, 6B, 7A, 7B-C
- Division 2—Districts 3B, 4A, 4B, 5, 8A, 8B
- Division 3—Districts 9, 9A, 10, 14, 15A, 15B
- Division 4—Districts 11A, 11B, 12, 13, 16A, 16B
- Division 5—Districts 17A, 17B, 18, 19B, 21, 23
- Division 6—Districts 19A, 19C, 20A, 20B, 22
- Division 7—Districts 25A, 25B, 26, 27A, 27B
- Division 8—Districts 24, 28, 29, 30A, 30B

The new division lines are effective January 1, 2000.

The Chief Justice may choose up to two divisions of these eight or portions of a division in which to establish pilot programs for the organization and management of the trial courts in that area. In an area designated as a pilot, the Chief Justice is to name a judge to serve as the coordinating judge for the pilot program. That judge must then work with the existing administrative structure to achieve the goals of the pilot program. Each district included in the pilot area will still have a chief district court judge and a senior resident superior court judge, whose positions are established by the statutes and constitution of this state. For the pilot to work the coordinating judge must get the cooperation of those judges. The legislation requires the coordinating judge to obtain the consent of the clerks of court, district attorneys, and senior resident and chief district court judges in the pilot area to take any significant action. It does not specify whether that consent may be by simple majority or by unanimous consent, nor does it specify if consent from each group is required for all actions. With that consent, the coordinating judge may establish the schedule for all the sessions of court in the pilot area, assign judges, develop calendaring procedures for both criminal and civil court, assign cases to individual judges, establish local rules, and allow judges to hear motions and pretrial proceedings in any county in the pilot area.

While the legislation does not explicitly say so, the clear implication is that superior court judges in a pilot area will not rotate outside the pilot and will be assigned by the coordinating judge instead of by the Chief Justice. Similarly the implication is that district judges may be assigned outside their district but within the pilot area by the coordinating judge and not by the Chief Justice.

The coordinating judge may hire staff and must appoint an advisory council to assist him or her in the conduct of the pilot program. The legislature appropriated $250,000 to provide staff and other support to the pilot areas. The Chief Justice and Administrative Office of the Courts must report on the experience gained by the pilot programs by March 1, 2002.

The pilot programs do not possess the clear lines of accountability that the Futures Commission envisioned in its proposals. That kind of accountability would require major reorganizational legislation and possibly a constitutional amendment. This effort may, however, allow some experimentation with a higher level of administrative support and a greater emphasis on assignment of judges to hear individual cases. It may also provide experience on how local assignments of judges over an area larger than the existing districts can work.

S.L. 1999-396 takes effect January 1, 2000.

The Budget

Funds allocated to the court system for the 1999–2001 biennium by S.L. 1999-237 (H 168) reflected a net gain of around $3 million in the first year and $7 million in the second. That figure does not include the funds necessary to finance the pay raise for all court officials and employees. The funds for new activities were substantially greater than that figure, but corresponding cuts were made in such items as salary reserve funds, equipment and operating reserves, software

maintenance agreements, and out-of-state travel. The increase suggested by the Governor to provide indigent defense also was reduced. The indigent defense cuts do not reflect an actual reduction in expenditures; instead they are a reduction in the amount by which the base budget for that activity was increased in the Governor's proposed budget.

The increases are mostly for new personnel, especially for judges. The budget adds four special superior court judges, one new resident judge in District 22, and nine new district court judges added in Districts 2, 5, 13, 15A, 18, 19A, 26, 27A, and 30. The superior court judges are effective October 1, 1999, and the district court judges are effective January 1, 2000. In addition eight new court reporter positions, seven new judges' support positions, and three magistrates are created. Prosecutors and clerks have received substantial increases in personnel over the last two years. This year's increases are much smaller—eleven new deputy clerk positions and nine new assistant district attorneys. The prosecutors are added in Districts 5, 10 (two positions), 12, 13, 15A, 19A, 20, and 26. Twenty-five victim witness/legal assistant positions were added in district attorney offices in anticipation of the demand for services created by the inclusion of some domestic violence misdemeanors in the coverage afforded by the victims' rights legislation enacted in 1998. Four new assistant public defender positions also are created. All these new positions are effective January 1, 2000. Family court funding was increased to support expansion of the program into two or more additional districts. Finally, funding was provided to the Department of Health and Human Services because that agency will begin to handle the financial transactions associated with child support collections in all non–IV-D cases. Formerly the clerk handled those cases. See Chapter 4 (Children and Families) for a detailed discussion of the child support changes.

Notable for its absence is funding for new initiatives in technology. Court officials and the public have demanded modernization of the court technology programs and equipment now in use. In 1998 the legislature authorized an independent study of the court system's technology needs, but that report was not available by the time the legislature considered the court system's budget. It is likely that increased funding for technology will be a high priority in the future. One item funded was a disaster recovery program for the court computer operations.

Relatively few nonappropriation matters were included in the court system's portion of the budget bill for this biennium. However, one such provision directs the Administrative Office of the Courts to establish an education program about custody and visitation issues for married couples with children who are involved in separations or divorces.

In addition the Administrative Office of the Courts is authorized to establish a court technology fund. The fund will receive any fees collected from third parties that provide remote access to court records for the public.

In two districts, 5 and 19B, the existing district is subdivided into smaller districts. The new subdistricts will be used only for elections and will have no bearing on the administration of the courts in those districts.

Finally, the budget adds new statutes authorizing cities and counties to provide funds to the Administrative Office of the Courts to supplement the operations of prosecutors when the district attorney demonstrates that "overwhelming public interest" or his or her inability to keep the dockets current requires additional resources. This authorization is the latest in a continuing debate over whether the state, and only the state, should provide funding for the court system, including prosecution. It is the first time since the court reform of the 1960s that the legislature has explicitly authorized local governments to use local tax revenues to fund the operation of the state court system.

Criminal Calendaring

In North Carolina, the General Statutes allocate the responsibility for preparing the criminal calendars (schedules setting out when the court will hear cases) to the district attorney. For several years that has been a subject of litigation and proposed legislation. It is a debate in which the

arguments are well known. [For a discussion, see Stanley Hammer, "Should Prosecutors Control the Criminal Trial Calendar?" 59 *Popular Government* (Spring 1994): 2–11; and Thomas J. Keith, "A Prosecutor's View of Criminal Trial Calendaring," 60 *Popular Government* (Spring 1995): 2–17.] S.L 1999-428 (S 292) enacts the first legislation on the subject since 1983. While it provides for mandatory procedures that district attorneys must follow, it maintains the power of the district attorney to calendar cases. If the district attorney does not expeditiously calendar the cases, a defendant has new statutory rights to involve a judge in the calendaring process.

Specifically the act adds a new G.S. 7A-49.4 to set out the rules applicable to calendaring of criminal cases in superior court. Effective January 1, 2000, each district attorney (DA) must develop a case docketing plan with input from judges and the local bar. The plan must contain provisions requiring an administrative hearing regarding each felony within sixty days of indictment (or service of notice of indictment). The judge presiding over the hearing must set any necessary deadlines for discovery, arraignment, and motions. The hearing may include a plea conference if the district attorney has offered a plea. The law establishes a preference for resident judges to conduct the hearings but allows others to preside as well. It allows for multiple administrative settings as needed. If parties do not agree on a trial date by the end of the last setting contemplated by the plan, the DA must propose a trial date, which will be the date unless the judge sets a different date. The date for a trial may not be set earlier than thirty days after last setting without consent of the defendant. Administrative hearings may be held anywhere within a district, but a defendant may only be required to attend if the hearing is in the county of filing. S.L. 1999-428 allows a defendant to apply to the senior resident judge (or designee) for a specific trial date if no date is set within 120 days of indictment, and that judge must hold a hearing to determine when the trial should be held. All printed calendars must list cases in the order of intended trial or disposition and should not contain cases that the DA does not reasonably expect to be ready for trial. Deviations from the printed order require approval of the judge if the defendant objects. If all the cases are not reached before court adjourns, the DA must set new trial dates for the cases not reached.

Clerk's Procedures and Appeals from Clerk

Background

S.L 1999-216 (S 246) revises the statutes specifying when clerks of court should hear issues arising in civil matters, special proceedings, and estate matters and when they should transfer the matter to a trial court. In addition it specifies how appeals from the clerks' decisions are to be handled and the standard of review the trial court is to apply in hearing the matter on appeal. The General Statutes Commission recommended the bill.

Appeals or transfers of cases started before the clerk of superior court are the exception. When they have occurred, they have been governed by statutes that are quite old and by cases interpreting those statutes that also are decades old. The basic statutes that govern these matters were enacted right after the Civil War, when the state was fashioning a governmental structure to secure its reentry into the Union. It served those times well.

Since those times the court system has undergone significant changes. Over the latter part of the nineteenth century and the first half of this century, local courts sprang up like weeds in virtually every county of the state. A hodgepodge of local trial courts below the superior court—more than 250—developed, as did widely differing treatments of clerk of court jurisdiction. This resulted in a system that was not uniform in the manner in which clerks exercised jurisdiction or in the manner in which appeals from their decisions were handled.

In the 1950s and 1960s a new court system was established to deal with these and other problems in court administration. The clerks' jurisdiction was made uniform. The statutes that governed appeals and transfers, however, were hardly touched at all. The divergence in practice that grew during the days of local courts survived the court unification effort. S.L. 1999-216

repeals many of those post–Civil War statutes and replaces them with a more uniform treatment of appeals and transfers.

Current law

Clerks handle three basic kinds of actions. They enter orders in civil actions, typically in pre- or post-trial situations. They often preside over and enter orders and judgments in special proceedings in an amazingly wide array of cases, ranging from name changes to cartway proceedings to partitions of land. All of these cases share the common characteristic of needing court approval to confer a new status or to authorize the taking of some kind of action; many are uncontested. Finally, clerks are the judges of probate, and in that capacity they preside over matters related to the estates of decedents, minors, and incompetents.

Article 27 of G.S. Chapter 1 provided some limited procedural guidance in these cases. It established a procedure for the clerk to follow in making a record; that procedure, however, was rarely followed. It provided some guidance in appeals and transfers of special proceedings, but another section (G.S. 1-399), in an article dealing only with special proceedings, had conflicting language. In estate matters, where the clerk's actions have the most finality, virtually no statutory guidance was offered. In addition, two very important cases were not followed consistently, and from time to time that inconsistency was a trap for the unwary estate lawyer who was unfamiliar with the cases.

New Legislation

The commission's stated goal was to bring some order to the handling of these cases and to provide easily accessible, clear guidance to clerks, judges, attorneys, and litigants who appear before a clerk of court in a civil action, special proceeding, or estate matter. The commission's stated intent was to preserve the substance of the existing law, changing it only where ambiguity required clarification.

S.L. 1999-216 adds a new Article 27A to G.S. Chapter 1 that consists of three sections. One deals with appeals or transfers of issues heard by the clerk in civil actions, one with special proceedings, and one with estate matters. Existing statutes on those subjects are repealed.

Civil matters. Section 1-301.1 deals with the clerk's handling of civil matters. It is consistent with current law. In most civil matters in which the clerk exercises civil jurisdiction, the clerk holds that power concurrently with the judge. Parties typically chose to file the matter with the clerk to get a more expeditious hearing or ruling. The new law continues that rule. Any decision of the clerk may be appealed for a de novo review by the judge. On appeal the judge may hear the entire matter or dispose of only the matter that led to the appeal. If the proceeding is one that must be heard by the clerk initially, the judge must resolve only the matter appealed and recommit the case for final resolution by the clerk.

Special Proceedings. Section 1-301.2 provides that special proceedings are to be transferred to the trial courts when issues of fact or law are raised. In doing so the section clarifies the existing law, since one current statute requires a transfer "if issues of law and of fact, or of fact only" are raised, and another requires a transfer if a party "may plead any equitable or other defense, or ask any equitable or other relief in the pleadings." The new law requires transfer if issues of fact, equitable defenses, or equitable relief are sought *in the pleadings* in the special proceeding. If the matter is not pleaded but is raised in the course of hearing the special proceeding, the clerk continues to hear the matter, and the issue may then be appealed for a de novo review. Three important and high-volume special proceedings—incompetency determinations, foreclosures, and partitions—are exempted from these rules. All three have highly developed laws with special rules about transfer, and those specific rules apply.

Estates. Section 1-301.3 applies to appeals of estate matters. Estates are not transferred under current law. They are heard by the clerk as the judge of probate and are appealed to superior court if further review is sought. The basic law is found in two cases, *Estate of Lowther*, 271 N.C. 345, 156 S.E.2d 693 (1967), and *Estate of Adamee*, 291 N.C. 386, 230 S.E.2d 541 (1976). *Lowther*

holds that the clerk's jurisdiction is exclusive in probate matters, that the superior court has appellate jurisdiction only, and that appeals from clerks' orders in such cases will be heard de novo by the superior court if the appellant challenges the findings of fact. If the appellant does not except to the findings, "a general exception to the judgement presents only the question whether the facts found support the conclusions of law" (271 N.C. at 355–56, 156 S.E.2d at 702). *Adamee* reaffirmed that the establishment of the district court and the uniform court system did not affect the holding in *Lowther*. The new law restates that rule and requires the clerk to enter orders, including findings of fact and conclusions of law in estate orders.

The commission's intent was to follow the basic principles established in *Lowther*. The superior court acts in an appellate capacity to review the decision of the clerk, not to conduct a de novo hearing of the matter. Evidentiary matters, however, may be raised for the first time before the trial judge, but the judge may only review the specific evidentiary issue. He or she may not review all the evidence and substitute his or her judgment for the clerk's.

Since the clerks hear estate matters to their conclusion and appeals are on the record made in the proceeding, clerks or parties may require that a verbatim record be kept. Electronic equipment must be used unless a party chooses to pay for a court reporter to create a verbatim record.

Partition proceedings. The legislature added an amendment to the commission's bill to specify that, in proceedings to divide jointly owned land, the clerk may not decide how the land should be divided. Instead the clerk must appoint disinterested experts (commissioners) to review the land and divide it according to the respective interests of the parties. A clerk who does not agree with the commissioners' recommendation may direct them to reconsider their recommendation, or he or she may appoint new commissioners. The amendment also provides that judges, in reviewing a clerk's decision, may not do anything that the clerk could not do. Thus a judge may not change the suggested division of land, but he or she may send the matter back to the commissioners to reconsider the matter or direct that new commissioners be appointed.

Alternative Dispute Resolution

S.L. 1999-354 (H 924) makes several modifications to current programs that provide alternatives to litigation. It modifies the procedure followed in mediated settlement conferences for superior court civil actions and district court family law actions by providing that settlements arising out of these mediations may not be enforced unless the settlement has been reduced to writing and signed by the parties. It has been a practice of many mediators to reduce settlements to writing, but now the statutes will require it. The mediated settlement conferences have provided that statements made in a mediation proceeding may not be admissible in a court proceeding; nor may a mediator be compelled to testify about statements made during a mediation proceeding. S.L. 1999-354 makes an exception for proceedings for sanctions or proceedings to enforce a settlement of the action, providing that a mediator can be compelled to attest to the signing of a settlement agreement in a court proceeding to enforce the settlement.

S.L. 1999-354 adds a statutory provision to G.S. Chapter 7A that recognizes the importance of community mediation centers (dispute resolution centers) and encourages each chief district court judge and district attorney to send civil cases and criminal misdemeanors to the mediation center when it provides an appropriate alternative to a court proceeding. Because of the nature of mediation services, mediators potentially could be charged with violating two professional licensing requirements. Therefore the new law amends G.S. 84-2.1 to provide that "practicing law" does not encompass the writing of memoranda of understanding by mediators at community mediation centers. It also amends G.S. 90-330 to provide that settlement of conflicts by mediators at community mediation centers does not constitute the "practice of counseling." It adds provisions governing admissibility of statements made during community mediation sessions that are similar to those in place for mediated settlement conferences. Statements made during a mediation are not subject to discovery and are not admissible in any court proceeding except one to enforce the settlement. The settlement must be reduced to writing to be enforced; no mediator is

compelled in a civil or criminal case to testify about statements made during a mediation, except that in a criminal case the judge may compel disclosure if the information is unrelated to the dispute that is the subject of the mediation and the judge believes the testimony is necessary to the administration of justice. However, a mediator must comply with the statutory requirement for reporting suspected abuse of a child or a disabled adult.

S.L. 1999-185 (H 495) adds a new law on family law arbitration. That bill is discussed in Chapter 4 (Children and Families).

Civil Procedure

Rules of Civil Procedure

S.L. 1999-187 (S 921) amends Rule 55(b) to allow a judge to grant a default judgment without a hearing when (1) the motion for default notifies the party against whom the judgment is sought that the judge will decide the motion without a hearing if the party against whom the motion is sought fails to file a written response within thirty days and (2) that party fails to file a response.

S.L. 1999-264 (S 1055) amends Rule 28(c) to prohibit a deposition from being taken before a court reporter who is an independent contractor under a blanket contract for court reporting services with an attorney of the parties, a party to the action, or a party having a financial interest in the action unless the parties waive disqualification by stipulation after written disclosure. It also prohibits a court reporter from taking a deposition under a contractual agreement that requires transmission of the original transcript without the transcript having been certified.

Civil Contempt

S.L. 1999-361 (S 170) modifies civil contempt law. It began as an attempt to limit the period of imprisonment for civil contempt, but as enacted its limitation seems to apply to only a very small number of civil contempt cases. It provides that the maximum imprisonment for civil contempt for refusal to comply with a court order is ninety days, with possible recommitment hearings for ninety-day periods up to a total of twelve months imprisonment. However, a person who is imprisoned for civil contempt for failure to pay child support or for failure to perform an act that does not require payment of a monetary judgment may be imprisoned as long as the contempt continues. Because those two exceptions constitute many of the situations in which a person is found in civil contempt, very few cases will be affected by the new requirement. One example of the kind of case that will be covered is a person who is held in civil contempt for failing to make a lump sum distributive payment as ordered in an equitable distribution judgment.

S.L. 1999-361 also amends G.S. 5A-21 to require the judge or clerk who is imposing civil contempt to make specific findings of fact that the noncompliance is willful, which has been required by the appellate courts but is now stated in the statute. The new law also allows contempt proceedings to be initiated by a party by motion and notice in addition to the current procedure of motion to a judicial official who issues an order to appear and show cause. The main difference in the manner of initiating the contempt charges is that the defendant cannot be held in contempt for failing to appear in response to a motion and notice as opposed to an order.

Prosecution Bonds

G.S. 1-109 requires a clerk, upon motion of the defendant, to set a bond of $200 to be given by the plaintiff in a civil action or special proceeding for the payment of all costs if the defendant recovers costs against the plaintiff in the action. Failure to file the bond constitutes grounds for dismissal of the action. S.L. 1999-106 (S 693) modifies that statute to require the defendant who

seeks imposition of the bond to show good cause why the bond should be imposed and to give the clerk discretion whether to require the bond.

Matters of Particular Interest to Trial Judges

Privileges and Admissibility of Documents

Several bills dealt with the admissibility of evidence. The most interesting is S.L. 1999-267 (S 1009), which grants a qualified privilege to a journalist against disclosure in a legal proceeding of any information obtained while acting as a journalist. This statute follows a ruling by the court of appeals in *In re Owens*, 128 N.C. App. 577, 496 S.E.2d 592 (1998), in which the court said there is no common law privilege protecting a journalist from testifying about information gained as a journalist, nor is such a privilege constitutionally required. Thus the court left it to the legislature to decide whether to grant a privilege. This year the General Assembly did so. Under S.L. 1999-267, the journalist's privilege may be overcome by establishing that the testimony is relevant and material to the proper administration of justice; the evidence cannot be obtained from alternative sources; and the testimony is essential to the maintenance of a claim or defense of the person on whose behalf the testimony is sought. The privilege does not apply to disclosure of information obtained as a result of journalists' eyewitness observations of criminal or tortious conduct.

In S.L. 1999-374 (S 995), the General Assembly added a testimonial privilege for police peer support group counselors for any communication necessary to render counseling services unless the judge orders disclosure is necessary for the proper administration of justice. The privilege does not apply if the peer counselor was an initial responding officer, a witness, or a party to the incident that led to the peer counseling or to communications made to the peer counselor while the peer counselor was not acting in his or her official capacity. Nor does the privilege apply to communications related to a violation of criminal law.

Various provisions in chapters 8, 153A, and 160A of the General Statutes allow businesses and governmental agencies to destroy original documents after reproducing those documents by microfilm or by photographic or other processes that reproduce the original and also authorize admission of the reproduction into evidence in a court proceeding as if it were the original. S.L. 1999-131 (S 1021) modifies those statutes to conform to modern methods of copying documents. It specifies that the statutes cover records stored on any form of permanent, computer-readable media, such as CD-ROM, if the medium is not subject to erasure or alteration.

In order to encourage participation in a child fatality review so that the state has accurate and complete studies of child fatalities, S.L. 1999-190 (H 262) provides that the findings and recommendations by a State Child Fatality Review Team are not admissible in civil proceedings against individuals who participate in the review.

New Causes of Action

This session of the General Assembly created several new causes of action to deal with current national issues. In response to several notable incidents of school violence, S.L. 1999-257 (H 517) makes a parent of a minor liable to the school for damages of up to $25,000 if the child makes a bomb threat or brings a bomb or explosive device onto educational property and up to $50,000 if the child discharges a firearm or detonates an explosive device on educational property. The school must prove that the parent knew or should have known of the minor's likelihood to commit such an act; that the parent had the opportunity and ability to control the minor; and that the parent made no reasonable effort to correct, restrain, or properly supervise the minor. A more detailed discussion of this law is in Chapter 9 (Elementary and Secondary Education).

S.L. 1999-295 (S 1005) is one of two bills that anticipate lawsuits arising out of Year 2000 (Y2K)–related problems. It provides that a defendant is not liable to third parties for delay or

interruption in the performance of a contract or in the delivery of goods if the delay or interruption was caused by another party's Y2K problem. It prohibits punitive or consequential damages and establishes a prima facie rule that due diligence is shown by compliance with directives by state or federal regulators. It also establishes a mandatory prelitigation mediation procedure similar to the procedure already existing for farm nuisance cases. S.L. 1999-308 (S 1074), the second bill dealing with Y2K litigation, establishes an affirmative defense to a lawsuit in which failure of the defendant to meet an obligation is caused by a Y2K problem on computing equipment not owned or controlled by the defendant. The granting of the affirmative defense does not impair, discharge, or otherwise affect the underlying obligation that is the basis of the claim against which the affirmative defense was asserted. However, the law provides that if the affirmative defense is established, the claim is dismissed without prejudice and may not be refiled for sixty days, which means that if the underlying obligation has not been satisfied, the lawsuit may be refiled after sixty days.

Finally, S.L. 1999-437 (S 830) requires automobile repair shops to provide written estimates of repairs over $350. Further, it prohibits the following practices and provides a cause of action for violation with the relief being damages, attorney fees, and injunctive relief:

- charging more than 10 percent over the estimate without the consent of the customer,
- failure to return the vehicle because of failure to pay charges not agreed upon,
- charging for unauthorized repairs or repairs not actually done,
- representing that unneeded repairs are necessary,
- falsely suggesting that a vehicle is dangerous to operate,
- rebuilding a vehicle in a way that does not meet the manufacturer's specifications without consent of the owner,
- fraudulently misusing a customer's credit card.

The General Assembly also wanted to curb the practice of advertising a price for a vehicle service that is different from the price actually charged, that is, the $19.95 oil change that actually costs $25. The new law requires a business that services or repairs private passenger vehicles and advertises the cost of a specified service to disclose in the advertisement all additional charges routinely charged for that service. If the business fails to comply with the law, then upon written notice the customer is required to pay only those charges disclosed in the advertisement plus taxes required by law. Violation also constitutes an unfair trade practice. S.L. 1999-437 takes effect January 1, 2000.

Protecting Structured Settlement Transfers

S.L. 1999-367 (S 746) reflects legislative concerns about businesses that purchase the rights to a structured settlement from the settlement recipients (payee) for a one-time cash payment. It prohibits the transfer of rights to receive structured settlement payments without court approval and requires that a "court of competent jurisdiction" determine that

- transfer of the rights to a structured settlement is in the best interest of the payee;
- the person to whom the structured settlement rights are being transferred has given the payee notice of the financial details of the transfer in compliance with the law;
- the payee has received independent professional advice regarding the legal, tax, and financial implications of the transfer;
- the discount rate used in determining the net amount does not exceed an annual percentage rate of prime plus five percentage points;
- the fees and commissions do not exceed 2 percent of the net amount payable to the payee; and
- the transfer is fair and reasonable.

If the structured settlement was entered into after a civil action was filed in North Carolina, the "court of competent jurisdiction" is the court in which the civil action was filed, and the matter is brought before a judge by a motion in the cause. If the settlement was entered into without the

commencement of litigation or as a result of litigation in another state, the "court of competent jurisdiction" is the superior court, and the matter is brought before the court by filing a special proceeding. However, unlike other special proceedings, the case goes directly to the superior court judge without the clerk ruling first. The provisions of the law may not be waived.

Matters of Particular Interest to Clerks of Superior Court

Civil Matters

Interest on Judgments. In *Custom Molders, Inc. v. American Yard Products, Inc.*, 342 N.C. 133, 463 S.E.2d 199 (1995), the N.C. Supreme Court interpreted G.S. 24-5(b) regarding whether a judgment for money damages in an action not based on contract bears postjudgment interest. Based on the legislative history of the statute and an effective date provision in 1985 N.C. Sess. Laws Ch. 214, the court held that postjudgment interest applies to the entire judgment, not merely the compensatory damages portion of the judgment. S.L. 1999-384 (S 128), recommended by the General Statutes Commission, codifies the decision in *Custom Molders*. The General Assembly also resolves another ambiguity in G.S. 24-5. The language "in an action for breach of contract, except an action on a penal bond, the amount awarded . . . bears interest from the date of breach" raises the issue of whether an action on a penal bond draws postjudgment interest or no interest. An early court decision, *Moseley v. Johnson*, 144 N.C. 257 (1907), took the former position. S.L. 1999-384 provides that the amount of a judgment on a penal bond, except for costs, bears interest at the legal rate from the date of entry until paid.

Letters of Credit as Security. Sometimes clerks are asked to accept letters of credit as the security for a required bond in a civil action, special proceeding, or an estate matter. S.L. 1999-73 (S 245) revised Article 5 of the Uniform Commercial Code dealing with letters of credit. The new law makes numerous changes, but one provision is important for clerks in deciding whether to accept a letter of credit in lieu of a surety or cash bond. The new law provides that, if no expiration date is stated, a letter of credit expires one year after the date issued and a letter of credit that states it is perpetual expires five years after it is issued.

Lis Pendens for Abatement of Public Nuisance. General Statutes Chapter 19 provides a procedure for abatement of nuisances for buildings used for certain illegal activities. S.L. 1999-371 (S 929) provides that a person filing a civil action to abate a nuisance may file a notice of lis pendens in the county where the property is located.

Foreclosures

Frequently debtors appear at foreclosure hearings not to contest their default but rather to find out the amount owed on their note. They indicate to the clerk that they have been unable to get the precise amount owed from the noteholder. S.L. 1999-137 (H 226) was enacted to cure this problem. It requires the trustee to include, within the notice of a foreclosure hearing, which is the initiating document for the foreclosure, a statement that the noteholder has, within the past thirty days, mailed, by first-class mail, a notice to the debtor indicating the amount of principal and interest the debtor owes as of the date of the statement, a daily interest charge from that date until the note is paid, and the amount of other expenses the holder contends is owed. Any dispute concerning the mailing of the notice or the accuracy of the written statement cannot be considered by the clerk at the foreclosure hearing. S.L. 1999-137 is effective January 1, 2000.

Administration of Estates

Decedent's Estates. S.L. 1999-133 (S 525) amends G.S. 28A-4-2 to remove the automatic disqualification for service as a personal representative for "aliens disqualified by law." The provision was subject to various interpretations since the statutes never explain what is meant by

"disqualified by law." Effective for the estates of decedents whose deaths occur on or after January 1, 2000, the clerk may appoint a person who is not a citizen of the United States as a personal representative.

S.L. 1999-166 (S 871) deals with the problem of making the estate liable for the funeral expenses of the decedent when a family member must contract for the expenses before a personal representative is appointed. It amends G.S. 28A-19-8 to provide that a person authorized to dispose of a body may bind the decedent's estate for funeral expenses. G.S. 130A-420 authorizes the following persons in the order listed to dispose of the body: surviving spouse, majority of the surviving children, surviving parents, majority of the persons in the class of next degree of kinship, and if no surviving kin then the person who took care of decedent. The estate is liable to pay these expenses to the funeral establishment, a third-party creditor that finances the payment of the expenses, or to a person authorized to dispose of the body who has paid for the funeral. The new law makes no change in the amount of funeral expenses that are paid as a first priority.

North Carolina's lapse statute specifies how to apply a bequest in a will when the person to whom property is left (devisee) predeceases the testator. S.L. 1999-145 (S 329), effective January 1, 2000, rewrites the statute in an attempt to make it easier to apply and to expand persons entitled to take the devisee's interest. It amends G.S. 31-42 to provide that if the devisee is the testator's grandparent or a descendant of the testator's grandparent, then the devisee's issue (children, grandchildren, great-grandchildren) take in the place of the devisee. For example, a testator dies leaving two children; his will leaves $10,000 to his favorite nephew and the remainder of the estate to the testator's two children; the nephew predeceases the testator but left three children. The nephew's three children divide the $10,000 bequest to their father.

If the devisee has no issue, or if the devisee does not fall within the required categories of kinship, the property passes to the persons taking under the residuary clause in the testator's will. If the deceased devisee is one of several residuary devisees, the deceased devisee's interest augments the share of the other residuary devisees; if the devisee is the sole residuary devisee, the interest passes under the laws of intestate succession. For example, a testator dies leaving two children; his will leaves $10,000 to his best friend and the remainder of his estate to his two children; the friend predeceased the testator but left three children. The friend does not fit within the category of covered kinship; therefore, the $10,000 goes to the testator's two children.

S.L. 1999-296 (S 176) amends G.S. 31A-4 to specify how property is distributed if the decedent is killed by a person who would have inherited the decedent's property. If the decedent dies intestate and the slayer has living issue who would have been entitled to take if the slayer had predeceased the person killed, the issue take as if the slayer had predeceased the decedent. If there is no such issue, the property passes as if the slayer had predeceased the decedent. If the decedent dies with a will, the property passes as provided by the antilapse statute.

Gifts by Fiduciaries. Two statutes modify the law regarding a fiduciary making gifts from the principal's estate. Under current law a guardian can make a gift from income or principal of the incompetent's estate for governmental or charitable purposes upon approval by a superior court judge. S.L. 1999-270 (S 1003) imposes a requirement that the judge find that the proposed gift is of a nature that the incompetent person would have approved before being declared incompetent. It also allows the guardian to make gifts, with approval by a resident superior court judge, to certain individuals, including beneficiaries under the incompetent's will or trust, the incompetent's parents or spouse, or a descendant of the incompetent or of the incompetent's grandparent. If the guardian fits within one of these categories of individuals, the gift may be to the guardian. To approve a gift from income, the judge must find that, after making the gifts and paying taxes, the remaining income will be reasonable and adequate to provide for the support and maintenance of the incompetent in the manner to which the incompetent is accustomed. To approve a gift from principal, the judge must find that (1) the remaining principal will be sufficient to provide reasonable and adequate income for the support of the incompetent in the manner to which the incompetent is accustomed, (2) making the gift will not jeopardize any existing creditor of the incompetent, and (3) it is improbable that the incompetent will recover competency.

S.L. 1999-270 also authorizes the guardian of the estate of an incompetent to petition the court for approval to transfer the ward's assets to a revocable trust executed by the ward before he

or she was declared incompetent if the ward's will provides that the assets are to paid into the trust at death, if the trust has the same dispositive provisions as the will, or if the trust provides that the assets are to be distributed at the ward's death. The guardian may withdraw assets transferred to the trust upon thirty days notice to the trustee.

Under G.S. 32A-2 a person giving a power of attorney may specifically grant authority within that power of attorney for the attorney-in-fact to make gifts to himself or herself. S.L. 1999-385 (H 604) places a limitation on those gifts by providing that they must be made in accordance with the principal's personal history of making lifetime gifts.

Trusts. S.L. 1999-215 (S 178), the North Carolina Uniform Prudent Investor Act, sets out the standard of care for a trustee with regard to investment of funds. It applies to testamentary trusts but does not apply to guardianships or estates managed by personal representatives. S.L. 1999-215 takes effect January 1, 2000.

S.L. 1999-144 (S 1060) gives trustees the authority to sever trusts under certain circumstances. S.L. 1999-266 (S 526), effective January 1, 2000, for all trusts except certain spendthrift trusts created before October 1, 1991, adds a new Article 11A to G.S. Chapter 36A, replacing current Article 11, to provide for modification or termination of express, noncharitable trusts in the following situations:

- by the settlor (person who created the trust) if he or she is the sole beneficiary of the trust,
- by the settlor and all the beneficiaries if all consent,
- by the superior court if all the beneficiaries do not consent and the court finds that the modification or termination would not substantially impair the interest of the beneficiaries who do not consent or who are incompetent or are minors,
- by the superior court if the court determines that the fair market value of the assets is so low that continuance of the trust in relationship to the cost of its administration would defeat the purposes of the trust,
- by the superior court because of changed circumstances or if the purpose of the trust has been fulfilled or become impossible to fulfill.

It also allows the trustee to terminate a trust, without court approval, if the assets of the trust have a fair market value of $50,000 or less and continuance of the trust in relation to the costs of its administration would defeat the purposes of the trust.

S.L. 1999-118 (H 201) makes technical changes to the statutes governing the appointment of successor trustees.

Matters of Particular Interest to Magistrates

Jurisdiction in Small Claims Court

As has been the customary practice since 1966, when small claim courts were created with a jurisdictional amount of $300, every few years the North Carolina Merchants Association approaches the General Assembly about raising the jurisdictional amount for small claims court. The last time the jurisdictional amount was raised was 1993. S.L. 1999-411 (H 939) increases the small claim jurisdictional amount from $3,000 to $4,000.

Vacation Rental Contracts

S.L. 1999-420 (S 974) adds a new Chapter 42A to the General Statutes setting out special rules for rentals of residential property for vacation purposes because those rentals have unique requirements not found in traditional, long-term leases of primary residences. This act specifies the rights of landlords and tenants in vacation rental leases and enacts an eviction procedure that is even more expeditious than the traditional summary ejectment procedure.

Vacation Rental Agreements. A *vacation rental* is defined as the rental of residential property for vacation, leisure, or recreation purposes for fewer than ninety days by a person who

has a place of permanent residence to which he or she intends to return. To be covered by the new law, a vacation rental agreement must be in writing and be signed by a landlord or real estate broker. In addition the tenant must either have signed the agreement, paid moneys after receiving the agreement, or taken possession of the property after receipt of the agreement. S.L. 1999-420 regulates the handling of and accounting for advance funds paid for vacation rentals and security deposits and specifies the rights of tenants when the real property is transferred. It also sets out the same respective duties of the landlord and tenant with regard to the property that are found in the law for regular residential rentals and grants the tenant a right to a refund when the tenant is required to leave in order to comply with an evacuation order.

Expedited Eviction. The new law creates a special expedited eviction procedure for a vacation rental agreement for thirty days or less if the tenant holds over after the tenancy has expired; commits a material breach of the lease, which according to the lease results in termination; fails to pay rent; or has obtained the property by fraud or misrepresentation. The expedited procedure applies to an action for possession of the premises only; the landlord must bring a separate civil action for any monetary damages. A landlord who wishes to begin the eviction proceeding while the clerk's office is closed may file the complaint that commences the action with a magistrate, and the magistrate is authorized to issue the summons. The landlord must give the tenant at least four hours notice before commencing the action; any law enforcement officer, not just the sheriff, may serve the complaint and summons. The magistrate must hold the trial between twelve and forty-eight hours after service of the summons on the tenant; if the landlord prevails, the magistrate must enter an order specifying when the tenant must vacate the property, which must be no less than two hours nor more than eight hours after the order is served on the tenant; failure to vacate constitutes criminal trespass. A tenant may appeal for a trial de novo, but only the district court judge may stay the eviction upon the posting of a bond. S.L. 1999-420 takes effect January 1, 2000.

Landlord's Rights with Regard to Tenant's Mobile Home

In 1995 the legislature created a new landlord's lien in tenant's personal property left on the landlord's premises after eviction. The law was written to make it easier for landlords to dispose of property left by tenants and allows landlords to throw away, dispose of, or sell the property if left on the premises more than ten days after the writ of possession was executed by the sheriff. Legal Services attorneys and other advocates for tenants expressed concern to the General Assembly because the new lien law applied to all personal property left on the premises, which included the tenant's mobile home when the tenant rented a mobile home space. They thought such rapid disposal of the tenant's mobile home was unfair to the tenant and recommended that a different procedure be enacted for the disposal of mobile homes. S.L. 1999-278 (S 654) creates a new landlord's lien for a lessor of a space for a mobile home in G.S. 44A-2(e2). It provides that a landlord has a lien on all furniture, furnishings, and other personal property, including the mobile home titled in the name of the tenant if the mobile home remains on the rented premises twenty-one days after the lessor is placed in lawful possession by a writ of possession and the lessor has a lawful claim for damages against the tenant. The lien must be enforced by a public sale under G.S. 44A-4(e). The landlord may no longer throw away or dispose of the property but must sell it. A controversy arose in the General Assembly about fairly balancing the needs of the tenant with those of the landlord. In particular members of the General Assembly were concerned about requiring the landlord to use the longer and more complicated procedure when the tenant has abandoned a worthless mobile home or one in such poor condition that it could not even be moved without destroying it. They reached a compromise by making this new lien provision apply only if the mobile home has a current value of more than $500. If the value of the mobile home is $500 or less, the general landlord's lien under General Statutes Chapter 42 applies. Thus for a mobile home worth more than $500, the landlord must wait twenty-one days before he or she has a lien in the mobile home and property left in the mobile home, and the landlord must sell the mobile home at a public sale. For mobile homes worth $500 or less, the landlord may dispose of the mobile

home and its contents after ten days, and disposal includes throwing away the property or otherwise disposing of it as well as selling it.

Self-Service Storage Late Fees

S.L. 1999-416 (H 885) regulates late fees in self-service storage contracts. It requires a self-storage contract to include a conspicuous statement regarding the imposition of late fees and other associated costs for late payment. It limits the maximum late fee that a self-service storage facility may assess to 15 percent of the rental payment and prohibits the late fee from being imposed until the rental payment is five days or more late. A late fee may be imposed only one time for each late rental payment. (In other words, if a person fails to pay in September and fails to pay October's rent, a late fee may be imposed for September's rent and for October's rent, but a second late fee for September's rent may not be imposed when it still is not paid in October). A self-service storage business that violates the late fee provisions may not recover any late fee.

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7

Criminal Law and Procedure

As in most sessions, the 1999 General Assembly made numerous changes to the state's criminal laws. The changes were of a more technical nature than in previous sessions, however. Offenses were created and revised, punishments raised, and procedures modified, but few major initiatives were enacted. Perhaps the most groundbreaking legislation this session involved limiting prosecutors' authority over the criminal calendar, discussed further below and in Chapter 6 (Courts and Civil Procedure). The General Assembly also toughened the laws concerning offenses at schools, controlled substances, and impaired driving. This last area as well other changes to the state's motor vehicle laws are discussed in Chapter 18 (Motor Vehicles). Readers interested in issues related to sentencing and corrections should refer to Chapter 22 (Sentencing, Corrections, Prisons, and Jails).

Assaults and Threats

School Personnel and Volunteers. Under G.S. 14-33(c)(5), assaults on school bus personnel have been treated as a more serious class of offense, a Class A1 misdemeanor, than comparable assaults on other persons. Effective for offenses committed on or after December 1, 1999, S.L. 1999-105 (S 637) repeals this section and replaces it with G.S. 14-33(c)(6), which makes it a Class A1 misdemeanor to assault *any* elementary or secondary school employee, volunteer, or independent contractor performing the duties of a school employee. For this greater punishment to apply, the assault must occur either during the discharge of the person's duties or as a result of the discharge of those duties. The term *duties* is defined as activities on school property, activities during a school-authorized event or the accompanying of students to or from such an event, and activities relating to school transportation.

Court Officers. Two little-used statutes—G.S. 14-16.6 and -16.7—have provided for enhanced penalties for assaults and threats against executive or legislative officers. Effective for offenses committed on or after December 1, 1999, S.L. 1999-398 (H 478) expands these statutes

to cover court officers as well. A *court officer* is defined under new G.S. 14-16.10 as a magistrate, superior court clerk, acting clerk, assistant or deputy clerk, judge, justice, district attorney or assistant district attorney, public defender or assistant defender, court reporter, or juvenile court counselor.

As amended, G.S. 14-16.6 includes the following assault offenses:

- assault on an executive, legislative, or court officer, a Class I felony;
- a violent attack upon such an officer's residence, office, temporary accommodation, or means of transport in a manner likely to endanger the officer, also a Class I felony;
- assault or violent attack (as defined above) with a deadly weapon, a Class F felony; and
- assault or violent attack (as defined above) inflicting serious bodily injury, a Class F felony.

As amended, G.S. 14-16.7 includes the following threat offenses:

- threatening to inflict serious bodily injury or kill an executive, legislative, or court
- writing containing a threat to inflict serious bodily injury or kill such an officer, a Class I felony.

G.S. 114-15(a) is also amended to authorize the State Bureau of Investigation to investigate alleged assaults or threats against court officers as well as those against executive or legislative officers.

Child Abuse. G.S. 14-318.4 has provided that a parent or other person caring for a child under age sixteen is guilty of felony child abuse, a Class E felony, if the parent or caregiver inflicts serious physical injury on the child. Effective for offenses committed on or after December 1, 1999, S.L. 1999-451 (H 160) amends this statute to provide that a parent or caregiver who inflicts serious bodily injury on a child under age sixteen is guilty of a Class C felony. *Serious bodily injury* is defined as bodily injury that creates a substantial risk of death, causes serious permanent disfigurement, or results in other specified consequences involving great harm. This change continues a recent legislative trend of distinguishing between offenses involving serious injury and those involving serious bodily injury. Compare, for example, G.S. 14-33(c)(1), which makes assault inflicting serious injury a Class A1 misdemeanor, with G.S. 14-32.4, which makes assault inflicting serious bodily injury a Class F felony.

Laser Devices. Effective for offenses committed on or after December 1, 1999, S.L. 1999-401 (S 348) enacts a new statute, G.S. 14-34.8, making it unlawful to intentionally point a laser device at a law enforcement officer, or at the head or face of any other person, while the device is emitting a laser beam. The statute bears the caption "Criminal use of a laser device," but a violation is an infraction only, a noncriminal violation of law punishable by a penalty of $100 under G.S. 14-3.1. The new statute provides that it does not prohibit a law enforcement officer, health care professional, or other authorized person from using a laser device in the performance of the person's official duties. Nor does it apply to laser tag, paintball guns, or similar games or devices using light emitting diode (LED) technology.

Threats Concerning Child, Dependent, Sibling, or Spouse. Effective for offenses committed on or after December 1, 1999, S.L. 1999-262 (S 956) revises two statutes concerning threats. Amended G.S. 14-196(a)(2), which has dealt with telephone calls threatening bodily harm, makes it a Class 2 misdemeanor to make such threats by either telephone *or* e-mail. The amended statute also provides that it is a Class 2 misdemeanor to threaten to physically injure a person's child, sibling, spouse, or dependent. G.S. 14-277.1, the general statute on communicating threats, is likewise revised to provide that threatening to physically injure a person *or* that person's child, sibling, spouse, or dependent is a Class 1 misdemeanor.

Patient Abuse and Neglect. Effective for offenses committed on or after December 1, 1999, S.L. 1999-334 (S 10), Section 3.15, amends G.S. 14-32.2 to add a misdemeanor version of the offense of patient abuse and neglect. Previously all of the offenses under this statute were felonies involving abuse resulting in death or serious injury. New G.S. 14-32.2(b)(4) provides that it is a Class A1 misdemeanor to physically abuse a patient if the conduct is willful or culpably negligent,

results in bodily injury, and is part of a pattern of conduct. The act also adds a definition of *abuse* for all offenses under the statute, providing that it means the willful or culpably negligent infliction of physical injury or violation of any law designed for the health, welfare, or comfort of patients.

Controlled Substances, Alcohol, and Cigarettes

Possession of Amphetamine or Methamphetamine. G.S. 90-95(d)(2), which governs the punishment for possession of a Schedule II through IV controlled substance, provides that possession of any amount of cocaine or PCP is a Class I felony. Possession of any other Schedule II through IV substance has been a Class 1 misdemeanor if the amount possessed is less than a certain threshold—for most substances, 100 dosage units. Effective for offenses committed on or after December 1, 1999, S.L. 1999-370 (S 888), Section 1, significantly enlarges the possession offenses that constitute felonies by providing that possession of any amount of amphetamine or methamphetamine, both Schedule II controlled substances, is a Class I felony.

Drug Trafficking. Two separate acts deal with drug trafficking. Effective for offenses committed on or after December 1, 1999, S.L. 1999-165 (S 920), Section 4, creates the offense of trafficking in MDA/MDMA, which stand for methylenedioxyamphetamine and methylenedioxy-methamphetamine.

S.L. 1999-370, Section 1, deals with trafficking in amphetamine and methamphetamine. Effective for offenses committed on or after December 1, 1999, G.S. 90-95(h)(3a), which covered trafficking in amphetamine, is repealed, and both amphetamine and methamphetamine are subject to amended G.S. 90-95(h)(3b). This change has two effects. First, under amended subsection (3b) the same threshold amounts for trafficking, expressed in grams, apply to both amphetamine and methamphetamine. Previously the threshold amounts for amphetamine were expressed in dosage units. Second, the offense class for each level of trafficking is raised by one class. For example, trafficking in 400 or more grams of amphetamine or methamphetamine, formerly a Class D felony, is raised to a Class C felony.

Restitution for Drug Manufacturing Offenses. Effective for offenses committed on or after December 1, 1999, S.L. 1999-370, Section 2, amends G.S. 90-95.3 to provide that the court must require a person convicted of a manufacturing offense to make restitution to law enforcement agencies for the cost of cleaning up a clandestine laboratory.

Controlled Substance and Precursor Chemical Schedules. Effective for offenses committed on or after June 8, 1999, S.L. 1999-165, Sections 1–3, makes the following changes to the controlled substance schedules:

- 4-bromo-2, 5-dimethoxyphenethylamine is added to G.S. 90-89(3)
- G.S. 90-92(a)(3) (stimulants, a form of Schedule IV controlled substance); and
- butorphanol is added to G.S. 90-92(a)(4) (other Schedule IV controlled substances).

Effective for offenses committed on or after December 1, 1999, S.L. 1999-370, Sections 1 and 3, makes the following changes to the controlled substance and precursor chemical schedules:

- ketamine is added to G.S. 90-91 (Schedule III controlled substances); and
- anhydrous ammonia, iodine, lithium, red phosphorous, and sodium are added to G.S. 90-95(d2) (precursor chemicals).

Alcohol Sales to Underage Persons. Effective for offenses committed on or after December 1, 1999, S.L. 1999-433 (S 120) imposes mandatory fines and community service for violations of G.S. 18B-302(a), which prohibits selling alcohol to a person under age twenty-one, and G.S. 18B-302(c)(2), which prohibits a person over twenty-one from aiding or abetting the purchase or possession of alcohol by an underage person. Both offenses remain Class 1 misdemeanors. But, under new G.S. 18B-302A, the court must make the following a part of any sentence if it does not impose a term of active imprisonment:

- for a violation of G.S. 18B-302(a), at least a $250 fine and 25 hours of community service for a first conviction and at least a $500 fine and 150 hours if the violation occurs within four years of a previous conviction for this offense;
- for a violation of G.S. 18B-302(c)(2), at least a $500 fine and 25 hours of community service for a first conviction; $1000 and at 150 hours of community service if the violation occurs within four years of a previous conviction for this offense.

Alcohol Violations by Underage Persons. Effective for offenses committed on or after December 1, 1999, S.L. 1999-406 (H 1135), Section 7, amends G.S. 18B-302(i) to make the purchase or possession of beer or wine by a nineteen- or twenty-year-old a Class 3 misdemeanor. Previously this offense was an infraction only. In addition Section 8 of the act amends G.S. 15A-145 to allow a person to expunge a misdemeanor conviction for possession of beer or wine in violation of G.S. 18B-302(b)(1) if the person was under the age of twenty-one and had not previously been convicted of any felony or misdemeanor other than a traffic violation.

Cigarette Sales. Effective for offenses committed on or after December 1, 1999, S.L. 1999-333 (H 74), Section 5, makes it a Class A1 misdemeanor for a person to sell or hold for sale packages of cigarettes that meet one or more of the descriptions in new G.S. 14-400.18. For example, the new statute prohibits the sale of packages of cigarettes that do not contain the labels, warnings, and other information required by federal law. A violation of the new statute is also an unfair trade practice, and the packages of cigarettes may be seized as contraband under the procedure for seizure of non-tax-paid cigarettes. Under new G.S. 105-113.4B and amended G.S. 105-164.29(d), a seller's license also may be revoked.

Explosives and Firearms

New and Amended Offenses

Bomb Threats. Effective for offenses committed on or after September 1, 1999, S.L. 1999-257 (H 517) raises the punishment for making a false bomb threat concerning a *public building*, which is defined in new G.S. 14-69.1(c) as

- educational property (owned by a public or private school);
- a hospital;
- a building housing only state, federal, or local government offices; and
- state, federal, or local government offices within any building.

A first conviction for a false bomb threat concerning a public building is the same class of offense as a conviction concerning other structures—that is, a Class H felony. A second conviction concerning a public building, however, is a Class G felony. New G.S. 14-69.1(d) also provides that the court may order a person convicted of making a false bomb threat, whether the threat concerns a public building or another structure, to pay restitution for disruption of normal

activities on the premises. The act makes the same changes—concerning both offense class and restitution—to G.S. 14-69.2, which deals with perpetrating a hoax by use of a false bomb.

Possession of Explosives on School Property. G.S. 14-269.2 has prohibited the possession of firearms and explosives on school property, making most such offenses Class I felonies. Effective for offenses committed on or after September 1, 1999, S.L. 1999-257 increases from a Class I to a Class G felony the offense of possessing or carrying a dynamite cartridge, bomb, grenade, mine, or other powerful explosive on educational property. This provision, contained in new G.S. 14-269.2(b1), also applies to possession of explosives at curricular or extracurricular activities sponsored by a school off school property (but only for offenses committed on or after December 1, 1999). The act likewise raises from a Class I to a Class G felony the offense of aiding a *minor* (a person under age eighteen) to possess or carry an explosive on educational property; however, that provision, which appears in new G.S. 14-269.2(c1), makes no reference to curricular or extracurricular activities off school property.

Fireworks are not covered by these new subsections of G.S. 14-269.2. But the act revises G.S. 14-269.2(d) and (e) by adding fireworks to the list of items prohibited on educational property. Previously the list included only weapons or things capable of being used as weapons. Effective for offenses committed on or after September 1, 1999, it is a Class 1 misdemeanor to possess or carry, or aid a minor to possess or carry, fireworks on educational property unless for an authorized purpose.

Firearms on School Property. Effective for offenses committed on or after December 1, 1999, S.L. 1999-211 (S 1096) expands the prohibition on firearms on school property. First, G.S. 14-269.2(b) is revised to make it a Class I felony to possess or carry a firearm on educational property and at curricular or extracurricular activities sponsored by a school off school property.

Second, G.S. 14-269.2(f), which in limited circumstances makes it a Class 1 misdemeanor instead of a felony to have a firearm on educational property, is narrowed further. Under the revised section a person is guilty of the lower class of offense only if (1) the person is neither a student nor an employee at the school and (2) the firearm is unloaded, is in a locked firearm rack or locked container, and is inside a motor vehicle. The principal effect of the revisions is to make the unauthorized possession of a firearm by an employee while on school property or at a school-sponsored event a Class I felony.

New G.S. 14-269.2(h) is also added to clarify that a person is not guilty of possession of a weapon on school grounds or at a school-sponsored activity if he or she takes or receives the weapon from another person, or finds the weapon, and then delivers the weapon, directly or indirectly, to law enforcement.

Bullet-Proof Vests. Effective for offenses committed on or after December 1, 1999, S.L. 1999-263 (S 1011) requires an enhanced sentence if a person commits a felony while wearing or having in his or her immediate possession a bullet-proof vest. New G.S. 15A-1340.16C provides that in such circumstances the person is guilty of a felony one class higher than the underlying felony for which the person was convicted. The enhancement does not apply if evidence that the person possessed a bullet-proof vest is needed to prove an element of the underlying felony.[1] Nor does it apply to law enforcement officers.

The statute apparently leaves to the sentencing judge the determination of whether the bullet-proof vest enhancement applies. A recent United States Supreme Court decision raises serious questions, however, about treating such an enhancement as a sentencing matter rather than as an offense element. In *Jones v. United States*, 526 U.S. 227, 119 S. Ct. 1215 (1999), the Court

1. A similar exception applies to the sentencing enhancement in G.S. 15A-1340.16A for use of a firearm in the commission of a Class A through E felony. For a discussion of cases interpreting that exception, see John Rubin & Ben F. Loeb, Jr., *Punishments for North Carolina Crimes and Motor Vehicle Offenses* (Chapel Hill, N.C.: Institute of Government, The University of North Carolina, 1999), pp. 11–12; and Robert L. Farb, Appellate Cases: Structured Sentencing Act and Firearm Enhancement (last modified Sept. 1999) <http://ncinfo.iog.unc.edu/programs/crimlaw/faculty.htm>. The discussion that follows concerning *Jones v. United States* may also bear on the procedures for imposing the firearm enhancement.

considered a federal statute authorizing a sentence of up to fifteen years for carjacking, up to twenty-five years for carjacking resulting in serious injury, and any number of years up to life for carjacking resulting in death. The Court concluded that Congress intended to create three separate offenses—one for each level of punishment. Thus to obtain one of the greater punishments, the prosecution had to charge all of the elements of the offense, including serious injury or death, and had to prove those elements beyond a reasonable doubt. The Court rejected the government's argument that the judge could impose the enhanced punishments upon finding serious injury or death by a preponderance of the evidence. The Court noted that such an interpretation of the statute raised serious constitutional concerns, stating: "[U]nder the Due Process Clause of the Fifth Amendment and the notice and jury trial guarantees of the Sixth Amendment, any fact (other than prior conviction) that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt." 526 U.S. 227, ___, 119 S. Ct. 1215, 1224 n.6. The Court ultimately did not address the constitutionality of the statute, however, basing its decision on its interpretation of congressional intent.

If wearing a bullet-proof vest during commission of a felony is considered an offense element—and under the reasoning of *Jones* it may well be—then it too would have to be charged by indictment, submitted to a jury, and proven beyond a reasonable doubt. An enhanced sentence could not be imposed merely upon a finding by a judge at sentencing.

Collateral Consequences

Several acts impose consequences beyond the potential criminal sentence for offenses involving explosives and firearms, particularly for offenses involving schools. The laws affecting offenses involving schools are discussed in more detail in Chapter 9 (Elementary and Secondary Education).

License Consequences of Offenses Involving Explosives. Effective for offenses committed on or after September 1, 1999,[2] S.L. 1999-257 requires the Division of Motor Vehicles (DMV) to revoke a person's driver's license if he or she is convicted of one of a number of offenses involving explosives. The listed convictions, set forth in new G.S. 20-17(a)(15), include offenses concerning educational property as well as general offenses involving explosives. The offenses are malicious use of an explosive to damage property [G.S. 14-49(b) and (b1)], making a false report concerning an explosive in a public building [G.S. 14-69.1(c)], perpetrating a hoax concerning an explosive in a public building [G.S. 14-69.2(c)], possessing an explosive on educational property [G.S. 14-269.2(b1)], and aiding a minor to possess an explosive on educational property [G.S. 14-269.2(c1)]. The revocation lasts one year [pursuant to G.S. 20-19(f)].

New G.S. 20-13.2(c2) likewise requires DMV, upon learning of a conviction of one of the above offenses, to revoke the permit or license of a person under age eighteen. The revocation lasts one year [pursuant to G.S. 20-13.2(d)]. This revocation differs from the loss of license eligibility imposed for certain acts by students, discussed below under "Offenses Concerning Schools."

Imposition of license consequences for conduct unrelated to driving or motor vehicles continues a recent legislative trend. For example, G.S. 110-142.2, enacted in 1997, allows courts to revoke a person's driver's, hunting, fishing, occupational, and professional licenses if he or she fails to make court-ordered child support payments. G.S. 143B-475.1(f), enacted in 1998, authorizes courts to revoke a person's driver's license for a willful failure to perform community service, regardless of whether the offense involves motor vehicles. These provisions are intended to induce compliance with unmet obligations. Once a person meets his or her obligations, either in

2. The act actually states that the license consequences apply to "causes of action" arising on or after that date. In using this language, the drafters apparently mistook the sections on license consequences for another section of the act involving civil liability (discussed further below).

the child support or community service arena, the license revocation ends.[3] In contrast, the revocation required is for a fixed period and is imposed automatically on conviction of one of the specified offenses.

If ever challenged, such revocations may be measured by various constitutional standards. See generally, Schware v. Board of Bar Examiners, 353 U.S. 232 (1957) (under the Due Process Clause, particular disqualification must bear rational connection to person's fitness to perform function involved); State v. Oliver, 343 N.C. 202, 470 S.E.2d 16 (1996) (discussing potential applicability of Double Jeopardy Clause to license revocations); Stevens H. Clarke, *Law of Sentencing, Probation, and Parole in North Carolina,* 2d ed. (Chapel Hill, N.C.: Institute of Government, The University of North Carolina, 1997), pp. 18–19 (discussing state constitutional limits on punishments).

Civil Liability for Offenses Involving Firearms or Explosives. S.L. 1999-257 provides that a parent or legal guardianof a minor may be held civilly liable to a public or private school if the minor violates one of a number of laws relating to possession or use of explosives or firearms. New G.S. 1-538 details the circumstances under which such liability may arise. It also describes the damages that a school may recover (up to $50,000 in some cases)

Mandatory Suspension of Students. G. S. 115C-391(d1) has required a one-year suspension of any student for possessing a firearm or explosive on educational property (subject to modification on a case-by-case basis). New G.S. 115C-391(d3), enacted by S.L. 1999-257, requires a one-year suspension of any student who makes a flase bomb threat or perpetrates a hoax by use of false bomb in connection with educational property (case-by-case basis).

Offenses Concerning Schools

Several acts discussed earlier (under the headings "Assaults and Threats" and "Explosives and Firearms") deal with schools. In addition to that legislation, the following also concern schools.

Indecent Liberties and Sexual Offenses with a Student. North Carolina has had two statutes on the taking of indecent liberties with a child. One, G.S. 14-202.1, prohibits acts of a sexual nature when (1) the perpetrator is sixteen years of age or more, (2) the victim is under the age of sixteen, and (3) the perpetrator is at least five years older than the victim. The other, G.S. 14-202.2, prohibits similar acts when (1) both the perpetrator and the victim are under the age of sixteen and (2) the perpetrator is at least three years older than the victim.

Effective for offenses committed on or after December 1, 1999, S.L. 1999-300 (S 742) creates another set of indecent liberties offenses, applicable to acts of a sexual nature by school personnel with a student at a public or private elementary or secondary school. The definition of indecent liberties is essentially the same as the definition in G.S. 14-202.1 and -202.2, except it does not cover acts of vaginal intercourse or sexual acts as defined in G.S. 14-27.1 (for example, oral sex). But another new set of sexual offenses, also created by S.L. 1999-300, covers such acts with elementary or secondary school students. For all of these new offenses, the conduct must have occurred during or after the time the defendant and the victim were at the same school but before the victim ceases to be a student.

3. This session, in S.L. 1999-293 (H 302), the General Assembly amended G.S. 110-142.2 to require the court to revoke a person's licenses if he or she is found in civil or criminal contempt for failing to pay court-ordered child support for a third or subsequent time. The revocation still may be stayed, however, if the court imposes a repayment plan meeting certain conditions, and the revocation ends when the person is no longer delinquent in his or her child support payments. For a further discussion of these provisions, see Chapter 4 (Children and Families).

The new offenses are as follows:

- A teacher, school administrator, student teacher, or coach is guilty of a Class I felony if he or she takes incident liberties with an elementary school or secondary school student. See G.S. 14-202.4(a). Such a person is guilty of a Class G felony if the act is vaginal intercourse or a sexual act as defined in G.S. 14-27.1. See G.S. 14.7(b). This also applies to other school personnel and volunteers at a school or at a school-sponsored activity. Age is a relevant factor, however. If the school employee or volunteer has less than a 4 year age difference with the student, both offenses are Class A1 misdemeanors. See G.S. 14-202.4(b)

The act states that a person who engages in the above conduct is guilty of the level of offense specified unless the conduct is covered by another law providing for greater punishment. See G.S. 14-202.4(a), -27.7(b). Thus a school employee could be convicted of statutory rape, a Class B1 felony, for having vaginal intercourse with a student if the ages of the employee and student meet the requirements for that offense. But the employee could not be convicted of both statutory rape and one of the offenses described above.

Eligibility for Driver's License. In 1997 the General Assembly amended G.S. 20-11 by providing that persons under age eighteen seeking a learner's permit or provisional driver's license must have a "driving eligibility certificate" or a high school diploma or its equivalent. Ordinarily, to qualify for a driving eligibility certificate, a minor must be enrolled in high school and be making progress toward a high school diploma.

S.L. 1999-243 (S 57) adds another requirement for issuance of a driving eligibility certificate. New G.S. 20-11(n1), captioned as "Lose Control; Lose License," enumerates the following conduct as grounds for a school's denial of a driving eligibility certificate to a student:

- possession or sale of an alcoholic beverage or illegal controlled substance on school property resulting in disciplinary action as defined in G.S. 20-11(n1)c
- possession or use of a firearm or explosive on school property resulting in disciplinary action under G.S. 115C-391(d1)
- physical assault on a teacher or other school personnel on school property resulting in disciplinary action as defined in G.S. 20-11(n1)c (discussed under (1), above).

The disqualification applies only if the conduct occurs after the student turns fourteen years of age or, if the student has not yet turned fourteen, after July 1 of the school year in which the student enrolls in eighth grade. Upon receiving notice from a school that a person is not eligible for a driving eligibility certificate, DMV must revoke the person's permit or license. The length of ineligibility and revocation depend upon the factors described in G.S. 20-11(n1)(3) and (4) and G.S. 20-13.2(c1). The act applies to acts committed on or after July 1, 2000. For a further discussion of these provisions, see Chapter 9 (Elementary and Secondary Education).

Fraud and Property Offenses

Frauds

Financial Identity Fraud. Effective for offenses committed on or after December 1, 1999, S.L. 1999-449 (H 1279) creates the crime of financial identity fraud in new Article 19C, G.S. 14-113.20 through -113.23. A person is guilty of this offense if he or she

- knowingly obtains, possesses, or uses
- personal identifying information of another person, such as a Social Security, driver's license, or credit card number,
- without the consent of the other person
- with the intent to fraudulently represent that the person is the other person

- for the purpose of making financial or credit transactions in the other person's name or for the purpose of avoiding legal consequences.

The offense is ordinarily a Class H felony. It is a Class G felony if the victim, that is, the person whose personal identifying information is fraudulently used, is arrested, detained, or convicted as a result of the offense.

The new statutes also provide for civil remedies. The victim may bring a civil suit for damages of up to $5,000 or three times the amount of actual damages, whichever is greater, for each incident. The victim also may seek injunctive relief. In such actions the court may award reasonable attorneys' fees to the prevailing party.

Child Care Subsidy Fraud. Effective for offenses committed on or after December 1, 1999, S.L. 1999-279 (H 304) creates the crime of fraudulent misrepresentation concerning child care subsidies. Under new G.S. 110-107 a person is guilty of this offense if he or she,

- with the intent to deceive,
- makes a false statement regarding a material fact or fails to disclose a material fact, and
- as result of the false statement or omission, that person obtains, attempts to obtain, or continues to receive a child care subsidy.

The offense is a Class I felony if the amount of the child care subsidy is more than $1,000 and a Class 1 misdemeanor if the amount is $1,000 or less. As an incentive for counties to investigate child care fraud, new G.S. 110-108 provides that local purchasing agencies retain the amount of fraud and overpayment claims that they collect.

Insurance Fraud. Effective for offenses committed on or after October 1, 1999, S.L. 1999-294 (S 594), Section 3, broadens the definition of insurer for purposes of insurance fraud offenses under G.S. 58-2-161. The revised definition, in G.S. 58-2-161(a)(1), includes those types of insurers listed in that section and those entities covered by the general definition of insurer in G.S. 58-1-5(3).

Worthless Checks

Worthless Check Prosecutions. G.S. 14-107(d)(1) has governed worthless check offenses involving amounts of $100 or less; G.S. 14-107(d)(2) has governed worthless check offenses involving amounts of $100 to $2,000. The two subsections, however, have provided for identical penalties. Thus writing a worthless check of $2,000 or less is ordinarily a Class 2 misdemeanor. Effective for offenses committed on or after December 1, 1999, S.L. 1999-408 (H 328) eliminates this redundancy by repealing subsection (d)(2) and incorporating the deleted portions into subsection (d)(1). The penalties for writing a worthless check of $2,000 or less remain unchanged.

The act also revises G.S. 14-107(d)(4) to clarify the elements of the offense of writing a worthless check on a closed account. A person is guilty of this offense, a Class 1 misdemeanor, by writing a check on an account that has been closed by the drawer *or* that the drawer knows to have been closed by the bank or depository.

Collection of Worthless Checks without Prosecution. In 1997 and 1998 the General Assembly authorized pilot programs in Columbus, Durham, Rockingham, and Wake Counties for collection of worthless checks without criminal prosecution. The authority for the pilots was to expire June 30, 1999. Effective that date, S.L. 1999-237 (H 168), Section 17.7, continues the programs indefinitely and also authorizes similar programs in Brunswick, Bladen, New Hanover, and Pender counties.

To participate in the program, the "check passer" must meet the criteria established by the local district attorney and must pay a fee of $50. A participating check passer may not be prosecuted if he or she makes restitution to the "check taker" for the amount of the check, any service charges imposed by a bank on the check taker for processing the check, and any processing fees imposed by the check taker under G.S. 25-3-506.

Other Property Offenses

Larceny of Ginseng. Effective for offenses committed on or after December 1, 1999, S.L. 1999-107 (S 769) revises G.S. 14-79 concerning larceny of ginseng, a Class H felony, by eliminating the requirements that the ginseng must have been in a bed and that the land on which the bed is located must have been surrounded by a lawful fence.

Computer Trespass. Effective for offenses committed on or after December 1, 1999, S.L. 1999-212 (S 288) creates the offense of computer trespass. The caption of the legislation states that it makes unlawful the sending of unsolicited bulk commercial e-mail, but it actually encompasses at least six different kinds of conduct, not all of which necessarily involve e-mail.

New G.S. 14-458 makes it unlawful for any person to use a computer or computer network without authority and with the intent to do one of six things—for example, altering or erasing computer data, programs, or software or making an unauthorized copy of those materials. Only one of the six prohibited acts specifically concerns e-mail—in essence, falsely identifying unsolicited bulk commercial e-mail with the intent to deceive the recipient. The General Assembly's concern over this type of e-mail is also expressed, however, in its definition of the term "without authority," an element of all the offense variations. A person acts *without authority* when he or she either does not have the right to use someone's computer *or* uses a computer, computer network, or computer services of an e-mail service provider to transmit unsolicited bulk commercial e-mail in violation of the service provider's rules.

A violation of the new statute is a Class 3 misdemeanor if there is no property damage, a Class 1 misdemeanor if there is property damage of less than $2,500, and a Class I felony if there is property damage of $2,500 or more. A person injured by a violation also may sue for damages pursuant to new G.S. 1-539.2A.

Domestic Violence

S.L. 1999-23 (S 197), which implements recommendations of the Governor's Task Force on Domestic Violence, makes several changes to the laws concerning domestic violence. The changes primarily concern the authority of law enforcement officers to enforce out-of-state protective orders and to make warrantless arrests for misdemeanors involving domestic violence and violations of domestic violence protective orders. These changes are discussed in Chapter 4 (Children and Families) and Chapter 6 (Courts and Civil Procedure).

The act also creates a new offense involving false misrepresentations regarding domestic violence protective orders. Effective for offenses committed on or after December 1, 1999, new G.S. 50B-4.2 provides that a person is guilty of a Class 2 misdemeanor if he or she

- knowingly makes a false statement
- to a law enforcement agency or officer

- that a domestic violence protective order entered by the courts of this state or another state or Indian tribe
- remains in effect.

Capital Cases

Only one act addresses capital cases, and it has a limited impact. First, S.L. 1999-358 (S 365) amends G.S. 15-194 to provide that the Secretary of Correction, rather than the warden at Central Prison in Raleigh, is responsible for setting execution dates (after receiving proper notice to do so) and for notifying interested parties of such dates. The act also provides that the execution date must be from thirty to sixty days, rather than from thirty to forty-five days, after the Secretary receives notice to schedule the date.

Second, the act states that it shall be the policy of the Department of Correction to prohibit death row inmates from contacting surviving family members of a victim without the written consent of those family members. The act states that the term "contact" includes arranging for a third party to forward communications from the inmate to the family members.

Miscellaneous Offenses

Cruelty to Animals. S.L. 1999-209 (S 249), Section 8, clarifies the definition of *animal* for purposes of the offense of cruelty to animals. As amended G.S. 14-360(c) provides that the term includes living vertebrates in the classes Amphibia, Reptilia, Aves, and Mammalia only. In other words, fish are not covered (although frogs, which are in the Amphibia class, are covered). The amended section also states that the statute does not bar lawful activities concerning aquatic species or activities conducted for the primary purpose of providing food.

Tax Violations. S.L. 1999-415 (H 1476) extends from three to six years the statute of limitations for violations of G.S. 105-236(8) (willful failure to collect, withhold, or pay over tax) and G.S. 105-236(9) (willful failure to file return, supply information, or pay tax). These changes apply to prosecutions brought on or after December 1, 1999, if the previous three-year statute of limitations has not expired before that date.

Personal Watercraft Safety. Effective for acts committed on or after December 1, 1999, S.L. 1999-447 (H 1209) makes several changes to the laws concerning use of personal watercraft, also known as "jet skis." G.S. 75A-13.2, the previous statewide law on personal watercraft, is repealed. G.S. 75A-13.3, which previously applied only to certain waters, is expanded to apply to the entire state and to impose some restrictions on use of personal watercraft. For example, the amended statute prohibits a person under age sixteen from operating a personal watercraft except under specified conditions. However, it allows a person under age sixteen but twelve years of age or older to operate a personal watercraft if he or she has a boater safety certification card issued by the Wildlife Resources Commission or has proof of completion of a boating safety course. (The amended statute allows units of local government to impose stricter rules.)

A violation of G.S. 75A-13.3 remains a Class 3 misdemeanor in most instances, punishable by a fine only (up to $250) under G.S. 75A-18. New G.S. 75A-18(c1) provides that a boat livery that fails to carry the required liability insurance is guilty of a Class 2 misdemeanor, also punishable by a fine only (up to $1,000).

Littering. Effective for offenses committed on or after December 1, 1999, S.L. 1999-454 (H 222) provides minimum and maximum fines for littering offenses as follows:

- For a first violation of G.S. 14-399(c) (littering in an amount up to 15 pounds and not for a commercial purpose), the fine is $250 to $1,000; for a second such violation within three years, the fine is from $500 to $2,000.
- For a violation of G.S. 14-399(d) (littering in an amount from 15 to 500 pounds and not for a commercial purpose), the fine is from $500 to $2,000.

For a violation of G.S. 14-399(e) (littering in an amount exceeding 500 pounds or for a commercial purpose or of a hazardous waste), the court must impose one or more of the conditions stated in that section—for example, removing the litter or rendering it harmless. Previously these conditions were discretionary.

Vacation Rentals. New Chapter 42A of the General Statutes, enacted by S.L. 1999-420 (S 974), regulates the rental of residential property for vacation, leisure, or recreational purposes. Among other things, the new chapter allows landlords, and real estate brokers as agents of landlords, to use an expedited eviction procedure in limited circumstances. New G.S. 42A-27 states that a landlord or broker may use the expedited procedure only when he or she has a good faith belief that grounds exist for its use; otherwise, the landlord or broker is guilty of a Class 1 misdemeanor (and an unfair trade practice under G.S. 75-1.1). The act applies to rental agreements entered into on or after January 1, 2000.

Civil and Criminal Contempt. S.L. 1999-361 (S 170) deals primarily with civil contempt and is discussed in Chapter 6 (Courts and Civil Procedure). But the act also makes minor changes to the rules on criminal contempt. G.S. 5A-12(d) and -21(c) have provided that a person may be held in civil and criminal contempt for the same conduct but that the total period of imprisonment may not exceed that authorized for the version of contempt carrying the greater period of imprisonment. Effective for proceedings for contempt held on or after December 1, 1999, the act amends those statutes to state simply that a person may not be held in civil and criminal contempt for the same conduct.

Designation of Offense Classes. With the implementation of structured sentencing in 1994, most offenses were assigned offense classes, however, some were overlooked. Effective for offenses committed on or after December 1, 1999, S.L. 1999-408 assigns the following classes to the indicated offenses:

- acting as an officer before qualifying as such, a Class 1 misdemeanor (G.S. 14-229);
- failing to adequately care for animals, a Class 3 misdemeanor (G.S. 19A-35);
- first violation of livestock dealer rules, a Class 3 misdemeanor; second or subsequent violation, a Class 2 misdemeanor (G.S. 106-418.14);
- violating meat inspection rules, a Class 2 misdemeanor; violating such rules with the intent to defraud or distributing or attempting to distribute an adulterated article, a Class H felony [G.S. 106-549.35(a)];
- violating poultry inspection rules, a Class 1 misdemeanor; violating such rules with the intent to defraud or distributing or attempting to distribute an adulterated product, a Class H felony [(G.S. 106-549.59(a)];
- assaulting or resisting a person who is engaged in the performance of official duties under the Poultry Products Inspection Act, a Class 2 misdemeanor; committing such an act with a deadly or dangerous weapon, a Class A1 misdemeanor [G.S. 106-549.59(c)];
- violating provisions relating to disposal of dead poultry, a Class 1 misdemeanor (G.S. 106-549.71);
- violating provisions relating to biological residues in animals, a Class 2 misdemeanor (G.S. 106-549.88); and
- violating provisions relating to endangered wildlife, a Class 1 misdemeanor [G.S. 113-337(b)].

Criminal Procedure

Criminal Calendaring. Two acts deal with criminal procedure (other than law enforcement procedures, discussed further below). One, dealing with the calendaring of criminal cases, represents a potentially significant departure from previous practice. Unique among the fifty states, North Carolina has allowed prosecutors control over the calendaring of felony cases—that is, they have had the power to decide when a felony goes to trial. Effective January 1, 2000, S.L. 1999-428 (S 292) introduces various devices that constrain this authority. Prosecutors still have

some control over the calendar in the sense that they initially propose the trial date and prepare a list of the cases scheduled for trial. But the act involves judges in the scheduling of trials and provides defense counsel with considerably more input into and notice of trial dates. For example, although prosecutors may propose a trial date, the court may set a different date if the defendant objects. Further, the trial date may be no sooner than thirty days from the hearing (called the final administrative setting) at which the trial date is proposed. The details of this act are discussed further in Chapter 6 (Courts and Civil Procedure).

Waiver List. Under G.S. 7A-148(a) and -273(2) magistrates may accept guilty pleas or admissions of responsibility by mail for misdemeanors and infractions on the "waiver list"—a list prepared each year by the chief district court judges of the state. In those cases, the defendant need not appear in person if he or she pays the required fine and signs a form admitting to the offense and waiving the right to a trial. S.L. 1999-80 (H 870) amends G.S. 7A-273 to allow magistrates to accept such waivers for a narrow, additional set of offenses, namely, misdemeanors involving violation of a county ordinance regulating the use of dune or beach buggies at the beach.

Evidence

Privileges. The General Assembly created two evidentiary privileges this session. S.L. 1999-267 (S 1009) enacts a new statute, G.S. 8-53.9, establishing a qualified privilege against disclosure of any information, documents, and other items obtained or prepared by a journalist while acting in that capacity. A person seeking to compel a journalist to reveal such information may overcome the privilege if he or she establishes that the information is relevant and material to the legal proceeding, cannot be obtained from an alternate source, and is essential to the person's claim or defense. An order requiring disclosure may be issued only after notice to the journalist and a hearing and must be supported by specific findings. The new statute also states that the privilege does not protect information, documents, or other items obtained as the result of the journalist's eyewitness observations of criminal or tortious conduct, including any visual or audio recording of the observed conduct.

S.L. 1999-374 (S 995) creates a second new statute, G.S. 8-53.10, protecting from disclosure communications by law enforcement employees and their immediate families to police peer counselors during counseling. Disclosure of privileged communications is permissible if the employee authorizes disclosure or a judge of the court in which the case is pending finds that disclosure is necessary to a proper administration of justice. The new statute also identifies certain circumstances in which the privilege does not apply—for example, if the communication concerns a violation of criminal law. The new statute states that the privilege is not grounds for failing to report child abuse or neglect or the need of a disabled adult for protective services; nor is the privilege grounds for excluding evidence concerning those matters in any judicial proceeding related to such a report.

Impeachment by Prior Conviction. Rule 609(a) of the North Carolina Rules of Evidence has provided that, for purposes of impeaching a witness—that is, attacking his or her credibility—evidence of a prior conviction of a crime punishable by more than sixty days confinement is admissible. S.L. 1999-79 (H 818) modifies Evidence Rule 609(a) to allow impeachment by a conviction of any felony or any Class A1, Class 1, or Class 2 misdemeanor; the language requiring a minimum term of confinement is deleted.

This change has one, possibly two effects. First, by including Class 2 misdemeanors, the rule expands the offenses that may be used for impeachment purposes. Since implementation of structured sentencing in 1994, offenses classified as Class 2 misdemeanors have not been a proper subject of impeachment under Rule 609 because they are punishable by up to but not more than sixty days confinement.

Second, the revised rule may bar impeachment by misdemeanor offenses that are not subject to structured sentencing, the main one being misdemeanor impaired driving under G.S. 20-138.1. The punishment for this offense may include confinement of more than sixty days. But in light of

the rule's revised language, which makes offense classification and not length of confinement the criterion for impeachment by a prior conviction, the rule may be interpreted as barring use of these offenses for impeachment purposes.[4]

The act is silent about convictions of misdemeanors committed before the effective date of structured sentencing, which also have no classification. For purposes of determining a person's sentence under structured sentencing, a prior conviction is classified according to its classification at the time the current offense was committed. This principle may potentially apply to the use of prior convictions for impeachment purposes.

Admissibility of Records Stored on CD-ROM. Generally photographic reproductions of records are as admissible in legal proceedings as the originals of the records. S.L. 1999-131 (S 1021), as amended by S.L. 1999-456 (H 162), Section 47, revises several statutes to clarify that records stored on permanent, computer-readable media, such as CD-ROM, are admissible if not subject to erasure or alteration. The affected statutes are G.S. 8-45.1 (business records), G.S. 8-45.3 (Department of Revenue records), G.S. 8-34 (official writings), G.S. 153A-436 (county records), and G.S. 160A-490 (city records).

Law Enforcement

Traffic Law Enforcement Statistics. Concerned about possible racial profiling in the stopping of vehicles—that is, the stopping of vehicles based on the race or ethnicity of the drivers or passengers—the General Assembly passed legislation requiring the Department of Justice to collect information on traffic stops made by state law enforcement officers, such as the North Carolina State Highway Patrol. Effective for law enforcement actions occurring on or after January 1, 2000, S.L. 1999-26 (S 76) amends G.S. 114-10 to require the Division of Criminal Statistics of the Department of Justice to keep fourteen different categories of information on traffic stops, including among other things the number of drivers stopped for routine traffic enforcement; the race, age, and sex of the drivers stopped; the alleged traffic violations that led to the stops; whether or not searches were instituted; and whether the officers used force against the drivers or passengers. This information also must be collected in connection with vehicle stops at impaired-driving checkpoints and other roadblocks conducted by state law enforcement officers if the stops result in warnings, searches, seizures, arrests, or certain other listed actions.

The act does not specify the persons entitled to obtain the information collected. Generally, however, unless a specific statutory exception exists, records maintained by state and local government agencies are public records.

Tracing of Firearms. S.L. 1999-225 (H 1192) requires the Division of Criminal Statistics to collect data to trace firearms seized, forfeited, found, or otherwise in the possession of any law enforcement agency that are believed to have been used in the commission of a crime.

Arrest on Private Premises. G.S. 15A-401(e)(1) has provided that officers seeking to enter private premises or a vehicle to arrest a person must have in their possession a warrant or order for arrest (unless the officers are authorized to enter without a warrant). S.L. 1999-399 (H 685) modifies this statute to allow an officer who is in possession of a copy of a warrant or arrest order to enter such areas if the original warrant or order is in the possession of a law enforcement agency in the county where the officer is employed and the officer verifies that the warrant is current and valid.

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4. G.S. 14-3(a) contains a default provision, based on length of imprisonment, for misdemeanors that do not have a specific classification under structured sentencing. Thus under G.S. 14-3(a), an offense is considered a Class 1 misdemeanor if the maximum punishment is more than six months imprisonment, a Class 2 misdemeanor if the maximum punishment is more than thirty days but not more than six months imprisonment, and a Class 3 misdemeanor if the maximum punishment is thirty days imprisonment or less or a fine. This provision may be inapplicable to misdemeanor impaired driving, however, because G.S. 15A-1340.10 expressly excludes that offense from the operation of structured sentencing.

No changes were made to the rules on service of arrest warrants. Consequently, under G.S. 15A-301, it appears that officers still must serve the original or a certified copy of the warrant on the defendant after he or she is arrested. The authority of officers to make arrests in public places is also not affected. Under G.S. 15A-401(a)(2) an officer who knows that an arrest warrant has been issued may arrest a person in a public place whether or not the officer has the warrant (original or copy) in his or her possession. The warrant must thereafter be properly served on the person arrested.

Warrantless Arrests. G.S. 15A-401(b) has provided that in certain circumstances an officer may arrest a person without a warrant for a misdemeanor committed out of the officer's presence. S.L. 1999-23 expands this authority to cover additional misdemeanors involving acts of domestic violence. These changes are part of the recommendations of the Governor's Task Force on Domestic Violence, discussed in Chapter 6 (Courts and Civil Procedure).

Community College Law Enforcement Agencies. S.L. 1999-68 (H 477) adds new G.S. 115D-21.1, authorizing community colleges to establish campus law enforcement agencies and to employ campus police officers. These officers have the same powers as campus officers at constituent institutions of The University of North Carolina (authorized under G.S. 116-40.5). The territorial jurisdiction of such officers extends to property owned by or leased to the college employing them and to public roads running through or adjoining the property. A community college also is authorized to enter into joint agreements with municipalities and counties to extend the law enforcement authority of campus officers into those areas.

McGruff House Volunteers. Effective June 25, 1999, S.L. 1999-214 (S 1068) amends G.S. 114-19.9 to allow local law enforcement agencies to obtain criminal record checks of volunteers for the McGruff House Program in their communities and of persons eighteen years of age or older who live in a volunteer's household. The criminal record check may be conducted only with the consent of the person whose record is to be checked. Refusal to give consent is considered a withdrawal of the application to be a volunteer, and information obtained by the local law enforcement agency must be kept confidential.

Victims' Rights

The 1999 session produced two acts dealing with victims' rights. One, S.L. 1999-269 (H 290), changes the procedures for awarding compensation to crime victims and is discussed in Chapter 22 (Sentencing, Corrections, Prisons, and Jails).

The other, S.L. 1999-169 (H 975), deals with the Crime Victims' Rights Act, enacted in 1998. G.S. 15A-839 and -840 provide that the Crime Victims' Rights Act does not create any claim for damages against the state or any county or municipality; further, the failure to provide a right or service under the Crime Victims' Rights Act may not be used by a defendant or a victim as a ground for relief in any criminal or civil case, although a victim may bring a suit for a writ of mandamus to compel compliance with the act's requirements. These statutes are amended to clarify that they also bar claims concerning the adequacy of services provided through the Statewide Automated Victim Assistance and Notification System (SAVAN), a computerized system for keeping victims informed of developments in their cases.

Collateral Consequences

This section discusses legislation concerning the collateral consequences of a criminal conviction—that is, those legal consequences that flow from a conviction but are not necessarily imposed by the court at the time of sentencing in the criminal case. [Some collateral consequences are discussed above under "Explosives and Firearms" and "Offenses Concerning Schools." Legislation concerning sentencing is discussed in Chapter 22 (Sentencing, Corrections, Prisons, and Jails).]

Sex Offender Registration. Effective for offenses committed on or after December 1, 1999, S.L. 1999-363 (S 331) modifies the sex offender registration laws. Under those laws, a person with a "reportable conviction" as defined in G.S. 14-208.6(4), which covers certain sex offenses and offenses against minors, must register with the sheriff of the county in which the person resides. The act amends that statute to include within the definition of *reportable conviction* solicitation and conspiracy to commit the listed offenses and aiding and abetting any of the listed offenses.[5] Previously the definition covered only completed offenses and attempts. The amended statute also provides that a final conviction of aiding and abetting is to be treated as a reportable conviction only if the sentencing court finds that registration of the person would further the purposes of the registration laws.

The act makes similar changes to the juvenile sex offender registration laws. Those laws provide that a court may require a juvenile to register if adjudicated delinquent of certain offenses (first- or second-degree rape, first- or second-degree sex offense, or attempted rape or sex offense). Effective for offenses committed on or after December 1, 1999, the act expands the list of offenses potentially requiring registration by including conspiracy, solicitation, and aiding and abetting as well as completed or attempted offenses.

Forfeiture of Succession Rights of Slayer. S.L. 1999-296 (S 176) modifies the laws dealing with the succession rights of "slayers," which bar a person convicted of a willful and unlawful killing of another person from acquiring any property from that person's estate. The amendments to G.S. 31A-4 do not change this general rule, but they modify the succession rights of others, such as children of slayers. The act applies to the estates of persons who die on or after October 1, 1999.

Local Bills

As in past sessions, the General Assembly enacted several criminal laws affecting only parts of the state.

Photographic Images of Traffic Violations. In 1997 the General Assembly authorized the city of Charlotte to enforce violations of G.S. 20-158—essentially failures to stop at intersections—by use of traffic control photographic systems. The 1997 act provided that the owner of the vehicle was responsible for a violation detected by a photographic system unless he or she could furnish evidence that the vehicle was in the care, custody, or control of another person at the time of the violation. A violation detected by these means was designated as a noncriminal violation of law, punishable by a civil penalty of $50.

This session the General Assembly extended this power to the following additional areas: the cities of Fayetteville, Greensboro, High Point, Rocky Mount, and Wilmington and the towns of Cornelius, Huntersville, and Matthews. To take advantage of this law, the municipality must adopt an ordinance authorizing use of a traffic control photographic system. The amended law also requires that warning signs be posted no more than 300 feet from the location of a photographic system and provides that a violation detected by such a system may not result in any insurance points. The changes appear in S.L. 1999-17 (H 50) and S.L. 1999-181 (H 426), as amended by S.L. 1999-456, Section 48, which have various effective dates.

Electronic Collars. Effective for offenses committed on or after December 1, 1999, S.L. 1999-51 (H 371) extends to several additional counties the crime of unlawfully removing or destroying an electronic dog collar, a Class 3 misdemeanor for a first conviction and a Class 2 misdemeanor for a second or subsequent conviction. The additional counties are Brunswick, Buncombe, Cherokee, Clay, Columbus, Davidson, Graham, Madison, Mecklenburg, Mitchell,

5. The act also expands the definition of "offense against a minor." Previously a conviction for an offense against a minor was subject to the registration laws only if the person committing the offense was not the minor's parent or legal custodian. Under the revised definition, the term continues to exclude acts committed by a parent but not acts committed by a legal custodian.

New Hanover, and Yancey. The act brings to thirty-five the number of counties covered by the law (contained in G.S. 14-401.17).

Fraudulent Ambulance Request. Effective for offenses committed on or after December 1, 1999, S.L. 1999-64 (S 652) extends to Durham County the crime of obtaining ambulance services without intending to pay for them, a Class 2 misdemeanor, and the crime of making unneeded ambulance requests, a Class 3 misdemeanor. The Class 2 misdemeanor, described in G.S. 14-111.2, will now apply to forty-two counties, and the Class 3 misdemeanor, described in G.S. 14-111.3, will now apply to nineteen counties.

John Rubin

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Elections

The General Assembly actively addressed several areas of concern in the administration of elections. First, it responded to a federal appeals court decision that ruled unconstitutional large portions of the state's campaign finance regulation laws. Second, it addressed problems that have arisen in the voter registration system that has been in place only since 1995. Third, it tackled long-standing problems in the conduct of absentee voting. It also enacted legislation affecting the local administration of elections, the state-level administration, and the establishment and operations of precincts and voting districts. *Reminder: No statewide election law passed by the General Assembly can be implemented until it has been approved by the United States Justice Department under Section 5 of the Voting Rights Act of 1965.*

Voter Registration

Failure to Deliver Registration Application

Under changes made in North Carolina's voter registration laws in the 1990s in response to the enactment of the federal National Voter Registration Act, applications to register to vote may be delivered to the appropriate county board of elections in any of several ways, including mail. Another acceptable method of delivery is for the applicant to fill out the application and leave it with another person for that person to deliver to the elections board office. That is a common practice in voter registration drives. S.L. 1999-426 (H 1074) amends G.S. 163-82.6 to make it a Class 2 misdemeanor for any person to indicate to the applicant that he or she will deliver the application to the elections board office and then fail to make a good faith effort to deliver the application in time for the application to be effective for the next election, unless the person informs the applicant that the form likely will not be delivered in time.

Payment for Voter Registration Forms

S.L. 1999-426 makes it a Class 2 misdemeanor to sell or attempt to sell a completed voter registration form or to condition its delivery on payment.

Altering Registration Records

S.L. 1999-426 amends G.S. 163-274 to make it a Class 2 misdemeanor for any member, director, or employee of a board of elections to alter a voter registration application or other voter registration record without either the written authorization of the applicant or voter or the written authorization of the State Board of Elections.

Asking Ethnicity on Registration Application

G.S. 163-82.4 requires that the application form for registering to vote ask certain information about the applicant: name, date of birth, address, county of residence, date of application, gender, race, political affiliation, and telephone number. S.L. 1999-453 (S 881) adds to that list ethnicity and provides that the portions of the form concerning race and ethnicity are to include as a choice any category shown on the most recent decennial federal census to compose at least 1 percent of the total population of North Carolina.

Precincts, Polling Places, and Voting Districts

Out-of-Precinct Voting Places

S.L. 1999-426 adds a new G.S. 163-130A permitting a county board of elections (by unanimous vote of all of its members) to establish a voting place for a precinct that is located outside the precinct, with the approval of the Executive Secretary-Director of the State Board of Elections. The county board must demonstrate that no adequate facilities are located within the precinct, that voters have been fully notified, that the plan does not unfairly favor or disfavor voters with respect to race or party, that disabled and elderly persons can gain access to the proposed place, and that it has adequate security against fraud. Approval by the Executive Secretary-Director is for one election cycle only. This provision expires January 1, 2002.

Pilot: Two Voting Places in One Precinct

S.L. 1999-426 adds a new G.S. 163-130B, permitting a county board of elections (by unanimous vote of all of its members) to designate two voting places to be used temporarily for the same precinct, with the approval of the Executive Secretary-Director of the State Board of Elections. (The Executive Secretary-Director is to approve no more than three counties as a pilot program.) The county board must demonstrate that the precinct has too many registered voters to be adequately accommodated by any single voting place available for the precinct, no boundary line that would qualify as a lawful precinct line is available to split the precinct, the county board can account for the locale of each registered voter in the precinct and fix each voter's residence address on a map, no more than four precincts in the county will have two voting places, both voting places would be accessible to the disabled and the elderly, the plan does not unfairly favor or disfavor voters with respect to race or party, and both places have adequate security against fraud. The designation of two voting places lasts only for the term of office of the county board of elections making the designation. Every voter is to be assigned to one voting place or the other. This provision expires January 2, 2002.

Adequate Parking Requirement

G.S. 163-128 permits county boards of elections to demand the use of any school building, municipal building, county building, or state building supported in whole or part through tax revenues for use as a voting place on Election Day. S.L. 1999-426 amends that statute to add a provision specifying that if the board does so require the use of a public building, it may require that those in control of the building provide parking adequate for voters at the precinct, as determined by the county board of elections.

Precinct Boundaries

Article 12 of G.S. Chapter 163 sets out requirements for the drawing of precinct boundary lines by county boards of elections. Among those requirements is a set of considerations imposed to insure that precinct boundary lines run along lines that the United States Census Bureau has indicated it will hold as block boundaries for the 2000 Census. G.S. 163-132.1(d) (found in Article 12) provides that once boundary lines have been set by counties in accordance with rules that are designed to bring the boundary lines into conformity with the census block lines (and approved by the Executive Secretary-Director), those lines may not be changed again before January 2, 2000. S.L. 1999-227 (H 248) extends that freeze to January 2, 2002. The statute provides for changes to be made during the freeze period in certain circumstances (such as municipal annexations) with the approval of the Executive Secretary-Director.

The 1999 legislation also provides that county boards may delay the implementation of precincts drawn according to the census block lines until January 1, 2000 (that is, after the 1999 elections) at their discretion and may request permission from the Executive Secretary-Director to delay until January 1, 2002. The Executive Secretary-Director may grant that permission upon finding that (1) the new lines would create a split precinct in 2000 for county commissioner, school board, judicial office, state office, legislative office, or Congress and that the split could be avoided by using the old lines and (2) the county can provide reasonably reliable voter registration data for April and October 2000 by the precinct drawn according to the census block lines.

Potential Delay of 2001 Municipal Elections

When jurisdictions that elect members of their governing boards (city councils, county commissioners, boards of education) from districts receive the census data following the 2000 United States census, they will have to make a determination as to whether population changes in the jurisdiction require the redrawing of election district lines. For municipalities with elections in 2001 (that is, virtually all municipalities), timing could be a problem. The filing period for the 2001 elections begins in July, and the census data will not be available until some time in early 2001. Once the city council gets that census data early in 2001, it must analyze it, determine whether election district lines must be redrawn, and redraw the lines before the July filing period. If the city is in one of forty North Carolina counties that, under the Voting Rights Act of 1965, must obtain “preclearance” for election changes, it must also get that approval from the United States Department of Justice before the July filing period. Recognizing that the time may be too short to accomplish all this, the General Assembly, in S.L. 1999-227, has amended various provisions of the municipal elections statutes found in Chapter 163 of the General Statutes to provide for the possibility of delaying the 2001 elections in towns that cannot meet the time frame. If the city council determines that it cannot have all steps accomplished by three days before the opening of the filing period, it may delay the election to 2002. In that case, the municipal elections would be held with the 2002 primary elections for partisan county and state offices, the exact timing of the elections depending on the kind of election the municipality uses—simple plurality, nonpartisan election and runoff, nonpartisan primary and election, or partisan primary and election.

Accessibility to Polling Places

S.L. 1999-424 (H 1072) puts back into the statutes (as new G.S. 163-131) a provision inadvertently dropped in revisions in 1995. It directs the State Board of Elections to promulgate rules assuring that disabled or elderly voters assigned to an inaccessible polling place will be assigned to accessible polling places upon advance request.

Local-Level Elections Administration

Municipal Boards of Elections

County boards of elections conduct the town elections for the overwhelming majority of North Carolina municipalities, but in approximately fifty-four municipalities the town elections are conducted by a municipal board of elections appointed by the city council. S.L. 1999-426 amends G.S. 163-304 to add a requirement that the city council is to notify the State Board of Elections of the appointment of members to its municipal board of elections within five days of the appointment, giving such information as the state board may require. If the city council fails to appoint the municipal board or fails to notify the state board, the Executive Secretary-Director is to request the information, and if it is not forthcoming by a deadline set in the statute, the Executive Secretary-Director may order the upcoming town election to be conducted by the county board of elections on an emergency basis.

The Executive Secretary-Director may also (with the approval of four members of the state board) order the upcoming town election to be conducted by the county board of elections on an emergency basis upon a determination that the municipal board has committed violations of law of such magnitude as to give rise to reasonable doubt as to the ability of the municipal board to conduct the election with competence and fairness. Before making such a determination, the Executive Secretary-Director must give the municipal board an opportunity to be heard before the state board.

The Executive Secretary-Director may also order that the county board of elections conduct town elections on an ongoing (as opposed to temporary) basis if (1) the county board has been ordered on at least one occasion previously to conduct the elections on a temporary basis or a new election has been ordered because of irregularities in the city's conduct of its elections, (2) the state board finds that the city board cannot meet the interest of the residents of the city in fair and competent administration of elections, (3) the city council and the municipal board of elections are given the opportunity to be heard before the state board, and (4) the state board votes to designate the county board to conduct the town elections on an ongoing basis.

Minimum Compensation for County Elections Directors

S.L. 1999-426 amends G.S. 163-35(c) to raise the minimum amount that any county may pay to its director of elections from $8 to $12 per hour.

Requirement of Full-Time Elections Office

G.S. 163-36 permits counties with sufficiently small populations to keep their elections board offices open on a less than full-time basis. The cut off has been 14,000 registered voters. S.L. 1999-426 amends the statute so that only counties with fewer than 6,501 registered voters may operate on a part-time basis.

Funding Responsibility of County Commissioners

S.L. 1999-424 puts back into the statutes (as new G.S. 163-37) a provision inadvertently dropped in revisions in 1995 that specifically directs boards of county commissioners to

appropriate reasonable and adequate funds necessary for the functions of the county board of elections.

Reports of Deaths and Felonies

G.S. 163-82.14 has required the state Department of Health and Human Services to furnish to each county board of elections, on a quarterly basis, the names of deceased persons who were residents of the state. S.L. 1999-453 amends that statute to call for the department to make the reports on a monthly basis and to report directly to the State Board of Elections, which will then be responsible for distributing the lists to the counties. The counties then remove the names of the deceased from the voter registration rolls.

G.S. 163-82.14 has also required the clerk of superior court in each county to report to the county board of elections each individual against whom a final judgment of conviction of a felony has been entered in that county in the preceding quarter. S.L. 1999-453 amends that statute to call for the clerk to make the reports on a monthly basis.

State-Level Elections Administration

Emergency Powers of the Executive Secretary-Director of the State Board

S.L. 1999-455 (S 568) adds a new G.S. 163-27.1 granting to the Executive Secretary-Director of the State Board of Elections, as the chief state elections official, emergency powers to conduct an election in a district where the normal schedule for the election is disrupted by a natural disaster, extremely inclement weather, or war. The Executive Secretary-Director is to adopt rules describing the emergency powers and the situations in which it will be exercised.

State Board Temporary Rule-Making Authority

S.L. 1999-453 (S 881) adds a new subsection to the Administrative Procedure Act [new G.S. 150B-21.1(a4)] giving the State Board of Elections the power to adopt a temporary rule in three situations: (1) to implement G.S. 163-22.2, which already gives the board temporary rule-making authority when a state or local election law or regulation is declared by a court to be in violation of the Constitution or unenforceable under the Voting Rights Act; (2) to implement any provision of state or federal law for which the state board has been authorized to adopt rules; and (3) when there is immediate need for the rule to become effective in order to preserve the integrity of upcoming elections and the electoral process.

State Ballot Preparation

County boards of elections are responsible for the preparation of most ballots, but the State Board of Elections is responsible for some, such as statewide referendums. G.S. 163-137 has required that the state-prepared ballot be ready at least sixty days before the applicable election. S.L. 1999-455 changes that provision to fifty days.

Appeals of Contested Elections

G.S. 163-181 has provided that boards of elections may not issue certificates of election or nomination or the results of a referendum if an election contest is pending before the county or State Board of Elections or is on appeal. S.L. 1999-424 specifies that a decision of the State Board of Elections must be appealed within ten days of the service of notice of the decision on the parties

and that certificates of election may be issued unless the appealing party obtains a stay of certification from the superior court of Wake County within those ten days.

Unconstitutional Petition Provisions Deleted

S.L. 1999-424 amends G.S. 163-96 (regarding petitions to form a new political party) and G.S. 163-122 (regarding petitions to have one's name printed on the ballot as an unaffiliated candidate) to remove from those statutes provisions found by the courts to be unconstitutional. Those provisions had required certain validation procedures and a fee for checking the petitions.

Campaign Finance Opinions

G.S. 163-278.23 has for years directed the Executive Secretary-Director of the State Board of Elections to issue written rulings concerning obligations under campaign finance reporting provisions to candidates. The law authorizes issuance of rulings to the media, political committees, and referendum committees upon request. It specifies that, if a recipient of such a ruling acts in accordance with it, the recipient is not subject to prosecution for such actions, even if they turn out to have been in violation of law. S.L. 1999-453 amends the statute to change the term from "rulings" to "opinions"; to require the Executive Secretary-Director to file the opinions with the Codifier of Rules, who is to publish them in the North Carolina Register and the North Carolina Administrative Code; and to add that a recipient of an opinion who acts in accordance with it is protected not only from prosecution but also from civil action.

Absentee Voting

The statutes establishing the procedures for absentee voting have been added to, changed, and expanded from one session of the General Assembly to the next. As a result the statutes have become complex and difficult to understand and administer. The General Assembly in S.L. 1999-455 undertook to simplify and clarify absentee voting procedures and to make a few substantive changes.

North Carolina allows two distinct methods of absentee voting. By the traditional method, a voter requests an application to vote absentee. The board of elections sends the application and the ballot to the voter. The voter fills out the application and the ballot and returns both to the elections board office. The elections board considers the application and, if it approves the application, the ballot is counted at the time of the election. By the one-stop method, the voter comes to the board of elections office and, in one transaction, fills out the application and marks the ballot. If the application is ultimately approved, the ballot is counted, as in the traditional absentee method, on election day.

In order to vote by absentee ballot, the voter has been required to demonstrate that one of five possible excuses for voting absentee is present: (1) the voter expects to be absent from the county during the entire period that the polls will be open on election day; (2) the voter is unable to be present at the voting place on election day because of sickness or physical disability; (3) the voter is in jail; (4) the voter will be unable to cast a ballot on election day because that day is a holiday pursuant to the tenets of his or her religion; or (5) the voter is an employee of the board of elections and will be working on election day.

The 1999 changes affect both the traditional and one-stop methods of absentee voting.

No-Excuse One-Stop Absentee Voting in General Elections

In the most significant substantive change, the 1999 legislation does away with the requirement that the voter must be able to show one of the five statutorily recognized excuses for one-stop absentee voting in even-year general elections. For those elections a voter may come to the one-stop voting place, fill out an application, and cast his or her ballot without presenting any reason for voting this way rather than waiting for Election Day to vote at the regular polls.

This change is applicable *only* to even-year general elections. That is, it is not applicable to odd-year elections, which are primarily municipal elections for town council and mayor, and it is not applicable to party *primary* elections in the even years. For those elections the requirement of a statutorily recognized excuse still applies. It is also not applicable to traditional absentee voting as opposed to one-stop absentee voting.

Additional One-Stop Absentee Voting Sites

Before the 1999 legislation, each county was permitted by general law to have only one site available for one-stop absentee voting. That one site had to be at the office of the county board of elections. The 1999 act permits a county board of elections, by unanimous vote of all of its members, to provide additional sites at the kinds of places that can be used for polling places on election day. To have such remote one-stop sites, the county board of elections must prepare a Plan for Implementation and have the plan approved by the State Board of Elections. Employees who staff the remote sites must meet certain training requirements set out in the new law.

Challenges at One-Stop Sites

The general law permits challenges to absentee ballots over the issue of the voter's qualifications and entitlement to vote between noon and 5:00 P.M. on election day. For regular, nonabsentee voting, the general law permits challenges at the polls at the time that the voter attempts to vote. The 1999 legislation amends G.S. 163-227.2 to add a provision permitting the challenge to a person attempting to vote absentee at a one-stop site. The challenge may be entered by the person conducting the one-stop voting at the site or by any registered voter of the same precinct of the voter being challenged.

Counting Absentee Ballots

The 1999 legislation adds several directions regarding the counting of absentee ballots. The general law provides that the counting begins before the polls close on election day. The new provisions specify that if the count has been completed before the polls close, it is to be suspended until that time, pending receipt of any additional ballots. One-stop ballots counted electronically are not to be counted until the polls close, except any outstack ballots in the counting device, which may be counted with the other absentee ballots.

Streamlining Provisions

The 1999 legislation makes a number of changes in the absentee ballot law.

It reduces the number of required meetings for county boards of elections, for instance. Before the 1999 legislation, the general law called for numerous meetings of the county board of elections to consider absentee ballot applications. The meetings had to occur once a week beginning fifty days before an election and increasing in frequency as the election neared, so that in the last eight days before the election the statute required four separate meetings. The 1999 act amends the provisions so that now G.S. 163-230.1 requires one meeting a week in the last three weeks before the election. As another example, the legislation reduces the variety in the procedures for issuance of absentee ballot applications and the ballots themselves. The procedures

formerly turned on whether the request was made by mail or in person and the nature of the excuse for voting absentee). Also, in many places where the statutes, in antiquated language, laid duties or powers in the hands of the chair of the county board of elections, the 1999 changes place them in the hands of the board as a whole.

Military Absentee Voting by Fax and E-mail

The 1999 legislation adds a new G.S. 163-257 providing that members of the armed forces, their spouses, certain civilians working with the armed forces, and certain people connected with the Peace Corps, all of whom are protected by federal legislation on absentee voting, may apply for voter registration and for absentee ballots by facsimile or electronic mail. A county board of elections may send and receive absentee ballot applications and accept voted ballots by facsimile and electronic mail, in accordance with rules to be adopted by the State Board of Elections.

Campaign Finance Regulation

A decision of the federal Fourth Circuit Court of Appeals in early 1999, *N.C. Right to Life v. Bartlett,* 68 F.3d 705 (4th Cir. 1999), held large portions of North Carolina's statutory scheme of regulation of the finances of political campaigns unconstitutional. First, the court held that North Carolina's regulation of "political committees" (requiring them to register, to keep detailed records of expenditures and contributions, and to file reports on their expenditures and contributions) was too broad because it applied not only to committees engaged in "express advocacy" (that is, attempts to get voters to vote for or against a candidate) but also to committees engaged in "issue advocacy" (that is, attempts to influence people to think one way or another about a matter of public concern without directly attempting to influence them to vote for or against a particular candidate).

Second, the court held that North Carolina's prohibition against corporations making expenditures for "political purposes" was unconstitutional primarily because it applied to for-profit and nonprofit corporations alike. While the capacity of for-profit corporations to distort the political process through huge expenditures might justify a prohibition against their contributions to candidates, the court said, there is not a sufficient justification to permit the prohibition of participation by nonprofit corporations.

In response the 1999 General Assembly enacted S.L. 1999-31 (H 921) in an attempt to cure the constitutionality problems and reinstate effective regulation of campaigns. It also enacted S.L. 1999-453, labeled the Campaign Reform Act of 1999, adding new substantive provisions to the regulatory scheme. All of the changes described in this section were made through S.L. 1999-31 unless otherwise noted.

Definition of "Political Committee"

The state's regulatory scheme for political campaigns chiefly concerns the activities of political committees. Before the 1999 changes, G.S. 163-278.6(14) defined *political committee* to include any two or more persons or entities that had as a "primary or incidental purpose" the support or opposition of a candidate or influencing the result of any election. The federal court in *N.C. Right to Life v. Bartlett* made its finding of unconstitutionality based primarily on two factors. First, a group could come under the definition (and therefore under regulation) even if its activities only had the *incidental* purpose of supporting or opposing a candidate. Second, a group could come under the definition even if it was not supporting or opposing a candidate at all but was in some other way attempting to influence the outcome of an election—such as furthering the interests of some particular group or pushing for a particular outcome on some issue of public concern.

To meet these court objections, the 1999 legislation provides (primarily by amending G.S. 163-278.6) that to be a political committee a group must have as a *major* purpose the support of or opposition to the nomination or election of one or more clearly defined candidates, or meet one of the following criteria: (1) be controlled by a candidate, (2) be a political party or its executive committee or be controlled by one of them, or (3) be a committee created by a corporation, business entity, insurance company, labor union, or professional association under statutory provisions for creation of political committees by such entities. An entity is rebuttably presumed to have support for or opposition to a candidate as a major purpose if it contributes or expends during an election cycle more than $3,000 on election matters other than referendums or support or opposition of ballot issues, as opposed to candidates. The presumption may be rebutted by showing that the contributions and expenditures were not a major part of activities of the organization during the election cycle. In any proceeding the committee under scrutiny may offer evidence to rebut the presumption, but the ultimate burden of persuasion rests with the state.

After the passage of these changes, the General Assembly, through S.L. 1999-453, added a new G.S. 163-278.14A laying out the kinds of evidence (along with other kinds) that may prove that an individual or entity acted "to support or oppose the nomination or election of one or more clearly identified candidates": (1) financial sponsorship of communications to the general public that use phrases such as "vote for" or "reelect" or "support" (among a list of other such phrases) and (2) financial sponsorship of communications whose essential nature expresses electoral advocacy to the general public and goes beyond a mere discussion of public issues in that they direct voters to take some action to nominate, elect, or defeat a candidate in an election. These provisions do not apply to a communication that appears in a news story, commentary, or editorial distributed through a broadcasting station, newspaper, or magazine, unless those facilities are owned or controlled by a political party or political committee. The provisions also do not apply to communication distributed by a corporation solely to its stockholders and employees or by any organization, association, or labor union to its members or subscribers or made available to individuals in response to their requests, including through the Internet.

Limiting Covered "Contributions"

The 1999 legislation restricts the scope of the campaign regulation statutes by narrowing the definition of *contribution* so that it applies only to money (or other things of value) given to a candidate to support or oppose the nomination or election of one or more clearly identified candidates, or to a political committee, or to a political party, or to a referendum committee. The definition explicitly excludes *independent expenditures*, defined as expenditures made in support of or opposition to a candidate but without consultation with or coordination with the candidate. Independent expenditures in excess of $100 must be reported to the State Board of Elections (along with donations received by the reporting entity for the purpose of making the independent expenditures).

Expanding the Definition of "Candidate"

The thrust of the 1999 changes bringing the statutes into compliance with the court decision is to narrow the scope of the campaign regulations. In one respect, however, the 1999 changes expand the scope, by expanding the definition of *candidate* to include an individual who has not yet filed a notice of candidacy or begun a petition to become a candidate or been certified as a nominee but who has received funds or made payments for the purpose of exploring or bringing about his or her nomination or election to office.

Limiting Prohibition on Corporate Expenditures

The 1999 changes amend G.S. 163-278.19(a)—the general provision prohibiting corporate expenditures—to limit the scope of the statute to corporate expenditures for the purpose of

supporting or opposing the nomination or election of a clearly identified candidate or the candidates of a clearly identified political party.

Permitting Contributions by Nonprofit Corporations

To directly meet one of the federal court's objections to the former statutory provisions, the 1999 legislation adds a new G.S. 163-278.19(f), providing that the prohibitions on contributions by corporations do not apply to an entity that (1) has as an express purpose promoting social, educational, or political ideas and not to generate business income, (2) does not have shareholders or other persons who have an economic interest in its assets and earnings, and (3) was not established by a business corporation, insurance company, or business entity.

Lobbyists' Solicitations of Contributions

One of the elements of North Carolina's scheme of campaign finance regulation that withstood the challenges of the plaintiffs in *N.C. Right to Life v. Bartlett* was the set of limitations on campaign contributions by lobbyists. G.S. 163-278.13B(c) prohibits lobbyists from making or offering a contribution to a member of the General Assembly or Council of State (or candidate for such a position) while the General Assembly is in session. S.L. 1999-453 adds to that statutory provision a prohibition against lobbyists soliciting contributions from any individual or political committee on behalf of a member as well as making the contributions. The solicitation prohibition does not apply to solicitations on behalf of a political party executive committee if it is solely for a separate segregated fund kept by the party limited to use for activities that are not candidate-specific.

"Stand by Your Ad"

The Campaign Reform Act of 1999, S.L. 1999-453, adds a new Part 1A to Article 22A of Chapter 163 of the General Statutes, entitled "Disclosure Requirements for Media Advertisements," commonly referred to as "Stand by Your Ad."

Disclosure requirements. The legislation requires any sponsor of an advertisement supporting or opposing the nomination or election of one or more clearly identified candidates to disclose in the advertisement whether it is authorized by a candidate. The disclosure requirements do not apply to individuals who spend less than $1,000 on advertisements.

In a print media advertisement in which the sponsor is opposing an identified candidate, the sponsor must disclose in the advertisement the name of the candidate whom the advertisement is intended to benefit if the sponsor coordinates with or consults with the candidate about the advertisement. The legislation sets out requirements regarding the size of the disclosure notice and penalties for violation.

In any advertisement on television, the legislation adds additional requirements. For advertisements purchased by a candidate (or committee for a candidate) supporting or opposing the nomination or election of a clearly identified candidate, the candidate must personally speak a disclosure statement saying words to the effect of "I am candidate so-and-so, and I sponsored this advertisement." For such advertisements purchased by a political party, the disclosure must be spoken by the chair, executive director, or treasurer. For such advertisements purchased by political committees, the disclosure must be spoken by the chief executive officer or treasurer of the committee. For such advertisements purchased by an individual, the disclosure must be spoken by the individual. In all instances of television advertisements, a picture of the individual making the disclosure statement must appear on the screen throughout the speaking of the statement.

The legislation adds corresponding disclosure requirements for advertisements on radio.

Remedies. For violations related to the television and radio rules, a candidate may file a Notice of Complaint Regarding Failure to Disclose on Television or Radio Campaign Advertising. That notice must be filed by the Friday after the election. The filing of the notice entitles the candidate to bring a civil action in superior court at any time within ninety days after the election.

If the candidate prevails in the lawsuit, he or she will receive a monetary award in the total dollar amount of television and radio time that was aired in violation of the statute. If the candidate can demonstrate that he or she informed the sponsor of the advertisements of the violation and the advertisements continued despite the notice, the damages are to be tripled.

Election Laws Study Commission

S.L. 1999-395 (H 163) creates the Election Laws Study Commission charged with studying the following matters:

- the election laws, policies, and procedures of the state;
- the administration of those laws, policies, and procedures at the state and local levels;
- the election laws, policies, and procedures of other states;
- federal and state case rulings impinging on those laws, policies, and procedures;
- public funding of election campaigns;
- an exemption from the Administrative Procedure Act for the State Board of Elections;
- preference voting and instant second primaries.

The commission is to prepare and recommend to the General Assembly a comprehensive revision of the election laws of the state that will accomplish the following:

- remove inconsistencies, inaccuracies, ambiguities, and outdated provisions in the law;
- incorporate in the law any desirable uncodified procedures, practices, and rulings of a general nature that have been implemented by the State Board of Elections or its Executive Secretary-Director;
- conform the statutory law to state and federal case law and to any requirements of federal statutory law and regulation;
- ensure the efficient and effective administration of elections;
- continue the impartial, professional administration of elections, which the citizens of the state expect and demand;
- recodify the election laws, as necessary, to produce a comprehensive, clearly understandable structure of current North Carolina election law, susceptible to orderly expansion as necessary.

The commission is to consist of seventeen members. The President Pro Tempore of the Senate is to appoint four, including at least one county board of elections member, with no more than three of the four affiliated with the same political party. The Speaker of the House of Representatives is to appoint four, including at least one county elections director, with no more than three of the four affiliated with the same political party. The Governor is to appoint four, including at least one county commissioner and at least one minority-party member of the State Board of Elections. The chair and the Executive Secretary-Director of the State Board of Elections are to be ex officio members, as are the chairs of the three political parties that received the highest number of votes in the most recent general election for Governor.

Robert P. Joyce

9

Elementary and Secondary Education

The deaths of fourteen students and one teacher at Columbine High School in Littleton, Colorado, haunt us all. In the wake of this tragedy people all across the country struggled to figure out why Littleton happened and how to prevent violence at schools. At the same time, unfortunately, scores of schools across the country and across North Carolina received threats of violence. Although concern for school safety obviously predated the spring of 1999 and already had led to many changes in school statutes, policies, and operations, Littleton apparently was a catalyst for additional action by the General Assembly.[1] Much of the school law it enacted is aimed at deterring violence or making accountable those responsible for violence or other illegal conduct at school.

As the 1999 school year drew to a close, schools experienced a dramatic increase in bomb threats. Such threats or just rumors of threats cause disruption and may lead to the evacuation of school and a heightened sense of fear and insecurity throughout a community. Threats are also expensive to investigate. The 1999 General Assembly responded to these problems through changes in school discipline statutes, criminal penalties, civil liability for parents, and mandatory driver's license revocations.

The General Assembly also continued its efforts to improve student achievement and accountability. This year the efforts focused not on any major new reform initiative, but on refining and evaluating those already in place. In addition the General Assembly paid greater attention to the need for high-quality alternative learning opportunities for students who are at risk of school failure or who are disruptive. The decision to fund a significant pay increase for teachers and bonuses under the ABCs program has the ultimate goal of improving student learning.

After three very active sessions in 1996, 1997, and 1998, the North Carolina General Assembly in 1999 took a break from enacting major legislation affecting employment in the

1. Governor Hunt also reacted and appointed a Task Force on Youth Violence and School Safety. The task force issued its report in August 1999, and the report is available through the Governor's Web site at www.governor.state.nc.us.

public schools. In 1996 the School-Based Management and Accountability Program, commonly known as the ABCs Program, called for the classification of schools based on certain measures tied to student performance on particular standardized tests. Through that legislation numerous employment consequences for a school's teachers and administrators, including the potential for dismissal, spring from the classification of the school. In 1997 the Excellent Schools Act brought wholesale changes to school employment, affecting everything from teacher training to certification, tenure, and the procedures for dismissal. In 1998 the legislature worked to fine-tune some of the earlier legislation and provided, in a break with the past, for the employment of uncertified teachers in certain circumstances.

The 1999 General Assembly continued the upward movement in teachers' salaries begun with the Excellent Schools Act, tinkered with certification and dismissal provisions, focused on issues related to sexual harassment and improper sexual contact, and aimed at improving instructional conditions for teachers.

Responses to Violence at School

Lose Control, Lose your License

A major rite of passage for American teenagers is getting a learner's permit or driver's license. Before 1997 a minor could get a learner's permit simply by meeting the age requirement, having parental permission, and completing a driver training and safety education course. In 1997 the General Assembly added the requirement that any minor who did not have a high school diploma or its equivalent must have "a driving eligibility certificate." Under G.S. 20-11 a principal or the principal's designee could issue a certificate for a minor student in public school only if (1) the minor was currently enrolled in school and making progress toward a high school diploma or its equivalent, (2) a substantial hardship would be placed on the minor or the minor's family if the minor did not receive a certificate, or (3) the minor could not make progress toward a high school diploma or its equivalent. This certificate requirement was designed as an incentive to keep students in school by taking advantage of the high value teenagers place on being able to drive.

In 1999 a new restriction was added, this one to encourage students to refrain from serious and dangerous misconduct. This restriction, commonly known as "lose control, lose your license," had been introduced in 1998 but did not pass. In 1999, in response to heightened concern about safety, and in spite of opposition from some educators worried about an additional administrative burden, the measure did pass. S.L. 1999-243 (S 57), as amended by S.L. 1999-387 (H 1154), defines circumstances under which students who engage in certain kinds of misconduct would not receive, or would lose, their driving eligibility certificate and therefore, their learner's permit or driver's license. These amendments to G.S. 20-11 cover all minor students enrolled in public schools, including charter schools, community colleges, nonpublic schools, or home schools.

The "lose control, lose your license" restriction applies when a minor student commits certain offenses on school property and receives specified disciplinary sanctions as a result. If the school official has not yet issued an eligibility certificate, he or she may not issue one. If a certificate has been issued, the school official must report information to the Division of Motor Vehicles (DMV). It is the DMV's responsibility to take direct action on the permit or license.

The offenses are (1) possession or sale of alcohol or an illegal controlled substance on school property, (2) the bringing of a weapon or firearm to school or the possession or use of a weapon or firearm at school that results in disciplinary action under G.S. 115C-391(d1) (365-day suspension) or such possession or use away from school that could have resulted in that action if the conduct had occurred at school, and (3) physical assault on a teacher or other school personnel on school property. "School property" is the physical premises of the school, school buses or vehicles under the school's control or contract used to transport students, and school-sponsored curricular or

extracurricular activities that occur on or off the physical premises of the school. The disciplinary actions are (1) expulsion, (2) suspension for more than ten consecutive days, or (3) assignment to an alternative educational setting for more than ten consecutive days. For the conduct to be covered, it must have occurred after July 1 before the student's eighth grade year or after the student's fourteenth birthday, whichever occurred first. The act becomes effective with respect to conduct that occurs on or after July 1, 2000.

A student who loses eligibility for a certificate may regain it. A student is again eligible for a certificate when he or she has exhausted all administrative appeals connected to the disciplinary action and either (1) the conduct occurred before the student was fifteen years old and the student has now turned at least sixteen; (2) the conduct occurred after the student was fifteen and it is now at least one year after the date the student exhausted all administrative appeals connected to the disciplinary action; or (3) no other transportation is available and the student needs to drive to and from school, a drug or alcohol treatment counseling program, or a mental health treatment program.

Additionally a student whose permit or license is denied or revoked because he or she has lost eligibility for a certificate may regain eligibility if, after six months from the date of the ineligibility, (1) the student has returned to school or been placed in an alternative educational setting and has displayed exemplary behavior or (2) the disciplinary action was for the possession or sale of an alcoholic beverage or an illegal controlled substance on school property and the student subsequently attended and successfully completed a drug or alcohol treatment counseling program.

G.S. 115C-12(28) requires the State Board of Education to adopt rules[2] related to these requirements. These rules must define what is "equivalent to a high school diploma" (because eligibility for a certificate turns on a student's making progress toward a high school diploma or its equivalent), establish procedures that a person who is or was enrolled in a public school (including a charter school) must follow to obtain a driving eligibility certification, require the appropriate school official to provide the driving eligibility certificate for a minor who meets all requirements, provide for an appeal to an appropriate education authority by a minor denied a certificate, define "exemplary student behavior" and "successful completion" of a drug or alcohol treatment counseling program (which are the elements of the requirements for reinstatement of a lost certificate).

The 1997 law on driving eligibility certificates was silent on the school's responsibility to obtain parental consent before releasing the required information about the student to the DMV. Many people questioned whether releasing the information without parental consent would violate the federal Family Educational Rights and Privacy Act (FERPA). That issue was addressed in 1999. Parents, guardians, or emancipated juveniles must provide in advance their written, irrevocable consent for a public school, including a charter school, to disclose to the DMV that the student no longer meets the conditions for a driving eligibility certificate. The only information the school may disclose pursuant to this consent is whether the student is no longer eligible under G.S. 20-11(n)(1) or 20-11(n1). Presumably if consent is not given, the school official will not issue a driver eligibility certificate and the minor will not be able to drive legally.

G.S. 115C-288 assigns the school principal or the principal's designee three specific duties related to driving eligibility certificates. First, the principal must sign certificates for students who meet the conditions in G.S. 20-11. Second, the principal must obtain the written, irrevocable consent described above from parents, guardians, or emancipated juveniles. Third, the principal must notify the DMV when a student who holds a certificate no longer meets the eligibility conditions. For charter schools G.S. 115C-238.29F assigns these duties to the designee of the school's board of directors.

2. For a discussion of the State Board's rule-making process, see Ann McColl, "The North Carolina State Board of Education: Its Constitutional Authority and Rule-Making Procedures," *School Law Bulletin* 29 (Fall 1998): 1–11.

Some educators expressed concerns about the potential cost of administering this act. Section 8.11 of S.L. 1999-237 permits the State Board to use funds appropriated for driver's education for the 1999–2000 and 2000–2001 fiscal years for the costs of issuing driving eligibility certificates.

365-Day Suspension

For several years G.S. 115C-391(d1) has required the school board or superintendent to suspend any student who brings certain weapons onto school property. This requirement applied to weapons as defined in G.S. 14-269.2(b) and 14-296.2(g). The board may modify this suspension on the superintendent's recommendation.

S.L. 1999-257 (H 517), as amended by S.L. 1999-387, amends G.S. 115C-391(d1) by adding weapons as defined in G.S. 14-269.2(b1) and 14-269.2(h) to the weapons that trigger the 365-day suspension. The 365-day suspension now applies to firearms, explosives, bomb threats, and bomb hoaxes. The suspension originally applied to any student who "brings a weapon onto school property." Now it applies to any student who brings a weapon onto or possesses a weapon on educational property and to any student who brings a weapon to or possesses a weapon at a school-sponsored curricular or extracurricular activity off educational property.

S.L. 1999-257, as amended by S.L. 1999-387, enacts G.S. 115C-391(d3). This new section requires a local board of education (but not a superintendent) to suspend any student who makes a false report or perpetrates a hoax with a device that could be reasonably believed to be a bomb or other destructive device on educational property or at a school-sponsored curricular or extracurricular activity off educational property. As in G.S. 115C-391(d1), the board may modify the suspension upon recommendation of the superintendent. G.S. 115C-391(e) allows an appeal to the board of education of a superintendent's decision under G.S. 115C-391(d1) (365-day suspension for weapons), G.S. 115C-391(d2) (action by superintendent when a student assaults another person), and the new G.S. 115C-391(d3) (false reports), although the superintendent does not make the suspension decision in the last instance.

Metal Detectors

An increasing number of schools use metal detectors at school and school-sponsored activities as part of their efforts to keep students and others safe. Section 20.5 of the appropriations act, S.L. 1999-237 (H 168), appropriates $350,000 to the Department of Crime Control and Public Safety to provide metal detectors to public schools.

Criminal Law

Assault

S.L. 1999-105 (S 637) amends G.S. 143-33 to make it a Class A1 misdemeanor for a person to assault a school employee or volunteer (including certain independent contractors) when the employee or volunteer involved is carrying out his or her duties.

Possession of a Firearm

S.L. 1999-211 (S 1096) amends G.S. 14-269.2 to make it a felony for a school employee to possess or carry a firearm on educational property or to a curricular or extracurricular activity sponsored by a school. Under specified circumstances and depending on the person's status as employee or student at the time of the offense, the offense is a misdemeanor. In any event, the offense can be a misdemeanor and not a felony only if the firearm is not loaded and is in a locked container or locked firearm rack in a motor vehicle. It is not a criminal violation if the person takes

or receives the weapon from another person or finds the weapon and then delivers it, directly or indirectly, to law enforcement authorities as soon as is practical.

Explosives

S.L. 1999-257, as amended by S.L. 1999-387, increases criminal penalties for second and subsequent offenses and authorizes court-ordered restitution for those convicted under G.S. 14-69.1 (making a false report of destructive device at a public building) and G.S. 14-269.2 (perpetrating hoax by use of false bomb or other device at a public building). "Educational property" as defined in G.S. 14-269.2 is a public building. S.L. 1999-257 sets the penalty for a person convicted under G.S. 14-269.2 of possessing or carrying explosives on educational property or for a person convicted of causing, encouraging, or aiding a minor to possess an explosive on educational property or at a school-sponsored curricular or extracurricular activity. A misdemeanor penalty is set for a person convicted of possessing or carrying fireworks on educational property.

Parental Liability

Whenever a child engages in criminal conduct, questions arise about what the parents knew or should have known about their child's activities and whether the parents should be held accountable for their child's behavior. S.L. 1999-257 enacts new G.S. 1-538.3 to provide that a parent or legal guardian with care, custody, and control of an unemancipated minor may be held civilly liable to an educational entity for negligent supervision if the child makes a bomb threat, perpetrates a bomb hoax on a school, or brings certain weapons onto school property. The educational entity must prove by clear, cogent, and convincing evidence that four conditions are met. First, that the minor violated G.S. 14-49, -49.1, -50, -69.1(c), -69.2(c), -269.2(b1), or -269.2(c1) or committed a felony offense involving injury to persons or property through the use of a gun, rifle, pistol, or other firearm of any kind as defined as G.S. 14-269.2(b) on educational property. Second, that the parent or guardian knew (or reasonably should have known) of the minor's likelihood to commit such an act. Third, that the parent or guardian had the opportunity and ability to control the minor. Fourth, that the parent or guardian did not make a reasonable effort to correct, restrain, or properly supervise the minor. If these conditions are met, then the educational entity must prove its damages. Liability is limited to no more than $25,000 actual compensatory and consequential damages resulting from the disruption or dismissal of school or the school-sponsored activity arising from a minor's act. The limit increases to $50,000 in actual compensatory and consequential damages to educational property resulting from the discharge of a firearm or detonation or explosion of a bomb or other explosive device.

License Revocation

Independent of the "lose control, lose your license" law discussed above, S.L. 1999-257 adds new G.S. 20-13.2 and amends G.S. 20-17 to require the DMV to revoke the permit or license of a minor or any other driver who is convicted of specified crimes involving explosives.

Violent Students

S.L. 1999-257 directs the Joint Legislative Education Oversight Committee to study the issue of students who make or carry out threats or violence directed at schools or persons in the schools.

Improving School Safety and Student Achievement

Alternative Schools/Alternative Learning Programs

Educators and others have long been concerned about what happens to students who are suspended or expelled from school and students who simply do not fare well in the regular school setting. One response to this concern, the development of alternative schools and alternative learning programs, was encouraged last year in S.L. 1998-202. It is now mandatory.

Section 8.25 of S.L. 1999-237 amends G.S. 115C-47(32a) to require each local board of education to establish at least one alternative school or alternative learning program by July 1, 2000, although G.S. 115C-105.26(c1) allows the State Board to waive the requirement. G.S. 115C-47(32a) requires local boards to adopt guidelines for assigning students to alternative programs or schools after considering the State Board's policies and guidelines. The General Assembly "urges" local boards to adopt policies that prohibit superintendents from assigning to an alternative learning program any professional school employee who has received within the last three years a rating on a formal evaluation that is less than "above standard."

S.L. 1999-397 (S 1099) adds new G.S. 115C-105.48, which requires that, before a school refers a student to an alternative school or learning program, the referring school must document the procedures used to identify the student as at risk of academic failure or disruptive or disorderly, provide reasons for the referral, and provide all relevant student records to the alternative school or program. Once a student is placed in an alternative school or program, appropriate school staff must meet to review the records and to determine what support services and intervention strategies are recommended for the student. Parents must be encouraged to provide input regarding the student's needs.

G.S. 115C-12(24) directs the State Board to develop guidelines and policies that define what constitutes an "alternative school" and "alternative learning program." The State Board must review the qualifications of teachers assigned to alternative schools and learning programs and include this information in an annual report to the General Assembly.

S.L. 1999-397 amends G.S. 115C-47(32a) to require local boards to regularly assess whether the unit's alternative schools/learning programs incorporate best practices for improving student academic performance and reducing disruptive behavior, are staffed with employees who are well trained and provided appropriate staff development, and are organized to provide coordinated services and provide students with high-quality and rigorous academic instruction.

Safe School Plans

For several years local school boards have been required to have local plans for maintaining safe and orderly schools. S.L. 1999-397 amends G.S. 115C-105.47 to add components that must be in the plan. A plan must have ways to assess and address the needs of students who are at risk of academic failure as well as those who are disruptive and disorderly or both and measures of the effectiveness of these efforts, a statement of the services that will be provided to students who are assigned to an alternative school or an alternative learning program, and a statement of the planned use of federal, state,[3] and local funds allocated for at-risk students and alternative schools and alternative learning programs.

Local school boards submit their safe school plans to the State Board of Education. G.S. 115C-105.46 sets out the State Board's responsibilities with regard to these plans, and G.S. 115C-12 is a broad list of the board's duties. G.S. 115C-12(24), as amended by S.L. 1999-237 and S.L. 1999-397, requires the State Board to develop policies that define who is an at-risk student and what constitutes an alternative school and an alternative learning program. The State Board also must measure the effectiveness of alternative learning programs.

3. Section 8.25 of S.L. 1999-237 amends G.S. 115C-105.25(b) to require that funds allocated in the Alternative Schools/At-Risk Student allotment be spent only for alternative learning programs, at-risk students, and school safety programs.

S.L. 1999-397 requires local boards to submit their revised safe school plans to the State Board by July 1, 2000. The State Board must review and make recommendations regarding their implementation, and the local boards are encouraged to consider these recommendations before implementing their safe school plans.

School Improvement Teams

In order to improve student performance, G.S. 115C-105.27 requires each school to have a school improvement team that is responsible for developing a school improvement plan. Each plan must contain strategies for improving performance. S.L. 1999-397 amends G.S. 115C-105.27 to provide that the strategies in the plan must specify the effective instructional practices and methods to be used to improve the academic performance of students identified as at risk of academic failure or at risk of dropping out of school.

S.L. 1999-373 (S 977) amends G.S. 115C-288 to add to the list of a principal's duties the duty of ensuring that a school improvement team is established at each school to develop, review, and revise a school improvement plan. S.L. 1999-373 also amends G.S. 115C-47(38) to add to the list of a local board's duties the duty of adopting a policy to ensure that each principal has established a school improvement team. The superintendent or the superintendent's designee must provide guidance to principals.

In addition to the school's principal, each school improvement team has representatives of the assistant principals, instructional personnel, instructional support personnel, and teacher assistants as well as parents of students in the school. The procedure for selecting school personnel to serve on the team was not specified in the act establishing the teams. S.L. 1999-271 (H 1150) amends G.S. 115C-105.27 to provide that assistant principals, instructional personnel, instructional support personnel, and teacher assistants are to elect the representatives of their respective groups by secret ballot.

S.L. 1999-397 requires school improvement teams to revise their plans during the 1999–2000 school year.

Charter School Evaluation

Charter schools are public schools that operate free of many of the restrictions that apply to other public schools. Each charter school is governed by a private nonprofit corporation, and enrollment in a charter school always is voluntary. The General Assembly authorized this new type of public school in 1996 for specific purposes: to improve student learning, increase learning opportunities for students, encourage the use of different and innovative teaching methods, create new opportunities for teachers, provide parents and students with expanded choices for education, and hold the charter schools accountable for student achievement.

Charter schools are a new, as yet unproven approach to public education, and their authorization and operation have been controversial. No one yet knows whether this approach is meeting the goals the General Assembly set for it.

S.L. 1999-27 (H 216) amends G.S. 115C-238.29I(c) by directing the State Board to review and evaluate the educational effectiveness of the charter school approach and make recommendations about its future. The recommendations must be based on (1) the current and projected impact of charter schools on the delivery of services by the public schools, (2) student academic progress in the charter schools as measured, where available, against the academic year immediately preceding the first academic year of the charter schools' operation, (3) best practices resulting from charter school operations, and (4) other information the State Board considers appropriate.

In addition to the evaluation, Section 8.28 of S.L. 1999-237 requires the State Board to study the fiscal impact of charter schools on local school administrative units.

Student Accountability

S.L. 1999-317 (S 942) directs the State Board to develop plans for implementing the Statewide Student Accountability Standards (16 N.C. Admin. Code 6D.0305), including identifying resources and plans for using them to ensure appropriate early and ongoing assistance for students.

Salaries, Calendar, and Leave

Salary Increase for Public School Employees

S.L. 1999-237 enacts for 1999–2000 the teacher salary schedule. The schedule for "A" certificate teachers ranges from $24,050 for first-year teachers employed on a ten-month basis to $43,820 for teachers with twenty-nine years of experience. For "G" certificate teachers the corresponding figures are $25,550 and $46,560. Certification based on the six-year degree level results in a salary that is $1,260 higher than the "G" compensation would be, and certification at the doctorate level results in a salary that is $2,530 higher. The act also sets out salary schedules for principals and assistant principals and salary ranges for other administrators.

For the 1995–1996 school year (the last year before the passage of the ABCs program and two years before the passage of the Excellent Schools Act), the salary schedule called for a salary of $31,220 for a twenty-year teacher with an "A" certificate. For 1999–2000 the corresponding figure is $37,890. The increase over that four-year time period is approximately 21 percent.

In addition the General Assembly enacted several other salary-related provisions.

- Non-certificated employees received a 3 percent pay raise. The State Board of Education was empowered to create salary ranges for noncertificated personnel.
- Most public school employees received a one-time $125 bonus.
- School nurses were continued on the "G" salary schedule.
- Two salary-related studies were directed. The Joint Legislative Education Oversight Committee is to study the issue of salaries for school central office personnel and the need for additional funding. That committee is also directed to study the necessity of establishing a teacher assistant salary schedule.
- In addition to the higher salaries awarded (as described above) for teachers with "G" certificates or higher levels of educational achievement, the salary schedules call for higher salaries for teachers with certification from the National Board for Professional Teaching Standards. Section 8.7 of S.L. 1999-237 directs the State Board of Education to pay for the participation fee for teachers wishing to take the national certification examination. This subsidy is available only to teachers with three years of experience and must be paid back if the teacher does not complete the process or does not teach in North Carolina for at least one year after completing the process.

School Calendar

The General Assembly in S.L. 1999-373 made several changes in the way the school year calendar is constructed.

G.S. 115C-84.2 requires a 220-day calendar each year. Of that 220, 180 must be scheduled for instruction. Of the remaining 40, 10 must be scheduled for teacher vacation days and approximately 10 must be scheduled for state holidays (the number varying slightly year to year depending on when Christmas falls). That leaves 20. Of those 20 days, the statute has provided that 10 may be designated by the local board of education for use as teacher workdays, additional instructional days (meaning that pupils would be in attendance more than 180 days), or other purposes the board may pick. The 1999 legislation changes that number from 10 days to 8. The use of these days may vary from employee to employee or from school to school. The board may

delegate to the individual school the authority to schedule some or all of these 8 (was 10) days. That leaves 12 (was 10).

Those remaining 12 days are scheduled for each individual school by the principal for teacher workdays, additional instruction days, or other purposes and may vary from employee to employee. Before the 1999 legislation the statute said that the principal was to schedule these days "in consultation with the school improvement team." Now the statute says that the principal is "to work with the school improvement team to determine the days to be scheduled and the purposes for which they should be scheduled." The 1999 legislation adds a provision specifying that if during the last two years the local school administrative unit has made up an average of at least 8 days for school closings for inclement weather, the local board may designate up to 2 of these days as additional makeup days to be scheduled after the last day of student attendance.

Leave

S.L. 1999-170 (H 820) adds a new G.S. 115C-12.2 directing the State Board of Education to adopt rules to allow any employee at a public school to share leave voluntarily with a spouse, parent, child, brother, sister, grandparent, or grandchild (all including step, half, and in-law relationships) who is an employee of a public school or state agency. It also adds a new G.S. 126-8.3 directing the State Personnel Commission to adopt rules allowing state agency employees similarly to share leave with such relatives who are employed in a public school.

Certification, Hiring, Nonrenewal, and Dismissal Provisions

Assistant Principal Provisional Certificates

S.L. 1999-30 (S 225) and S.L. 1999-394 (H 274) together amend G.S. 115C-284(c), which, before the amendments, provided that the State Board of Education "shall not issue provisional certificates for principals and assistant principals." That prohibition remains in place for principals, but the 1999 legislation permits the issuance of a one-year provisional assistant principal certificate to an employee of a local board of education if one of two sets of conditions applies. First, the one-year certificate may be issued if the local board determines that a shortage of persons who hold or are qualified to hold a principal's certificate exists and the employee enrolls in an approved program leading to a master's degree in school administration before the provisional certificate expires. Second, the one-year certificate may be issued if the employee is enrolled in an approved master of school administration program and is participating in the required internship under the program. The State Board may extend the provisional certificate for a total of no more than two additional years while the employee is completing the program.

The same 1999 legislation also amends G.S. 115C-287.1 to clarify that, in employing a person under a one-year provisional certificate, a local board of education is employing that person as a school administrator—which normally would require a contract of at least two years in duration—but that the employment may be under a contract of only one year in duration since the certificate is issued for only one year.

Hiring Teachers without Certificates

In 1998 the General Assembly added a new G.S. 115C-296.1 permitting a local board of education to determine that there is or will be a shortage of qualified teachers with North Carolina certificates available to teach specified subjects or grade levels and then to employ as teachers individuals who do not meet the qualifications for initial or continuing certification. Under that 1998 legislation, three categories of individuals could be employed, all of whom must have at least a bachelor's degree. The three categories are (1) individuals licensed in another state, (2) individuals with one year of community college, college, or university teaching experience, and

(3) individuals with three years of other experience if the board determines that both the individual's experience and postsecondary education are relevant to the grade and subject to be taught. Under the 1998 legislation, an individual in the first category receives certification without the necessity of taking the certification exam if he or she is hired for a second year, but individuals in the second and third categories, to receive certification, must pass the certification exam during the first year of teaching and be reemployed for a second year. S.L. 1999-96 (S 898) amends this last provision to clarify that individuals in the second and third categories receive certification if they are reemployed for a second year and if they pass the certification exam during the first year of teaching or *prior to employment.* The effect is to permit someone who might be interested in entering teaching through one of these categories to go ahead and take the exam before beginning employment as a safeguard against spending a year teaching and finding he or she is unable to pass the exam.

Achieving Tenure

G.S. 115C-325(c) provides that a teacher is eligible for tenure after having served for four consecutive years as a probationary teacher. A "year" for this purpose means 120 days worked in a full-time probationary position within one school year. If a teacher does not work 120 days during a year, that year does not count, and the next year worked starts a new set of four consecutive years. Section 34 of S.L. 1999-456 (H 162) adds a new G.S. 115-325(c)(5) to provide that if the teacher fails to get in the 120 days because he or she is out on disability leave or sick leave, then while that year still does not count as one of the four years necessary for tenure, it does not break the streak of four *consecutive years,* and the next year worked adds on to the previous total.

Nonrenewal

G.S. 115C-325(o) has required for years that probationary teachers whose contracts are not to be renewed for the coming year must be notified of that fact by June 1. S.L. 1999-96 changes the notification deadline to June 15.

Dismissal Procedure Changes

The General Assembly rewrote the teacher dismissal provisions of G.S. 115C-325 in the Excellent Schools Act of 1997. In 1999 the legislature made some changes in the new procedures. The first relates to the teacher's request for a hearing upon notification that the superintendent intends to recommend the teacher's dismissal. In such a case the teacher may request a hearing before a case manager or may request a hearing directly before the board of education. If the teacher requests a hearing directly before the board, the 1997 statute provided that the hearing must be held within five days of the request. The 1999 legislation changes that period to ten days.

The second change relates to the participation by the superintendent in a hearing before a case manager. The 1997 statute said that both the teacher and the superintendent had the right to be present and to be heard. The 1999 legislation makes clear that the superintendent may be represented by a designee rather than appearing himself or herself.

The third change relates to preparation of the transcript of any hearing before a case manager. The 1999 legislation makes clear that the obligation of the superintendent is, upon notice from the teacher following a case manager hearing that the teacher wishes the matter to be heard before the board of education, to request that a transcript of the case manager hearing be made and to send it to the teacher within two days of receiving it.

The fourth change relates to the obligation of the superintendent to provide to the teacher a list of witnesses the superintendent intends to call in a dismissal hearing. The 1997 statute said that that list must be provided to the teacher at least ten days before the hearing. The 1999 legislation changes that to eight days.

Sexual Harassment and Improper Sexual Relations

Two acts passed by the 1999 General Assembly concern sexual harassment and improper sexual relations.

Employee Reports of Sexual Harassment

S.L. 1999-352 (H 1267) adds a new G.S. 115C-335 providing that no school board employee is to be disciplined in any way solely for the reason that the employee has filed a written complaint alleging sexual harassment by students, other school employees, or school board members unless the employee reporting the harassment knows or has reason to believe that the report is false.

Indecent Liberties and Sexual Offenses with a Student[4]

North Carolina has had two statutes on the taking of indecent liberties with a child. One, G.S. 14-202.1, prohibits acts of a sexual nature when (1) the perpetrator is sixteen years of age or more, (2) the victim is under the age of sixteen, and (3) the perpetrator is at least five years older than the victim. The other, G.S. 14-202.2, prohibits similar acts when (1) both the perpetrator and the victim are under the age of sixteen and (2) the perpetrator is at least three years older than the victim.

Effective for offenses committed on or after December 1, 1999, S.L. 1999-300 (S 742) creates another set of indecent liberties offenses applicable to acts of a sexual nature by school personnel with a student at a public or private elementary or secondary school. The definition of indecent liberties is essentially the same as the definition in G.S. 14-202.1 and -202.2, except it does not cover acts of vaginal intercourse or sexual acts as defined in G.S. 14-27.1 (for example, oral sex). But another new set of sexual offenses, also created by S.L. 1999-300, covers such acts with elementary or secondary school students. For all of these new offenses, the act must have occurred during or after the time the defendant and victim were at the same school but before the victim ceased to be a student.

The new offenses are as follows. A teacher, school administrator, student teacher, or coach is guilty of a Class I felony if he or she takes indecent liberties with an elementary or secondary school student. [See G.S. 14-202.4(a).] Such a person is guilty of a Class G felony if the act is vaginal intercourse or a sexual act as defined in G.S. 14-27.1. [See G.S. 14-27.7(b).] Age is not relevant for either offense.

Other school personnel and volunteers at a school or at a school-sponsored activity are also subject to prosecution for taking indecent liberties or engaging in intercourse or a sexual act with an elementary or secondary school student. Age is a relevant factor, however. If the school employee or volunteer is four or more years older than the student, the indecent liberties offense is a Class I felony and the offense involving intercourse or a sexual act is a Class G felony. [See G.S. 14-202.4(a), -27.7(b).] If the age difference is less than four years, both offenses are Class A1 misdemeanors. [See G.S. 14-202.4(b), -27.7(b).]

The act states that a person who engages in the above conduct is guilty of the level of offense specified unless the conduct is covered by another law providing for greater punishment. [See G.S. 14-202.4(a), -27.7(b).] Thus a school employee could be convicted of statutory rape, a Class B1 felony, for having vaginal intercourse with a student if the ages of the employee and student meet the requirements for that offense. But the employee could not be convicted of both statutory rape and one of the offenses described above.

[4] This section was written by John Rubin, Professor of Public Law and Government at the Institute of Government, a specialist in criminal law.

Improving Instructional Conditions for Teachers

Two acts passed by the 1999 General Assembly aim at improving the workload responsibilities of teachers.

Duty-Free Periods

G.S. 115C-301.1 has long provided that all full-time assigned classroom teachers are to be provided a daily duty-free period during regular school hours but only to the extent that the safety and proper instruction of the students allow and only insofar as the General Assembly provides funds. S.L. 1999-163 (S 1093) adds to the statute a provision stating that principals may not, without the consent of the teacher, unfairly burden a given teacher by making that teacher give up his or her duty-free period on an ongoing, regular basis.

Limiting Duties of New and Most Senior Teachers

S.L. 1999-96 adds a new G.S. 115C-47(18a) and amends G.S. 115C-296(e) to direct local boards of education to adopt rules and policies limiting the noninstructional duties assigned to *all* teachers "to the extent possible given federal, State, and local laws, rules, and policies" and specifically providing that teachers with initial certification (that is, teachers in their first years) and teachers with twenty-seven or more years of experience may not be assigned extracurricular activities at all unless they request them in writing. A local board may temporarily suspend the rules and policies for individual schools upon a finding that there is a compelling reason for not implementing the rules or policies. The statute also provides that the noninstructional duties required of teachers are to be distributed equitably.

Miscellaneous

Textbook Commission

The Textbook Commission is responsible for selecting the basic textbooks needed for instruction in public schools,[5] although G.S. 115C-105.26 authorizes the State Board of Education to grant local boards a waiver from using commission-adopted textbooks. G.S. 115C-85 defines "textbooks" as systematically organized material comprehensive enough to cover the primary objects outlined in the standard course of study for a grade or course. "Textbooks" may be in print or nonprint formats and include technology-based programs.

Section 8.30 of S.L. 1999-237 amends G.S. 115C-88 to change the commission's method of evaluating books. Formerly every principal, teacher, and parent on the commission had to examine and file an evaluation of each textbook offered for adoption. Now each proposed textbook must be read by at least one expert certified in the discipline for which the textbook is proposed. The commission may use external experts if no commission or advisory committee member is an expert in a particular discipline. In addition the commission may consider other experts' reviews of a proposed textbook, but these reviews may not substitute for the direct examination of the book by a commission member, advisory committee member, or expert retained by the commission. An amendment to G.S. 115C-87 increases the Textbook Commission's membership from fourteen to twenty-three members, effective January 1, 2000.

5. G.S. 115C-47(33) grants local boards of education sole authority to select and procure supplementary instructional materials.

Immunization

Children enrolling in public school need proof of certain immunizations unless they have a medical or religious exemption. S.L. 1999-110 (S 614) amends G.S. 130A-154 to require a person who received immunizations in a state other than North Carolina to present an official certificate or record of immunization to the school. The record must contain specified minimum information.

Energy Conservation Measures

S.L. 1999-235 (S 56) amends G.S. 143-64.17(1) and 143-64.17(2), which deal with energy conservation measures and energy savings contracts, and repeals the sunset regarding the authority of a local government unit to enter into a guaranteed energy savings contract.

School-Based Health Clinics

S.L. 1999-4 (S 26) repeals the prohibition of reimbursement for services provided by school-based health clinics under the Health Insurance Program for Children, established in Section 8 of S.L. 1998-1 (Ex. Sess.).

Teacher Absences

Section 8.9 of S.L. 1999-237 provides that if a local education agency's number of teacher absences is higher than the state average, the local board must determine why and develop a plan to decrease the number of absences.

Students with Special Needs

Every year many students who have been identified as disabled in another state enroll for the first time in a North Carolina public school. Because a state has some leeway in setting its own eligibility standards, some of these students may not be identified as children with special needs in North Carolina. S.L. 1999-117 (S 1075) provides that if a local school unit serves a student with a current special education plan from another state while the school determines whether the child is eligible for services in North Carolina, the school unit is entitled to state funding for the services while the determination is being made. The school unit need not repay the funds if the student does not qualify for services in North Carolina.

Breakfast

Section 8.26 of S.L. 1999-237 requires the State Board of Education to expand the free school breakfast program to all kindergarten students by the start of the 2000–2001 school year.

Activity Buses

S.L. 1999-274 (H 1054) amends G.S. 20-142.3 to require all activity buses, as well as all school buses, to stop at all railroad crossings.

Appropriations

S.L. 1999-237 appropriates $5.26 billion for fiscal 1999–2000 and $5.28 billion for fiscal 2000–2001 to the Department of Public Education. Some highlights of the budget include $10 million for low-wealth school systems, $3 million for small school systems, $1.1 million to begin implementing a school breakfast program for all kindergarten students, $5 million for students with limited proficiency in English, and up to $2 million to develop a high school exit

exam. Allocations for exceptional children are set at $789.78 per academically and intellectually gifted child with a cap of 4 percent (of the school population) and at $2,374.17 per child with a disability with a cap of 12.5 percent. Funds are allocated for ABCs bonus awards at the same rate as 1998. Section 8.18 appropriates $2.5 million from the State Literary Fund to the Department of Public Instruction for the 1999–2000 fiscal year to aid local school units.

Pilot Programs

ABCs Pilot

The ABCs Program, the state's accountability program, focuses on the performance of individual schools in the basics of reading, mathematics, and writing as compared to that school's performance the year before. Schools are expected to have a year's growth in achievement in a year's time. Students are tested annually to determine whether the school has met or exceeded its expected growth in student achievement, as determined by the State Board. A critical element of the ABCs Program is bonuses for personnel in schools that meet or exceed their goals in student achievement.

Section 8.36 of S.L. 1999-237 directs the State Board to establish a pilot program in up to five local school administrative units to test and evaluate a revised school accountability model. The program's purpose is to determine "whether revisions in the present school accountability model under the ABCs Plan are likely to result in more students demonstrating mastery of grade level subject matter and skills on the end-of-grade tests or demonstrating mastery of course subject matter or skills on end-of-course tests." Note that the pilot program is to provide a different way of measuring student mastery, not a direct way to increase student learning and achievement. All units in the pilot are to use the same model, and personnel in participating schools will be eligible to receive financial awards for achievement in addition to awards received under the standard ABCs Program. School systems in the pilot that are not designated "low wealth" must contribute a 25 percent local match for the award. This program expires with the payment of awards for the 2004–2005 school year.

Communication Devices in Buses

S.L. 1999-275 (H 1187) directs the State Board to establish a pilot program in one or more school administrative units, including the Northampton County Schools, to enable local boards of education to use state school transportation funds to install communication devices in school buses.

Studies

Differentiated Diplomas

Section 8.31 of S.L. 1999-237 authorizes the Joint Legislative Education Oversight Committee to study the issue of differentiated high school diplomas. The State Board must report to this committee before implementing any differentiated diploma plan.

School Size

Researchers and educators have long been interested in the relationship between school size and student learning. Now there is new interest in a possible relationship between high school size and the alienation and isolation some students feel at school. Section 8.33 of S.L. 1999-237

requires the State Board to study the relationship between school size and students' academic performance and behavior.

Transportation for Children with Special Needs

Some children with special needs must travel long distances to receive an appropriate special education program, and some cannot ride safely on a regular school bus. Nonetheless, most children with special needs are entitled to an instructional day that is as long as the instructional day for other students. Section 8.24 of S.L. 1999-237 directs the State Board to study the issue of school transportation for children with special needs, including the difficulty local school units have in meeting the length of school day requirements for some children.

Cooperative High School Education Programs

In 1998 the State Board of Community Colleges and the State Board of Education were directed to create a joint task force to study existing policies for cooperative high school education programs. Section 9.1 of S.L. 1999-237 requests the boards to reconsider these policies and make recommendations aimed at increasing the number of high school students participating in these community college programs.

Information Technology Systems

Section 8.34 of S.L. 1999-237 directs the Education Cabinet to study the functions involving information technology systems.

Dropout Rates

S.L. 1999-257 directs the State Board of Education to study the computation of dropout rates for the ABCs Program.

Tax Policy

The Studies Act, S.L. 1999-395 (H 163), establishes the North Carolina Tax Policy Commission to study, examine, and, if necessary, design a realignment of the state and local tax structure in accordance with a clear, consistent tax policy. Although the act gives the commission only this broad direction, the issue of whether local school boards should have independent taxing authority may be a part of the study.

Other Studies

S.L. 1999-395 authorizes the Legislative Research Commission to study driver education programs, teen drivers, seat belts on school buses, resolution of conflicts between boards of education and county commissioners, and school boards review of applicable court orders. The Joint Legislative Education Oversight Committee may study the concept of prekindergarten education. S.L. 1999-395 creates the Commission on Improving the Academic Achievement of Minority and At-Risk Students and establishes the Study Commission on Children with Special Needs. This new commission replaces the Commission on Children with Special Needs, with the repeal of G.S. 120-58 through 120-65.

Unaddressed Areas

The General Assembly took no final action on several controversial issues. These include encouraging school boards to promote community-based schools by redrawing attendance lines and local bills authorizing an additional optional half-cent sales tax for specific counties.

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10

Environment, Natural Resources, and Solid Waste

The closing days of the 1999 session produced two major pieces of environmental legislation, the "Ambient Air Quality Act" and the "Clean Water Act," as well as the withdrawal of North Carolina from the Southeast Compact for disposal of low-level radioactive waste. In addition to its major substantive legislation, the 1999 session authorized a potentially significant study of growth and its management. The General Assembly ratified Phase II of the tobacco settlement agreed to by four major tobacco companies for payments from a trust fund to tobacco growers and allotment holders. These legislative events, along with a handful of other environmental and natural resources bills passed earlier in the session, make 1999 another important year for environmental law in North Carolina.

The key stakeholders and the political leadership of the state continue to find ways to address some of the widely apparent environmental problems. The main problems the legislature attempted to fix in 1999 were air pollution in the form of ground-level ozone, animal waste from intensive swine farming, sedimentation of surface waters, liability for prescribed burning, the regulation of structural pesticides, and the delineation of sites subject to the state's Inactive Sites Cleanup Program. The fixes offered resulted in large part from consensus-seeking stakeholder negotiations. This approach has succeeded in producing legislation, but it remains to be seen how successful the negotiated fixes themselves will be in solving the environmental problems.

Administrative Law

Contested Case Proceedings

One area in which consensus continued to elude stakeholder discussions was reform of contested case procedures. The issue of how much power and autonomy the administrative law judges have vis-à-vis the agencies is an important one in environmental law. The contested case process determines how disputes over environmental permits and enforcement are resolved. H 968 would have given greater deference to administrative law judge recommendations. It passed the House but was strongly opposed from various quarters and stalled in the Senate. There was talk of a possible veto by the Governor, a threat very rarely raised and as yet unused. The bill remains eligible for consideration in the 2000 session.

Licensing

Professional geologists play important roles in many environmental problems as they gather, analyze, and interpret data on subsurface conditions. S.L. 1999-355 (S 1004) revises G.S. 89E-17 and -19 regarding the process for complaints and enforcement against professional geologists. It broadens the authority of the North Carolina Board for Licensing of Geologists to permit the board to hire investigators and creates an exception to the Public Records Act for investigatory materials. It sets out explicit grounds that the board can use in refusing to grant or renew a geologist's license, including the grounds of "engag[ing] in gross unprofessional conduct, dishonest practice, or professional incompetence." It gives the board civil penalty authority (penalties up to $5,000) for violations of the general statutes affecting professional geologists, the rules of the board, board orders, and the rules of professional conduct for geologists.

Agency Structure

Department of Environment and Natural Resources (DENR) Organization

The organization and reorganization of the state environmental agencies and, for several years, the health agencies as well, have been regular subjects of study by the agencies themselves and by legislative committees. The 1999 Appropriations Act, S.L. 1999-237 (H 168), authorizes the House and Senate Appropriations Committees to study the organization of the Department of Environment and Natural Resources (DENR) "to determine its effectiveness and efficiency" and to make a report to the General Assembly by May 1, 2000.

Agriculture

Appropriations

Section 13.4 of the 1999 Appropriations Act, S.L. 1999-237 (H 168), authorizes the Department of Agriculture and Consumer Services to lend $500,000 for start-up costs to the Southern Dairy Compact Commission, if it is approved by Congress. (Section 13.4). The act also directs the Board of Agriculture to adopt rules by October 1, 1999, for mandatory testing of horses for equine infectious anemia.

Fees for Agricultural Services

S.L. 1999-413 (H 1289), which sets fees for a number of state agencies, provides that any board or commission within the Department of Agriculture and Consumer Services may establish fees or charges for services provided. It deletes language that had limited such fees to the cost of service, as specified in G.S. 106-6.1.

Crops and Commodities

Nickels-for-Know-How Assessments. G.S. Chapter 106, Article 50A, established the "Nickels for Know-how" program to support agricultural research through assessments on growers of agricultural commodities using commercial feed or fertilizer, with referendum approval. The original assessments in 1951 were five cents per ton on mixed fertilizers, commercial feed, and their ingredients (except lime and plaster). The 1981 General Assembly increased the assessment to ten cents per ton.

S.L. 1999-172 (H 1009) raised the assessments from ten cents to fifteen cents per ton. The related assessments on tobacco producers of ten cents per one hundred pounds of tobacco market, initiated in 1991, were left unchanged.

Tobacco Settlement, Phase II Funds

S.L. 1999-333 (H 74) ratifies Phase II of the tobacco settlement agreed to by four major tobacco companies under which the companies will pay approximately $5.15 billion ($5,150,000,000) into the National Tobacco Growers Settlement Trust. The trust will provide payments to tobacco growers and allotment holders in fourteen grower states, including North Carolina, to help them weather the storm of adverse economic consequences of changes in the tobacco market. Legislative actions regarding both phases of the tobacco settlement are discussed in Chapter 2 (The State Budget).

S.L. 1999-333 provides for creation of a nonprofit corporation, as contemplated by the tobacco settlement, that will serve as a certification entity to administer distribution of Phase II funds in North Carolina. The North Carolina Board of Directors of the certification entity will consist of the Governor (as chair), the Commissioner of Agriculture (as vice-chair), the Attorney General (as secretary), and the following appointees:

- four to seven citizens appointed by the Governor,
- two members appointed by the North Carolina congressional delegation,
- a state senator appointed by the President Pro Tempore of the State Senate,
- a state representative appointed by the Speaker of the North Carolina House of Representatives.

The law also contains a number of administrative provisions. It immunizes members of the board of directors from civil liability arising out of the performance of their duties. It authorizes the Secretary of Revenue to cancel licenses to sell tobacco products for certain violations and prohibits the sale of packages of cigarettes for unfair trade practices, including label violations. It exempts from state income tax interest investment earnings and gains of the trust and provides tax credits for manufacturers producing cigarettes for export to foreign countries.

Regulation of Cotton Gins, Warehouses, and Merchants

S.L. 1999-412 (H 1010) requires persons engaged in business as cotton gins, cotton merchants, or cotton warehouses to register annually with the Commissioner of Agriculture, pay a $25 registration fee, file a $300,000 surety bond, and meet other records requirements. Violations are Class 2 misdemeanors and subject to injunctive relief.

Larceny of Ginseng

S.L. 1999-107 (S 769) deletes from G.S. 14-79 two elements of the felony of larceny of ginseng: that the ginseng taken was in beds and that the lands where the beds were located was surrounded by a lawful fence. The effect is to make it a felony to intentionally steal or aid in stealing any ginseng growing on the lands of another, not merely ginseng growing in beds located on fenced land.

Liquefied Petroleum Gas Appliances

S.L. 1999-344 (S 785) provides that the Building Code Council rather than (as previously) the Commissioner of Agriculture is to approve the laboratories that certify liquefied petroleum gas appliances designed or built for domestic use. It also repeals statutory prohibitions against installing unvented space heating appliances in manufactured homes or in sleeping rooms with an input of over 30 BTU per cubic foot of enclosure.

Roads and Vehicles

S.L. 1999-281 (H 1030) expands the exemption of certain farm trailers from vehicle registration to include trailers drawn by motor vehicles when transporting loaders owned by a farmer. It also exempts from taillight requirements trailers exempt from registration and certificate of title requirements that weigh less than 6,500 pounds.

Highway Signs for Agricultural Facilities

S.L. 1999-356 (S 7) directs the Department of Agriculture and Consumer Services to provide highway signs at designated locations for agricultural facilities that promote tourism by offering tours and product samples. Facilities must be open for business at least four days a week, ten months of the year, in order to qualify for these directional signs. The department will assess the costs of the signs to the facilities.

Repeals of Obsolete Statutes

S.L. 1999-44 (H 334) continues a practice of systematic repeals of obsolete agricultural statutes that was initiated during the years of an active “sunset” program in North Carolina. The statutes repealed this session were:

- the cotton grading law,
- the statutes that required the licensing of dealers in scrap tobacco and the keeping of accounts and records for tobacco warehouse sales,
- the statutes that created the northeastern and southeastern farmers market commissions,
- the statute that set dimensions and weights for standard loaves of bread sold in North Carolina,
- the statute that authorized the Board of Agriculture to adopt rules prescribing standards of weight or measure for milk or milk products sold at retail.

S.L. 1999-29 (S 27) also repeals an obsolete statutory prohibition against planting Bermuda grass along highways except where the abutting property is not in cultivation or with the consent of the abutting landowner.

Legislative Studies

Legislative studies of interest to agriculture mandated by Section 2.1 of the omnibus legislative study bill, S.L. 1999-395 (H 163), include:

- control and eradication of red imported fire ants;
- apple industry marketing, production, and pesticide control;
- spaying and neutering of dogs and cats.

Section 13.1 of the 1999 Appropriations Act, S.L. 1999-237, directs the Office of State Budget and Management to study private and public farm loan and grant programs and to report to the Fiscal Research Division by May 1, 2000.

Related Topics

For related topics, see the following sections of this chapter: "Animal Waste Management" and "Environmental Health: Food and Lodging Law: Country Ham Exemption."

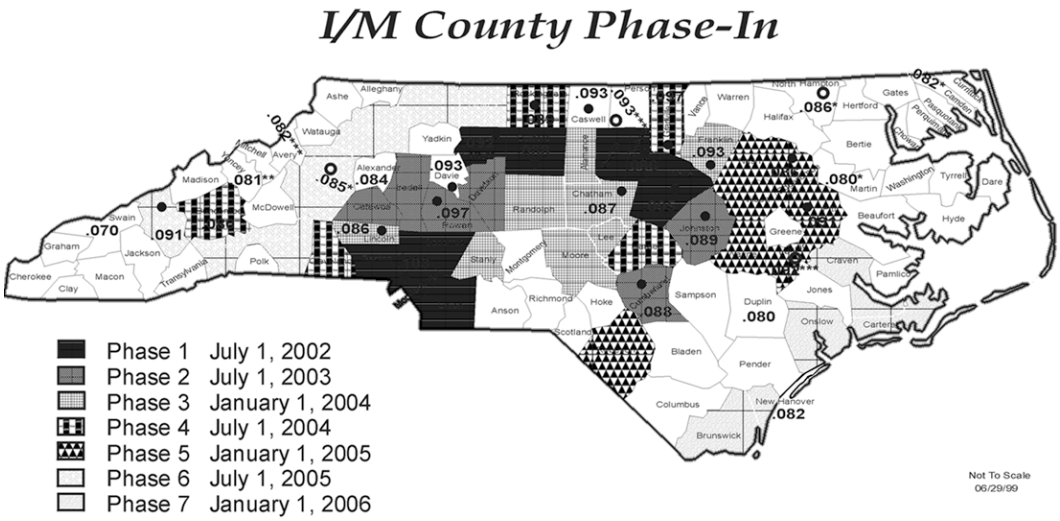
Air Quality

Ambient Air Quality

Legislation aimed at reducing emissions from motor vehicles was proposed by Governor Hunt in 1999 and passed as a committee substitute to S 953 (S.L. 1999-328). By the summer of 1999, the levels of ozone on the ground in piedmont North Carolina and on some North Carolina mountains frequently exceeded health standards. Emissions from motor vehicles were believed to be one major cause of the problem. The Division of Air Quality in DENR proclaimed, and the news media broadcast, "code yellow" and "code red" ozone days, corresponding to the degree of ozone predicted to form by the afternoon. On a "code red" day the House tentatively approved S 953 on a 72 to 39 vote. The bill ultimately passed over objections to the cost of the enhanced testing it required for automobiles and was signed into law at the very end of the session.

The bill establishes statewide goals for cutting emissions of nitrogen oxides (25 percent reduction by July 1, 2009), the major ozone-forming pollutant in North Carolina, and for reducing the growth of vehicle miles traveled in the state (25 percent by July 1, 2009). The bill also has more concrete requirements aimed at mobile sources of ozone pollution and its precursors. It requires the use of low-sulfur gasoline (an average of 30 parts per million or less for each seller on a one-year basis) statewide. Removing sulfur from gasoline allows the air pollution controls in cars and trucks to work better and last longer. The effective date of the low-sulfur gasoline requirement is January 1, 2004, unless the United States Environmental Protection Agency (EPA) requires such gas earlier, in which case the Governor is empowered to adopt the earlier date by executive order. If, however, the EPA requires a different sulfur standard, the Environmental Review Commission of the General Assembly will study the federal standard prior to executive branch action.

Chart 10-1. Phased Expansion of Auto Emissions Testing



The bill also expands and extends the inspection and maintenance (I&M) program for testing exhaust from cars and trucks. The I&M program is expressly limited to a decentralized test-and-repair system (allowing testing by shops that also repair vehicles), prohibiting the Environmental Management Commission (EMC) from using a centralized or a decentralized "test only" approach. The new test requirements include an acceleration simulation mode, a more comprehensive form of testing than the I&M testing carried out in nine counties when the bill passed. Those nine counties will continue to require inspections, and the EMC is authorized to extend inspections in larger counties. The bill also authorizes the use of onboard diagnostic equipment included on newer vehicles. Through a phased-in series of changes to the statute, forty-eight counties will eventually be covered by the enhanced I&M program. These counties, and the phase-in dates, are depicted in Chart 10-1. The fee that can be charged for the tests is not set in the legislation, but DENR and the Department of Transportation are authorized to study the fee issue.

The bill further:

- sets goals for the purchase of low-emission vehicles for the state motor fleet (75 percent of purchases after January 1, 2004) and encourages the purchase of such vehicles for buses used by public school and transportation systems (50 percent of purchases after January 1, 2004, in counties with a population of at least 100,000 and where enhanced inspections are required),
- directs the state EMC to develop an incentives program to promote voluntary reductions in air pollution,
- directs the EMC to develop and adopt rules for the certification of motor fuel transport tanker inspectors,
- directs the EMC to develop and adopt rules governing the sale and service of exhaust emission analyzers,
- directs the EMC to begin rule making to regulate the emissions of nitrogen oxides (NOx) from complex sources (such as shopping centers, parking decks, and highways) by October 1, 1999,
- directs the EMC to adopt rules for underground storage tank tightness testing procedures and for certification of persons who conduct tank tightness testing,
- directs the Department of Transportation to consider ways to reduce air pollution in designing transportation projects and in particular to plan for intermodal interfaces.

Animal Waste Management

Extension of Swine Farm Moratorium

On the last day of the session and for the second time in two years the General Assembly extended the moratorium on construction and expansion of swine farms—this time by one year and ten months, from September 1, 1999, to July 1, 2001. S.L. 1999-329 (H 1160), sections 2.1 and 2.2. In effect the General Assembly gave itself one "short" session and one regular biennial session to brood over the long-term future of swine waste management in North Carolina. A trace of ambiguity remains on this point. This year's amendments left in the moratorium statute the wording, "The purposes of this moratorium are to allow counties time to adopt zoning ordinances . . . to allow time for the completion of the studies authorized by the 1995 General Assembly . . . and to allow *the 1999 General Assembly* to receive and act on . . . these studies" (emphasis added).

The extended moratorium, like its predecessors, applies to new or expanded lagoons and waste management systems as well as to new swine farms. It also applies to both the Moore County and statewide provisions. The extended Moore County moratorium, as before, has two provisions not contained in the statewide moratorium: the exemptions contained in the original statewide moratorium do not apply in Moore, and waste systems must apply for individual permits rather than general permits.

Extension and Expansion of Pilot Program

The 1999 General Assembly also extended (and expanded) the pilot program created in 1997 to evaluate in limited areas the efficacy of substituting annual inspections by soil and water conservation personnel for regular inspections by Division of Water Quality personnel (sections 3.1–3.3, S.L. 1999-329). The original pilot program was applied in two eastern counties, Jones and Columbus, selected by DENR. The extended pilot continues in Jones and Columbus and is enlarged to include Brunswick.

DENR is to submit two interim reports in each fiscal year of the biennium and a final report by July 15, 2001, to the Environmental Review Commission (ERC) and the Fiscal Research Division. The final DENR and ERC reports are to recommend whether to continue or expand the pilot program. DENR's report is to be prepared in consultation with the divisions of water quality and of soil and water conservation.

Inventory of Inactive Lagoons

Proposals to mandate the phaseout of swine waste lagoons as a method of waste treatment were debated throughout the 1999 session, in the wake of a suggestion by Governor Hunt for a ten-year lagoon conversion plan. No mandated phaseout was enacted, but the Clean Water Act of 1999 requires DENR to develop an inventory of all inactive lagoons ranked according to relative threats to public health, the environment, and the state's natural resources (sections 4.1 and 4.2, S.L. 1999-329). The Environmental Management Commission is to make quarterly progress reports to the Environmental Review Commission on Governor Hunt's lagoon conversion plan.

Coastal and Marine Resources

Aquariums

S.L. 1999-49 (H 326) authorizes the DENR Division of Aquariums to dispose of exhibits and objects of collections of the North Carolina Aquariums in accordance with the generally accepted

practice for accredited zoos and aquariums of the American Association of Zoos and Aquariums. The net proceeds of these transactions are to be credited to the North Carolina Aquariums Fund. These transactions may be concluded "notwithstanding" the state surplus property and sealed bid laws. The Division of Aquariums is to submit to the Fiscal Research Division and the Joint Legislative Commission on Governmental Operations an annual report on sources and amounts of funds credited to the fund and the purposes of fund expenditures.

Boat Speeds or Operations and No-Wake Zones

"No-wake zones" are areas in which vessels should proceed at an idle speed or at a slow speed in order not to create an appreciable wake. Three local acts created no-wake zones: for Coinjock Canal Intracoastal Waterway in Currituck County, Lee's Cut in New Hanover County, and the Intracoastal Waterway within the town of Holden Beach (between Rogers Street and the eastern line of L. S. Holden Subdivision) [S.L. 1999-38 (H 637), S.L. 1999-95 (H 772), S.L. 1999-92 (H 649)]. Each act authorizes the respective town to place and maintain markers and to provide for criminal enforcement after markers have been placed.

S.L. 1999-174 (H 615) authorizes Elizabeth City to regulate the speed of vessels by ordinances that apply to waterways within the city's boundary or its extraterritorial jurisdiction. The ordinances will be enforceable after markers (buoys or flotation devices) are set out in sufficient numbers to give adequate warning of the speed limit.

S.L. 1999-87 (H 650) authorizes Brunswick County to adopt ordinances regulating the operation of personal watercraft in the Atlantic Ocean and other waterways within its territorial jurisdiction. It also authorizes the governing board of any municipality within the county, by resolution, to allow any such ordinance to be effective within the municipality, consistent with the general statute governing such ordinances, G.S. 153A-122.

Licensing (Recreational Fishing License)

A bill to establish a Coastal Recreational Fishing License, H 1434, passed the House but not the Senate. The version that passed the House was substantially weakened from its original form with an amendment that granted a blanket license for recreational fishing boats. The fee for the blanket license would have been $1 per boat foot. This meant that only one license would have been required of the owner/operator of a recreational fishing boat and that no license would have been required of any other individuals fishing from the boat. The bill already provided for a blanket license for charter/head/dive boats and commercial fishing piers. Furthermore the bill exempted surf and shore fishermen entirely. In effect the House amendment removed the last remaining requirement for an individual license for any type of coastal recreational fishing.

Motor Vehicle Violations on Beaches

G.S. 7A-273(2) lists certain misdemeanor and infraction cases in which magistrates may accept written appearances, waivers of trial or hearing, and guilty pleas or admissions of responsibility in accordance with a schedule promulgated by the Conference of Chief District Judges. S.L. 1999-80 (H 870) adds to that list of cases those involving the violation of county ordinances regulating the use of dune or beach buggies or other power-driven vehicles on the foreshore, the beach strand, or the barrier dune system.

Shellfish Harvesting

S.L. 1999-143 (S 1047) prohibits the taking of shellfish within 150 feet of a publicly owned pier beneath which the Division of Marine Fisheries has deposited cultch material. It also redefines *oyster rocks* as rocks in the coastal fishing waters on which oysters grow rather than upon which the tides rise and fall. DENR is required, to the extent of available funds, to post oyster

rocks to forbid the taking of clams or oyster rocks by rakes, tongs, or other devices that may disturb or damage oysters.

Fees for Water Quality Certifications

The fee bill, S.L. 1999-413, permits DENR to charge a fee for water quality certifications required in connection with Coastal Area Management Act (CAMA) permitting. Water quality certifications are typically required for development activities in and around wetlands and other waters of the state. The fee cannot exceed the fees charged either for the underlying CAMA permit or for a water quality certification not associated with CAMA permits.

Studies

S.L. 1999-395 (H 163) authorizes the Legislative Research Commission to study coastal beach movement, beach renourishment, and storm mitigation, which were addressed by two bills that were not enacted, H 118 and S 54. The commission may report its findings and recommendations to the 2000 Regular Session or the 2001 General Assembly.

Local Acts

Yaupon Beach and Long Beach Merged into Oak Island. S.L. 1999-66 (H 221) combines the towns of Yaupon Beach and Long Beach into the new town of Oak Island, effective July 1, 1999. It enacts a consolidated charter for Oak Island with a town manager as chief administrator. It also combines the alcoholic beverage control boards of Yaupon Beach and Long Beach into a consolidated Oak Island board.

Carolina Shores 201 Plan. Section 201 of the Federal Clean Water Act requires local governments to develop long-term plans for approval by the United States EPA in order to obtain grants for improvement of their wastewater treatment systems. Although no new federal wastewater grant money has been appropriated for years, in some places remnants of grants remain unspent. The "Section 201 Plan" process still survives as a framework for wastewater management and for distribution of other federal and state wastewater grants and loans in some places.

S.L. 1999-240 (H 570) removes the town of Carolina Shores from the 201 planning area in Brunswick County. Carolina Shores is a recently created town in an area that was formerly part of the town of Calabash. Carolina Shores's wastewater system is managed by a private water company, Carolina Blythe, whose operations are centered in South Carolina. The intended effect of this law appears to be to remove Carolina Shores from the wastewater planning jurisdiction of South Brunswick Water and Sewer Authority (SUBWASA), which has served as the regional wastewater planning agency for an area that included Carolina Shores. (There has been an extended dispute in and out of court between SUBWASA and other local governments, as well as citizens, over the financing of SUBWASA's proposed stormwater management system, but this law does not literally address that subject.) Opinions differ among state and local officials over whether or not the act achieved this result.

Environmental Assessment

In the wake of concern about the siting of a proposed steel plant and paper plant in northeast North Carolina, the General Assembly added formal environmental checkoffs for the use of state industrial development funding. The amendments to the Bill Lee Act, S.L. 1999-360 (S 1115), direct the Department of Commerce to promulgate rules for the use of the Industrial Development Fund, G.S. 143B-437.01(a), including a rule on environmental assessment. The rule on environmental assessment requires the Secretary of Commerce to find that any project that uses industrial development funding will have no significant adverse effect on the environment. The Secretary of

Commerce can only make this finding after certification by DENR that, after consideration of avoidance and mitigation measures, the project will have no significant adverse environmental effect.

Environmental Finance

Compensatory Mitigation and Riparian Buffers

S.L. 1999-448 (S 1049), the Neuse River Buffer Amendments, provides for compensatory mitigation as an alternative to maintaining riparian buffers and authorizes the EMC to delegate responsibility for the implementation of riparian buffer protection requirements to local governments.

Mecklenburg Stormwater Fees

S.L. 1999-50 (S 313*)* amends G.S. 153A-277 to allow Mecklenburg County to continue to levy stormwater fees to cover outstanding revenue bonds that were issued based on a pledge of revenue from the stormwater system. The N.C. Supreme Court decided in August 1999 (superceding an earlier opinion) that the city of Durham did not have statutory authority to impose stormwater fees. Smith Chapel Baptist Church v. Durham, 350 N.C. 805, 517 S.E.2d 874 (1999). It appears that this bill will permit Charlotte to continue charging at least a portion of its stormwater utility fees, whether or not they accord with the court's opinion in the Durham case.

Fishery Grant Program

S.L. 1999-162 (S 1048) creates a grants committee to set priorities for, review applications to, and award grants under the fishery resources grant program and makes other changes to the grants program statute, G.S. 113-200. The grant review functions were previously handled by the Marine Fisheries Commission. The bill set the membership of the grants committee and provides that priority in funding is to go to projects involving persons involved in "a fishing-related industry" (now priority is to projects involving "fishermen").

Drinking Water State Revolving Loan Fund

S.L. 1999-213 (S 878) allows drinking water revolving loans and grants to be made to nonprofit water corporations that exist solely for the purpose of providing community water or community water and wastewater and that are eligible for a federal loan or a federal loan and grant from the Rural Utilities Services Division, U.S. Department of Agriculture. Loans to a nonprofit water corporation must be approved by the Local Government Commission.

County Bonds for Open Space

S.L. 1999-378 (H 1084) authorizes counties to issue bonds for open space preservation, among other purposes.

Environmental Health

Food and Lodging Law

Country Ham Exemption. A popular down-home deregulation bill (forty-three of fifty senators co-sponsored the bill), S.L. 1999-13 (S 560) exempts country ham and salt pork from

health regulation under the food law if "minimal preparation" (such as slicing, weighing, or wrapping) is the only activity that would otherwise subject the product to regulation. The products exempted are uncooked country ham and uncooked cured salt pork.

Study of Ice Bucket and Coffee Pot Rules. S.L. 1999-77 (H 1127) directs the State Division of Environmental Health to study the existing state rules concerning coffee pots and ice buckets provided by lodging establishments in guest rooms and to adopt revised temporary rules by January 31, 2000. Until that date, the current rules are suspended. In making its study the division is to consult stakeholders, including the affected industry and the local agencies that implement the rules. This legislation should enable the division, with input from these stakeholders, to better resolve questions that have arisen concerning whether simple in-place washing and rinsing suffice to address health concerns or if more expensive sanitation measures should be taken.

Other Food Law Changes. S.L. 1999-247 (H 957) makes several clarifying changes in the definitions and exemptions of the food law. The act redefines an *establishment that prepares or serves drink* as a business that prepares or serves beverages made from raw apples or potentially hazardous beverages made from other raw fruits or vegetables or that otherwise portions, sets out, or hands out drinks for human consumption. (This eliminates the previous qualification that the drinks must be in unpackaged portions reused on the premises. The definition of an *establishment that serves food* also is amended to eliminate this qualification.)

The act makes the following changes in exemptions: (a) It conforms the exemption of drinks provided from single-service containers not reused on the premises to the revised definition of establishments that prepare or serve drinks; (b) it revises the exemption of those who sell at unregulated events from temporary food stands so that it clearly applies to establishments that are already regulated under the food law at permitted locations; and (c) it adds exemptions for establishments that only set out or hand out beverages or food that are regulated by the Department of Agriculture and Human Services.

On-Site Sewage Systems

Northeastern Counties, Financing and Management. In the early 1990s the four-county health district in northeastern North Carolina, Pasquotank, Perquimans, Camden, and Chowan (PPCC), developed a program for managing on-site sewage systems in the district. (The district is being expanded to include a fifth county, Currituck.) This program relied on the authority of counties under the county enterprise statute, G.S. 153A-275, to maintain and operate sewage systems, including on-site systems. The systems installed were either systems provisionally approved by the health department under the state sewage rules or were innovative systems designed to accommodate the prevailing soils and high groundwater tables of the area.

To finance the program the four counties imposed fees under the county enterprise statute. In 1995 those four counties and three others that had joined the program (Currituck, Tyrrell, and Washington) obtained legislation authorizing them to bill the fees they collect as property taxes. 1995 N.C. Sess. Laws Ch. 577. In the intervening years some owners of on-site systems in the area (particularly large systems serving subdivisions and shopping centers) have asked the counties to assume the management of the systems for a fee, and two more nearby counties (Gates and Hertford) have asked to join the program.

S.L. 1999-288 (H 638) adds Gates and Hertford to the program and seeks to accommodate the counties' taking over the managing of some of the systems. To accomplish these purposes the act:

- gives Gates and Hertford the same power as the other seven counties to bill sewage fees as property taxes and to enforce the collection of delinquent fees as liens on real property,
- empowers all nine counties to act as "units of local government" under the Interlocal Cooperation Act (G.S. Ch. 160A, art. 20, pt. 1) and to establish a joint agency pursuant to G.S. 160A-462 for the purpose of owning and operating provisionally approved septic systems or innovative septic systems. Such an agency would be responsible for the maintenance and operation associated with the systems, leaving inspection and regulation

to the local health departments. (Since the district health board and department already exist, it seems clear that these counties have no authority to "establish" either of them as the "joint agency.") The act makes it clear that the district may own real property, either directly or by transfer from constituent counties.

Studies. Under the Clean Water Act of 1999, S.L. 1999-329 (H 1160, sec. 13.5), the Commission for Health Services is to study issues related to the proper maintenance of septic tank systems and report its findings and recommendations to the Environmental Review Commission by March 1, 2000. The commission is to focus on the harm that results from failure of systems and measures that prevent failure.

Mass Gatherings Law

The 1971 General Assembly enacted a Mass Gatherings Law in response to the requests of local health and law enforcement officials who had been overwhelmed by large rural rock music and fiddler conventions that were inspired by Woodstock. (The most highly publicized North Carolina events occurred at Love Valley.) The 1971 law required permits, performance bonds, and liability insurance for open-air gatherings expected to attract 5,000 or more persons for longer than twenty-four hours. It also authorized rule making concerning minimum space requirements, ingress, egress, evacuation and crowd control measures, medical care, water supply and sewage disposal, noise limits, and post-event cleanup.

The Mass Gatherings Law has remained on the books for almost three decades, its origins largely forgotten. During the intervening years changing patterns of large open-air gatherings have led to questions about the appropriateness of such a law for conditions in the late 1990s. This year those questions generated two amendments to this law designed especially to accommodate speedways and dragways.

S.L. 1999-3 (S 23) exempted permanent stadiums with adjacent campgrounds that host annual events attracting crowds of 70,000 people or more. Later in the session S.L. 1999-171 (H 1286) rewrote the earlier measure, making the exemption apply to any permanent stadium with an adjacent campground that hosts an annual event that, within the previous five years, attracted crowds in excess of 70,000. It also defined a *stadium* to include speedways and dragways. Reportedly the first bill was drafted for Charlotte, the second for Rockingham. These fine-tuning changes should make the exemptions easier to administer.

Sanitary Districts

S.L. 1999-94 (S 691) dissolves the Bermuda Center Sanitary District in Davie County and simultaneously creates the town of Bermuda Run. The district is directed to take all actions necessary to transfer assets and liabilities to the town by three days before the district's dissolution.

Natural Resource Management

Forest Resources

S.L. 1999-121 (H 316) encourages prescribed burning in forests for forestry and wildlife purposes. It immunizes prescribed burning that complies with new G.S. 113-60.43 from liability as a public or private nuisance and from civil damages unless the burning is negligent. The procedure for liability protection requires obtaining a written prescription from a certified prescribed burner, all under the regulatory authority of the Division of Forest Resources within DENR.

Pesticides

Structural Pest Control Law Revisions

S.L. 1999-381 (H 1233) enacts a detailed set of revisions of the structural pest control law that licenses and regulates termite control operators and related businesses. This long and complex act was substantially rewritten by a House committee substitute. It is a mixture of changes that reorganize the roles of the Commissioner of Agriculture and the Structural Pest Control Committee (generally strengthening the hand of the committee), strengthen some regulatory provisions, and clarify provisions concerning branch offices.

Major provisions of the act include the following:

- It makes the Director of the Structural Pest Control Division answerable to both the commissioner and the committee and spells out the administrative powers of the commissioner. The director will be appointed by the commissioner from a list submitted by the committee.
- It spells out the powers of the committee, including (a) rule-making authority; (b) authority to consult with the commissioner on supervision of personnel; and (c) authority to issue, deny and revoke licenses, certified applicator cards, and registered technician cards.
- It increases fees for licenses and renewals from $5 to $25.
- It requires the committee to adopt rules that allow a licensee to establish at least two branch offices and supervise work performed from the offices covered under the license. It allows a company to act as a structural pest control licensee by engaging a licensee as a full-time employee responsible for the company's work. It allows the committee to grant an additional ninety-day period within a year after the death or disability of a licensee during which a business may operate without a license.
- It provides that enforcement for minor violations is not necessary, allowing instead written notices of violations.
- It authorizes rules for submission of efficacy data by registrants and manufacturers and prohibits use of information not turned over to the committee except in work performed on the individual's own property.
- It prohibits the use of restricted-use pesticides in demonstrations of proper use or in conducting fieldwork unless the person possesses a valid certified applicator's identification card, is conducting laboratory research, or is an M.D. or D.V.M. using the pesticides as drugs or medications.
- It prohibits a licensee from (a) failing to supervise work performed out of his or her offices; (b) allowing a license to be used by those not actively supervised; (c) using pesticides or devices or materials prohibited by the committee; or (d) using restricted-use pesticides in a phase of work for which a person is not licensed or qualified as a certified applicator except under proper supervision.

Pollution Prevention/Waste Reduction

Recycling

Several bills were introduced to encourage recycling or to change state policy on incentives for recycling. None of the bills passed. Two bills dealing with recycling passed the house of introduction and are eligible for consideration in the 2000 "short" session of the General Assembly. H 1290 would limit the tax benefits given to the owners of recycling and resource recovery equipment to three years from the date DENR issues a certificate for the equipment. This bill passed the House and at adjournment was in the Senate Committee on Finance. S 1081 would make various amendments to G.S. 136-28.8 to require the North Carolina Department of Trans-

portation to make expanded use of recycled materials in both road construction and maintenance. The bill passed the Senate and was in the House Committee on Transportation at adjournment.

S 1000 would have imposed a two-cent tax on motor oil to fund oil reuse and reclamation. S 500 would have required all reports of state agencies to be copied on both sides of paper pages. Neither bill passed in the Senate, so neither is eligible for consideration in 2000.

Protection of Natural Areas

State Parks

S.L. 1999-268 (S 1127) dedicates properties as part of the State Nature and Historic Preserve. Pursuant to G.S. 143-260.8 and Article XIV of the N.C. Constitution, the bill accepts properties added to the state parks system since the last dedication of lands in 1989 as part of the State Nature and Historic Preserve. The bill also removes other properties from the preserve as requested by the Council of State and updates the names of various parks and historic sites previously dedicated to the preserve.

Wetlands Restoration

S.L. 1999-328 (S 953), the Ambient Air Quality Act, also provides a legislative vehicle for changes that gave the Wetlands Restoration Program in DENR more flexibility. It authorizes DENR to distribute moneys from the Wetlands Restoration Fund and to convey interests in real property acquired under the Wetlands Restoration Program to federal and state agencies, local governments, and private nonprofit conservation organizations. The bill requires recipients of funds to acquire property and recipients of interests in real property under this provision to grant a conservation easement to DENR in a form acceptable to DENR.

Wild and Scenic Rivers

S.L. 1999-147 amends the Natural and Scenic Rivers Act of 1971 to remove the limit on the amount of acreage the state can acquire for inclusion in the New River Scenic River Area of the North Carolina Natural and Scenic Rivers System.

Radiation Protection

Low-Level Radioactive Waste Disposal

At the end of the session, with very little public discussion or debate, the General Assembly passed a committee substitute to S 247 that withdrew the state from the Southeast Compact Commission. The bill eliminates the statutory commitment to license a disposal facility for the Southeast Compact Commission states. S.L. 1999-357 (S 247) thus places the state, for the present, on a “go it alone” path with regard to disposal of low-level radioactive waste. The bill directs DENR not to issue a license for the proposed site in Wake County that had been under study since the 1980s and directs the Commission for Radiation Protection to work on an alternative plan for waste disposal. The State of North Carolina and the Southeast Compact Commission had been at a standstill since 1997, when the commission stopped funding for work at the Wake County site.

Sediment Control

Sedimentation Pollution Control Act

S.L. 1999-379 (H 1098) strengthens the Sediment Control Act. The new law requires that sediment control plan approvals (including those from local governments) be conditioned on compliance with all federal and state water quality laws. The changes also require approved sediment control plans that use ditches for dewatering to be forwarded to the Division of Water Quality (presumably out of concern over wetlands draining). The bill raises the maximum civil penalty to $5,000 (it was $500, except for stop work orders) counted from the day of the violation (it was counted from the date of receipt of notice of violation). The 30 percent cap on fee revenue used for program administration is eliminated. Finally, the bill requires that applicants for contractor's licenses be tested for knowledge of the Sediment Control Act.

Relationship to Mining Act

The 1999 legislature also adopted S.L. 1999-82 (H 1008) to provide for regulation of grading and excavating activities under the Sediment Control Act rather than the Mining Act when all of the following apply:

- The excavation or grading is conducted to provide soil or other unconsolidated material to be used without further processing for a single off-site construction project for which an erosion control plan has been approved in accordance with Article 4 of Chapter 113A of the General Statutes.
- The affected land, including nonpublic access roads, does not exceed five acres.
- The excavation or grading is completed within one year.
- The excavation or grading does not involve blasting, the removal of material from rivers or streams, the disposal of off-site waste on the affected land, or the surface disposal of groundwater beyond the affected land.
- The excavation or grading is not in violation of any local ordinance.
- An erosion control plan for the excavation or grading has been approved in accordance with Article 4 of Chapter 113A of the General Statutes.

Solid and Hazardous Waste

Littering

S.L. 1999-454 (H 222) increases the penalties and makes certain other changes in G.S. 14-399, the criminal antilittering statute. The penalty increases are:

- first offense in an amount not to exceed 15 pounds and not for commercial purposes: fine of not less that $250 or more than $1,000 [G.S. 14-399(c)];
- second or subsequent offense in an amount not to exceed 15 pounds and not for commercial purposes: fine of not less that $500 or more than $2,000 [G.S. 14-399(c)];
- offense in an amount greater than 15 pounds but not exceeding 500 pounds and not for commercial purposes: fine of not less than $500 or more than $2,000 [G.S. 14-399(d)];
- offense in an amount exceeding 500 pounds or in any amount for commercial purposes: removal of the litter, restoration of any property damaged, and community service must be ordered by the court [G.S. 14-399(e)].

The bill also adds a definition of *commercial purposes* as new G.S. 13-399(i)(2a) to mean the discard of litter by a business entity for economic gain.

Scrap Tires

The 1999 Appropriations Act, S.L. 1999-237, authorizes DENR to use funds in the Scrap Tire Disposal Account to maintain and support a position for the 1999–2000 fiscal year and for the 2000–2001 fiscal year to provide regulatory assistance to local governments. The assistance is aimed at developing programs to prevent scrap tires from outside the state from being presented for free disposal and to complete the cleanup of nuisance tire collection sites. Funds in the account were previously restricted, pursuant to G.S. 130A-309.63(d), to clean up scrap tire collection sites.

Out-of-Unit Land Acquisition

G.S. 153A-15 provides that, for certain listed counties, before a unit of local government outside the county may acquire or condemn land in the county, the board of commissioners must approve the acquisition or condemnation. S.L. 1999-6 (H 37) adds Lenoir and Wayne to the list of counties to which this statute applies. This authority can be used to block the acquisition of property by another unit of local government for a variety of uses, such as landfills, wastewater discharge facilities, and water supply intakes and reservoirs.

Cleanup of Contaminated Property

Brownfields Fees. North Carolina passed substantive brownfields legislation in 1997 but did not commit significant resources to the administration of the program. The amendments to the Bill Lee Act, S.L. 1999-360, address the program funding problem. They raise the initial fees charged by DENR for prospective brownfields agreements to $2,000 (it was $1,000). They further provide that the prospective developer of a brownfields property for which a brownfields agreement exists is responsible for payment of the full costs to DENR and the Department of Justice of all activities related to the brownfields agreement. The procedure for determining this cost is to be included in the brownfields agreement, and the fee is to be paid in two installments, with interest and a lien imposed on the real and personal property of the developer for unpaid amounts.

Inactive Sites Program. S.L. 1999-83 (H 1125) conforms the definition of *site* under the state's inactive sites program to the definition used in the federal Superfund program, thus clarifying an ambiguity that has existed since the start of the state's inactive sites program. The federal definition extends the delineation of a covered "site" or "facility" to any place where hazardous substances have migrated. This clarification expands the potential footprints of sites covered by the North Carolina Inactive Sites Cleanup Program.

Land-Use ("Institutional") Controls. S.L. 1999-198 (S 1159) extends the use of "institutional controls," in the form of land-use restrictions, to all DENR remedial cleanup programs. Institutional controls, originally associated just with "brownfields" cleanups, are devices that attempt to remove the risk of exposure to hazardous substances without actually removing or detoxifying the substances themselves. For example, rather than attempting to remove all the solvents that are contaminating an area of groundwater, an institutional control authorized under the bill might include a restriction on the use of that groundwater for drinking or bathing purposes. The restriction is to be recorded in the chain of title of the property and runs with the land. These restrictions must be part of a remedial plan for the site that has been approved by the secretary of DENR. The restrictions may be enforced by the owner or other person responsible for the site or by DENR.

The procedure for approval and recording of land-use restrictions under S.L. 1999-198 corresponds to the procedures authorized in past sessions for such restrictions at brownfields properties and properties contaminated with dry cleaning solvent. The act enacts new G.S. 143B-279.10 to provide for the recording of a notice of these restrictions. The restrictions, along with a surveyed plat of the property, must be submitted to DENR for approval. The plat will be titled NOTICE OF CONTAMINATED SITE. After approval, the department will certify the notice and return it to the owner. The owner is then required to file a certified copy of the notice-plat with the register of deeds. The plat is required to comply with G.S. 47-30 and will have to be certified by a

review officer before the register records it. It should be filed and indexed with other plats. It is to be indexed on the grantor index in the name of the landowner; no grantee indexing is necessary.

A Notice of Contaminated Site may be canceled by DENR after the contamination has been eliminated. DENR will then send a notice of cancellation to the register of deeds. This notice of cancellation is to be recorded in the deed books, indexed on the grantor index in the name of the landowner, and indexed on the grantee index in the name "Secretary of Environment and Natural Resources." If the register makes marginal entries, a marginal entry is to be made on the Notice of Contaminated Site showing the date of cancellation and the book and page where the notice of cancellation is recorded.

Dry Cleaning Solvent Remediation. Significant changes were proposed and debated in the state's nascent Dry Cleaning Solvent Act cleanup program. In essence, the private insurance market, which was the foundation for the original act, no longer appeared affordable or even available to dry cleaners. Thus some substitute is needed for funding solvent cleanups if the program is ever to accomplish anything. However, the changes proposed in 1999 in H 1326 (and by committee substitute in S 777) were not passed. The bill, as S 777, remains available for consideration in the "short" session.

PCB Landfill. The 1999 Appropriations Act, S.L. 1999-237, transfers $1 million from the White Goods Management Account, G.S. 130A-309.83, to be used for the detoxification of the Warren County PCB landfill.

Water Quality

Clean Water Act Amendments

The General Assembly adopted S.L. 1999-329, the Clean Water Act Amendments, at the end of the 1999 Session. For a discussion of the animal waste provisions of the bill, which were central to debate about the legislation, see the "Animal Waste Management" section in this chapter. In addition to extending the moratorium on swine production and extending and enlarging the pilot program for inspecting large animal operations, the bill:

- requires owners of publicly operated treatment works, wastewater collection systems, and animal waste management facilities to notify the press, customers, and DENR of problems such as spills of untreated waste of 15,000 gallons or more;
- increases civil penalties for water quality violations to $25,000 (was $10,000);
- provides DENR with more flexibility in administering the Wetlands Restoration Program and the Conservation Reserve Enhancement Program;
- authorizes temporary water quality rules in the Cape Fear, Catawba, and Tar-Pamlico river basins;
- sets up a pilot program for technical assistance to municipal wastewater facilities in a single county;
- expands permitting alternatives analysis for new or expanded discharges;
- directs creation of engineering standards and permits for regional and systemwide wastewater collection;
- allows DENR to lower the maximum grants under the Clean Water State Revolving Loan Fund to $2 million from $3 million in certain circumstances and changes the procedure for local hearings on disbursements from this fund; and
- calls for a variety of studies.

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11

Health

The General Assembly did not ignore health issues this session. A number of areas were tidied up, and certain steps were taken. However, action on a major issue—limitations on the managed care industry—was largely postponed. Another important matter, the details of distribution of tobacco settlement funds to health programs, also was left to the future.

Public health fared reasonably well in the state budget, sustaining no major cuts and making progress in some areas. The Healthy Carolinians program, which helps communities identify the health needs most important to them, received its first state funding—$1 million. The period for continuation of Medicaid coverage for people leaving public assistance was doubled, from twelve to twenty-four months. Medicaid physician-reimbursement rates were raised to those of Medicare, which should improve access to health care for low-income residents. Preventive dental care was added as a benefit of the Health Choice program for children in low-income families, and school health clinics are now eligible to serve these children. Last session people with AIDS received $8 million in one-time funding to purchase medication. This time they were awarded continuing funding of $7 million plus additional federal funding. Low-income elderly residents with cardiovascular disease or diabetes were given a $.5 million prescription drug subsidy. $6 million was set aside to relieve families caring for people with developmental disabilities who are waiting for admission to the Community Alternative program, and $1 million was allocated to improve the level of immunization in the state.

This summary groups the session's activities in the following categories: managed care, prescription drugs, the regulation of health providers, facilities, financing and insurance, medical information, women's health status, and communicable disease. Numerous items identified for further study also are noted.

Managed Care

Several new requirements for managed care were adopted in 1999. S.L. 1999-219 (H 306) includes managed care entities (health benefit plans or health plans) among insurers that may not deny coverage or benefits solely on the basis of handicap. The definition of "health benefit plan" is standardized for purposes of application of state laws, and managed care organizations are required to acknowledge claims within thirty days or risk civil penalties. S.L. 1999-294 (S 594).

Hospital, medical and dental service corporations, and health maintenance organizations (HMOs) are made subject to numerous aspects of state insurance regulation, including the provisions about licensure and the Commissioner of Insurance's investigation of fraud and embezzlement [S.L. 1999-244 (S 766)]. S.L. 1999-168 (S 344) allows certain enrollees quicker access to specialists within their plan. The ability to bypass a gatekeeper through what is called continuing referral is available to those with a "serious or chronic degenerative, disabling, or life-threatening" condition. Under S.L. 1999-391 (S 345), a health plan's coverage denials and decisions on appeal must be approved by a North Carolina–licensed physician.

However, the managed care proposals that failed were even more significant. They included the imposition of malpractice liability on plans (H 1133); limitations on patients' waiting time for appointments and distance from providers, protection for providers who want to participate in plans, complaint mechanisms for providers and patients, giving the latter the right to sue, and required settlement of health insurance claims within thirty days (H 1282); disclosure requirements about providers and benefits, access to eye care, and transition coverage for people disenrolling (H 736); and besides much of the foregoing, direct access to certain specialists and the right of parents to select a pediatrician as the primary physician for their children (H 285).

Prescription Drugs

As the U.S. population ages, prescription drugs move to the front row of significant health issues. Many health plans establish "closed" or exclusive formularies, that is, a list of the only drugs for which they will reimburse enrollees. The General Assembly required health plans to cover "medically necessary and appropriate" nonformulary drugs and devices [S.L. 1999-178 (S 347)], as long as they are for a covered condition (S.L. 1999-294).

S.L. 1999-290 (H 1095) establishes a new class of provider, the clinical pharmacist practitioner. These pharmacists will be jointly approved by the boards of medicine and pharmacy to cooperate with physicians on drug therapy. They may order drug therapy, tests, devices, or medication.

S.L. 1999-246 (S 59) allows mobile pharmacies to deliver free or reduced-price drugs to low-income uninsured individuals. S.L. 1999-343 (S 513) requires a uniform prescription drug card for all plans' enrollees by July 1, 2000. By 2003 the card must be able to be read electronically.

Several provisions of the state budget, S.L. 1999-237 (H 168) (hereafter, the budget act), address the need for drugs. Section 11.55 contains the additional AIDS funding mentioned in the introduction. Section 28.28 reduces what some state employees pay for drugs. (See the "Health Insurance" section of this chapter for details.) Section 11.1 covers some drug costs for low-income elderly people with cardiovascular disease or diabetes who are not fully covered by Medicaid and invites further study before next session.

The most controversial pharmacy bill (H 1277) did not pass, although it had considerable support. The bill allowed pharmacies to charge customers more than the co-payment established by their health plans. Another unsuccessful proposal (S 783) required out-of-state pharmacies to fill prescriptions written by North Carolina providers, even if the provider class could not have prescribed in the pharmacy's state of incorporation.

See the "Women's Health" section of this chapter for a discussion of coverage of contraceptive drugs and devices.

Health Providers

In addition to recognizing clinical pharmacist practitioners as a new provider group, the General Assembly considered the boundaries among existing groups. S.L. 1999-226 (H 1193) lets physician's assistants or nurse practitioners perform any physical examination that state law requires be performed by a physician. S.L. 1999-210 (S 685) requires reimbursement for a

physician's assistant's services if a physician performing the service would have been reimbursed. S.L. 1999-292 (S 793) expands psychologists' scope of practice to include the diagnosis and treatment of the "neuropsychological aspects of physical illness" and the diagnosis of mental and emotional disorders.

North Carolina joined the Interstate Compact on Nursing Licensure [S.L. 1999-245 (S 194)], which gives a nurse licensed by any one of the party states the ability to practice in another party state. The compact also coordinates a licensure information system for recording disciplinary actions. Another measure to improve discipline is the requirement that, before employing health providers, health facilities must consult the state's Health Care Personnel Registry. The facilities also must report to the registry all substantiated allegations of misconduct and the disciplinary actions taken [S.L. 1999-159 (S 1258)]. S.L. 1999-430 (S 732) limits ownership of chiropractic practices to chiropractors, as of January 1, 2000, and makes a chiropractor accused of misconduct responsible for the cost of a disciplinary hearing in which he or she asserted a dilatory defense or one not based in good faith.

Three acts addressed the problem of impaired providers. S.L. 1999-81 (H 906) allows the Board of Pharmacy to contract for the identification and treatment of impaired pharmacists. The contractors are made state agencies and are given good faith immunity. S.L. 1999-382 (H 1470) gives similar contracting authority to the Board of Dental Examiners. S.L. 1999-291 (S 160) authorizes the Board of Nursing to adopt its own programs.

All direct health care providers will soon be identifiable by patients and families. By October 1, 1999, all must wear name badges. By October 1, 2001, the badge must also state the wearer's license, certification, or registration, unless the category of provider is exempt through rules of its licensing board. S.L. 1999-320 (S 951).

In order to improve information on cancer in North Carolina, S.L. 1999-22 (S 273) extends the allowable time for reporting a case to six months after diagnosis and requires reporting by all providers and facilities that detect, diagnose, or treat cancer. The Central Cancer Registry may collect the data from any site that fails to report and charge the provider or facility.

Two interesting bills failed. H 996 would have prevented any provider (including physicians) with fewer than 1,200 hours of training in spinal manipulation from adjusting the spine. H 1049 would have made a physician's review of services for reimbursement or precertification for reimbursement the practice of medicine. The effect would have been that only North Carolina–licensed physicians could perform these acts for a health plan. The bill also made the unlicensed practice of medicine a felony, proposed several new grounds for physician discipline, and conferred good faith immunity on those (other than the person charged) involved in disciplinary proceedings.

Health Facilities

Long-Term Care Facilities

The 1999 General Assembly addressed long-term care in two enactments. Section 11.7A of the budget act directs the Department of Health and Human Services (DHHS) to lead state and local agencies and consumer and provider organizations in developing a "system that provides a continuum of long-term care for elderly and disabled individuals and their families." By April 15, 2000, the department is to submit a progress report to the General Assembly and other bodies that includes a proposed budget and a budget management plan for "all publicly financed long-term care services available to older North Carolinians." By January 1, 2001, the system is to track expenditures, services, and consumer profiles and preferences and to develop a coordinated system to minimize administrative costs and improve access to services. The system is to emphasize public-private partnerships and personal responsibility for long-term care. The second session law [S.L. 1999-334 (S 10)] addresses current concerns in long-term care. It changes supervision of adult care homes from the Division of Social Services to the Medical Care Commission and places

greater emphasis on professional and medical services in the homes. Adult care homes may apply for licensure as providers of special care for Alzheimer's disease and other conditions. The department may refuse to renew a license if a home has a history of noncompliance with state law, or it may reduce a full license to provisional status. The rights of residents to remain in a home are set out, as is the obligation of local departments of social services to investigate complaints and remedy inadequacies.

Other

Local hospitals operating under G.S. 131-4 received authority to hold a new referendum on a tax levy for the hospital. S.L. 1999-377 (S 279). S.L. 1999-386 (H 1120) lets public hospitals use installment purchase financing and issue revenue anticipation notes. Under S.L. 1999-307 (S 34) the Division of Facility Services may waive rules applicable to health care facilities, home care agencies, and adult homes so they may function as temporary shelters in an emergency. For legislation on required cancer reporting and ownership of chiropractic facilities, see the preceding section.

Health Insurance

Three budget act provisions affect insurance coverage. Section 11.7 sets income limits for inclusion in state health programs other than Medicaid and allows the Department of Health and Human Services to reimburse providers for those programs at higher than Medicaid rates if necessary to procure their services. Section 28.28 improves coverage for state employees in the traditional indemnity health plan. Beginning January 1, 2000, instead of meeting deductibles and paying co-insurance, they may obtain prescription drugs for a co-payment of $10 to $20. Section 11.8 doubles the period, to twenty-four months, in which Work First clients who take jobs may continue to have Medicaid coverage for their children. For fuller coverage of Medicaid, see Chapter 23 (Social Services).

Other acts require health plans to continue to reimburse enrollees for pastoral counseling [S.L. 1999-186 (S 293)] and permit the Children's Health Insurance Program to reimburse school-based health clinics for covered services [S.L. 1999-4 (S 26)]. Under S.L. 1999-134 (H 1119), after January 1, 2000, health plans must cover anesthesia and hospital charges for dental work on children under nine and people with serious mental, physical, and behavioral problems. S.L. 1999-351 (H 294) establishes standards for disability income insurance and family leave credit insurance. This act also requires that policies covering mastectomy and reconstructive surgery cover prostheses and the expenses of physical complications in all stages of a mastectomy. S.L. 1999-425 (S 212) sets out conditions for dealings between mutual burial associations and other insurers, and it exempts certain family-owned graves from the statutory minimum burial depth.

Health Financing

Probably the most important health issue of the session was what portion of the state's settlement with tobacco companies will fund health programs. Two proposals for division, S 969 and H 1431, failed. While some observers think the matter is not entirely settled, S.L. 1999-2 (S 6) expresses a legislative intent that 25 percent of the settlement go to health programs.

Medical Information

A new requirement of the Joint Commission on Healthcare Organizations is that hospitals report untoward ("sentinel") events. Facilities fear that the ability to protect such information, for instance, from use in litigation, will be lost by the act of reporting. S.L. 1999-222 (H 190) addresses this concern by providing that information released to an accrediting agency for its use in evaluation retains its confidentiality and is not subject to discovery or use in any civil actions. S.L. 1999-247 (H 957) moves North Carolina away from states with "quill pen" laws, that is, requirements that medical signatures be created by pen on paper. Now facilities and providers may use electronic records exclusively, and physicians may sign orders and death certificates with electronic or facsimile signatures.

Women's Health

S.L. 1999-231 (S 90) requires insurers who cover outpatient care or prescription drugs to pay for contraceptive drugs and devices and outpatient contraceptive services. The law allows an exemption for religious employers that oppose contraception.

See the "Health Insurance" section of this chapter for mastectomy coverage amendments.

S.L 1999-197 (H 314) requires health plans to cover bone mass measurement for osteoporosis.

Communicable Disease

Several budget act provisions concern communicable disease control. Section 11.53(a) authorizes Health and Human Services to use up to $1 million annually on outreach efforts and a registry to improve immunization rates in North Carolina. Section 11.55 describes eligibility for and use of AIDS Drug Assistance funds (see the introduction to this chapter), and Section 11.56 outlines the use of HIV/STD prevention funds. S.L. 1999-110 (S 614) requires preschools to enroll only vaccinated (or exempt) children and spells out what documentation of immunization in another state a parent must present upon entry to a North Carolina school or daycare facility.

Studies

A number of the most significant health issues considered in 1999 were set aside for further study. Section 2.1 of S.L. 1999-395 (H 163) authorizes the Legislative Research Commission to study

- managed care
- health reform issues (including those identified by the 1993 Health Care Planning Commission and its advisory committees)
- pharmacy choice for consumers and competition
- long-term care facilities' compliance with licensure requirements
- recovery of Medicaid costs from the estates of former recipients
- a central registry for consents to organ donation and living wills
- hunger and nutrition
- spinal manipulation
- defibrillators
- health professionals' scope of practice
- health effects of fire ants
- the appropriateness of the death penalty for people with mental retardation.

In other provisions of S.L. 1999-395, Section 7.1 instructs the state study commission on aging to consider flu shots for nursing home residents and employees; immunization against pneumococcal disease; and the present allocation of state Medicaid costs. Section 19.1 creates the Legislative Study Commission on Musculoskeletal Disorders and asks it to review the frequency, costs, and means to prevent these conditions. Section 20.1 directs the State Board of Dental Examiners to study licensure by credential (rather than examination) for out-of-state dentists and dental assistants. Section 21B.2 creates the Study Commission on Children with Special Needs to study services for this population.

The budget act also directs several studies. The DHHS is to study the cost of traumatic brain injury (Section 11.2) and medically necessary prosthetics and orthotic devices for adult Medicaid recipients (Section 11.13). The Joint Legislative Oversight Committee will study the need for additional school nurses (Section 8.23).

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12

Higher Education

The biggest story in higher education legislation during the 1999 session of the General Assembly was a bill that did not pass. S 912, in its original form, would have authorized the sale of $2.7 billion in State of North Carolina University Improvement Security Interest Bonds and $300 million in State of North Carolina Community College Security Interest Bonds. The impetus behind the proposal was the recognition that over the next ten years, the university is expected to enroll an additional 48,000 students and the community college system will face a corresponding increase.

The bonds would have been limited obligation bonds (meaning that the university and the community college system would pledge various kinds of assets as security for the bonds) and not general obligations bonds (which would have pledged the full faith and credit and taxing authority of the state for the repayment of the bonds). Because they would have been limited obligation bonds, they would not have required, under the state constitution, a vote of the people. The bonds faced stiff opposition because of the size of the proposal and the no-referendum feature.

The bill passed the Senate at the $3 billion level with no referendum. It eventually passed the House in a version calling for $1 billion in university bonds and $200 million in community college bonds, contingent on a favorable vote in a referendum. The session ended with the two houses unable to agree on a final bill.

Other higher education issues in the 1999 session were far less attention grabbing.

Appropriations and Salaries

The University of North Carolina (UNC) Current Operations

The 1999 Appropriations Act, S.L. 1999-237 (H 168), the "budget act," appropriates to The University of North Carolina (UNC) Board of Governors—for the operation of all UNC campuses and hospitals—$1,644,244,323 for fiscal 1999–2000 (an increase of about $110 million over the immediately preceding year) and $1,656,863,227 for fiscal 2000–2001.

Community Colleges Current Operations

The budget act appropriates to the Community Colleges System Office $579,803,851 for fiscal 1999–2000 (an increase of about $14 million over the immediately preceding year) and $591,015,693 for fiscal 2000–2001. S.L. 1999-321 (H 275) adds a new G.S. 96-6.1 levying on employers as a part of their unemployment compensation levy a mandatory contribution (calculated at levels specified in the statute) to create the Employment Security Commission Training and Employment Account to provide funds for community college working training programs. Consistent with that legislation, the General Assembly appropriated from the account to the Community Colleges System Office $22 million for fiscal 1999–2000 and $56.5 million for fiscal 2000–2001 for equipment and technology, regional and cooperative initiatives, the New and Expanding Industry Training Program, and the Enhanced Focused Industrial Training Programs. In addition, if the account produces more than the funds appropriated, 80 percent of the excess is to be appropriated for these purposes.

Capital Improvements

UNC. The budget act appropriates to the UNC Board of Governors for capital improvements for 1999–2000 a total of $20 million. Section 29.5 specifies that these funds are for facilities' renovations and repairs. It directs the Board of Governors to allocate these funds among the UNC constituent institutions that are expected to grow in enrollment by 20 percent by fall 2003 and that had certain low facility condition and index ratings in a recent study conducted for the board.

Community Colleges. Capital improvements for community colleges are primarily a county, not a state, responsibility. Nonetheless, for 1999–2000 the budget act appropriates $14.5 million for a grant-in-aid of $250,000 to each of the fifty-eight community colleges for purposes of capital improvement or land acquisition. These funds are not subject to a matching requirement.

Salaries

Section 28.12 of the budget act provides sufficient funds for salary increases for UNC employees (faculty members and others) to receive an average salary increase of 3 percent, to be distributed to employees according to rules adopted by the Board of Governors. Teaching employees of the North Carolina School of Science and Mathematics received an average 7.5 percent salary increase.

Section 28.11 provides sufficient funds for salary increases for community college employees (full-time and part-time) to receive an average salary increase of 3 percent, to be distributed to employees according to rules adopted by the State Board of Community Colleges.

Each UNC and community college employee other than teaching faculty also received a one-time payment of $125.

UNC Governance

Horace Williams Campus

In 1985 the General Assembly through G.S. 116-36.5 created a special continuing and nonreverting trust fund, composed of proceeds from the lease or rental of property in the Centennial Campus of North Carolina State University, to be used for the development of the Centennial Campus. S.L. 1999-234 (H 1134) amends that statute to add directly corresponding provisions for the Horace Williams Campus of The University of North Carolina at Chapel Hill (UNC–CH). The 1999 legislation also amends Article 21B of Chapter 116, which permits the Board of Governors to issue revenue bonds, payable from any revenues from the Centennial Campus, without a pledge of taxes or the full faith and credit of the state, to make the provisions

of the article applicable also to the Horace Williams Campus. The Horace Williams Campus is defined as the real property and appurtenant facilities left to UNC–CH by the will of Henry Horace Williams and other property and facilities designated by the Board of Governors.

Hospital Real Property

S.L. 1999-252 (H 985) amends G.S. 116-37 and -40.6 to provide that acquisitions and dispositions of any interest in real property for the use of The University of North Carolina Health Care System or the East Carolina University Medical Faculty Practice Plan are not subject to the provisions of Article 36 of G.S. Chapter 143 or any of G.S. Chapter 146, which together give general control over state buildings to the Department of Administration.

Student Aid and Tuition

Aid to Students Attending Private Colleges. Section 10 of the budget act raises from $900 to $1,050 the amount per full-time equivalent student paid by the state to North Carolina private colleges that enroll North Carolina undergraduate students. The private colleges use these funds to provide financial assistance to needy North Carolina students. The act also raises from $1,600 to $1,750 the amount that is granted to each full-time North Carolina undergraduate student attending a private college in this state. The funds may not be used for the benefit of prisoners. The State Education Assistance Authority is to report to the Joint Legislative Education Oversight Committee on the numbers of students enrolled in off-campus programs and the state funds collected for such students. Section 10.1 puts limitations on the extent to which these funds may be used for students in off-campus programs. Section 10.1 also provides that any member of the armed services abiding in North Carolina incident to military duty who does not qualify as a resident for tuition purposes is eligible for the $1,750 payment if enrolled as a full-time student.

Wake Forest and Duke Medical School Assistance. Section 10 of the budget act sets at $8,000 and $5,000 for Wake Forest and Duke, respectively, the amount to be disbursed for each North Carolina resident medical student enrollee.

Escheat Law Rewrite

The North Carolina Constitution provides “escheats” (certain kinds of abandoned property that, after passage of time, become the property of the state) “shall be used to aid worthy and needy students who are residents of this State and are enrolled in public institutions of higher education in this State.” By the provisions of G.S. Chapter 116B, escheats are placed in the Escheat Fund, and the income derived from that fund is paid yearly to the State Education Assistance Authority for loans to students. S.L. 1999-460 (S 244) rewrites major portions of G.S. Chapter 116B, enacting a new “North Carolina Unclaimed Property Act,” spelling out the kinds of property subject to escheat, how such property is determined to be abandoned, how the state is to take custody of it, how it may be recovered by rightful owners, and similar matters.

President’s Budget Authority

G.S. 116-30.1 and -30.2 permit UNC constituent institutions to be named special responsibility constituent institutions, a designation that gives the chancellor of the institution flexibility in spending decisions across certain budget codes containing General Fund appropriations. The budget act, in Section 10.14, adds a new G.S. 116-30.3 and amends G.S. 116-14 to grant to the president of The University of North Carolina a corresponding flexibility in making spending decisions from appropriations made to UNC. It also provides that, subject to the approval of the Board of Governors, the president may establish and abolish employment positions within the UNC staff complement as may the chancellor of a special responsibility constituent institution.

North Carolina Progress Board

G.S. 143B-372.1 establishes the North Carolina Progress Board (composed of appointees of the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate, along with four appointees of the board itself) and charges it with (among other things) encouraging the discussion and understanding of critical global and national social and economic trends that will affect North Carolina in the coming decades, undertaking new and ongoing policy research and benchmarking studies, and reporting to North Carolinians every five years on prospects for progress over the next twenty to thirty years. S.L. 1999-237, Section 10.11, moves the Progress Board from the Department of Administration to the UNC Board of Governors and locates it at North Carolina State University (NCSU). The chancellor of NCSU is to appoint the board's executive director, who is to serve at the pleasure of the chancellor.

Community College Governance

State Level Name Change

S.L. 1999-84 (H 260) makes a number of technical changes in Chapter 115D of the General Statutes, the chapter that contains the basic community colleges statutes. In addition to the purely technical changes, the act throughout the statute changes the name of the Department of Community Colleges to the Community Colleges System Office.

Performance-Based Budgeting and Funds Carryforward

The budget act, in Section 9.2, adds a new G.S. 115D-31.3 directing the State Board of Community Colleges to create new accountability measures and performance standards to be used for performance budgeting for the community college system. Required standards are to include (1) progress of basic skills students, (2) passing rate for licensure and certification examinations, (3) goal completion of program completers, (4) employment status of graduates, and (5) performance of students who transfer into the university system. Colleges may choose one other measure from a specified list. A college meeting the new performance standards will be allowed to carry forward funds remaining in its budget up to 2 percent of the state funds allocated to the college for that year, to be used for the purchase of equipment and initial program start-up costs other than faculty salaries.

Student Financial Assistance and Tuition

The budget act, in Section 9.4, allocates $5 million for each year of the 1999–2001 biennium to provide need-based financial assistance to community college students.

In Section 9.5 the act provides that the State Board of Community Colleges may not charge tuition or fees to volunteer firefighters and volunteer EMS workers for courses required for certification.

Student on State Board of Community Colleges

S.L. 1999-61 (H 244) enacts a new G.S. 115D-2.1(b)(5) adding as an ex officio member of the State Board of Community Colleges the person serving as president of the North Carolina Comprehensive Community College Student Government Association. This student member has all the rights of other board members except the right to vote.

Campus Police

For many years the boards of trustees of constituent institutions of UNC have had the authority to establish campus law enforcement agencies and to employ campus police officers with all the powers of law enforcement officers generally. S.L. 1999-68 (H 477) adds a new G.S. 115D-21.1, permitting boards of trustees of community colleges to establish campus law enforcement agencies on the same basis as the UNC institutions. The territorial jurisdiction would be all property owned or leased to the college and the portions of any public road or highway passing through the property or immediately adjoining it. A college with a campus police agency may enter into joint agreements with municipalities and counties (with the consent of the sheriff) to extend the jurisdiction of the campus police into the municipality or county.

Financial Flexibility

The budget act, in Section 9.5, authorizes each community college to use all state funds allocated to it (except for Literacy Funds and Funds for New and Expanding Industries) for any authorized purpose consistent with the college's Institutional Effectiveness Plan. The same section, noting allocations of additional moneys for instructional and administrative support, directs that transfers made in college budgets from faculty salaries to other purposes may be made only after public notice and notice to the faculty. No more than 2 percent statewide may be transferred from faculty salaries without the approval of the State Board of Community Colleges.

Cooperation with County in Property Matters

S.L. 1999-115 (H 239) adds a new G.S. 153A-158.2 and a new G.S. 115D-15.1. By these new provisions a county is authorized—upon a request from the community college board of trustees and following a public hearing—to acquire any interest in real or personal property by any lawful method (including eminent domain) for use by a community college within the county and to dispose of (through sale or otherwise) any of this property to the community college for any price and on any terms negotiated between the board of trustees and the board of county commissioners. The trustees are authorized to accept the property.

A community college board of trustees, for its part, may, in connection with additions, improvements, renovations, or repairs, dispose (through sale or otherwise) any of its property to the county for any price and on any terms negotiated between the board of trustees and the board of county commissioners, subject to the approval of the State Board of Community Colleges. Any agreement by which the community college transfers property to the county must require that the county transfer the property back to the community college when any financing agreement entered into by the county to finance the additions, improvements, renovations, or repairs has been satisfied. If no such financing agreement exists, the agreement must require the county to transfer the property back as soon as the additions and so forth are completed. If a financing agreement exists, the obligations are to be the responsibility of the county alone and not of the board of trustees of the community college.

New College for Anson and Union Counties

In 1998 the General Assembly directed the county commissioners of Anson and Union counties to develop and submit to the State Board of Community Colleges a contract for establishing a new multi-campus community college to serve the two counties, or a proposal for separate community colleges to serve the two counties, or another proposal for providing community college access for citizens of the two counties. Because the counties could not agree on a single proposal, the General Assembly in 1999 passed S.L. 1999-60 (S 1039), establishing a new college and abolishing the old Anson Community College. The legislation sets out how the board of trustees of the new college is to be appointed and directs the new board to give the new college a name.

Studies

The 1999 General Assembly, through the budget act (1999-237), authorized or directed the following studies with respect to higher education.

Section 9 directs the State Board of Community Colleges to contract with an outside consultant to study the issue of whether community colleges system faculty should be employed for less than twelve months instead of on a twelve-month basis since the system now operates on a semester instead of a quarter basis.

Section 9.1 requires the State Board of Community Colleges and the State Board of Education to report on ways to increase the number of qualified high school students participating in cooperative high school education programs provided by local community colleges.

Section 9.7 directs the State Board of Community Colleges to review the Adult High School Program to determine the extent to which the program is aligned with recent public school reforms, including course content standards and end-of-course tests.

Section 9.14 authorizes the Joint Legislative Education Oversight Committee to study the need to streamline the community college capital construction process.

Section 10.20 directs the UNC Board of Governors to study the salaries and other compensation of faculty of the constituent institutions of UNC in order to attract and retain the best academic professionals, maintain the level of excellence for which UNC institutions are known, and maximize learning opportunities for students.

Section 10.20 also directs the UNC Board of Governors to study the structure, management, and use of prepaid tuition plans and college savings plans in North Carolina.

Robert P. Joyce

13

Land Records and Registers of Deeds

The 1999 session of the General Assembly enacted numerous acts affecting registers of deeds. Perhaps the major one was a long-sought updating of Chapter 43 of the General Statutes, the Torrens land title procedures. Other important changes deal with corporate acknowledgments, real estate excise tax stamps, and marriage licenses.

Office of the Register of Deeds

Fees

S.L. 1999-434 (S 222) enacts new G.S. 159-32.1. This statute authorizes "a local government" to accept an electronic payment for any tax, assessment, fee, or charge. An *electronic payment*, as used in this statute, is defined by G.S. 147-86.29(2a) to include credit cards, debit cards, and electronic fund transfers. The statute further provides that a local government may pay any discount or transaction fee imposed by a credit card company or bank for handling the electronic payment and then impose a surcharge on the maker of the payment to recover this cost.

This statute prompts several questions concerning the acceptance of electronic payments by registers of deeds in payment of the fees required by G.S. 161-10. First, could a board of county commissioners require that all county offices, including the register of deeds, accept electronic payments even though the register did not wish to do so? The answer appears to be no. The register of deeds, as an elected county officer and pursuant to G.S. 161-10, is responsible for collecting and accounting for the fees collected in the office. The register alone determines when the appropriate fee has been paid and what medium is acceptable as payment, and the register is liable on his or her bond for the proper handling of the fees collected. Nothing in Chapter 153A of the General Statutes gives the board of county commissioners authority over the register's fees, and nothing in Chapter 159 gives either the board or the county finance officer authority to direct what medium the register shall accept in payment of the fees set forth in G.S. 161-10.

Second, does new G.S. 159-32.1 authorize a register of deeds to accept electronic payments? The answer appears to be yes. Even though a register of deeds is not, strictly speaking, "a local government," the intent of the statute appears to be to allow acceptance of electronic payments for all fees owed to a city or county, and the register of deeds is certainly an officer of county government.

Third, if a register of deeds decides to accept electronic payments, can he or she impose a surcharge to recover any discount or transaction cost? The answer appears to be no, for two reasons. First, G.S. 161-10(a) requires that the fees charged by registers of deeds be uniform statewide. If some registers made surcharges in different amounts, this uniformity requirement would be violated. Second, G.S. 161-10(b) provides that the fees set forth in G.S. 161-10(a) are exclusive and that no other fees may be charged. The addition of a surcharge would violate this provision. Since these provisions of G.S. 161-10 relate specifically to the fees charged by registers of deeds, under accepted principles of statutory construction, they control the general provisions of new G.S. 159-32.1. Registers of deeds may well conclude that it would not be fiscally responsible to accept electronic payments without authority to impose the surcharges, because without the surcharge the county would lose between 4 and 7 percent of the fee charged on each transaction.

Electronic Storage of Records

G.S. 153A-436 deals with the various media on which copies of county records, including those in the office of the register of deeds, can be stored. Effective December 1, 1999, S.L. 1999-131 (S 1021) and S.L. 1999-456 (H 162) add new subsection (f) to provide that the statute also applies to records stored on permanent, computer-readable media, such as a CD-ROM, if the medium is not subject to erasure or alteration. G.S. 153A-436(f) also prohibits the use of nonerasable, computer-readable storage media for preservation duplicates, as defined in G.S. 132-8.2, or for the preservation of permanently valuable records, except as expressly approved by the Department of Cultural Resources.

Real Property Records

Real Estate Excise Tax

Effective July 1, 2000, S.L. 1999-28 (H 56) amends G.S. 105-228.31 and G.S. 105-228.32 to delete the requirement that stamps be affixed to instruments to show the amount of the real estate excise tax paid. It is important to note that this act does not eliminate the tax itself but only the requirement that stamps be affixed. The tax must still be paid, and the amount of the tax is unchanged. The types of instruments on which the tax is paid and the exemptions to the tax are also unchanged. Before an instrument is recorded, the register of deeds is required to collect the tax and enter a notation on the instrument that the tax has been paid and the amount of the tax. A notation similar to the following one should be sufficient: "Real estate excise tax paid: $____." The entry can be handwritten, typed, or made as part of a computerized entry. The act also repeals G.S. 105-228.34, which makes willful failure to pay the tax a misdemeanor.

Corporate Acknowledgments

S.L. 1999-221 (S 761) makes significant changes in the forms for acknowledgments by corporations on conveyances, that is, on deeds and deeds of trust. In addition to a few minor changes in the form set out in G.S. 47-41.01(b) for an acknowledgment by the attesting officer, the act makes one major change: if the instrument is not sealed with the corporate seal, the words "sealed with its corporate seal" may be omitted from the acknowledgment. The reason for this change is that another provision of S.L. 1999-221, discussed below, deletes the requirement of a seal for real property instruments. The corporate officials authorized to perform attestations

remain the secretary, assistant secretary, trust officer, assistant trust officer, associate trust officer, or in the case of a bank, its secretary, assistant secretary, cashier, or assistant cashier.

Two provisions of this act authorize corporations to execute and record conveyances that have not been attested. New G.S. 47-41.01(c) is enacted to create a form of acknowledgment to be used when a corporate instrument making a conveyance is not attested. That form is set up as follows.

> _____ (State)
>
> _____ (County)
>
> I, _____ (Name of officer taking acknowledgment), _____ (Official title of officer taking acknowledgment), certify that _____ personally came before me this day and acknowledged that he (or she) is _____ (Title of official) of _____, a corporation, and that he/she, as _____ (Title of official), being authorized to do so, executed the foregoing on behalf of the corporation.
>
> Witness my hand and official seal, this the _____ day of _____.
>
> _____
> (Signature of officer taking acknowledgment)
>
> (Official seal, if officer taking acknowledgment has one)
>
> My commission expires _____ (Date of expiration of commission as notary public).

The significance of this new form of acknowledgment is that, together with the deletion of the attestation requirement in G.S. 47-18.3(a), it permits a corporation to execute and acknowledge a deed or deed of trust without the instrument being attested and without a corporate seal being affixed.

New G.S. 47-41.01(d), together with G.S. 47-18.3(a), provides that if a corporate conveyance is executed on behalf of the corporation by its chairman, president, chief executive officer, a vice-president or an assistant vice-president, treasurer, or chief financial officer, no further evidence of the official's authority to execute the conveyance is required. That is, a register of deeds should certify such an acknowledgment without requiring any additional documentation. This is no change from the existing law and practice. Amended G.S. 47-18.3(e), however, provides that any officer, manager, or agent of the corporation may execute a conveyance on behalf of the corporation if the corporation has either attached to the instrument or recorded in the office of the register of deeds a signed and attested resolution giving the officer, manager, or agent authority to execute conveyances on behalf of the corporation. It is permissible under this statute for a corporation to record the authorizing resolution once, and then the resolution is applicable to all deeds and deeds of trust subsequently recorded.

Seals

S.L. 99-221 enacted new G.S. 39-6.5 to eliminate the requirement that a person executing an instrument conveying an interest in real property must seal the instrument with his or her personal seal. This requirement was eliminated with regard to both corporate and individual instruments. Thus registers of deeds may soon begin seeing instruments that do not bear a corporate seal or that do not have the term "[SEAL]" after the grantor's signature. Such instruments are now legal. This act has no effect on the requirement that a notary or other official taking the acknowledgment of a signature must affix his or her official seal.

Records Study

S.L. 1999-395 (H 163) authorizes the Legislative Research Commission (LRC) to study ways to improve the quality of documents recorded in the office of the register of deeds. This study grew out of S 873, which would have authorized the Secretary of State to adopt rules imposing certain requirements as to format on documents recorded in the office of the register of deeds. S 873 did not pass, but this study may result in a proposal to accomplish its objectives. It is permissible for the commission to appoint nonlegislator members, such as registers of deeds and lawyers, to this study committee. The LRC may report its findings and recommendations on this matter to either the 2000 or the 2001 session of the General Assembly.

Torrens Land Title Registration Procedures

The Torrens land title registration procedures, authorized by Chapter 43 of the General Statutes, are used for the most part in the eastern counties, where timber and paper companies own large tracts of land, but the procedures are available for use in every county of the state. S.L. 1999-59 (H 1088) makes numerous changes in these procedures to bring them up to date. The act is effective January 1, 2000.

Fees. The act amends G.S. 43-5 to link the fees charged for Torrens procedures to the general fees charged pursuant to G.S. 161-10. The fee for recording a new certificate of title is that charged for instruments in general, the fee for issuing a certificate is the fee for issuing a certified copy, and the fee for noting entries is that for recording instruments in general. A considerable advantage of this linking is that, when the general fees provided in G.S. 161-10 are increased, the Torrens fees will automatically be increased as well.

Registration and Indexing. G.S. 43-13 is amended to delete the requirement that the register of deeds provide a special book for Torrens title registrations and instead requires that all instruments and entries be recorded in the real property records and indexed in those records. The certificate of title and entries for transactions regarding the title are to be indexed on the grantor index in the name "Registered estate no. _____ (the certificate number)" and on the grantee index in the name of the registered owner.

Judgments. The act amends G.S. 43-5 to change significantly the procedure when a judgment or lien is recorded in the clerk of superior court's office against the owner of registered land. The clerk is required to certify notice of the judgment, lien, or notice of lis pendens to the register of deeds only if a party in interest requests the clerk to do so. The register must then enter notice of the judgment or lien on the record copy of the certificate of title and proceed to recover the certificate of title pursuant to G.S. 43-40. The encumbrance is effective against the registered estate from the time the register of deeds enters the notice on the record copy of the certificate of title.

Delinquent Property Taxes. Property taxes become delinquent on January 6 following the September 1 due date. G.S. 43-46 currently directs the tax collector to file a memorandum of delinquency with the register of deeds by March 1 for each delinquent tax on registered land. The act amends G.S. 43-46 to move the deadline for filing this memorandum to June 30. It further directs the register of deeds to enter the notice of delinquency on the record copy of the certificate of title, and the tax lien shall be valid against the registered estate from that time. When the tax is paid, the register is directed to enter a notice of cancellation of tax lien on the record copy of the certificate of title. In place of the special procedure in G.S. 43-48 for foreclosing the tax lien on registered land, the act simply provides that the *in rem* foreclosure procedure contained in G.S. 105-375 shall be used. This procedure is one of two available to foreclose tax liens on unregistered land.

Technical Changes

S.L. 1999-119 (H 214) substitutes the Secretary of State for the Department of Environment and Natural Resources in various land records statutes, such as G.S. 161-22.2(d). This reflects the transfer several years ago of the Land Records Management Program to the Office of the Secretary of State.

Limited Liability Companies

G.S. 57C-2-34 provides that, when the real property of a limited liability company is transferred by merger, a certificate of merger is to be recorded in the office of the register of deeds. The name of the former limited liability company is to be indexed in the grantor index, and the name of the new entity is to be indexed in the grantee index. S.L. 1999-189 (S 660) amends this statute to provide that a certificate shall be filed with the register of deeds when there is a transfer by merger, conversion, or name change of the limited liability company.

Notice of Contaminated Property

S.L. 1999-198 (S 1159) enacts G.S. 143B-279.9 and –279.10 to provide for yet another type of notice of contaminated real property. The act authorizes the owner to place certain restrictions on the property. These restrictions, along with a surveyed plat of the property, must be approved by the Department of Environment and Natural Resources. The plat will be titled NOTICE OF CONTAMINATED SITE. After approval, the department will certify the notice and return it to the owner. The owner is then required to file a certified copy of the notice-plat with the register of deeds. The plat is required to comply with G.S. 47-30 and will have to be certified by a review officer before the register records it. It should be filed and indexed with other plats. It is to be indexed on the grantor index in the name of the landowner; no grantee indexing is necessary.

A Notice of Contaminated Site may be canceled by the Department of Environment and Natural Resources (DENR) after the contamination has been eliminated. DENR will then send a notice of cancellation to the register of deeds. This notice of cancellation is to be recorded in the deed books, indexed on the grantor index in the name of the landowner, and indexed on the grantee index in the name "Secretary of Environment and Natural Resources." If the register makes marginal entries, a marginal entry is to be made on the Notice of Contaminated Site showing the date of cancellation and the book and page where the notice of cancellation is recorded.

Department of Transportation Right-of-Way Plans

Effective January 1, 2000, S.L. 1999-422 (S 233) makes three changes in Department of Transportation (DOT) right-of-way plans. The first adjusts the dimensions of each plan from 20 inches by 12 inches to 17 inches by 11 inches. The second allows the DOT to file the plans electronically, if the register of deeds of the county where the plans are to be filed approves filing in that medium. The third change requires indexing the plans by identification number rather than by project number.

Notaries

Application Fee

Effective October 1, 1999, S.L. 1999-337 (S 55) amends G.S. 10A-4(b)(6) to increase the application fee to be commissioned as a notary public to $30.

Validations

S.L. 1999-21 (S 62) amends G.S. 10A-16 to validate various defective notary acknowledgments that were taken on or before February 28, 1999 (the date was October 1, 1998). It also enacts new G.S. 10A-17 to validate acknowledgments taken on or before August 1, 1998, by a person whose commission was revoked on or before January 30, 1997.

S.L. 1999-456 amends G.S. 47-108.111 to validate instruments not containing a seal that were recorded prior to January 1, 1999 (the date was January 1, 1995).

Vital records

Death Certificates

Effective October 1, 1999, S.L. 1999-247 (H 957) amends G.S. 130A-115(c) to authorize a physician signing a death certificate to use an electronic or facsimile signature, if approved by the state registrar.

Marriage Licenses

Effective July 21, 1999, S.L. 1999-375 (S 1018) amends G.S. 51-8 to provide that if an applicant for a marriage license does not have a social security number, and is ineligible to obtain one, he or she shall present a sworn or affirmed statement to that effect to the register of deeds, and the register shall then issue the license, provided all other license requirements are met. The statement must be sworn or affirmed before an officer authorized to administer oaths, such as a notary. Registers who are currently using an affidavit for this purpose should modify the form so that the substantive language states: "I swear (or affirm) that I have not been issued a social security number by the United States Government and I am ineligible to obtain a social security number." Nothing needs to be said about why the applicant does not have a social security number, why the applicant is in the United States, or the country of which the applicant is a citizen. The register of deeds is to retain this statement with the register's copy of the marriage license; it is not forwarded to the state Office of Vital Records.

S.L. 1999-395 authorizes the Legislative Research Commission to study the North Carolina marriage laws. If the commission chooses to undertake this study, it is to be guided by H 973 and S 1018, as introduced in the 1999 General Assembly, for the scope of the study. Those bills called for a comprehensive study of Chapter 51 of the General Statutes, including an examination of such issues as who is authorized to perform marriages, the role of the register of deeds in issuing marriage licenses, and the laws regarding marriages by persons under eighteen years old. The commission may appoint one or more registers of deeds to the committee that undertakes this study. If the study is undertaken, the commission may report its findings and recommendations to either the 2000 or the 2001 session of the General Assembly.

William A. Campbell

14

Land Use Regulation, Planning, Code Enforcement, and Transportation

The 1999 General Assembly authorized several major new studies in the areas of planning and transportation. The Commission to Address Smart Growth, Growth Management, and Development Issues was created and funded. This commission will examine alternatives for local growth management, regional coordination of plans and programs, the state role in growth management, and funding alternatives for plan implementation. The Blue Ribbon Transportation Finance Study Commission will examine a number of important issues, including current revenue sources and their future adequacy. The General Assembly also adopted legislation to facilitate local government contracts with private firms to conduct building code inspections. While no major statewide modifications were made in the zoning, subdivision, or housing code statutes, a number of local modifications were approved.

Planning and Extraterritorial Jurisdiction

Smart Growth

Urban growth and development can bring new jobs, better housing, and increased opportunities to communities. It can also bring urban sprawl, loss of open space, clogged highways, overcrowded schools, inadequate water supplies, degradation of water and air quality, and loss of the unique character of a community. The question of how best to manage urban growth and

development to maximize its positive benefits and minimize its harm to communities has become a potent political issue around the country. As a high-growth state, North Carolina and its local governments are increasingly faced with balancing the opportunities and costs of development.

While North Carolina did not join the national trend in adopting growth management legislation, the 1999 General Assembly did take steps in that direction. H 1468, the Growth Management Act of 1999, was introduced by Representatives Joe Hackney and Verla Insko. This bill, which was not adopted, proposed a number of new alternatives for local government planning and growth management. The following were among its provisions.

1. Encourage local governments to voluntarily engage in long-term planning and boards of county commissioners to coordinate growth management efforts within each county.
2. Require each county that elects to participate to develop a growth plan that identifies growth boundaries for each of its municipalities as well as planned growth areas and rural areas. Municipalities would propose urban growth boundaries for high-density growth projected over the next twenty years. Counties would designate growth areas outside existing municipalities. Rural areas would include territory outside of urban and planned growth areas to be preserved over the next twenty years as agricultural, forest, recreational, or wildlife management areas or for uses other than industrial or residential development.
3. Require each participating county to adopt a final growth plan that provides a unified physical design for development of the local community, encourages development in existing urban areas or planned growth areas, and establishes adequate public services. Land use, transportation, public infrastructure, housing, public education, and economic development would be addressed by the plan. Unresolved municipal objections to the plan would be subject to consideration and dispute resolution by the Local Government Commission. After the plan is approved, all land-use planning decisions by the county and municipalities within the county must be consistent with the plan.
4. Require each participating county to establish a joint economic development board to foster communication on economic and community development among governmental entities, industry, and private citizens.
5. Authorize counties that have adopted final growth plans to levy a tax on the impact of land development within the county. Such taxes will be used for new, expanded, or improved school capital facilities necessitated by growth within the county.
6. Allow counties and cities to acquire interests in real property for the purpose of land conservation, including acceptance of transfer of development rights.
7. Authorize use value taxation of land that is managed for protection of environmental, historical, or cultural resources for the public benefit.

In addition to this substantive proposal, bills to study growth management issues were introduced in the Senate by Senators Beverly Perdue (S 896) and Howard Lee (S 1123).

The General Assembly chose to further study the issue before taking action. Section 16.7 of the 1999 Appropriations Act, S.L. 1999-237 (H 168), creates a thirty-seven member Commission to Address Smart Growth, Growth Management, and Development Issues. Significantly the General Assembly appropriated $200,000 to fund the work of this commission.

The Lieutenant Governor and the Secretaries of Transportation, Commerce, and Environment and Natural Resources serve as ex officio members of the commission. The act specifies the requisite backgrounds of the remaining thirty-seven commission members, including representation of local government, environmental, planning, development, financing, business, agriculture, health, real estate, and economic development interests. The commission also includes eight legislative members. Of these members to be appointed, thirteen are appointed by the President Pro Tem of the Senate, thirteen by the Speaker of the House, and eleven by the Governor. Co-chairs are designated by the President Pro Tem of the Senate, and the Speaker of the House. Senator Howard Lee and Representative Joe Hackney have been appointed co-chairs.

The commission is to study growth, growth management, and development issues and recommend initiatives to promote comprehensive and coordinated local, regional, and state planning and growth management to:

1. preserve natural and cultural resources,
2. promote smarter infrastructure and transportation planning,
3. foster more balanced economic development in rural and urban areas,
4. foster compatible land-use patterns,
5. preserve and improve air quality,
6. protect housing affordability and assure consumer choice, and
7. enhance the quality of life for citizens.

The commission is also to address additional issues deemed necessary to implement coordinated planning and growth. Among the specific items to be studied are:

1. the growth management proposals in H 1468 (described above) and legislation in other states, specifically to include Maryland, Tennessee, New Jersey, and Washington, regarding smart growth and growth management;
2. the present and projected effects of population growth and urban development on the capacity of the state's infrastructure, environment, and economy, particularly those resulting from land use and transportation in high-growth and metropolitan regions;
3. options for long-term, strategic planning for the efficient growth of urban, rural, retirement, and resort areas of the state, including land-use management and the transfer of development rights;
4. incentives to encourage local governments to develop and implement sound land-use management practices;
5. planning and growth management goals and processes, including planning directed at existing infrastructure, regionally significant infrastructure, and environmentally sensitive lands;
6. the relationship and consistency between local and regional land use, infrastructure, farmland preservation, and natural resource/open space plans ensured by a process in which local, state, and regional representatives reach consensus;
7. funding requirements to implement comprehensive planning and alternative means for meeting those requirements, including consideration of state, regional, and local responsibilities, to include procedures for directing state expenditures within the metropolitan regions for infrastructure to the region's locally designated and regionally conformed urban growth areas and targeting the expenditure of environmental protection funds to designated environmentally sensitive lands and significant rural lands;
8. development of recommendations for funding sources for regional infrastructure, land acquisition needs, and assistance to local government for implementing plans;
9. incentives to promote the continued use of farmlands for agriculture and the maintenance of the agricultural economy.

The commission is to issue an interim report to the 2000 regular session of the 1999 General Assembly and submit a final report by January 15, 2001. The report is to include recommendations to (i) enact and implement a program of comprehensive planning, supportive infrastructure development, and growth management and (ii) address the issue of continued oversight of growth and development in the state, including whether a permanent commission should be established. The commission is directed to include citizen participation in its work and is authorized to seek technical and expert assistance. The commission terminates upon filing its final report.

Transfer of Development Rights

Transfer of development rights (TDR) is a process that assigns development rights to each property in an area, then allows transfer of development rights from areas where regulations allow less density to areas where more density is allowed. Property owners in the "receiving" area purchase the development rights from property owners in the "sending" area, thereby reducing the economic impacts of the regulations on those who are not allowed to develop their property as densely as others.

Huntersville Pilot Program. The Senate passed a bill (S 710) authorizing Huntersville to establish a TDR system, but the House of Representative did not act on that bill. In the closing days of the session, the Senate amended a bill that had passed the House (H 684, authorizing several municipalities to adopt tree protection ordinances) to incorporate the substance of the Huntersville TDR proposal. Since H 684 passed both chambers, albeit without the Huntersville TDR provisions in the House version, a conference committee was appointed to resolve the differences. The session adjourned before the conferees submitted a conference report.

TDR schemes are one of the topics to be studied by the Commission to Address Smart Growth, Growth Management, and Development Issues. Section 2.1(12(a) of the 1999 Studies Bill, S.L. 1999-395 (H 163), also authorizes study of the TDR concept.

Planning Jurisdiction

The General Assembly continued its practice of making individual adjustments in municipal extraterritorial planning and land-use regulatory jurisdiction through adoption of local bills. Over the past twenty-five years, the General Assembly has made such adjustments approximately seventy-five times. In 1999 the following adjustments were authorized:

- Chocowinity—S.L. 1999-42 (H 837) authorizes extraterritorial jurisdiction for the Cypress Landing subdivision.
- Farmville—S.L. 1999-43 (H 846) authorizes a two-mile extraterritorial jurisdiction with county approval.
- Kings Mountain—S.L. 1999-259 (H 855) authorizes a two-mile extraterritorial jurisdiction with approval of Cleveland and Gaston counties.
- Matthews—S.L. 1999-69 (S 702) authorizes extraterritorial jurisdiction for specified property, provided it is no longer owned by Mecklenburg County.
- Pinebluff—S.L. 1999-35 (S 433) authorizes a two-mile extraterritorial jurisdiction (no county approval required).

Also S.L. 1999-154 (H 504) authorizes Carteret County to adopt and enforce planning, zoning, and subdivision ordinances under the general enabling statutes as well as under a 1959 local act. If the county elects to adopt ordinances under the general enabling statute, existing planning board members continue to serve until their terms expire or they resign.

Zoning

The General Assembly made no changes in the statewide zoning enabling acts for cities or counties in 1999. However, a bill that started several years ago as a proposal to allow cities to impose special and conditional use permit requirements on establishments with high volume alcohol sales was enacted as a general standard in the state's Alcoholic Beverage Control (ABC) licensing laws. Several cities had raised concerns about convenience stores in economically depressed neighborhoods that sold large quantities of beer and wine. Some patrons then had a tendency to loiter and consume the alcohol on nearby properties, contributing to crime in the area and impairing neighborhood revitalization efforts. S.L. 1999-322 (S 812) creates G.S. 18B-309 to address these concerns. A food business or eating establishment located in a designated urban redevelopment area is not allowed to have alcohol sales in excess of 50 percent of its total annual sales. A city may request that the state Alcoholic Beverage Commission conduct an audit of any such business to determine whether this maximum percentage of alcohol sales is being exceeded, but it may do so only once per year for any individual business. If a business exceeds the maximum percentage, its ABC permits are to be revoked.

The General Assembly enacted several local bills regarding zoning authority. These local bills are summarized below.

Referendum. S.L 1999-303 (S 532) authorizes the Buncombe County Board of Commissioners to call a countywide advisory referendum on the question of zoning the unincorporated area of the county. The referendum must be conducted on or before December 31, 1999.

Agricultural Uses. S.L. 1999-57 (H 471) precludes several small Guilford County municipalities from regulating agricultural land uses through zoning. The limitation applies to the cities of Stokesdale, Summerfield, Pleasant Garden, and Oak Ridge.

Site Plans. S.L. 1999-70 (S 719) authorizes Durham County and the city of Durham to consider the contents of site plans in making rezoning decisions. The site plans submitted may include limitations on the number, range, and types of uses, and elected officials are authorized to consider those limitations in their rezoning decisions. The act specifies that, if the proposed limitations are approved, they are binding as a part of the zoning of the property. The act further specifies that the governing board consideration of rezonings subject to a site plan are to be conducted as legislative hearings (like rezonings to general use districts).

Enforcement. S.L. 1999-55 (S 720) allows Durham County and the city of Durham additional options regarding service of notice of violations of zoning and subdivision ordinances. The notice of violation is to be served personally or by registered or certified mail. When service is made by registered or certified mail, the city may also send a notice by first-class mail. The service is deemed sufficient if the registered or certified notice is unclaimed or refused but the first-class notice is not returned by the post office in ten days. In these situations notice of violation must also be posted on the site.

Signs and Outdoor Advertising; Community Appearance

Outdoor Advertising Control Act

The North Carolina Outdoor Advertising Control Act (G.S. 136-126 to -140) dates from 1967. S.L. 1999-404 (S 254) rewrites this statute to update statutory references and definitions, to increase permit fees, to establish new enforcement remedies, and to clarify notification requirements. The new law increases initial permit fees for outdoor advertising structures from $60 to $120 and annual renewal fees from $30 to $60. Initial fees for directional signs are increased from $20 to $40 and annual renewal fees from $15 to $30. A newly added section, G.S. 136-18.7, establishes a fee of $200 for a selective vegetation removal permit.

The legislation adds a new G.S. 136-134.2 to establish procedures for the North Carolina Department of Transportation (NCDOT) to follow in denying a sign permit application, in revoking a permit, or in issuing a violation notice. In such cases the department must deliver a written notice by certified mail, return receipt requested, to the permit applicant, permit holder, or sign owner. However, it must also include with the notice a copy of the act and all rules issued pursuant to it. If NCDOT fails to deliver a copy of the act and its rules, this failure tolls the beginning of the period during which the affected party may request a decision review hearing.

The amendments also provide new enforcement remedies and sanctions. The department may issue a stop-work order for outdoor advertising that is under construction but for which no permit has been issued. Remarkably enough, however, no such order is applicable if the advertising message has already been attached to the sign structure and displayed in its final position for viewing by the public. Violation of a stop-work order entitles NCDOT to remove the offending sign. The costs of doing so are assessed against the owner of the unpermitted outdoor advertising. (If the unpermitted sign has already been erected and the sign message displayed before NCDOT takes enforcement action, existing law allows the owner thirty days within which to comply. Failure to comply allows NCDOT to remove the sign once this period has expired. Costs of removal may be assessed against the owner.)

Additional changes redefine federal primary system highways (along which the act applies) to include those federal-aid primary highways on the system as it existed on June 1, 1991, and any highways not on that system that have since been added to the National Highway System.

Surry County Outdoor Advertising

Legislation adopted in 1993 (S.L. 1993-559) prohibited new outdoor advertising displays from being erected along a portion of highway N.C. 752/U.S. 52 through the foothills of Surry County as it passes by Pilot Mountain State Park. S.L. 1999-218 (S 1140) amends the existing session law to extend the prohibition to the replacement of existing outdoor advertising structures along this corridor as well as the erection of new displays.

Outdoor Advertising along Interstate 40

S.L. 1999-436 (S 829) establishes a moratorium on the erection of new outdoor advertising along Interstate 40 between the Orange–Alamance County line and the Wilmington city limits. The moratorium expires July 1, 2000. The Joint Legislative Transportation Oversight Committee is directed to study whether the erection of outdoor advertising should be prohibited permanently along this corridor. The act also directs the committee to study the advisability of NCDOT allowing billboard owners to enter onto highway rights-of-way to destroy vegetation that may obscure their signs. (This study apparently applies to all affected highways, not just the portion of Interstate 40 subject to the sign ban study.) The committee is directed to report to the 2000 session of the General Assembly.

Littering

S.L. 1999-454 (H 222) strengthens the state's statute governing littering on public or private property by increasing the applicable fines and requiring community service for more serious offenses. The act amends G.S. 14-399(c) (littering for other than commercial purposes in an amount not exceeding fifteen pounds) by increasing the minimum fine for such an offense from $100 to $250 and increasing the maximum fine from $500 to $1,000. In addition it increases the minimum fine for a second or subsequent offense from $100 to $500 and the maximum fine from $1,000 to $2,000. It also amends G.S. 14-399(d) (littering for other than commercial purposes in an amount exceeding 15 but not more than 500 pounds) by increasing the minimum fine from $100 to $500 and the maximum fine from $1,000 to $2,000. Finally, if the violator discards more than 500 pounds, discards hazardous waste, or litters for commercial purposes, the act provides that the court shall order (it used to say may order) the violator to provide restitution or perform community service to remove the litter or restore the polluted area. The act also clarifies litter "for commercial purposes" and directs the Division of Motor Vehicles to add at least one question on littering to the next driver's license examination prepared by the Division.

Bills Eligible for Further Consideration

H 529, which has passed the House, is directed at local zoning regulations governing signs and flags. It provides that no law may prohibit the display of any U.S. flag if the flag is flown with the consent of the owner or the person having control of the property and the flag is flown in accord with the patriotic customs that are set forth in the U.S. Code.

H 684 passed both chambers but was never reported out of a conference committee. The first portion of the bill would grant five municipalities (Apex, Garner, Kinston, Cary, and Morrisville) the power to regulate the removal and preservation of trees within the planning jurisdiction of each. The bill, however, excludes both property to be developed for single- or two-family residential purposes and property being forested under a forestry management plan. It is unclear whether express legislative authority is needed by cities to regulate trees at all. The second portion of the bill authorizes Huntersville to establish a pilot program allowing the voluntary transfer of development rights.

Housing Code/Nuisance Abatement

Housing Code

Rental Heat. One statewide law affecting local housing codes was adopted this session, but its applicability is quite restricted. It concerns the obligation of landlords to heat rental houses and apartments. S.L. 1999-14 (S 41) requires landlords to provide either a central heating system or a heating unit in at least one habitable room other than the kitchen and to maintain them in a good and safe working condition. Portable kerosene heaters do not qualify. The heating system must be capable of heating the one room to a minimum temperature of 68 degrees Fahrenheit when the outside temperature is 20 degrees. This legislation, however, applies only inside the corporate limits of cities with a population of at least 200,000. The cities to which the act applies are directed to adopt the appropriate ordinance language by Jan. 1, 2000. Charlotte and Durham had already adopted such requirements in their respective minimum housing codes before the act was passed. The only city currently covered by the legislation that will be required to act in order to comply with the new law is Raleigh.

Bill Eligible for Further Consideration in 2000. Differing versions of S 414 have been passed by the House and the Senate and await resolution in conference committee during the year 2000 session. S 414 would extend the application of G.S. 160A-443(5a) to all municipalities. This subsection currently allows cities of certain sizes to take action against property owners who have vacated and closed housing units rather than have them repaired. Subsection 5a applies when units are shown to have certain blighting influences on the neighborhood after remaining vacant and closed for a period of one year. In such instances the local governing board may adopt an ordinance ordering the owner to either repair or demolish the unit, or, in instances where the housing has undergone further deterioration, it may give the owner no choice other than to demolish the unit.

Criminal Nuisances

S.L. 1999-371 (S 929) makes a variety of clarifying, elaborating, and technical changes to the state's criminal nuisance statutes and adds definitions. The statutes can be used to close premises used for prostitution, sale of controlled substances, or obscene activity. These statutes (G.S. 19-1 *et seq*.) authorize law enforcement officials to seize personal property used in connection with the illegal enterprise and provide for the possible forfeiture of real property used in this connection.

Nuisance Abatement: Local Acts

S.L. 1999-62 (S 181) allows Dallas, Tabor City, and Whiteville to each enact a property maintenance ordinance dealing with trash, obnoxious weeds, overgrowth, solid wastes, and stagnant water. If affected owners fail to comply with the ordinance, the municipality may go on the property to perform any work necessary to bring it into compliance with the ordinance (a "self-help" remedy). The costs of such work may be charged against the property and become a lien on the property equivalent to a tax lien. A similar act, S.L. 1999-58 (H 776), also addresses the problem of overgrown vegetation on private property. However, this act provides Roanoke Rapids with a "self-help" remedy only if the owner is a *chronic violator* of the ordinance (defined as an owner whose property is subject to remedial action at least three times during the previous calendar year).

Land Subdivision Regulation/Platting

Filing of Right-of-Way Plans/Plats

One question that has arisen in counties across the state is whether land subdivision ordinances may require and county registers of deeds may accept plans and plat maps submitted in an electronic form. No bill has been filed concerning this question. However, S 328, which has passed the Senate and awaits further consideration next year, would allow the North Carolina Department of Transportation to file its right-of-way plans in an electronic form, if the county in which the plans are to be filed approves.

Land Subdivision Regulation: Local Acts

S.L. 1999-125 (H 437) amends the statutory definition of "subdivision" in G.S. 153A-335 as it applies to Jones County. It expands the second statutory exception to exempt the division of land into parcels greater than five acres if no street right-of-way is involved. The state statute currently excepts only those divisions into parcels greater than ten acres.

Building Code Enforcement

Building Inspection Contracts

S.L. 1999–372 (S 966), an act strongly opposed by the North Carolina Building Inspectors' Association, has generally been referred to as the act to "privatize" building code enforcement in North Carolina. Although this legislation provides new possibilities for local governments who wish to contract out building plan review and inspection services, that characterization is misleading since certain forms of "privatization" were possible before S 966 was ever adopted. Nonetheless the act does address new code enforcement arrangements involving private contractors.

Contracts; Insurance. This law amends G.S. 160A-411 and G.S. 153A-353 to permit an inspection department to contract with the *employer* of a certified code-enforcement official for the provision of inspection services. (Under prior law an inspection department could privatize inspection services and plan review, but if it did so it had to contract directly with a certified code-enforcement official.) If an inspection department does contract with the employer of the code-enforcement official, the company that is the employer must obtain insurance to cover the code official's errors and omissions.

Individual as Code-Enforcement Official. Another change concerns the definition of "code enforcement" for purposes of qualifying under state law as a certified code-enforcement official. The act expands the definition of *code enforcement* to include individuals employed by a company contracting with a local government for inspection services. This is simply a conforming change to accomplish the changes described above. However, it is also important because it clarifies that only an individual may be a code-enforcement official or be certified as such. The company or firm employing the inspector may not hold a code-enforcement certificate. (Compare this with current law regarding a general contractor's license. Under this arrangement a company may hold a general contractor's license because it employs someone who has passed the necessary exams. It is thus relatively easy for a general contracting firm to retain its license even as its employees turn over.)

Conflict of Interest Generally. Perhaps the most controversial features of the act are the provisions dealing with conflict of interest. In the past a code-enforcement official who contracts with a local government has been subject to the same conflict of interest requirements as a governmental employee. Under the new law, G.S. 160A-415 and G.S. 153A-355 declare a conflict of interest if the individual is financially interested or is employed by a business that is financially

interested in certain work within the regulatory jurisdiction of the unit of government. A special exception is made for firefighters whose primary duties are fire suppression and rescue but whose secondary duties include fire inspection activities.

Defining a Conflict. S.L. 1999-372 liberalizes the conflict of interest provisions both for a contracting individual and for a company that may employ a code-enforcement official. The act finds a conflict of interest in three instances. First, a conflict exists if the individual, the company, or the company employee has worked within the last two years for the owner, developer, contractor, or project manager of the project to be inspected. Second, a conflict exists if the individual, the company, or the company employee is "closely related" to the owner, developer, contractor, or project manager of the project to be inspected. Finally, a conflict exists if the individual, company, or employee has a financial or business interest in the project to be inspected. These three instances are the only circumstances in which a conflict of interest is found. The statute provides no apparent remedy or sanction for violation of its conflict of interest provisions. Although the new law provides that a local government "must find a conflict of interest" in certain defined situations, no enforcement mechanism is provided for circumstances where a conflict of interest exists.

Specifically Designated Projects. The only limitation on the widespread use by local governments of building inspection contracts is a stipulation in G.S. 160A-413 and G.S. 153A-353 that provides that such contracts may be entered into only for "specifically designated projects." It is unclear whether this provision refers to a list of individual building projects for which code services are to be provided or whether it refers to categories of designated projects (for example, review of all plans for Level III nonresidential projects).

General Contractors' Licensing

S.L. 1999-427 (S 1058) makes some modest changes to legislation governing the licensing of general contractors. The act amends G.S. 87-10(b) so that the general contractor's examination, administered by the State Licensing Board for General Contractors, includes material testing the applicant's knowledge of "relevant matters contained in the North Carolina State Building Code." No mention is made of what weight or portion of the exam may be devoted to code matters. Previously an applicant familiar with the law of construction contracts, cost estimation, and liens could pass the exam without any knowledge of code standards. The act also amends G.S. 87-11(a) to strengthen the disciplinary powers of the Licensing Board to suspend, restrict, or refuse to renew the license of a general contractor. These remedies may be used as alternatives to simply revoking the license. In addition the bill clarifies that the board may take the same kind of action against someone who acts as the "qualifying party" for a license held by a partnership, corporation, or other organization.

Home Inspectors

S.L. 1999-149 (H 259) makes several changes to the legislation providing for the licensing of home inspectors. The changes include rather technical requirements concerning lapsed licenses and the supervision of licensed associate home inspectors. However, the topic of the most interest in the act is the authorization it provides for the Home Inspector Licensure Board to establish and administer a continuing education program for all license holders. The number of continuing education hours that licensees must complete each year is to be determined by the board, but the number of required hours cannot exceed twelve.

Building Inspection on Tribal Lands

S.L. 1999-78 (S 674) allows federally recognized Indian tribes to adopt the North Carolina State Building Code and to enforce it on tribal lands. The act also provides for the certification by the North Carolina Code Officials Qualification Board of those who perform inspections on tribal

lands. Legislation adopted last year to allow Indian tribes in several far western North Carolina counties (i.e., the Cherokees) to perform building inspections under the North Carolina State Building Code on tribal lands is repealed.

Fire Mains Comply with Building Code

S.L. 1999-12 (H 1076) is a brief act that requires public utilities contractors constructing fire service mains intended for connection to fire sprinkler systems to terminate inside the building one foot above the finished floor. It also requires all fire service mains to meet Volume V requirements of the State Building Code.

Compliance of Old Nonbusiness Occupancies with State Building Code

S.L. 1999-456 (H 162), the 1999 "technical corrections" act, includes an obscure provision (section 40) that affects buildings with nonbusiness occupancies built prior to the adoption of the 1953 Building Code. It adds a new G.S. 143-138(j1) to provide that if such a building is not currently in compliance with either Section 402.1.3.5 of Volume IX of the Building Code or Section 3407.2.2 of Volume I of the Building Code, it must come into compliance with the applicable sections by December 31, 2006. Section 3407.2.2 of the General Construction Code concerns the circumstances under which single exitways are allowed in buildings with stories intended to accommodate fewer than 100 occupants. Section 402.1.3.5 of the Existing Building Code provides that if certain buildings fail to comply with exitway and egress standards, work was to have been initiated by January 1, 1999, to bring the building into compliance. The practical effect of this new law is to give property owners more time to comply with egress standards and to cause the North Carolina Building Code Council to amend the Code to conform it to the legislation.

Bills Eligible for Consideration in 2000

Two important bills may be considered in next year's session of the General Assembly because they passed the chamber in which they were introduced. The first, H 1149, loosens the requirements for those who erect modular buildings by allowing a licensed manufactured home set-up contractor to erect certain types of modular units. The second, S 1152, began as an attempt by the League of Municipalities to expand the factors to be considered and to elaborate the remedies that a city may use when it condemns an unsafe building under G.S. 160A-426 to -432. However, the bill that emerged from committee would weaken existing law. As a result, the bill's future is uncertain.

Two other bills failed to advance but are eligible for further consideration because they have financial implications. H 1256 was introduced by Rep. Beverly Earle of Charlotte. Certain features of the bill (for example, mandated attorney fee awards to homeowners who sue builders, correction of code violations after the closing under the direction of code officials, the imposition of civil penalties and fines on negligent builders, and the lengthening of the period during which a builder may be sued) were opposed by developers and deleted from the original version of the bill. The bill now calls for reducing the project cost threshold that triggers the requirement for a licensed general contractor, strengthening the authority of the licensing board to discipline contractors, changing the homeowners' recovery fund, and requiring contractors to purchase commercial general liability insurance. A second bill, H 312, would authorize the Code Officials Qualification Board to adopt a continuing education program for code-enforcement officials. It includes a $100,000 appropriation from North Carolina Department of Insurance funds to help develop and implement the program. Despite the hopes of its sponsors, its provisions were not incorporated into the 1999 appropriations bill.

Transportation

Studies

Relatively few legislative changes were adopted regarding transportation, but several topics will be the subjects of studies during the next two years.

The most important news in this regard is the establishment of the Blue Ribbon Transportation Finance Study Commission, a fifteen-member commission directed to study a number of important issues affecting the state's transportation future and NCDOT. The commission is established in section 27.2 of the Appropriations Act, S.L. 1999-237 (H 168). First, the commission is directed to evaluate the Highway Trust Fund Act, which was adopted ten years ago to earmark specific revenues to fund certain major new highway construction projects, including a series of urban loop projects in the metropolitan areas of the state. Similarly, the commission is directed to study NCDOT's current revenue sources and their adequacy for the projected needs of the state during the next twenty-five years. Third, the commission will study the problem of funding transportation system maintenance. Fourth, the commission will evaluate the possibility of funding public transportation with dedicated sources of funding and recommend specific funding sources and amounts. Fifth, the commission will consider the transfer of Highway Fund moneys to state agencies other than NCDOT, "including whether or not those funds would more appropriately come from the General Fund." Finally, the commission will look at several new ideas. One is the concept of establishing separate funding allocations for roads that impact large-scale economic development projects. Another is developing separate funding allocations for major highways that impact more than several regions of the state. The Blue Ribbon Transportation Finance Study Commission is to submit an interim report to the Joint Legislative Transportation Oversight Committee by June 2000 and a final report by March 2001.

A second study reveals a prime concern among legislators about the state's transportation progress. Section 27.5 of the Appropriations Act directs NCDOT to study the reasons why road construction is delayed in North Carolina. It directs the department to study and make recommendations on (a) its inability to obtain environmental and historic preservation permits in a timely or expedited manner, (b) cooperation between NCDOT and other agencies involved in permitting, (c) problems in obtaining needed rights-of-way, and (d) delays that are related to public hearings and participation in the planning and design process. The department's recommendations to the Joint Legislative Oversight Committee and to the Joint Legislative Commission on Governmental Operations were due by November 1999.

A third study reflects concern about demands placed on NCDOT in maintaining a state secondary road network. Section 27.8 of the Appropriations Act directs NCDOT to study its policies for accepting and maintaining subdivision roads. The study is to consider both roads and streets that meet the current subdivision street standards adopted by the NCDOT and those that do not. NCDOT is directed to submit an interim report to the 2000 session of the General Assembly and a final report to the 2001 session.

S.L 1999-395 authorizes the Legislative Research Commission (LRC) to study municipal participation in road financing. After the session the LRC referred this matter to the Blue Ribbon Transportation Finance Study Commission for inclusion in the broader study noted above.

Public Transportation

Several legislative changes will affect public transportation.

The first will allow the NCDOT and the state's municipalities to designate "transitways." S.L. 1999-350 (H 1085) amends G.S. 20-146.2 to allow NCDOT to designate one or more travel lanes on a state highway as a transitway and allows cities to do so on city streets. Transitways are generally reserved for public transportation vehicles, but if they are appropriately marked with signs or other markers, they may also be reserved for privately operated vehicles.

The second affects regional transportation authorities, first established by the General Assembly in 1997. Although the criteria for establishing such an authority do not expressly limit them to the region of the Piedmont Triad, that is the only region of the state that has qualified so far. S.L. 1999-445 (H 937) makes a variety of changes in existing law. The most important change concerns the 5 percent gross receipts tax on vehicle rentals and $5 motor vehicle license tax that a regional transportation authority may levy. Existing law requires all counties within the authority to approve such a tax before it is levied. The new act permits such an authority to create a special district that consists of the entire area of one or more counties within the authority's territorial jurisdiction. If the board of county commissioners of each county within this district consents, then a gross receipts tax and/or motor vehicle license tax may be levied in just those counties. The tax rate within the special district, however, when combined with any tax levied throughout the jurisdiction of the regional transportation authority may not exceed 5 percent (gross receipts tax) or $5 (vehicle license tax). The act also makes a change concerning the geographic jurisdiction of the authority. The authority includes all those areas within the metropolitan planning organizations (MPOs) of the region but may be expanded to include areas outside the MPOs if the affected board of county commissioners consents. S.L. 1999-445 provides that the authority may expand its territorial jurisdiction to include the entire area of such a county if the Board of Trustees is expanded so that the county is represented on the Board. In addition the act adds to the Board the chair of the airport authority or commission for each of the authority's two most populous counties (in the case of the Piedmont Triad region, Guilford and Forsyth).

Other

S.L. 1999-224 (H 755) authorizes certain municipalities to create a municipal service district to finance lighting at interstate highway interchanges. The act, which adds a new G.S. 160A-536(3b), applies only to towns that have a population of between 2,000 and 2,500 at the time the district is created and that are located within a county whose land area exceeds 946 square miles according to the 1990 federal census.

One notable bill that did not pass was H 1288. The bill would have reorganized the state's MPOs and consolidated them. However, the bill attracted opposition from representatives from some of the smaller MPOs (most notably from the Chapel Hill–Durham MPO) and stalled. The bill, however, is eligible for further consideration in the year 2000 session of the General Assembly.

Local Government Generally and Other Topics

The General Assembly adopted several bills affecting land use that are discussed in other chapters. In the environmental area, legislation was enacted to extend the moratorium on new, large swine operations [S.L. 1999-329 (H 1160)], to allow land-use restrictions as part of the cleanup strategy for contaminated sites [S.L. 1999-198 (S 1159)], and to improve air quality by strengthening controls on motor vehicle emissions [S.L. 1999-328 (S 953)]. These bills are discussed in Chapter 10 (Environment, Natural Resources, and Solid Waste). In the economic development area, the General Assembly adopted several amendments to the Bill Lee Act, addressing among other things an affordable housing tax credit [S.L. 1999-360 (S 1115)]. These amendments are discussed in Chapter 5 (Community Development and Housing). Finally, the General Assembly tightened the standards for incorporations of new cities [S.L. 1999-148 (H 964)]. This law is discussed in Chapter 15 (Local Government and Local Finance).

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15

Local Government and Local Finance

The 1999 session was perhaps as notable for the changes that did not occur in the local government area as for those that did. But a large number of authorized studies, such as those in the areas of tax policy [S.L. 1999-395, Part III (H 163)] and smart growth [Section 16.7 of S.L. 1999-237 (H 168)], and bills that remain eligible for consideration in the 2000 "short" session [for example, legislation to provide for a constitutional amendment to limit legislative sessions (S 9), reform of local taxation of rental cars (S 1076), and increased penalties for cockfighting and related activities (H 959)] mean that the next year or two may present some interesting challenges and opportunities. Three of the most important acts passed were S.L. 1999-434 (S 222), which makes it easier for local governments to accept electronic, including credit card, payments for taxes and other bills; S.L. 1999-458 (H 964), which makes several changes in the procedures by which most new municipalities will be incorporated and in the procedures all new towns must follow to obtain state-shared revenues; and S.L. 1999-366 (S 708), which authorizes counties to engage in a broad range of housing programs.

This chapter deals with a broad range of bills of general interest to local government officials. For a more complete picture of legislation affecting cities, counties, and other local governments, also see Chapter 3 (Alcoholic Beverage Control), Chapter 5 (Community Development and Housing), Chapter 8 (Elections), Chapter 9 (Elementary and Secondary Education), Chapter 10 (Environment, Natural Resources, and Solid Waste), Chapter 11 (Health), Chapter 13 (Land Records and Registers of Deeds), Chapter 14 (Land Use Regulation, Planning, Code Enforcement, and Transportation), Chapter 16 (Local Taxes and Tax Collection), Chapter 17 (Mental Health and Related Laws), Chapter 19 (Public Personnel), Chapter 20 (Public Purchasing and Contracting), and Chapter 23 (Social Services).

Local Finance

Electronic Payments to State and Local Governments

S.L. 1999-434 amends both G.S. Chapters 147 (state agencies) and 159 (local governments) relating to the acceptance of most forms of electronic payments. Previously both state agencies and local governmental units (including hospitals) could accept credit cards, under certain conditions, and charge the taxpayer or customer the discount rate or service fee charged by the issuing bank (as opposed to passing such costs along to the taxpayer or consumer). The changes in these statutes focus primarily on terminology and the way in which discount rates/service fees may be funded.

First, single references to "credit cards" have been updated to include terms related to electronic payments, specifically "charge cards," "debit cards," and "electronic funds transfers." The other major change involves the discount rate and/or other service fees charged by issuing banks. State agencies and local governments now have the ability to pass such fees along to taxpayers or consumers who are paying electronically or to absorb such costs as part of the operating costs of the entity.

Finally, this bill creates the Office of Information Technology Services, a division of the Department of Commerce, to strengthen the overall management of information technology in state government by enhancing accountability and improving efficiency.

County Bonds for Land Purchases

G.S. 159-48(c), which provides authorization for counties to borrow money and issue general obligation bonds for particular purposes, was amended by S.L. 1999-378 (H 1084), allowing additional purposes for the borrowing or issuing of bonds. Counties may now borrow or issue bonds to provide land for present or future county corporate, open space, community college, and public school purposes. This change gives counties increased flexibility in issuing bonds to acquire land.

Provision of Affordable Housing by Counties

S.L. 1999-366 amends G.S. 159-48(c) to authorize counties to participate in providing affordable housing for low- and moderate-income persons. As part of their efforts, counties may enter into bonded indebtedness to finance the costs of providing housing projects for persons of low and moderate income. Such projects may be owned by a county, redevelopment commission, or housing authority. A project may provide housing for persons at other income levels if at least 40 percent of the units in the project are exclusively reserved for low- or moderate-income persons. Also such funds may be used to provide loans, grants, interest supplements, and other programs of financial assistance (but not rent subsidies) to persons of low and moderate income.

Additional Financing Opportunities for Hospitals

S.L. 1999-386 (H 1120) gives public hospitals authority to engage in installment purchase financing and to issue revenue anticipation notes. The act amends G.S. 160A-20 to include public hospitals among the entities that may enter into installment purchase contracts. It also amends G.S. 159-170 to allow public hospitals to issue revenue anticipation notes. In both cases a public hospital is specifically defined as "a nonprofit corporation or association operating or leasing a public hospital as defined in G.S. 159-39." G.S. 159-39 defines a public hospital as follows:

1. a hospital operated by a county, city, hospital district, or hospital authority; or
2. a hospital owned by a county, city, hospital district, or hospital authority and operated by a nonprofit corporation or association, a majority of whose board of directors or trustees are appointed by the governing body of a county, city, hospital district, or hospital authority; or

3. a hospital on whose behalf a county or city has issued and has outstanding general obligation or revenue bonds or to which a county or city makes current appropriations (other than appropriations for the cost of medical care to prisoners and indigents).

Also, in both cases, approval for the financing must be obtained from the city, county, hospital district, or hospital authority that owns the hospital. However, these governmental entities can only withhold approval for one of the following reasons:

1. The contract would cause the city, county, hospital district, or hospital authority to violate a covenant of an existing financing agreement.
2. The contract would restrict the ability of the city, county, hospital district, or hospital authority to incur anticipated bank eligible indebtedness under federal tax laws.
3. Entering into the contract would materially adversely affect the credit ratings, or the future financing abilities, of the city, county, hospital district, or hospital authority.

The provisions also clearly state that the public hospital must have an ownership interest in the property being financed through an installment purchase transaction. Similarly revenue anticipation notes may only be issued if the public hospital has the legal authority to collect and pledge such revenues for the repayment of the notes.

Budgeting and the Ratio of Property Tax Collections

Currently local governmental entities are prohibited from budgeting estimated property tax collections that exceed the percentage of the levy actually received in cash by June 30 of the preceding fiscal year. S.L. 1999-261 (S 484) amends G.S. 159-13A(b)(6) by adding language that adjusts this rule as it relates to the budgeting of the registered motor vehicle tax. Specifically the calculation for the anticipated *levy* of the motor vehicle tax should be based on the nine-month period ending March 31 of the previous year. The anticipated *collections* realized in cash for the motor vehicle tax should be based on the twelve-month period ending June 30 of the previous fiscal year. S.L. 1999-261 became effective July 1, 1999, and is applicable to budget ordinances for fiscal years beginning on that date.

Duty of County Commissioners to Fund Elections

S.L. 1999-424 (H 1072), Section 3(a), makes explicit a duty that has probably been assumed by most county boards of commissioners for many years. Specifically the board of county commissioners is required to provide reasonable and adequate funds for the legal functions of the county board of elections, including reasonable and just compensation of the director of elections. These requirements are codified in new G.S. 163-37.

Additional Collateral Options for Official Depositories

G.S. 159-31 requires local governments and public authorities to designate at least one official depository. In addition all funds on deposit in the official depository must be secured by deposit insurance, surety bonds, or investment securities. S.L. 1999-74 (S 417) simply allows letters of credit issued by the Federal Home Loan Bank also to be a form of security that these official depositories may use to secure these governmental deposits.

County Reductions in Appropriations to Mental Health Authorities

S.L. 1999-202 (S 1122) amends G.S. 122C-115(d) to give counties the ability to reduce their appropriations to area mental health authorities by the amount previously appropriated for any one-time, nonrecurring special needs. Otherwise counties are still prohibited from reducing county appropriations for current operations as well as for ongoing programs and services.

Studies

Tax Structure Study. S.L. 1999-395 establishes the North Carolina Tax Policy Commission, which is charged with undertaking an extensive review of the entire state and local taxation structure in North Carolina. The study is to establish "principles of taxation upon which a sound State and local tax structure should be built for the 21st century." To achieve this goal the fifteen-member appointed commission will study every aspect of taxation at both the state and local level, such as the income tax, sales tax, property tax, and the like. Taxation rates, costs of implementing taxes, tax burdens on individuals and businesses, as well as the overall principles of taxation, will be studied. The commission will also make extensive comparisons to other state and local governments in the nation. The findings and recommendations of the commission, due no later that March 1, 2001, could have a long-range impact on the taxation structure in place in North Carolina.

Transportation Finance Study. The 1999 Appropriations Act [S.L. 1999-237, sec. 27.2 (H 168)] establishes a Blue Ribbon Transportation Finance Study Commission charged with reviewing a full spectrum of issues involving the state's financing of highways and other forms of transportation.

Local Acts: Investments and Various Fees

Special Investment Authority for Durham and Pitt Counties. G.S. 147-69.2 establishes special investment authorizations for certain funds and systems in North Carolina. This statute, which allows a broader variety of investment options, is in addition to the general investment guidelines that must be followed for local governmental entities under G.S. 159-30. S.L. 1999-101 (S 653) authorizes the Durham County Community Health Trust Fund to invest its funds in accordance with G.S. 147-69.2. Pitt County received extensive funds from its transfer of Pitt County Memorial Hospital, and S.L. 1999-48 (H 847) effectively extends this authorization to them as well. However, both Durham County and Pitt County only have the authority to invest the specifically mentioned funds in accordance with this statute. All other funds of the respective counties are still subject to the general investment guidelines found in G.S. 159-30.

Fire Protection Fees. Following a trend begun in the 1998 session, Brunswick and Gates counties obtained local acts involving the establishment of fire protection fees. Union County, meanwhile, was affected by a minor amendment to an existing fire protection fee act.

S.L. 1999-323 (H 651) authorizes Brunswick County to create a fee-supported fire district for insurance grading purposes. Such a district may only be created, however, if the county receives one of the following:

1. a written request signed by at least two-thirds of the board of directors of a local fire department that contracts with the county to provide fire protection, or
2. a petition signed by 15 percent of the residential freeholders living in an area of the county.

This act also includes guidelines for establishing the district, its governing committee, its fee structure, and its policies for annexation of areas to the district.

S.L. 1999-242 (H 900) authorizes Gates County to impose fees for fire protection services. Such fees are not to exceed the costs of providing the services, and the act specifically identifies fee maximums per class of property. The fire protection fees may be billed and made payable in the same manner as property taxes.

Union County has an existing statute [G.S. 153A-236(c)] authorizing the assessment of fire protection fees. S.L. 1999-39 (H 797) amends this statute by exempting the North Carolina Department of Transportation (NCDOT) for real property held exclusively for highway use.

Septic System Inspection Fees Treated as Taxes. S.L. 1999-288 (H 638) deals with, among other things, fees collected by Gates and Hertford counties for the inspection of provisionally approved septic tanks or other innovative septic tank systems. As has been done in North Carolina with some other fees in the past, the act authorizes treating inspection fees like property taxes. They may be billed and payable in the same manner as property taxes, and if delinquent, they may

be collected in the same manner as delinquent taxes. If the ordinance provides for such collection, the fees are a lien on the real property described on the bill that includes the fee. These provisions apply to fees imposed for inspections performed on or after July 14, 1999.

Local Government

Incorporation and Annexation

Incorporation Procedures Revised. S.L. 1999-458 makes significant changes in the way most municipal incorporation proposals will be handled and the services and taxes that new towns will likely provide. It modifies the rules followed by the Joint Legislative Commission on Municipal Incorporations (G.S. Chapter 120, Article 20) as well as certain tax and other statutes. This legislation was supported by both the League of Municipalities and the Association of County Commissioners and was offered in reaction to the large number of new towns proposed in recent years, many of them at least in part designed to avoid annexation of an area by a nearby municipality.

For many years there has existed a Joint Legislative Commission on Municipal Incorporations, to which any legislator was entitled to send a proposal to incorporate a new town for study and evaluation. Referral of incorporation bills to the commission has been, and still is, voluntary, and the legislator and legislature may choose to follow or disregard the commission's findings. In recent years, however, both the House and the Senate have adopted rules requiring referral of incorporation proposals to the commission, and all four of the incorporation acts passed this session had been referred to the commission.

S.L. 1999-458 makes several changes in the commission's process, most of them designed to help insure that petitions for incorporation involve "real" towns intent on providing services. First, however, the act eases one of the incorporation standards. It drops the requirement that the commission may not make a positive recommendation to the General Assembly concerning incorporation unless the entire area proposed for incorporation meets the applicable "urban purposes" development criteria under North Carolina's annexation law.

Next, S.L. 1999-458 adds a requirement that the petition filed by those seeking the incorporation of the proposed municipality must contain statements that the municipality will have a budget ordinance with an ad valorem tax levy of at least five cents on the $100 valuation on all taxable property within its corporate limits, and that it will offer four out of a list of eight services by the first day of the third fiscal year following the incorporation's effective date. The list includes police protection, fire protection, solid waste collection or disposal, water distribution, street maintenance, street construction or right-of-way acquisition, street lighting, and zoning. Previously the statutes included a similar list of eight but with a requirement that two services be offered. As under the prior law, the commission may not make a positive recommendation unless the area to be incorporated submits a plan for providing a reasonable level of municipal services, and that plan is now based on the four services proposed.

To qualify for providing police protection, the new city must propose either to provide that service or to have it provided by contract with a county or another municipality that proposes to be compensated for providing supplemental protection. This requirement implies that simply asking the sheriff to continue to patrol within the town would not be enough, but asking the sheriff to increase patrols in return for an extra payment each year would qualify as providing police protection.

The minimum tax rate and service provision requirements are a reaction to the practice in some newly incorporated towns of simply collecting state-shared revenues, such as sales and utility franchise taxes, without directly imposing a tax burden on their citizens through property or business license taxes. Some of these towns also do not directly provide services beyond those that their citizens received prior to incorporation, such as private garbage collection, volunteer fire service, county sheriff protection, and perhaps county water service. The municipalities choose

instead to allow their bank accounts to grow, as they save, perhaps, for a large future project, such as a community center. To their critics, such towns are municipalities on paper only or "paper towns."

The requirement to provide four municipal services will not likely impose much of a burden on most newly incorporated North Carolina towns, which can take advantage of the widespread, statutorily approved practice of contracting for services. All North Carolina municipalities are entitled, under G.S. 160A-20.1, to contract with and appropriate money to any person, association, or corporation to carry out any public purpose in which the city is authorized by law to engage. Indeed small towns commonly provide many services by contract, for example, garbage collection through an arrangement with a private hauler, street maintenance through a contract with the NCDOT, or fire protection through an arrangement with a local volunteer fire department. The only limitation on such contracts under the incorporation commission law is the requirement noted above that some sort of payment arrangement (no dollar amount is specified) be made for police protection.

S.L. 1999-458 also provides several revenue inducements that strongly encourage newly incorporated local governments to keep their services and property taxes in place once they are enacted. It has been the case for many years that cities can only receive street maintenance or "Powell Bill" funds if they adopt an annual budget and levy a five cents per $100 valuation property tax. More recently, newer municipalities have also been required as a condition for receiving Powell Bill money to continue to provide the two services that they were required to have when they went through the incorporation commission process. S.L. 1999-458 specifies that municipalities that are incorporated with an effective date on or after January 1, 2000, must meet the regular Powell Bill requirements (budget, five-cent tax levy, and so forth) and must also show that funds have been appropriated for at least four of the services listed in the act in order to receive Powell Bill funds.

More significantly, receipt of other state-shared revenues is also tied to provision of services and levy of property taxes for municipalities incorporated with an effective date on or after January 1, 2000. They are prohibited from receiving any local option sales tax revenue, beer and wine tax funds, or funds from utility gross receipts taxes if they are disqualified from receiving Powell Bill money (that is, if they do not levy a five-cent property tax and provide at least four services). These new municipalities are also prohibited from receiving any of these other state-shared revenues unless a majority of the mileage of their streets is open to the public. This last requirement, which becomes effective with respect to distribution of funds on or after July 1, 1999, was prompted by the proposed and actual incorporation of gated private communities.

Note that while the revenue inducements noted above create strong incentives for newly incorporated towns to provide services and levy taxes, they do not create legal mandates. In North Carolina, each municipal and county governing board is free under the statutes to set its own property tax rate (with a few exceptions spelled out in specific city charters) and to determine what services it will provide. Once a newly incorporated town has fulfilled its pledge to the incorporation commission by adopting an annual budget with a five-cent tax rate and provision for four services, it is probably free in subsequent years to choose a different level of taxation and services. If the town's governing board wishes to forego state-shared revenues, lower the tax rate to two cents or zero, and provide less than four services, it is probably free to do so.

Additional requirements imposed by the act as conditions for a positive recommendation from the Commission on Municipal Incorporations relate to population density and the fiscal impact of the incorporation on neighboring communities. The commission is not to make a positive recommendation unless the proposed municipality has a population density, either permanent or seasonal, of at least 250 persons per square mile, and coastal areas no longer have an exception to the requirement that 40 percent of the area either be developed or be dedicated as open space. In addition the commission must in its report indicate the impact on other cities and counties "of diversion of already levied local taxes or State-shared revenues from existing local governments to support services in the proposed municipality."

When a new city or town is incorporated, the amount of such state-shared revenues as local option sales taxes and beer and wine tax receipts that other local governments in that county

receive may change. That change may not be significant, however, if the new town's population is small and its tax rate is low. The amount of another state-shared revenue source, utility franchise taxes, is based on energy consumption within a municipality and is not affected by a new incorporation. It is not clear how already levied local taxes would be diverted and what the effect of such a diversion would be.

In general S.L. 1999-458 became effective August 13, 1999. Its substantive provisions [other than the repeal of G.S. 120-169.1(a)] do not apply to any community that first filed a petition with the commission prior to July 20, 1999, or to the communities of Gray's Creek in Cumberland County and Union Cross in Forsyth County if either community files a petition with the commission before July 1, 2002.

The impact of the new requirements that petitioners must meet to receive a positive recommendation from the Joint Legislative Commission on Municipal Incorporations depends, of course, on whether an incorporation proposal goes through the commission and whether the General Assembly follows the commission's recommendations. The impact of the revenue and taxation incentives of S.L. 1999-458, on the other hand, will be much broader and should result in a higher level of property taxation and service provision by most towns in North Carolina that are incorporated in 2000 and beyond.

Incorporations and Mergers. Four acts to incorporate new towns passed during the 1999 session. St. James, S.L. 1999-241 (H 863), is located in Brunswick County and will operate under the council-manager plan. Of particular interest in its charter is a provision that forbids the town from becoming involved in planning or land use regulation (including building inspection) activity before December 31, 2009. Brunswick County will provide such functions and regulation until that time.

Bermuda Run, S.L. 1999-94 (S 691), in Davie County, is formed by the simultaneous dissolution of the Bermuda Run Sanitary District and is another council-manager jurisdiction. The new town is notable in that it is not allowed to annex property without the vote or consent of a majority of the residents of the property being annexed, and the town's property tax rate may not be increased above fifteen cents per $100 of valuation without the residents' voted consent.

Rimertown, S.L. 1999-284 (S 694), in Cabarrus County, and Mineral Springs, S.L. 1999-175 (S 314), in Union County, are both incorporated subject to voter approval. If approved, each town will operate under the mayor-council form of government.

Two mergers of municipalities also were approved this session. Under S.L. 1999-66 (H 221), effective July 1, 1999, Long Beach and Yaupon Beach in Brunswick County officially became the town of Oak Island. S.L. 1999-9 (S 43) provides for Alexander Mills to be consolidated into Forest City if Alexander Mills' voters approve a referendum to that effect no later than May 31, 2000.

Clarify Time for Action on Remand after Court Review of Annexation Ordinances. After a court reviews a challenge to an annexation ordinance and makes its decision, it may remand the ordinance or annexation report to the city council for further action. S.L. 1999-148 (S 77) provides that the municipality has ninety days to act following entry of the order embodying the court's instructions.

Property Transactions

Notice of Owner's Rights in Notice of Quick Take Condemnation Action. During this session, H 644 was introduced by legislators who wanted to make certain that persons whose property was being taken for public use through a "quick take" procedure clearly understood their legal rights. Under quick take a public entity takes immediate ownership of the property, and the amount owed in payment to the former private owner is determined later in court. During the session, procedural and other concerns that some public condemnors had about the original bill led to the compromise that was enacted as S.L. 1999-410.

Under the act the public condemnor's notice to property owners in quick take actions must be printed in at least twelve-point, bold, legible type with words such as "Notice of condemnation" appearing conspicuously on it. The notice must include a plain-language summary of the owner's

rights, including the right to commence an action for injunctive relief and the right to answer the complaint after it has been filed. The notice must also include a statement advising the owner to consult with an attorney regarding the owner's rights. Finally, the act provides that the owner is not entitled to relief because of any defect or inaccuracy in the notice unless he or she was actually prejudiced by the flaw and is otherwise entitled to relief under law.

County Help with Community College and Public School Construction Financing. During the last several years a number of local bills were enacted to marry the statutory authority of counties to finance the acquisition of real and personal property and the construction of improvements on real property with the statutory authority of school boards and community college boards of trustees to provide the buildings and equipment needed for educational purposes. S.L. 1999-115 (H 239) goes a step further by giving statewide authorization for financing and other types of advantageous property transactions between boards of county commissioners and community college boards of trustees, so long as the financing obligations are a county's responsibility.

The applicable new statutes are G.S. 153A-158.2 and 115D-15.1, and several conditions are imposed on each arrangement. First, the board of trustees of the community college within the county must request the board of county commissioners to acquire the property interest. Second, a public hearing must be held, and third, the State Board of Community Colleges must approve the actions of the board of trustees. At the end of the financing period, or if none, the construction period, the property belongs to the community college.

In connection with the passage of S.L. 1999-115, several local acts, but not any actual agreements, are repealed, effective January 1, 2000. The act applies to agreements entered into on or after May 28, 1999.

In addition to this statewide act, S.L. 1999-65 (S 709) makes Mecklenburg County and its public school system the seventy-sixth county with similar local authority under G.S. 153A-158.1.

Commissioner Consent to Property Acquisition. Under G.S. 153A-15(c) the county commissioners in four-fifths of North Carolina's counties must give their consent before any other local government may acquire property located in that county. S.L. 1999-6 (H 37) adds Lenoir and Wayne counties to the list, bringing the total to 82 of 100 counties. It is common for the General Assembly to make laws applicable statewide when over half the counties in the state ask to be made subject to them. Nevertheless, this has not occurred in the case of the commissioner consent statute, despite a prediction in this chapter of the legislative summary as early as 1993 that it soon might.

Housing

Counties May Provide Affordable Housing. S.L. 1999-366 adds an important new statute, G.S. 153A-378, which authorizes counties to engage in a variety of activities to help provide low- and moderate-income housing for their citizens. This act demonstrates that in recent decades North Carolina counties have come to share many powers and responsibilities formerly associated more closely with municipalities. Provision of adequate housing is of course both a rural and an urban issue.

Specifically counties may now (in addition to their powers under G.S. 153A-376 and -377):

1. Engage in and appropriate and expend funds for residential housing construction (new or rehabilitated) for the purposes of sale or rental to persons and families of low to moderate income. The governing board has specific authority to contract for this service.
2. Acquire real property by voluntary purchase to be developed or used by the county to provide this affordable housing.
3. Convey property by private sale to any public or private entity that provides affordable housing to low- or moderate-income persons. The county may establish procedures and standards for this action. The conveyance must include covenants or conditions that assure that the property will be developed by the entity for sale or lease to persons of low or moderate income.

4. Convey residential property by private sale under county procedures and standards to persons of low and moderate income in accordance with G.S. 160A-267 and any terms and conditions that the county commissioners may determine. The G.S. 160A-267 private sale procedure is usually not available for real estate conveyances.

In addition S.L. 1999-366 authorizes counties to use property tax funds from the up to $1.50 per $100 levy to undertake housing programs for low- and moderate-income persons as provided in G.S. 153A-378.

Finally, as discussed in the finance section of this chapter, the act amends the General Obligation Bond Act to authorize issuance of bonds to finance the cost of providing housing for persons of low or moderate income.

Housing Authority Must Have Assisted Person as Member; Maximum Size Increased. S.L. 1999-146 (H 951) makes two changes affecting the structure of housing authorities in North Carolina. First, it requires, for both city or county and regional authorities, that at least one of the appointed housing authority commissioners be a person who is directly assisted by the authority. Second, it increases the maximum size of a city or county housing authority from nine to eleven commissioners.

The "assisted commissioner" requirement was already the law for city and county authorities in fifty-three counties. Most (though not all) of the forty-seven counties not covered previously by the law have small populations, and the new act contains an exception that perhaps recognizes this reality. Appointment of an assisted commissioner is not required if the authority operates less than 300 public housing units, the authority provides reasonable notice to its resident advisory board(s) of the opportunity to serve as a commissioner, and within a reasonable time after the board(s) received the notice, the authority has not been notified of any such person's intention to serve.

Two other provisions of S.L. 1999-146 are worthy of note. First, an assisted commissioner does not continue to serve in that capacity after he or she ceases to receive assistance. Second, the act continues for local boards and adds for regional boards the current law's prohibition of assisted commissioners voting on matters affecting their official conduct or their own individual tenancy.

Housing Authority Exempt from Real Estate Licensure. Public housing authorities are regularly engaged in leasing the property they manage, and they might also occasionally be involved in selling some of their real estate. S.L. 1999-409 (H 438) makes clear that the requirements of the real estate licensure law, G.S. Chapter 93, do not apply to any housing authority organized under G.S. Chapter 157 or its regular employees when they are performing acts authorized in Chapter 93 as to any property owned or leased by the authority. The exception does not apply to persons or business entities that contract with an authority to sell or manage property the authority owns or leases.

Public Records

CD-ROM Records in Court and Possibly as Permanent Copies. Advances in technology have led to new methods of storing records. S.L. 1999-131 (S 1021) recognizes permanent, nonerasable or alterable, computer-readable media such as CD-ROMs as sufficiently reliable that they can be admitted into evidence in court. The act also offers the possibility that CD-ROMs might be kept as permanent records in many cases, but only with the express approval of the Department of Cultural Resources under guidelines issued by the department.

Specifically S.L. 1999-131 amends G.S. 153A-436 and 160A-490, applicable to photographic reproduction of county and city records respectively, to make those sections apply to records stored on CD-ROMs and other such media. The provisions do not apply to magnetic tape, CD-R, or CD-RW. S.L. 1999-131 also amends G.S. 8-34 and 8-45.1, which apply to records in a wide range of government offices, and G.S. 8-45.3, which applies to records of the Department of Revenue. In all cases nonerasable, computer-readable storage media cannot be used "for preservation duplicates, as defined in G.S.132-8.2, or for the preservation of permanently valuable records as provided in G.S. 121-5(d), except to the extent expressly approved by the Department of Cultural Resources pursuant to standards and conditions established by the Department."

Electronic Signatures and Records. Other technological changes affecting public records involve electronic signatures and electronic records. In an act that may be of interest to local governments as a possible harbinger of things to come, S.L. 1999-247 (H 957) authorizes an electronic or facsimile signature by a physician signing a death certificate when specifically approved by the State Registrar and allows the creation and maintenance of electronic medical records.

Police Power

Sedimentation Pollution Control Act of 1973 Changes. S.L. 1999-379 (H 1098) makes several changes that will affect local governments that enforce the Sedimentation Pollution Control Act, G.S. Chapter 113A, Article 4, through local ordinances. Similar changes are made for enforcement at the state level. A local government must now condition approval of a draft erosion control plan upon the applicant's compliance with federal and state water quality laws, regulations, and rules, and it must forward to the Director of the Division of Water Quality a copy of each erosion and sedimentation control plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table of the tract. The maximum civil penalty for a violation is now set at $5,000 (rather than $500 as it formerly was in many cases), and a penalty may be assessed from the date of the violation rather than the date the notice of the violation is served. S.L. 1999-379 also adds to G.S. 87-10(b) a requirement that the general contractor's examination include the applicant's knowledge of the sedimentation act and the rules adopted pursuant to it.

Nuisance Statutes Revisions. S.L. 1999-371 (S 929) makes several revisions to the public nuisance laws found in G.S. Chapter 19. These statutes deal with maintaining places for gambling, prostitution, illegal alcohol or controlled substance use, and the like, and the revisions generally have the effect of strengthening and clarifying those statutes. Three changes should be of particular interest to local officials.

A city, a county, or a private citizen may already maintain a civil action in the name of the state to abate and enjoin the maintenance of a nuisance. Under S.L. 1999-371 the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety or any other law enforcement agency with jurisdiction is specifically authorized, upon request of a county, municipality, sheriff, or chief of police, to investigate alleged public nuisances and make recommendations regarding actions to abate them. Second, S.L. 1999-371 clarifies that no legal action may be maintained against any public official or public entity or its employees or agents for investigating or maintaining an action for abatement of a nuisance. Third, the act adds breach of the peace as defined in the statute to the offenses that can constitute a nuisance and lead to the penalties under the act.

Littering Law Strengthened. S.L. 1999-454 (H 222) strengthens the penalties for violating North Carolina's littering statute, G.S. 14-399. While littering and beautification of public property are of concern to cities and counties, G.S. 14-399 generally takes the place of local ordinances on the subject. Under S.L. 1999-454 the fine is increased to a range of $250 to $1,000 for first offenses and $500 to $2,000 for subsequent offenses within three years involving 15 pounds or less of noncommercial litter, and a range of $500 to $2,000 for violations involving 15 to 500 pounds of noncommercial litter. In addition the act requires specified types of community service for any person who violates G.S. 14-399 in an amount exceeding 500 pounds or in any quantity for commercial purposes or who discards litter that is a hazardous waste.

Personal Watercraft Safety Laws Strengthened. The safety of boaters is a concern of local governments that include significant bodies of water within their borders. S.L. 1999-447 (H 1209) seeks to improve boating safety by regulating personal watercraft, sometimes called jet skis, more stringently. The act makes the regulatory statute, G.S. 75A-13.3, apply statewide. It allows local governments, marine commissions, and local wake authorities with statutory authority under G.S. 160A-176.2 (a local act allowing a number of coastal municipalities to regulate and control personal watercraft operation) or any other law authorizing such regulation to adopt more stringent (but not more lenient) regulations than the provisions of G.S. 75A-13.3, or to regulate aspects of

personal watercraft operation not covered by it. Whenever a local unit does so, it must conspicuously post signs reasonably calculated to provide notice to personal watercraft users of the stricter regulations.

The act imposes a minimum age requirement of sixteen for operation of personal watercraft, with an exception for twelve- to sixteen-year-olds who are either accompanied by a person eighteen or older or who have taken a boating safety education course. S.L. 1999-447 also requires insurance for jet ski rental companies (with violators guilty of a Class 2 misdemeanor and subject to up to a $1,000 fine), strengthens rules about the required types of flotation devices and about water skiing from personal watercraft, and adds additional "rules of the road" for jet ski operation.

Local Acts. S.L. 1999-181 (H 426) and S.L. 1999-182 (H 514), both effective January 1, 2000, authorize the municipalities of Greensboro (both acts), High Point (first act), Rocky Mount (first act), Wilmington, Greenville, Huntersville, Matthews, and Cornelius (all second act) to use photographic images as prima facie evidence of a traffic violation. They join Charlotte and Fayetteville, which previously were granted this authority, codified in G.S. 160A-300.1.

S.L. 1999-181 and -182 also make two important modifications in the enabling statute that apply to Charlotte and Fayetteville as well. They specify that any traffic control photographic system installed on a street or highway must be identified by appropriate advance warning signs conspicuously posted not more than 300 feet from the system's location. The signs must be consistent with a statewide standard that the DOT is to adopt in conjunction with the authorized local governments. The acts also specify that no insurance points as authorized by G.S. 58-36-65 are to be assigned to the vehicle owner or driver for a violation detected by a photographic system.

S.L. 1999-58 (H 776) authorizes Roanoke Rapids to send an annual notice to chronic violators of the city's overgrown vegetation ordinance, alerting them that the city will, without further notice, remedy any ordinance violations during the calendar year of the notice and that the expense of the action will become a lien on the property to be collected as unpaid taxes. *Chronic violators* are property owners on whose property the city took remedial action under the ordinance at least three times in the previous calendar year.

S.L. 1999-64 (S 652) amends G.S. 14-111.2 and 14-111.3 to add Durham to those counties in which it is a misdemeanor to obtain ambulance services without intending to pay for them (now forty-two counties) or to make unneeded ambulance requests (now nineteen counties).

Traffic Regulation in Counties and Municipalities

Four laws enacted this session deal with traffic regulation. Interestingly two of the four laws apply to counties as well as to cities. Even though counties do not construct or maintain roads in North Carolina, county sheriff departments (and county police departments in a few counties) play an important role in law enforcement.

Permission to Preempt Traffic Signals in Emergency Situations. Emergency vehicles are often in danger when they must proceed against the light through intersections. S.L. 1999-310 (S 527) should help reduce this hazard somewhat. It amends G.S. 20-169 to authorize local authorities to pass ordinances authorizing law enforcement, fire, ambulance, and rescue squad emergency vehicles to preempt any traffic signals on city streets or state highways within the local authority's boundaries. NCDOT approval is required for state highways, and NCDOT must respond to approval requests within sixty days. Presumably a city would have to pass an ordinance that applied to city or county vehicles operating within city limits, while a county would have to pass an ordinance applying to vehicles operating outside municipal limits.

Respecting Funeral Processions. S.L. 1999-441 (H 247) codifies "rules of the road" for funeral processions in North Carolina in a new statute, G.S. 20-157.1. Importantly for local governments, the act specifies that to the extent that a local ordinance directly conflicts with any part of G.S. 20-157.1, the local ordinance controls. A violation of the new statute does not constitute negligence per se, nor is it to be considered a moving violation for purposes of provisions G.S. 58-36-65 or 58-36-75 of the insurance law.

Among the rules codified in G.S. 20-157.1 are the following. The lead vehicle in a funeral procession is to comply with all traffic-control signals, but once that vehicle has lawfully passed

across an intersection, all vehicles in the procession may proceed through the intersection without stopping, but exercising reasonable care. Operators of other vehicles may not knowingly drive between vehicles in a funeral procession, or pass a funeral procession when driving in the same direction, unless there are two or more lanes of moving traffic in that direction. Vehicles proceeding in the opposite direction of a funeral procession may yield to the funeral procession by reducing speed or by stopping completely off the roadway so that operators of other vehicles proceeding in the opposite direction of the procession can continue to travel in their lane of traffic.

While S.L. 1999-441 acknowledges that state and local law enforcement officers may escort funeral processions in law enforcement vehicles, it does not include other provisions about officers' involvement that had been in the original bill because of concerns about their effect on the public duty doctrine.

Transitways Permitted. S.L. 1999-350 (H 1085) authorizes cities to designate one or more travel lanes on the streets or highways of the municipal street system as "transitways." The DOT is authorized to do the same for roads on the state highway system. Once a transitway is designated and has been appropriately marked with signs or other markers, it is reserved for publicly or privately operated transportation vehicles, such as buses or vans, as determined by the city having jurisdiction.

Handicapped Parking and Signs Fines Increased. S.L. 1999-265 (H 143) amends G.S. 20-37.6(f) to increase the penalties for parking in a handicapped space without authorized use of a designated plate or placard, obstructing a curb ramp or curb cut for handicapped persons, or failing to use proper signs to designate handicapped parking spaces. In each case the penalty is increased to at least $100 but no more than $250 from a range of $50 to $100. S.L. 1999-265 becomes effective January 1, 2000.

Economic Development

Urban Area Revitalization Service Districts Authorized. S.L. 1999-388 (S 772) allows the creation of service districts for urban area revitalization projects in cities of more than 150,000. Such projects include the provision within urban areas, as defined in the act, of any service or facility that may be provided in a downtown area as a downtown revitalization project under existing law. S.L. 1999-388 gives North Carolina's larger cities a fair amount of flexibility to use service districts as an economic development and redevelopment tool in that a portion of a city can qualify for the urban area designation in any of several ways.

An urban area can be the central business district of a city, or it can be an area consisting primarily of existing or redeveloping concentrations of industrial, retail, wholesale, office, or significant employment-generating uses or any combination of them. It can be an area located along a major transportation corridor that apparently does not include any nearby residential parcels according to criteria specified in the act. Finally, it can be an area that has a major concentration of public or institutional uses as its center and focus.

Alcoholic Beverage Sales in Urban Redevelopment Areas. Officials in some North Carolina cities have expressed concerns about grocery or convenience stores that they perceive to be selling primarily alcoholic beverages. They see a connection between these sales and undesirable behavior in the surrounding neighborhoods, which they attribute to the detrimental effects of store patrons drinking nearby.

S.L. 1999-322 (S 812) addresses some of these concerns. New G.S. 18B-309 prohibits a food or retail business or eating establishment, as defined in the Alcoholic Beverage Control (ABC) law, that holds an ABC permit and is located in a part of a city that has been designated as an Urban Redevelopment Area under G.S. Chapter 160A, Article 22, from having alcoholic beverage sales in excess of 50 percent of the business's total annual sales. In addition G.S. 18B-309 establishes new monthly record-keeping requirements for such businesses concerning alcoholic beverage and other sales. If a permittee is found in violation of G.S. 18B-309, the state ABC Commission must suspend or revoke a permit issued by it.

Audits of a business's records may be conducted by the commission only upon the request of the city council, and a city may request an investigation of a particular business only once in each

calendar year. If a city requests an investigation, the commission is to report to the city council only the percentage of annual alcohol sales in proportion to the business's total annual sales.

Boards and Commissions

Appointment of Women to Statutorily Created Boards. S.L. 1999-457 (S 333) states the General Assembly's intent to recognize the importance of gender balance in appointing members of statutorily created decision-making and regulatory boards, commissions, councils, and committees while at the same time declaring that selecting well-qualified candidates is the paramount consideration. To this end the act states that local "appointing authorities," such as city councils and boards of county commissioners, should, in appointing members to any such body, select from among the most qualified persons those whose appointment would promote membership that is proportional to the percentage that each gender represents in the population of the area represented by the body. Nothing in the act is to be construed to require an appointing authority to make an appointment or to remove an appointee on the basis of gender; its purpose is to "encourage gender equity," not "direct, mandate, or require such."

The act requires each appointing authority to designate someone to be responsible for retaining all applications for appointment to boards covered by S.L. 1999-457. This person is to ensure that information describing each applicant's gender and qualifications is available for public inspection during reasonable hours.

An annual report must be compiled by December 1 disclosing the number of appointments from each gender made during the preceding year, as well as the total number of appointments of each gender that have been made, expressed both in numerical terms and as a percentage of the total membership of the board, commission, council, or committee. If a county or city is the appointing authority, the report is to be filed with the clerk to the board of county commissioners or the city clerk and reported by December 1 to the county or city governing board and to the Secretary of State.

The act only applies to "statutorily created" boards, commissions, councils, and committees. Probably many fewer local boards are covered by the law than might appear at first glance. For example, zoning boards of adjustment and boards of equalization and review are set up by statute with detailed guidelines for their operation, while planning boards and recreation advisory boards may be of practically any size with any term of office desired by a city or county. The first two boards are probably covered by the act, while the last two may not be. Local officials should consult their attorneys to determine on a case-by-case basis the boards to which the law applies.

Local Workforce Development Boards. Section 16.15(b) of the 1999 Appropriations Act, S.L. 1999-237, establishes local Workforce Development Boards as part of the state's effort at workforce training and development under its new Commission on Workforce Development. Local elected officials are to appoint members of these boards in accordance with criteria established by the Governor and with provisions of the federal Workforce Investment Act. The local boards are to have a majority of business members and are also to include representation of workforce and education providers, labor organizations, community-based organizations, and economic development boards as determined by local elected officials. Board chairs are to be selected from among the business members. The boards' duties are set out in new G.S. 143-438.11(a).

Police and Fire

Two acts passed this session involving law enforcement and fire departments and their personnel should be noted.

Testimonial Privilege for Law Enforcement Communications with Peer Counselors. S.L. 1999-374 (S 995) makes communications between law enforcement officers or their immediate families and peer counselors, necessary to enable the counselor to render counseling services, privileged for purposes of testifying in court. Thus the communications do not have to be disclosed except in certain instances. A peer counselor is someone who has received training to

provide emotional and moral support and counseling to law enforcement employees and their immediate families and has been designated by the sheriff, police chief, or other law enforcement agency head to counsel a client law enforcement agency. Disclosure is required under S.L. 1999-374 if the client or his or her estate's representative authorizes it, a court compels it as necessary to the proper administration of justice, or the privilege does not apply because of the peer counselor's particular role in the case, because the communications relate to a violation of criminal law, or because of other factors such as suspected child or disabled adult abuse or neglect.

Volunteer Fire and Rescue Departments May Have Three Paid Members and Still Receive Grants. S.L. 1999-319 (S 515) amends the statutes [G.S. 58-87-1(b) and -87-5(b)] that authorize the Department of Insurance to award grants to volunteer fire departments serving response areas of 6,000 or less in population, and to volunteer rescue or rescue/EMS units, to authorize awards if these organizations have paid members filling the equivalent of up to three full-time paid positions. Under previous law the limit was two paid members with no specific provision for full-time equivalency calculations.

Studies of Importance to Local Governments

Many issues of importance, perhaps more than in most years, were deferred by this year's General Assembly for further study between sessions. Several of these are of importance to local governments. In addition to the transportation finance and taxation studies mentioned in the "Local Finance" section of this chapter, the following are some others of note.

Smart Growth Commission. Section 16.7 of S.L. 1999-237 creates the Commission to Address Smart Growth, Growth Management, and Development Issues. This thirty-seven-member commission, which includes four representatives each from the League of Municipalities and the Association of County Commissioners, will study a variety of growth-related topics. These include incentives to encourage local governments to develop and implement sound land-use management practices; planning and growth management goals and practices; funding requirements for implementation of comprehensive planning; and incentives to promote the continued use of farmlands for agriculture and the maintenance of the agricultural economy. The commission and its duties are described in detail in Chapter 14 (Land Use Regulation, Planning, Code Enforcement, and Transportation).

Others, Including Roads. Among the many studies that the Legislative Research Commission is authorized to undertake by S.L. 1999-395, the following may be of interest to local governments: a study of home rule for local governments as practiced in other states, possibly leading to something similar for North Carolina local governments; a study of the processes for conflict resolution between county commissioners and local school boards; and a study of municipal participation in state road funding. In addition the Joint Legislative Transportation Oversight Committee is authorized to study whether the state should pay for nonbetterment utility relocation costs when roads are constructed or improved and whether or not the state should accept and maintain subdivision roads and streets that do not meet state standards. Each of these could have financial implications for local governments.

Finally, a study authorized by S.L. 1999-436 (S 829) will be of interest to local governments along the Interstate 40 corridor in the eastern part of North Carolina. Among other things, S.L. 1999-436 directs the Joint Legislative Transportation Oversight Committee to study banning the erection of additional outdoor advertising along the portion of Interstate 40 from the Orange–Alamance County line to the Wilmington municipal limits. Pending the committee's report to the 2000 regular session of the 1999 General Assembly, the act imposes a moratorium on the erection of new outdoor advertising along that stretch of highway. The moratorium expires July 1, 2000.

Miscellaneous

Elections Law Changes. Elections law changes affecting cities and counties are described in Chapter 8 (Elections). However, two acts in particular deserve the attention of local officials. S.L. 1999-227 (H 248) provides rules concerning precinct boundaries and municipal redistricting after

the 2000 Census and allows for delays in elections. S.L. 1999-426 (H 1074), Section 6, requires city councils in cities with municipal boards of elections to notify the State Board of Elections in writing of municipal board of elections appointments and to provide other information about the municipal board that the state board may require. The act requires municipal board members and elections officials to participate in training provided by the state board and requires the state board to provide the same training, materials, and assistance to municipal boards as to county boards. S.L. 1999-426, Section 6, also has emergency provisions for county boards to conduct municipal elections in certain instances. Section 6 becomes effective January 1, 2000, except that every city council with a municipal board of elections is to provide to the State Board of Elections by August 1, 1999, a list of the members and supervisor of the municipal board of elections in its municipality, along with addresses and telephone numbers.

Building Inspection Contracts. S.L. 1999-372 (S 966) amends G.S. 153A-353 and G.S. 160A-413 to authorize counties and cities, respectively, to enter into building inspection contracts with the employers of certified building inspectors. The employees of these companies are added to certain conflict of interest provisions of G.S. 160A-415 and 153A-355. The act provides that contracts with individuals who are not city or county employees or with the employers of such individuals may be entered into only for specifically designated projects. The act is described in detail in Chapter 14 (Land Use Regulation, Planning, Code Enforcement, and Transportation).

The authorization in S.L. 1999-372 is redundant of that in G.S. 153A-449 and G.S. 160A-20.1, which authorize counties and cities, respectively, to contract with and appropriate money to any person, association, or corporation in order to carry out any function that the county or city is authorized by law to engage in. It is unclear how this general authorization relates to the act's limitation of building inspection contracts to specific projects.

Change in County Form of Government

S.L. 1999-37 (H 429) validates a voter referendum that approved changing the Madison County Board of Commissioners from straight four-year to staggered four-year terms, beginning in 2002. The staggering system will be established by electing commissioners that year to a combination of two- and four-year terms. In addition under S.L. 1999-37 the Madison County board expands from three to five members on the first Monday in December 2002.

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16

Local Taxes and Tax Collection

The major developments in the 1999 session concern legislation that was not enacted. Although numerous bills were introduced to amend the exclusion for the elderly and disabled, none passed. Major legislation that was enacted dealt with the exclusion for retirement centers, the appraisal date for motor vehicles, and tax lien advertising procedures.

Assessment

Listing

Statewide Permanent Listing. The Machinery Act's basic plan for listing real property makes it the duty of property owners to list all of their real property each year during the regular listing period. Failure to perform this duty subjects the owner to a 10 percent penalty for not listing. The duty to list arises each year even though the property has not changed hands and has not been improved in any way since it was last listed. As recently as 1973, when the Machinery Act underwent its most recent comprehensive revision, most counties followed this basic plan.

The Machinery Act provides an alternative listing plan for real property known as permanent listing. Under the permanent listing plan, it is the county assessor's duty to list all real property in the county. Owners are required to report any improvements on or separate rights in the property occurring in the previous year, but an owner whose property has undergone no change in the previous year is relieved of the duty to make any listing or report with respect to the property. Approval of the Department of Revenue is required for a county to adopt a permanent listing system.

Over the past quarter-century all but 6 of the state's 100 counties have obtained approval for a permanent listing system for real property. According to the Department of Revenue, the six counties still using the basic plan are Clay, Graham, Swain, Vance, Warren, and Yancey.

Session Law 1999-297 (S 817) requires all counties to install a permanent listing system approved by the Department of Revenue no later than the 2004 tax year. Thereafter the traditional basic listing system will not be an option. This mandate's most immediate impact is on the six counties still using the basic system, but also counties that have moved to permanent listing may not go back to the basic system. S.L. 1999-297 amends G.S. 105-312 to provide that the discovery penalty does not apply to real property that has not changed hands and has not been improved since it was last listed. This change affects only the six counties still using the basic system. It is repealed effective for the 2004 tax year, when it will become obsolete.

Exemptions and Exclusions

Art Objects. S.L. 1999-337 (S 55) transfers the exclusion from taxation of art objects held by the North Carolina Art Society from G.S. 140-15, which the act repeals, to new G.S. 105-275(41).

Continuing Care Retirement Homes. As concerns property taxation, residential retirement homes or communities in North Carolina can be grouped into four categories. The first category includes facilities that qualify under G.S. 105-278.6 as a charitable "home for the aged, sick, or infirm." A principal criterion for this exemption requires a substantial element of charity in that many, if not most, residents of the facility are subsidized by endowment income or charitable contributions. The second category includes facilities financed by revenue bonds issued by the North Carolina Medical Care Commission. These facilities are exempted from taxation by G.S. 131A-21 as long as the bonds issued to build them remain outstanding. The third category can be described as noncharitable, nonreligious. Facilities in this category have no ties to religious organizations and all residents pay the full cost of the services they receive. This category includes both nonprofit and for-profit facilities. Nonprofit facilities in this category have been held to be subject to property taxes.[1] The fourth category can be described as noncharitable religious in that the facility has current or historic ties to a religious organization but its operations cannot be fairly described as charitable. Many facilities in this category were established years ago and originally operated as bona fide charitable organizations. Typically these older facilities were granted exempt status long ago under G.S. 105-278.6 and have continued to enjoy that status without challenge.

Within the past two decades, major changes have occurred in the operation and financing of retirement homes. The traditional charitable "home for the aged, sick, or infirm" has been all but replaced by for-profit nursing homes and nonprofit residential retirement communities. Indeed, most of the older facilities that were originally established as charitable institutions by religious organizations and fraternal orders have converted their operations to the new model. On the whole, residents of modern residential retirement communities are financially independent and have no need for financial assistance or subsidy. This fundamental change in the operations of "homes for the aged" has meant that new facilities sponsored by religious organizations and fraternal orders have found it difficult to qualify for property tax exemption under G.S. 105-278.6. By the same token, many facilities that have enjoyed tax exemption for decades find their exempt status being questioned.[?]

In 1987 the General Assembly enacted G.S. 105-275(32) to classify and exclude from property taxation facilities in the fourth category (noncharitable religious). This brought about a degree of equity between old-line institutions that were already exempt and new ones being established. The General Assembly did not intend, however, to extend the exclusion to nonprofit facilities in the third category (noncharitable, nonreligious). To avoid that result the legislation fixed as one of the requirements for exclusion that the facility be owned, operated, and managed by a church or other religious organization, a Masonic organization, or a nonprofit corporation

1. *In re* Chapel Hill Residential Retirement Ctr., Inc., 60 N.C. App. 294, 299 S.E.2d 782, *cert. denied*, 308 N.C. 386, 302 S.E.2d 249 (1983).

2. *In re* Moravian Home, Inc., 95 N.C. App. 324, 382 S.E.2d 772, *appeal dismissed and cert. denied*, 325 N.C. 707, 388 S.E.2d 457 (1989), *cert. denied*, 498 U.S. 1047 (1991).

whose board of directors is controlled by a religious or Masonic organization. The exclusion also required that the facility have an active program to generate funds for residents who need financial assistance. On April 3, 1998, the North Carolina Supreme Court held that granting an exclusion to the fourth category of retirement facilities but not to nonprofit facilities in the third category is unconstitutional as an establishment of religion in violation of the First Amendment.[3] As a result, nonprofit religious and Masonic retirement homes previously thought to be exempt from property taxes became taxable and were subject to discovery for 1998 taxes.[4]

The 1998 session of the General Assembly acted swiftly to preserve the status quo, at least temporarily. G.S. 105-275(32) was recodified as G.S. 105-278.6A and revised to eliminate the tie to religious organizations. The revised section was given an expiration date of July 1, 2000, and the Legislative Research Commission was directed to conduct a broad study of tax exemptions for all types of nonprofit institutions. Unfortunately the 1998 legislation also had a serious constitutional defect. One of the eligibility criteria specified by G.S. 105-278.6A was that the facility's charter or bylaws "as they existed on August 15, 1998" meet certain requirements. Defining the class by criteria as of a specific date in the past made this legislation unconstitutional. The courts have held that it is a violation of the Equal Protection Clause of the Fourteenth Amendment to enact classified legislation that conditions eligibility on facts as they existed on a specific date in the past.[5]

S.L. 1999-191 (S 325) rectifies the constitutional defect of the 1998 legislation and also cures an oversight that disqualified facilities established by Masonic organizations. As now configured G.S. 105-278.6A classifies and excludes from the tax base residential retirement communities that satisfy the following criteria:

- The buildings and grounds occupy a single site.
- The facility is designed for elderly residents, includes independent living units, and has either a skilled nursing facility or an adult care facility.
- The owner is exempt from North Carolina corporate income tax.
- The net revenues of the organization are applied to providing uncompensated goods and services to the elderly and the local community.
- The owner's charter provides that in the event of dissolution its assets will be conveyed to a tax-exempt charitable, educational, scientific, or religious organization.
- The owner has an active fund-raising program to assist the facility in serving persons who might not be able to reside there without financial assistance or subsidy.
- The owner's charter or bylaws provide that it is governed by a board of directors or trustees, a majority of whom are chosen by one or more nonprofit corporations, each of which is (a) exempt from federal income taxes under Section 501(c)(3), (8), or (10) of the Internal Revenue Code, (b) organized for a charitable purpose as defined in G.S. 105-278.6, and (c) not a private foundation as defined in Section 509 of the Internal Revenue Code.

The last bulleted paragraph expresses the 1999 changes in exclusion criteria. First, eligibility is no longer determined by charters or bylaws as of a specific date. Second, eligibility is extended to organizations controlled by entities exempt from federal income tax under Section 501(c)(8) and (10) as well as Section 501(c)(3). The latter change is apparently intended to qualify facilities sponsored by nonprofit fraternal associations, such as Masonic orders.

Because former G.S. 105-275(32) was invalidated in April 1998, continuing care retirement communities that qualified for exclusion only through its provisions became subject to discovery for the 1998 tax year and perhaps earlier years as well. S.L. 1999-191 includes a special provision making it disadvantageous for any taxing unit to attempt such a discovery. The reimbursements

3. *In re* Appeal of Springmoor, Inc., 348 N.C. 1, 498 S.E.2d 177 (1998).

4. *See* William A. Campbell, "*In re* Appeal of Springmoor, Inc.: Classification and Exclusion of Retirement Homes from Taxation Held Unconstitutional," *Property Tax Bulletin* No. 114 (June 1998).

5. *See* William A. Campbell and Joseph S. Ferrell, "1998 Legislation Affecting Local Tax Administration," *Property Tax Bulletin* No. 115 (Nov. 1998).

received by counties and municipalities through repeal of the intangibles tax will be reduced by 110 percent of the amount of taxes collected on or after January 1, 1998, on any continuing care retirement community that qualifies for exclusion under G.S. 105-278.6A, as amended. Thus if a county or municipality were to discover a continuing care retirement community for 1998, or any prior tax year, and were to collect the tax assessed through discovery, the net effect would be a 10 percent revenue penalty against the taxing unit.

The 1999 legislation makes no change in the expiration date of G.S. 105-278.6A or the Legislative Research Commission study mandated in 1998.

Motor Vehicle Evaluation Date

S.L. 1999-353 (H 315) amends G.S. 105-320.2 to change the evaluation date for registered motor vehicles to January 1 of the year the taxes are due. The values of vehicles registered or renewed in September, October, November, and December will be determined as of the next January 1. For example, if a vehicle's registration is renewed in September 2000, it will be valued as of January 1, 2001.

The act's effective date provision states that the act is "effective for taxes imposed for taxable years beginning on or after July 1, 2000." Pursuant to G.S. 105-330.6(a), the tax year for a registered motor vehicle begins on "the first day of the first month following the date on which the registration expires or the new registration is applied for. . . ." Thus the act first applies to renewals and registrations made in June 2000.

Collection

Delinquent Taxes on Registered Land

The Torrens land title registration procedures, authorized by Chapter 43 of the General Statutes, are used for the most part in the eastern counties, where timber and paper companies own large tracts of land, but the procedures are available for use in every county of the state. A proceeding before the clerk of superior court is held before the title can be registered, and special recording and indexing rules apply to these titles in the office of the register of deeds.

S.L. 1999-59 (H 1088) makes numerous changes in these procedures to bring them up to date, and some of the changes involve property taxes. G.S. 43-46 currently directs the tax collector to file a memorandum of delinquency with the register of deeds by March 1 following the January 6 delinquency date for each delinquent tax on registered land. The act amends G.S. 43-46 to move the deadline for filing this memorandum to June 30. It further provides that the register of deeds is to enter the notice of delinquency on the record copy of the certificate of title, and the tax lien shall be valid against the registered estate only from that time. When the tax is paid, the register is directed to enter a notice of cancellation of tax lien on the record copy of the certificate of title. In place of the special procedure in G.S. 43-48 for foreclosing the tax lien on registered land, the act simply provides that the *in rem* foreclosure procedure contained in G.S. 105-375 shall be used. The act is effective January 1, 2000.

Acceptance of Electronic Payments

Effective July 21, 1999, S.L. 1999-434 (S 222) enacts new G.S. 159-32.1, which authorizes a local government to accept an electronic payment for any tax, assessment, fee, or charge. An *electronic payment*, as used in this statute, is defined by G.S. 147-86.29(2a) to include credit cards, debit cards, and electronic fund transfers. The statute further provides that a local government may pay any discount or transaction fee imposed by a credit card company or bank for handling the electronic payment and then impose a surcharge on the maker of the payment to recover this cost. The act amends G.S. 105-357 to authorize the tax collector to accept electronic

payments, as provided in G.S. 159-32.1, and changes all of the references to "credit cards" in G.S. 105-357 to "electronic payments."

New G.S. 159-32.1 makes it clear that a city or county, in accepting a credit card in payment of property taxes, may pay the discount or transaction fee imposed by a bank or credit card company. This fee typically ranges from 3 to 6 percent of the payment. This legislation does not resolve the problem that banks and credit card companies prohibit making a surcharge to recoup the discount. Until this issue can be resolved, very few local governments are likely to accept electronic payments for property taxes as they likely will deem it fiscally irresponsible to pay the discount on each credit card transaction and not be able to recover it.

Advertisement of Tax Liens

Effective January 1, 2001, S.L. 1999-439 (H 120) significantly alters the procedures for advertising tax liens.

Notices by Mail. The act adds new G.S. 105-369(b1) to require that—after the governing board has ordered the advertisement of tax liens—the tax collector must send a notice of the advertisement to the listing owner by first-class mail at least thirty days before the date of the advertisement. If the listing owner has transferred the property, a notice by first-class mail must also be sent to the owner of record of the property as of December 31 preceding the advertisement. The mailed notice must state the principal amount of unpaid taxes that are a lien on the property and must further state that the owner's name will appear in the newspaper advertisement if the taxes are not paid before the publication date. Although the statute does not expressly require that the notice state the advertisement date, this last requirement implies that it must be stated. The notices must be sent to the owners' last known addresses. Failure to mail the notices, or mailing them to an incorrect address, does not affect the validity of the tax lien or any foreclosure action.

These new notice requirements have several consequences for tax assessors and collectors. First, the county assessor's office must have completed all real estate transfers at least forty-five to sixty days before the lien advertisement date so the collector can mail any required notices to transferees. For taxing units that have customarily advertised in March, the transfers must be completed by no later than mid-February. Second, cities and counties that routinely send second notices to taxpayers after January 6 may wish to wait until after the governing board has set the advertising date, in February, before sending out second notices to taxpayers who owe taxes on real property. That way the second notice can serve as the notice of lien advertisement required by G.S. 105-369(b1), and a separate notice will not be required. Third, the new requirement of mailed notices will increase the cost of advertising the tax lien, but since these notice requirements are an integral part of the advertising procedure, they appear to be part of the "costs" of advertising within the meaning of G.S. 105-369(d) and should be added to the taxes. These costs must be collected when the taxes are paid: whether before the lien advertisement, after the advertisement, or as part of a foreclosure. Fourth, municipalities that collect their own taxes must arrange with the county assessor to obtain the list of record owners as of December 31. When the municipality is able to advertise depends on when it can obtain the list from the assessor. Each municipal collector should obtain from the assessor an estimate of when the list will be available before the governing board sets the advertising date in February. If the assessor will not have the transfers available until the end of March, it would be fruitless for the municipality to set a March advertising date.

Contents of the Notice of Lien Advertisement. The act amends G.S. 105-369(c) to change the way the notice of lien advertisement is set up. The advertisement will contain two lists, one for property that has not been transferred and another for property that has been transferred. The liens on property the title to which was not transferred prior to January 1 preceding the lien advertisement date are advertised alphabetically in the names of the listing owners. The liens on property the title to which was transferred are advertised alphabetically in the names of the record owners as of December 31 preceding the advertising date. The name of the record owner is to be followed by the phrase "by transfer from," or some similar notation, followed by the name of the listing owner. For example, if John Brown was the listing owner and did not transfer the property, his name would be printed in the *B*s in the list of untransferred property. If, however, he had

transferred the property to Shirley Green, the lien would be advertised in the following manner in the transferred property list: "Green, Shirley by transfer from Brown, John." The act makes no other changes in the contents of the lien advertisement.

Subdivided Property. The amended statute does not deal expressly with the situation in which a parcel of land is subdivided into two or more parcels after January 1 and one or more of the new parcels is transferred to a new owner. New G.S. 105-369(1a) appears to require that the name of the new owner, or owners, of the subdivided parcels be advertised because it requires that "the name of the record owner as of December 31 of each *parcel* on which the taxing unit has a lien for unpaid taxes . . ." (emphasis added) be listed in the advertisement. For example, A owns a twenty-acre parcel on January 1. In March A subdivides the parcel into four, five-acre parcels and sells a parcel each to B, C, D, and E. If the taxes are unpaid, then the names of B, C, D, and E will be advertised alphabetically in the list of transferees. If A sold only one parcel, to B, for example, and retained ownership of the rest, then A's name would be advertised in the list of January 1 owners and B's name would be advertised in the list of transferees.

In this situation the tax collector will have to estimate the amount of the tax lien on each parcel. One way of doing this is to divide the number of acres into the tax on the original parcel, obtaining a per acre tax, and multiplying this by the number of acres in each new parcel. In the above example, if the tax bill for the twenty-acre parcel was $2,000, the estimated amount of the lien on each parcel would be $500. If the collector makes such an estimate, the lien advertisement should contain a statement similar to the following one: "When a parcel was subdivided after January 1, 2xxx, and ownership of one or more of the resulting parcels was transferred, the amount of the tax lien on each parcel, as shown in this advertisement, is based on an estimate and is subject to adjustment when the taxes are paid or the lien is foreclosed." The notice letters to the listing owner and the transferee should contain a similar statement.

Foreclosures

Default Judgments. Attorneys bringing foreclosures pursuant to G.S. 105-374 frequently have occasion to move for a judgment by default against defendants who have not filed an answer in the case. S.L. 1999-187 (S 921) makes it easier to obtain a default judgment in certain circumstances. The act amends G.S. 1A-1, Rule 55(b) to provide that a motion for judgment by default may be decided by the court without a hearing if the motion specifically provides that the court will decide the motion without a hearing if the party against whom the judgment is sought fails to serve a written response stating the grounds for opposing the motion within thirty days of service of the motion, and if the party against whom the judgment is sought in fact fails to serve the response.

Appeals from the Clerk. S.L. 1999-216 (S 246) enacts new G.S. 1-301.1 to provide detailed rules for appeals to a judge of judgments and orders of the clerk of superior court in a civil action. The act amends G.S. 105-374(h), (k), and (p), subsections of the mortgage-style tax lien foreclosure statute to refer to the appeal procedures in G.S. 1-301.1. The act is effective January 1, 2000.

***In Rem* Foreclosures**. Effective January 1, 2001, S.L. 1999-439 amends G.S. 105-375(b) to allow a judgment to be filed commencing an *in rem* foreclosure thirty days after the tax lien advertisement. This shortens the current six-month waiting period considerably. Note that G.S. 105-375(c) still requires that notices of the pending foreclosure be mailed to the listing taxpayer and others at least thirty days before the judgment is docketed. Thus as a practical matter, the waiting period between the advertising date and the docketing of the judgment is a minimum of sixty days. For collection purposes this is nevertheless an improvement over the six-month period.

Collection Percentages

G.S. 159-13(b)(6) requires that when a local government prepares its budget each year it must make an estimate of the percentage of property taxes it expects to collect, and this estimate cannot

exceed the percentage actually collected as of June 30 of the preceding fiscal year. Since 1993 this has caused a problem for local governments because it has been difficult to collect the taxes on registered motor vehicles that were levied in the last quarter of the fiscal year by June 30 of that year. As a result the collection percentages in most cities and counties have been lower than they were pre-1993, even though the greater part of the last-quarter taxes on motor vehicles are collected early in the next fiscal year. S.L. 1999-261 (S 484) addresses this issue by excluding from the percentage calculation taxes levied and collected on registered motor vehicles during the last quarter of the preceding fiscal year. For example, when a local government prepares its budget in 2000, it will refer to the collection percentage for 1998 taxes as of June 30, 1999. In making this calculation, however, registered motor vehicle taxes that were due in April, May, and June of 1999 will be excluded.

It is important to note that this exclusion is for budgeting purposes only. In the tax collector's settlement and in reports of collection percentages to the Local Government Commission, the levy and collection of taxes on registered motor vehicles during the fourth quarter of the fiscal year must be included.

Other Local Taxes

Privilege License Taxes

Circuses. S.L. 1999-337 repeals G.S. 105-38, the state privilege license tax on circuses and animal shows, and transfers its provisions to a rewritten G.S. 105-37.1, the state license tax on general amusements. This repeal and amendment makes no change in the city and county privilege license taxes on these businesses. Cities may levy a license tax of up to $25 on general amusements and a tax of up to $25 for each day, or part thereof, on circuses and animal shows. Counties may not levy a tax on general amusements but may levy a tax of up to $25 for each day, or part thereof, on circuses and animal shows.

Pawnbrokers and Check-Cashing Businesses. The privilege license taxation of pawnbrokers is a complicated story. In 1997, G.S. 105-50, the statute levying a state, city, and county license tax on pawnbrokers, was repealed. The act that accomplished the repeal, however, at the same time amended G.S. 160A-211, for cities, and G.S. 153A-152, for counties, to provide that the repeal was to have no effect on city and county license taxes and that cities and counties could continue to levy privilege license taxes on pawnbrokers in an amount not to exceed $275 annually. Effective July 1, 1999, S.L. 1999-438 (S 1112) amends G.S. 105-88 to authorize cities and counties to levy an annual license tax on pawnbrokers in an amount not to exceed $100. But S.L. 1999-438 does not amend G.S. 160A-211 and G.S. 153A-152 to delete the reference to former G.S. 105-50 and the authorization to levy a tax in a maximum amount of $275.

Thus effective for tax years beginning July 1, 1999, two statutes authorizing city and county license taxes are on the books, one with a maximum of $100 and the other with a maximum of $275. Which one is current law? Under accepted principles of statutory construction, when the legislature has enacted multiple statutes dealing with the same subject in an inconsistent manner, the most recent enactment is held to be the operative law. Following these principles, cities and counties should be guided by amended G.S. 105-88 and limit their license taxes on pawnbrokers to a maximum of $100. Those units of local government that have already levied a license tax on pawnbrokers for 1999–2000 that exceeded $100 will have to make a refund of any amount in excess of $100 to any pawnbroker who requests it. This is regrettably a confusing situation. One positive outcome of the new legislation, however, is that amended G.S. 105-88 clarifies that the pawnbroker licensing provisions of Chapter 91A of the General Statutes have no effect on the authority of cities and counties to levy a privilege license tax on those businesses, which has not been clear in the past.

Amended G.S. 105-88 also authorizes cities and counties to levy a privilege license tax on check-cashing businesses in an amount not to exceed $100.

Studies

North Carolina Tax Policy Commission

Section 3.1 of S.L. 1999-395 (H 163) creates a fifteen-member North Carolina Tax Policy Commission. The Governor, the Speaker of the House, and the President Pro Tempore of the Senate will each appoint five members from designated categories. The commission is instructed to "study, examine, and, if necessary, design a realignment of the State and local tax structure in accordance with a clear, consistent tax policy." It is to submit its final report by March 1, 2001. The commission is funded from the General Assembly's reserve funds in the amount of $500,000.

Nonprofit Institutions

Section 29A.18 of S.L. 1998-212 directed the Legislative Research Commission to study property tax exemptions for nonprofit institutions, including the history and evolution of those exemptions, the reasons for them, the effect of the exemptions on local governments and other taxpayers, and the extent to which other states exempt nonprofit institutions. Although this study was prompted by a perceived need to address the tax status of residential retirement communities, it addresses a much broader range of exempt entities. This study was not begun in 1998 due to the unusually brief time between adjournment of the 1998 session and convening of the 1999 session. It is uncertain whether the study will be undertaken in 1999.

Elderly and Disabled Exclusion

Section 6.2 of S.L. 1999-237 (H 168) calls for a study of the homestead property tax relief for low-income elderly and disabled citizens. The Speaker of the House and the President Pro Tempore of the Senate are to designate an appropriate committee to conduct the study. Options to be considered include increasing the exclusion amount, increasing the income threshold, indexing the exclusion amount and income threshold, excluding social security from income in determining the income threshold, and amending the North Carolina Constitution to allow counties the option of making one or more of these changes at the local level. A report is required to the General Assembly by May 1, 2000, and any recommended proposals must be accompanied by an estimate of fiscal impact on the state and its local governments.

Bills Eligible for Consideration

Three tax bills are eligible for consideration in the 2000 session of the General Assembly because they passed the house in which they were introduced and were not disapproved by the other house. The first is S 1076, which would exclude short-term rental cars (Hertz, Avis, and so forth) from the property tax but allow cities and counties to levy a privilege license tax on businesses renting cars. This bill passed both chambers in different versions. The second is H 1290, which would limit the exclusion for recycling and resource recovery equipment to three years from the date the Department of Environment and Natural Resources (DENR) issues a certificate for the equipment. This bill passed the House and was in a Senate committee at adjournment. H 677 would require that, before a deed may be recorded in Graham, Jackson, Haywood, Madison, and Swain counties, all delinquent taxes on property described in the deed must have been paid. The bill passed the House and was in a Senate committee at adjournment.

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17

Mental Health and Related Laws

This chapter discusses acts of the General Assembly affecting mental health, developmental disabilities, and substance abuse services. Particular attention is given to legislation affecting area mental health, developmental disabilities, and substance abuse authorities (area authorities), the local governmental entities responsible for providing services.

In 1999 the General Assembly expanded funding for community-based mental health, developmental disabilities, and substance abuse services while cutting appropriations to the Willie M. and Thomas S. programs. The legislature amended the certification and licensure laws for social workers and substance abuse professionals, enacted legislation authorizing the creation and maintenance of medical records in an electronic format, and called for a study of North Carolina's involuntary commitment laws that would address the roles and responsibilities of state and local agencies while examining the service systems and patient disabilities that contribute to patient noncompliance with recommended treatment.

Area Authorities

County Funding

In 1996 the General Assembly, at the recommendation of the Mental Health Study Commission, amended G.S. 122C-115 to prohibit counties from supplanting county appropriations to area authorities with other area authority revenues. For the most part S.L. 1996-749 merely codified existing provisions of the 1995 Session Laws, which prohibited counties from reducing county appropriations and expenditures for area authorities "because of the availability of State-allocated funds, fees, or capitation amounts to area authorities." The 1996 act changed the law, however, to add fund balances to the list of revenue sources that could not be used by counties as a basis for reducing area authority appropriations and expenditures. In its report to the 1996 General Assembly the commission explained that, under the recommended nonsupplant provision, coun-

ties would retain discretion to determine the amount of county funding to area authorities as long as reductions in funding were not made for the reasons prohibited by G.S. 122C-115.

Subsequent to the enactment of S.L. 1996-749, confusion and disagreement arose over the question of whether counties have any permissible grounds to reduce area authority appropriations or expenditures from one fiscal year to the next. As a result the General Assembly enacted S.L. 1999-202 (S 1122) to amend G.S. 122C-115(d) to clarify that counties are prohibited from using the listed revenue sources as a basis for reducing appropriations and expenditures "for current operations and ongoing programs and services of area authorities," but that counties "may reduce county appropriations by the amount previously appropriated by the county for one-time, nonrecurring special needs of the area authority."

Reimbursement of Area Authority Funds

S.L. 1999-237 (H 168) enacts new G.S. 122C-123A to provide that any funds of an area authority that are transferred by the authority to any other entity, including a firm, partnership, corporation, company, association, joint stock association, agency, or nonprofit private foundation, are subject to reimbursement by the area authority to the state when area authority expenditures are disallowed pursuant to a state or federal audit.

Appropriations

Current Operations

The 1999 Appropriations Act, S.L. 1999-237, appropriates from the General Fund to the Department of Health and Human Services' Division of Mental Health, Developmental Disabilities, and Substance Abuse Services (MH/DD/SAS) $614,290,187 for fiscal year 1999–2000 and $607,658,021 for fiscal year 2000–2001. Appropriations for the past five fiscal years were $564.3 million (1998–99), $528.5 million (1997–98), $465.6 million (1996–97), $473.6 million (1995–96), and $475.9 million (1994–95).

Two significant funding changes—both recurring—are a $3.9 million reduction in appropriations for Thomas S. services and $6 million in new funding for community-based mental health, developmental disabilities, and substance abuse services for individuals waiting for services. Other reductions in funding include the elimination of $500,000 in area authority capital reserves—originally appropriated in 1994—and a cut of $650,000 for 1999–2000 and $960,000 for 2000–2001 in appropriations for state-operated residential treatment programs for children and adolescents. The latter funding cut, made in anticipation of increased Medicaid revenues, affects the Wright and Whitaker Schools for the Emotionally Disturbed and the residential treatment programs in Wilson and Butner for violent and assaultive children. In anticipation of increased patient revenues, the General Assembly further reduced state appropriations to MH/DD/SAS by $1.3 million in 1999–2000 and $2.5 million in 2000–2001.

In addition to the $6 million expansion funding for community-based services, MH/DD/SAS received the following increases in appropriations:

- $200,000 (nonrecurring) to construct Union House, a psychosocial treatment facility for seriously and persistently mentally ill individuals;
- $471,000 (nonrecurring) to the Autism Society to complete Camp Royall, a camp for autistic children and adults;
- $158,000 (recurring) to the Blue Ridge Area Authority for allocation to First Step Farm of Western North Carolina, Inc., to increase contracted bed utilization;
- $800,000 (recurring) to complete the merger of the Cleveland County Area Authority and the Gaston-Lincoln Area Authority;

- $620,000 (recurring) to support programs for autistic children, including $200,000 for residential services, $150,000 for advocacy, and $270,000 to provide weekend camping;
- $4,353,003 (nonrecurring) to continue services to violent and assaultive children identified as members of the Willie M. class at the time the federal court ended jurisdiction of the case in 1998;
- $1,052,000 (recurring) to The University of North Carolina at Chapel Hill, Division of TEACCH Administration and Research, to meet the expanding needs of people with autism, including $434,693 for the Gastonia Center, $236,345 for the Raleigh Satellite Center, $199,472 for the Carolina Living and Learning Center Vocational Expansion, and $181,190 for administration and research;
- $203,000 for 1999–2000 and $610,000 for 2000–2001 to develop an integrated client database and establish a pilot site for a regional transdisciplinary team of experts to serve children below the age of six who have low incidence disabilities (for example, visual impairment, hearing impairment, or autism);
- $302,866 for 1999–2000 and $609,953 for 2000–2001 for professional mental health assessments for adult care home residents and for follow-up treatment services for residents identified as posing a risk to other residents;
- $247,000 (recurring) to expand mental health treatment and residential support for deaf individuals who have mental illness;
- $495,000 (recurring) for residential services for persons with mental illness;
- $150,000 (nonrecurring) for training for area authority boards; and
- $571,526 (recurring) and $120,246 one-time funding for 1999–2000 to establish a twelve-bed unit at the Black Mountain Mental Retardation Center for individuals with traumatic brain injury who require behavioral health services.

In addition to the appropriations to MH/DD/SAS, the 1999 Appropriations Act reduces the Medicaid Match Reserve—the $38 million allocated to DHHS for state matching funds for Medicaid services provided by area authorities—by $600,000. The Appropriations Act reduces state funding for the Carolina Alternatives program—appropriated to the Division of Medical Assistance in DHHS—by $2.5 million, based on a change in the cost-sharing formula.

Capital Appropriations

In 1998 the General Assembly appropriated $250,000 to DHHS to plan and design a facility to replace Whitaker School, a reeducation facility for behaviorally and emotionally disturbed youth. For 1999–2000, S.L. 1999-237 appropriates from the General Fund to DHHS $5.4 million for Whitaker School construction. The 1999 Appropriations Act also appropriates $2 million to DHHS for repairs and renovations at the Eastern Vocational Rehabilitation Facility in Goldsboro.

Federal Block Grant Allocations

Section 5 of S.L. 1999-237 allocates federal block grant funds for fiscal year 1999–2000. The act includes appropriations for community-based services provided in accordance with three of the state's long-range plans for services to specific age and disability populations. From the Mental Health Services Block Grant, the General Assembly allocates $3,895,179 for services provided in accordance with the comprehensive plan for services for persons with severe and persistent mental illness. From the same block grant the legislature appropriates $1,913,917 for services provided under the child mental health plan.

Allocations from the Substance Abuse Prevention and Treatment Block Grant include $7,454,702 (approximately $1.5 million more than in 1998–99) for services provided in accordance with the child and adolescent alcohol and other drug abuse plan and $15,350,132 (compared to about $11.5 million in 1998–99) for other substance abuse services provided by community-based and state-operated treatment centers. (The latter includes an unspecified amount for

tuberculosis services.) From the Social Services Block Grant, which funds several DHHS divisions, the General Assembly made the usual $4,764,124 appropriation to MH/DD/SAS and allocated another $5 million ($1 million less than in 1998–99) to provide services to individuals who are on the state's waiting list for developmental disabilities services but are not eligible for services under the Medicaid Community Alternative Program for Mentally Retarded/Developmentally Disabled (CAP–MR/DD).

From the Temporary Assistance to Needy Families (TANF) Block Grant, MH/DD/SAS receives three allocations: $3.5 million for substance abuse screening, diagnosis, treatment, and testing of Work First participants; $1,182,280 for substance abuse services for juveniles; and $1 million for the Enhanced Employee Assistance Program, a grant program of financial incentives for private businesses employing former and current Work First recipients.

State Government Reorganization

Section 11.4 of the 1999 Appropriations Act, S.L. 1999-237, directs DHHS to create a Division of Education Services to manage the Governor Morehead School and the three residential schools for the deaf. The act authorizes DHHS to include within this new division any or all of the schools and educational programs currently managed by MH/DD/SAS, provided that any goals and plans for the new division are consistent with the recommendations proposed by DHHS in its April 14, 1999, report "Program Review of Disability Services."

Licensed Professionals

Social Workers

Certification and Licensure Act. With certain exceptions, the Social Worker Certification and Licensure Act (G.S. Chapter 90B) has required the certification of social workers who engage in the practice of clinical social work. S.L. 1999-313 (H 1069, S 1157) amends G.S. Chapter 90B to require the licensure rather than certification of clinical social workers without changing the qualifications required to practice clinical social work. S.L. 1999-313 does revise, however, the academic requirements for becoming a "certified social worker" by requiring a bachelor's degree from an accredited social work program. A bachelor's degree in a human services–related subject with eighteen semester hours from an accredited social work program no longer suffices.

S.L. 1999-313 raises the maximum fees that may be assessed for applications for, and renewals of, certification and licensure and amends the provisions for certification and licensure of social workers certified, licensed, or registered in other jurisdictions. For example, the North Carolina Social Work Certification and Licensure Board may grant a certificate or license without examination to persons certified, licensed, or registered in other jurisdictions only if the applicant has passed an examination in the other jurisdiction that is equivalent to the examination required under North Carolina law. In addition the board may grant a temporary license to a nonresident clinical social worker who is certified, registered, or licensed in another jurisdiction whose standards, at the time of the person's certification, registration, or licensure, were substantially equivalent to or higher than the requirements under G.S. Chapter 90B. Persons with temporary licenses must comply with the act's supervision requirements.

S.L. 1999-313 also expands the disciplinary remedies that may be imposed by the board. In lieu of denying, suspending, or revoking certification or licensure when an applicant, certificate holder, or licensee has engaged in conduct prohibited by the act, the board may (1) issue a reprimand or censure; (2) order probation with conditions; (3) require examination, remediation, or rehabilitation, including care, counseling, or treatment by a professional designated or approved by the board; (4) require supervision by a certified or licensed social worker designated or approved by the board; or (5) limit or circumscribe the extent, nature, or location of the

applicant's, certificate holder's, or licensee's social work practice. In considering whether an applicant, certificate holder, or licensee is mentally or physically capable of practicing social work with reasonable skill and safety, the board may require the social worker to submit to a mental or physical examination by a mental health or health professional designated by the board.

The board must provide the opportunity for a contested case hearing (G.S. 150B, Article 3A) to (1) any applicant whose certification or licensure was denied; (2) any applicant whose certification or licensure was granted subject to restrictions, probation, or other limitations; and (3) any certificate holder or licensee before revoking, suspending, or restricting his or her certificate or license. No person is entitled to a hearing for failing to pass a qualifying examination.

S.L. 1999-313 also addresses the board's authority to access and protect client information and what information acquired or generated by the board is public record. The board may order the production of records concerning the practice of social work that are relevant to a complaint received by the board or to an inquiry or investigation conducted by the board. Records and other documents containing information compiled by or on behalf of the board through an investigation, inquiry, or interview conducted in connection with a certification, licensure, or disciplinary matter are not public records within the meaning of G.S. Chapter 132. Notices of charges, notices of hearings, and decisions rendered in connection with a hearing are public records, but information that identifies a client of social work services must be deleted from the public record unless the client consents to disclosure. In any proceeding before the board, the board may withhold from public disclosure the identity of any client of social work services, and if necessary for the protection of the client and the full presentation of relevant evidence, the board may close a hearing to the public for purposes of receiving evidence related to social work services.

The provisions of G.S. 90B-10(b)(3)a, which exempted from the act's certification and licensure requirements clinical social workers employed by the state, political subdivisions of the state, or local governments (including clinical social workers employed by area authorities), expired on January 1, 1999. Employees of state or local governments who are engaged in clinical social work practice, therefore, must be licensed under G.S. Chapter 90B unless they are otherwise exempt from licensure under that chapter.

Health Services Corporation. G.S. Chapter 55B regulates corporations formed to render certain personal or professional services, including health services. G.S. 55B-14(c) lists the types of professionals who may form a professional corporation and the professional services they may render. In particular the statute permits a licensed clinical social worker to form a professional corporation with a physician practicing psychiatry or a psychologist for the purpose of providing psychotherapeutic and related services. S.L. 1999-136 (S 620) amends G.S. Chapter 55B to permit licensed clinical social workers to incorporate with any type of physician.

Psychologists

S.L. 1999-292 (S 793) amends the Psychology Practice Act to define the *practice of psychology* to include the diagnosis and treatment of neuropsychological aspects of physical illness, accident, injury, or disability. The act defines *neuropsychological* as "[p]ertaining to the study of brain-behavior relationships, including the diagnosis, including etiology and prognosis, and treatment of the emotional, behavioral, and cognitive effects of cerebral dysfunction through psychological and behavioral techniques and methods."

Legislation (H 1156) that would have exempted certain licensed psychological associates from the act's supervision requirements failed to pass the House in the 1999 legislative session and is, therefore, not eligible for consideration during the regular 2000 legislative session.

Substance Abuse Professionals

Certification Act. S.L. 1999-164 (S 1062) makes several amendments to the statutory provisions for certification of substance abuse professionals. The act creates an intermediary designation, clinical supervisor intern, for substance abuse counselors or addictions specialists who wish to become certified clinical supervisors. To be designated a clinical supervisor intern,

the applicant must have a master's degree in a human services field with a clinical application from a regionally accredited college or university (the same educational background now required to become a certified clinical supervisor) and have completed at least 50 percent of the supervision-specific training required of certified clinical supervisors.

S.L. 1999-164 amends the certification requirements for certified clinical addictions specialists, adding 300 hours of supervised practical training to one of the four alternative certification classes, and revises certification requirements for certified residential facility directors to permit both substance abuse counselors and certified addictions specialists to apply.

Until January 1, 2001, certified clinical supervisors or persons who function, according to their job descriptions, as certified clinical supervisors are qualified to supervise applicants for certified clinical supervisor. Between January 1, 2001, and January 1, 2003, only a person certified both as a clinical supervisor and as a clinical addictions specialist may supervise applicants for certified clinical addictions specialist. During the same period either a certified clinical supervisor or a certified clinical addictions specialist may supervise applicants for certified substance abuse counselor. Effective January 1, 2003, only a person certified as a clinical supervisor or a clinical supervisor intern may supervise applicants for certification as clinical supervisors, substance abuse counselors, or clinical addictions specialists.

S.L. 1999-164 adds several provisions pertaining to records sought and compiled by the North Carolina Substance Abuse Professional Certification Board. The presiding officer of the board may subpoena witnesses and documents, including client records, concerning any matter to be heard before or inquired into by the board. Client records subpoenaed by the board must be produced, notwithstanding the application of any law that provides a "counselor-client or physician-patient privilege." (In spite of this provision, no information protected by the federal drug and alcohol confidentiality law, 42 C.F.R. pt. 2, should be disclosed except as authorized by those regulations.) Upon written request, the board must revoke the subpoena if, upon hearing, it finds the evidence sought does not relate to a matter in issue, the subpoena does not describe the evidence with sufficient particularity, or the subpoena is invalid.

Generally records and other documents containing information collected and compiled by the board as a result of an investigation, inquiry, or interview conducted in connection with a certification or disciplinary matter are not public records within the meaning of G.S. Chapter 132. Any notice of charges, any notice of hearing, and any documents received and admitted into evidence in any hearing before the board are public records. However, any information in a board proceeding, hearing record, or notice of charges that identifies or tends to identify a client of substance abuse services must be withheld from public disclosure unless the client or the client's representative expressly consents to the disclosure. The new law authorizes the board to receive evidence in a closed session when necessary for the full presentation of relevant evidence and the protection of the substance abuse client or accused substance abuse professional.

Reimbursement for Services. S.L. 1999-199 (H 714) amends articles 50 and 65 of G.S. Chapter 58, and G.S. 135-40.7B(c1), to provide for direct payment to substance abuse professionals for services covered by health insurance policies and plans. Any person certified by the North Carolina Substance Abuse Professional Certification Board is covered by the act.

Mental Health Records

Electronic Medical Records

S.L. 1999-247 (H 957) authorizes any health care provider or facility licensed, certified, or registered under North Carolina law, as well as any unit of state or local government (including area authorities), to create and maintain medical records in an electronic format. A separate paper copy of the electronic medical record is not required. When a consent to treatment or release of records is contained in a paper writing, however, the writing must be preserved in a durable

medium, and its existence and location must be noted in the electronic record. Electronic medical records must be maintained in a legible and retrievable form, including adequate data backup. The act further provides that laws pertaining to the security, confidentiality, accuracy, integrity, access to, and disclosure of records embodied in paper or other media also apply to electronic records.

Facilities and agencies covered by the act (new G.S. 90-412) may authorize individuals to authenticate orders and other medical record entries by written signature or by electronic or digital signature in lieu of signature in ink. Medical record entries must be authenticated by the individual who made or authorized the entry. The act defines *authentication* to mean the identification of the author of an entry by that author and confirmation that the contents of the entry are what the author intended.

Guardian Ad Litem Access to Records

G.S. 7B-601 provides for the court appointment of guardians ad litem to represent children alleged to be abused, neglected, or dependent in juvenile court proceedings. S.L. 1999-432 (S 25) amends G.S. 7B-601 to give the guardian ad litem the authority to obtain any information or reports (except those protected by the attorney-client privilege), whether or not confidential, that may in the guardian ad litem's opinion be relevant to the case. Previously the guardian ad litem had this authority only if the court specifically granted it in the order appointing the guardian ad litem. (Like the former statute, the amended statute does not authorize or compel the disclosure of information protected under the federal drug and alcohol confidentiality statute and implementing regulations at 42 C.F.R. pt. 2.)

Under the amended statute the guardian ad litem's appointment terminates when a permanent plan has been achieved for the juvenile and approved by the court. The act also adds to the guardian ad litem's responsibilities the duties (1) to conduct follow-up investigations to insure that court orders are being properly executed and (2) to report to the court when the needs of the juvenile are not being met.

Peer Review Information

S.L. 1999-222 (H 190) provides that peer review information that is confidential pursuant to G.S. 122C-191(e)(2) and medical review information that is confidential under G.S. 131E-95(b) may be released to a professional standards review organization that performs accreditation or certification functions. In the case of peer review information governed by G.S. 122C-191, only accrediting organizations that perform reviews pursuant to a contract with a federal or state agency may have access to the information. Peer review and medical review information released to an accrediting organization must be limited to that which is reasonably necessary and relevant to the organization's determination to grant or continue accreditation or certification. The released information retains its confidentiality and must be protected from disclosure by the accrediting organization.

Information Obtained by Health Maintenance Organizations and Provider Sponsored Organizations

S.L. 1999-272 (H 958) amends G.S. 58-67-180 and G.S. 131E-310 to clarify that confidential medical information obtained by health maintenance organizations (HMOs) and provider sponsored organizations (PSOs) may be disclosed pursuant to a court order for the production or discovery of evidence.

Records of Alleged Abusers of Juveniles

S.L. 1999-318 (H 1159) requires the county department of social services, whenever a juvenile is removed from the home due to physical abuse, to review any mental health records of the alleged abuser and petition the court for a mental health evaluation of the alleged abuser if the

review reveals a history of violent behavior. The section of the act relating to the department's access to mental health records is summarized here, while the provisions providing for court-ordered mental health evaluations are described below, in the section "Abused, Neglected, and Dependent Juveniles."

The act amends G.S. 7B-302 to require the director to conduct a thorough review of the background of the alleged abuser(s) whenever, due to physical abuse, a juvenile is removed from the home of a parent, guardian, custodian, stepparent, or adult relative entrusted with the juvenile's care. The review must include a check of the person's criminal history and a review of any "available" mental health records.

In obtaining the access to mental health records, social services directors may rely on existing wording in G.S. 7B-302(e), which gives the director broad authority to obtain information he or she needs in the performance of "any duties" related to the investigation of abuse, neglect, or dependency reports or to the provision of or arrangement for protective services. Under that subsection, the director may make a written demand for any information or reports, whether or not confidential, that the director believes may be relevant to the investigation or to the provision of protective services. A person or agency receiving such a request must give the director access to and copies of the requested information or reports

- to the extent permitted by federal law and regulations,
- unless they are protected by the attorney-client privilege, and
- subject to the right of a custodian of criminal investigative information or records to seek a court order to prevent disclosure, based on a belief that disclosure would jeopardize the state's right to prosecute a defendant or the defendant's right to receive a fair trial.

Transportation Costs for Involuntary Commitment

Generally, under the proceedings for involuntary commitment in North Carolina, a city has the duty to provide transportation in the case of a respondent who resides in or can be taken into custody within city limits. A county has the duty to provide transportation for a respondent who resides in or can be taken into custody in the county outside of city limits. Under some circumstances a county or city may have a duty to transport a respondent who resides in another county. Further, cities and counties may alter their statutory duty to transport by contracting with each other to provide transportation.

Regardless of who provides transportation, G.S. 122C-251(h) provides that the cost and expense of transporting a respondent to or from a twenty-four-hour facility is the responsibility of the county of residence of the respondent. Until amended, the statute further provided that a city or county was entitled to recover transportation costs from (1) respondents who have sufficient financial resources to pay or (2) the county of residence of an indigent respondent. S.L. 1999-201 (H 972) amends the reimbursement provision to provide that a county or city may recover from the respondent's county of residence the cost of transporting any respondent, whether or not indigent, and that the county of residence must reimburse the other county or city for the reasonable transportation costs incurred. Further, the ability of a respondent's county to seek transportation costs directly from the respondent is now limited to costs incurred as a result of the county of residence reimbursing another county or city for transportation.

For the respondent's county of residence to recover transportation costs paid to a county or city that provided transportation, the respondent or other individual liable for the respondent's support must be provided reasonable notice and opportunity to object to the recovery. Reimbursement may be sought from any respondent who is not indigent, any person or entity that is legally liable for the respondent's support and maintenance and who has sufficient property to pay the cost, any person or entity that is contractually responsible for the cost, or any person or entity otherwise liable for the cost under federal, state, or local law.

Health Care Personnel Registry

G.S. 131E-256 requires DHHS to maintain a registry containing the names of persons who may have neglected or abused residents of health care facilities. Specifically the registry must contain the names of health care personnel working in health care facilities who have been alleged or found to have neglected or abused a resident of a health care facility, misappropriated property of a resident or facility, diverted drugs belonging to a patient or facility, or committed fraud against a health care facility or patient for whom the employee was providing services. In 1998 the General Assembly expanded the list of facilities covered by the law by adding state-operated facilities and certain facilities licensed under Article 2 of G.S. Chapter 122C. S.L. 1999-159 (H 1258) amends G.S. 131E-256 to clarify that, with respect to facilities providing mental health, developmental disabilities, and substance abuse services, the law applies to "state facilities," "24-hour facilities," and "residential facilities," as those terms are defined in G.S. 122C-3(14). (*State facility* means a facility operated by the Secretary of Health and Human Services; *24-hour facility* means a facility that provides a structured living environment and services for a period of twenty-four consecutive hours or more and includes hospitals providing mental health, developmental disabilities, or substance abuse services; and *residential facility* means a twenty-four hour facility that is not a hospital, including a group home.)

In addition S.L. 1999-159 amends the health care personnel registry statute to require that facilities covered by the law, before hiring health care personnel into a facility or service, access the health care personnel registry and note each incident of access in the appropriate business files.

Insurance

Substance Abuse Services

S.L. 1999-116 (H 715) amends G.S. Chapter 58 to require insurers, when determining whether a patient needs to be placed in a substance abuse treatment program (for purposes of deciding whether to pay for services covered by the patient's insurance plan), to use either (1) criteria adopted by the American Society of Addiction Medicine or (2) clinical review criteria adopted by the insurer or its utilization review organization.

Health Insurance Program for Uninsured Children

Legislation affecting North Carolina's "Health Choice for Children" program for uninsured children is discussed in Chapter 11 (Health).

Medicaid

Legislation affecting Medicaid and other public assistance programs, including acts relating to Medicaid eligibility for the disabled, special assistance for adult care home residents, and foster care and adoption assistance, are discussed in Chapter 23 (Social Services).

Abused, Neglected, and Dependent Juveniles

Children in Institutions

Section 1 of S.L. 1999-190 (H 262) amends the Juvenile Code's definition of *caretaker* in G.S. 7B-101(3) to specify that a "person responsible for a juvenile's health and welfare [in a

residential setting]" includes "any employee or volunteer of a division, institution, or school operated by the Department of Health and Human Services."

Section 2 of the act amends G.S. 7B-302(b) to address the responsibility of a county department of social services when it receives a report of suspected abuse, neglect, dependency, or death from maltreatment relating to a juvenile in an institutional setting, such as a residential child care or educational facility. In those cases the department must ascertain immediately whether other juveniles remain in the facility subject to the alleged perpetrator's care or supervision and, if they do, assess the circumstances of those juveniles to determine whether they require protective services or whether their immediate removal from the facility is necessary for their protection.

Petition and Order for Mental Health Evaluation

S.L. 1999-318 requires county social services directors, whenever a juvenile is removed from the home due to physical abuse, to review any mental health records of the alleged abuser. Under new G.S. 7B-302(d1), if the director's review reveals that the alleged abuser has a history of violent behavior against people, the director must petition the court to order the alleged abuser to submit to a complete mental health evaluation by a licensed psychologist or psychiatrist. The act amends G.S. 7B-503 to require the court to rule on the petition before returning the child to a home where the alleged abuser is or has been present. If the court finds that the alleged abuser has a history of violent behavior against people, the court must order the alleged abuser to submit to a complete mental health evaluation and may order the alleged abuser to pay the cost of the evaluation. An amendment to G.S. 7B-506 requires the court, in determining whether the juvenile's continued nonsecure custody is warranted, to consider the opinion of the mental health professional who performed the evaluation.

The results of the mental health evaluation must be included in the evaluation the social services director prepares pursuant to G.S. 7B-304 for presentation to the court following adjudication. In addition, at disposition under G.S. 7B-903 or G.S. 7B-1003 (disposition pending appeal), if the court has found that the juvenile suffered physical abuse and that the responsible individual has a history of violent behavior against people, the court must consider the opinion of the mental health professional who performed the evaluation before returning the juvenile to that person's custody.

Court-Ordered Psychiatric or Psychological Treatment of Parents and Others

G.S. 7B-904 describes the court's authority, at a dispositional or subsequent hearing in an abuse, neglect, or dependency proceeding, to require parents to do specified things. S.L. 1999-318 rewrites the section to give the court most of the same authority in relation to the juvenile's guardian, custodian, or stepparent; an adult member of the juvenile's household; or an adult relative entrusted with the juvenile's care. Under the new law the court may order those persons, as well as the juvenile's parents, to

- participate in the juvenile's medical, psychiatric, psychological, or other treatment;
- undergo psychiatric, psychological, or other treatment or counseling designed to remedy behaviors or conditions that led or contributed to the juvenile's adjudication or removal from that person's custody (this may be a direct order or a condition of the person's having custody of the juvenile);
- pay, if able to do so, for treatment the court orders the person to undergo. (If the person is not able to pay, the court may order the county to pay the cost of the treatment.)

Other Legislation Relating to Child Welfare

Other legislation relating to child welfare and changes in Juvenile Code provisions relating to abuse, neglect, and dependency is discussed in chapters 4 (Children and Families) and 23 (Social Services).

Adult Protective Services

Section 1.10 of S.L. 1999-334 (S 10) amends G.S. 108A-103 to establish new time frames for county social services department investigations of certain reports involving the abuse or neglect of disabled adults.

- A report alleging a life-threatening situation must be investigated immediately.
- Investigation of a report alleging the abuse of a resident of an adult care home must be initiated within twenty-four hours of receipt of the report.
- Investigation of a report alleging the neglect of a resident of an adult care home must be initiated within forty-eight hours.
- All other investigations must be initiated within two weeks of the date the report is received.

The county social services department must complete all adult protective services investigations within thirty days.

Camp Butner Reservation

Under Article 6 of G.S. Chapter 122C the residential areas and state and federal facilities at Camp Butner Reservation in Durham and Granville Counties are administered by North Carolina through the Office of the Secretary of Health and Human Services. Under this administrative system Camp Butner residents generally have not had elected representation with respect to public services that normally would be under the control of an elected city council or board of county commissioners. In 1996 the General Assembly amended Article 6 to create the Butner Advisory Council, consisting of seven members elected by the residents of Camp Butner, to advise the Secretary of Health and Human Services on the administration of Camp Butner and to act, upon appointment of the secretary, as the planning agency for the reservation. S.L. 1996-667 (H 1144). In the 1997 session the General Assembly amended Article 6 to delete provisions requiring the election of council members, providing instead for their appointment by the Secretary of Health and Human Services. S.L. 1997-59 (S 428). The General Assembly revisited the issue in 1999 and enacted S.L. 1999-140 (H 105), which restores provisions for the election of council members by Camp Butner Residents. The council may advise the secretary on the operations of Camp Butner through resolutions adopted by the council, and the secretary may approve or disapprove any council recommendations.

Studies and Reports

Conditional Release of Involuntary Commitment Respondents

Section 5.2 of S.L. 1999-395 (H 163), the 1999 Studies Act, directs the Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services to study whether and under what circumstances persons committed involuntarily to state psychiatric hospitals should be released under specific conditions. In conducting the study, the commission must consider the following:

1. the target population for whom conditional release may be appropriate and necessary to protect public safety and enhance patient stability;

2. the estimated number of persons who could qualify for conditional release;
3. criteria for conditional release that are clearly and narrowly defined to ensure that conditional release will apply only to the target population and will not be susceptible to application in an overinclusive manner;
4. costs of implementing conditional release, including the need for such additional resources at the area mental health authority level as medication, transportation, case management, and administrative start-up costs;
5. the roles, duties, and responsibilities of area mental health authorities, twenty-four-hour facilities, courts, and law enforcement agencies, sufficiently and clearly defined to ensure both efficient coordination and communication among these entities and continuity of care for respondents on conditional release;
6. the qualifications necessary for personnel monitoring and supervising conditional release and providing treatment to respondents on conditional release;
7. the mental health system issues and patient disabilities that currently contribute to patient noncompliance with recommended treatment and treatment approaches and systems designs that would enhance patient compliance, mental health, and quality of life; and
8. any other issues the commission deems appropriate for the study.

The commission must report its findings and recommendations, including any recommended legislation, to the 1999 General Assembly, regular session 2000, within one week of its convening.

Physical and Mechanical Restraints

Section 5.3 of the Studies Act directs the Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services to study the use of physical and mechanical restraints in facilities providing mental health, developmental disabilities, and substance abuse services and licensed under G.S. Ch. 122C and in child placing and child caring facilities. The commission must report its findings and recommendations, including any recommended legislation, to the 1999 General Assembly, regular session 2000, within one week of its convening.

Traumatic Brain Injury

Section 11.2 of S.L. 1999-237 directs DHHS to study (1) the long-range costs of treating and caring for persons with traumatic brain injury and (2) the feasibility and cost to the state of obtaining a Home and Community-Based Medicaid Waiver to provide Medicaid services to one hundred individuals with traumatic brain injury. DHHS must report to the House Appropriations Subcommittee on Health and Human Services and the Senate Appropriations Committee on Human Resources by May 1, 2000.

Mental Health Insurance Parity

In 1997 a bill was introduced and passed in the Senate that would have required group health insurance plans covering five or more employees to provide mental health care benefits at least equal to the coverage provided for physical illness, unless the insurer demonstrated that compliance increased the cost of the policy by at least 2 percent. Under the bill (S 400), benefits for the treatment of mental and physical illnesses would have been subject to the same annual and lifetime limits, deductibles, durational limits, coinsurance factors, co-payments, out-of-pocket limits, and other dollar limits or fees for covered services. Although eligible for consideration during the 1998 session, S 400 was not enacted. The Studies Act of 1999, S.L. 1999-395, authorizes the Legislative Research Commission to study the issue of requiring health insurance plans to provide mental health and chemical dependency benefits in parity with the benefits for physical illness. If the commission decides to study the issue, any findings and recommendations may be reported to the General Assembly in 2001 or 2000.

State Psychiatric Hospitals and Area Mental Health Programs

In 1998 the General Assembly directed the State Auditor to coordinate with the Fiscal Research Division and DHHS a comprehensive study of area authorities and state psychiatric hospitals. Section 12.35A of S.L. 1998-212 (S 1366). The study must, among other things, (1) compare the costs of constructing and operating new facilities with the cost of redesigning and operating existing state psychiatric hospitals, taking into account patient access to quality care; (2) assess how many and what type of inpatient beds are needed statewide and how to provide adequate and efficient access to them; (3) assess the capacity and ability of area authorities to efficiently and effectively provide services now provided by state psychiatric hospitals; and (4) evaluate the overall structure of the current system for delivering mental health services and whether changes should be made in the governance and administration of services and in the relationship between state and local mental health agencies. Section 11.36 of 1999-237 reiterates that the State Auditor must make a final report on the study of state psychiatric hospitals to the Senate Appropriations Committee on Human Resources and the House Appropriations Subcommittee on Health and Human Services by December 1, 1999. A second interim report on the study of area authorities must be made by November 1, 1999, and a final report by April 1, 2000.

Mark F. Botts

18

Motor Vehicles

More than sixty bills dealing with motor vehicles or highway safety were considered during the 1999 session of the General Assembly. Less than half of these were enacted into law, and some of those were of a technical nature of primary interest to automobile dealers and government officials who regulate the various aspects of the automobile and trucking industries. This chapter summarizes the motor vehicle legislation that is of general public interest or historical significance.

As has been the case in the last several sessions, the most important motor vehicle legislation deals with strengthening and clarifying North Carolina's impaired driving laws. While the remainder of the changes consist mostly of fine-tuning a law that already seems to meet with the approval of the motoring public, the General Assembly made significant changes in driver's license law, rules of the road, and seat belt requirements. These subjects are discussed in detail in this chapter.

Impaired Driving

The decade of the 1990s has produced many changes in the statutes regulating impaired drivers. Among them are:

- lowering the level of alcohol in the blood necessary to prove a violation from 0.10 to 0.08,
- requiring a mandatory thirty-day jail sentence for Level One offenders,
- creating a felony for habitual impaired driving,
- raising the zero tolerance age for drivers from eighteen to twenty-one,
- imposing a driver's license revocation for failure to complete an alcohol treatment program,
- lengthening the immediate, pretrial revocation from ten to thirty days,
- establishing a zero tolerance level for commercial drivers and drivers of school buses and child-care vehicles,
- revising vehicle forfeiture laws mandating pretrial seizure and forfeiture of vehicles driven by repeat offending impaired drivers,

- doubling of the maximum fines for impaired drivers.

In addition prosecutors have begun to charge more serious offenses when death occurs in impaired driving incidents, and as this chapter is written, the North Carolina Supreme Court is reviewing a conviction of first-degree murder based on an impaired driving violation. The decade represents an increasingly aggressive effort by the state to prevent and deter people from driving while impaired, to severely punish those who do, and to mandate treatment for those convicted. The 1999 session of the legislature continued that trend.

S.L. 1999-406 (H 1135) contains several provisions modifying components of the impaired driving statutes. It establishes a new, lower set of per se levels applicable to people previously convicted of impaired driving, and it makes those levels enforceable by the Division of Motor Vehicles (DMV) instead of by the criminal court system. It mandates the use of ignition interlock devices for many repeat offenders and imposes a more severe punishment on persons under twenty-one who possess alcohol. It changes the vehicle seizure and forfeiture laws to make them more likely to result in forfeitures. S.L. 1999-330 (H 303) adds another provision prohibiting the transportation of alcoholic beverages, this time by drivers of commercial vehicles.

S.L. 1999-406 was initially recommended by the Governor's Task Force on Driving While Impaired, which is chaired by Lieutenant Governor Dennis Wicker. In addition to the matters that are included in the enacted legislation, the task force recommended changes to make the results of Horizontal Gaze Nystagmus tests admissible and to prohibit the possession of any alcoholic beverage in the passenger area of a motor vehicle. Both those changes were deleted from the final bill by the legislature. The complete ban on possession of alcohol is a requirement of federal law to remain eligible for certain highway construction funds and must be in place by October 1, 2000. The failure to have such a law in place by then can result in the loss of approximately $5 million initially, and that figure can rise to almost $11 million in later years.

Lower Per Se Levels for Repeat Offenders

In 1982, immediately before the Safe Roads Act of 1983, North Carolina had one per se offense in the impaired driving arena, a 0.10 offense that was equivalent to driving under the influence. The Safe Roads Act retained that offense and added two more—zero tolerances (in essence a per se level of 0.01) for drivers under eighteen and for those with limited driving privileges. In 1988 a 0.04 per se level for commercial vehicles was added. Later sessions added zero tolerances for drivers transporting alcohol, school buses, child-care vehicles, and commercial vehicles. S.L. 1999-406 continues that trend, adding three more categories of drivers subject to low per se levels.

The law amends G.S. 20-19 to impose new conditions on a person whose license is restored following various impaired driving offenses. The first time a driver's license is restored after a conviction for impaired driving (or for a similar offense committed out of state or on federal lands), the Division of Motor Vehicles must condition the restoration on the person not operating the vehicle if he or she has an alcohol concentration greater than 0.04. The condition remains in effect for three years. If it is the person's second or subsequent restoration, the per se level is reduced to zero for the same three-year period. If the person's license is restored after a permanent revocation, the per se level is zero and the condition applies for seven years.

If a person's license is revoked for convictions of certain other offenses—for example, Driving While Impaired (DWI) in a commercial vehicle, the underage twenty-one zero tolerance offense, felony death by vehicle, manslaughter, or similar convictions in other state or federal courts—the per se level imposed upon the person's restored license is anything greater than 0.00. The condition applies for three years, unless the revocation was permanent or for violation of the underage driver offense. For permanent revocations the period is seven years, and for drivers under age twenty-one it is until the driver reaches twenty-one.

Any person subject to these new lower, per se levels must agree, as a condition of receiving a driver's license, to take a chemical analysis under G.S. 20-16.2 and -139.1 if requested to do so by an officer who has probable cause to believe the driver is violating the condition. The person must also agree to accompany the officer to the test site. If the test reveals that the condition is violated,

the officer must submit an affidavit to the DMV and the DMV must revoke any conditional restoration of license and impose an additional one-year revocation.

The DMV must provide the motorist with a hearing to review the decision in the county where the violation occurred. The motorist may appeal the DMV's decision to superior court for a discretionary review of whether the DMV followed proper procedure and made findings of fact sufficient to support the revocation. That court may not issue a stay of a DMV revocation order unless it finds that the motorist is likely to succeed on the merits and will suffer irreparable harm. The new law specifically provides that a reading from an interlock ignition device is not sufficient to support a revocation under this section.

These new provisions are effective July 1, 2000.

Ignition Interlocks

Ignition interlock devices are instruments attached to motor vehicles that require the driver to submit to a breath test before and during the operation of the vehicle. A failure to pass the breath test will prevent the vehicle from being started or from continuing to be driven. Individuals using the devices, in addition to passing a breath test, must activate the device using a prearranged code. These devices have been authorized as a condition of restoration of a revoked license for impaired driving or as a condition of a limited privilege. S.L. 1999-406 mandates that they be used in certain cases, in part to respond to the federal requirement dictating the impoundment, immobilization, or installation of an ignition interlock system on all motor vehicles owned by repeat offenders.

Specifically the new law applies to a person whose license was revoked for an impaired driving conviction under G.S. 20-138.1 if the person had an alcohol concentration of 0.16 or more or had another conviction of an offense involving impaired driving in the seven years preceding the date of the current offense. The restriction requires the person to operate only a vehicle with an interlock device. That person must personally activate the device before starting the vehicle and may not drive with an alcohol concentration of 0.04 or more. This condition lasts for one year (although, as noted above, the lower per se level of 0.04 applies for three years) if the original revocation is one year, three years if the revocation is for four years, and seven years if the revocation is permanent. A violation of any of the conditions applicable to the use of the interlock device, unlike a violation of the new lower per se levels, constitutes the crime of driving while license revoked. Judicial officials finding probable cause for this charge must require surrender of the driver's license pending trial. Upon conviction, any remaining time left on the original revocation is activated, and an additional year is added. The person, however, receives credit for any time the license is held by a court pending trial. The statute provides also that the person's license can be revoked for a violation of an interlock condition, although it is not clear in the statute what kind of information is sufficient to support that revocation in the absence of a provision for reporting that information except as part of a criminal case. In those cases the DMV must hold a hearing, and appeal is to the superior court under G.S. 20-25. This law is effective July 1, 2000.

In a related change, limited driving privileges for first offenders convicted of impaired driving must require the person convicted to drive a vehicle equipped with an ignition interlock device if his or her alcohol concentration was 0.16 or higher. This is effective July 1, 2000.

Ignition interlock devices are provided by private vendors licensed by the DMV, and the offender bears the costs of installation and maintenance. The devices record all readings taken along with the time of the reading.

Alcosensor Admissibility

As noted, several statutes make it a per se violation of the law to drive with any alcohol in one's body. One method of proving that alcohol is present in a person's body is to ask the person to submit to a test using a portable breath-testing instrument. The legislature has not found these instruments (the one used in North Carolina is an Alcosensor) to be precise enough to allow

prosecutors to rely on them to prove that a person has a specific alcohol concentration (for instance, 0.05 instead of 0.04). But when the issue is the presence or absence of alcohol, the legislature has greater faith in them. Accordingly the General Assembly made these tests admissible in charges against underage persons violating the zero tolerance law applicable to them. S.L. 1999-406 makes the same provision for prosecutions involving violations of the zero tolerance provisions of all limited privileges issued under G.S. 20-179.3 for impaired driving.

Other Zero Tolerance Changes

Last session the legislature added zero tolerance offenses for drivers of commercial vehicles, school buses, and child-care vehicles. Those particular statutes were written in such a way as to require that the state have an Intoxilyzer test or a blood test under G.S. 20-16.2 to prove a violation of the offense. That is in contrast to the zero tolerance offense for persons under twenty-one, which allows multiple means of proof of the presence of alcohol. S.L. 1999-406 amends both new offenses to make them consistent with the underage zero tolerance laws and to allow any proof of alcohol, including Alcosensor test results, to prove that the offense has been committed.

Vehicle Forfeiture Changes

In 1997 the legislature enacted strict, mandatory vehicle forfeiture laws in impaired driving cases. In 1998 it enacted a significant number of amendments to that law to correct problems in its administration. S.L. 1999-406 contains a few more amendments to the law. First, it expands the coverage of the law. The law applies to persons charged with the most serious impaired driving offenses whose licenses have, at the time of the offenses, been revoked for previous impaired driving incidents. The amendment includes among those revocations a revocation entered by another state for an offense that would support a seizure/forfeiture if committed in this state. Second, it amends the definition of innocent owners. An *innocent owner* is a person who was not driving the seized vehicle and who can demonstrate his or her innocence in the transaction. If the owner can prove his or her innocence, he or she may recover possession of the vehicle. The original law allowed a person to show innocence by demonstrating that, although he or she knew the driver had a revoked license, the driving occurred without his or her permission. This amendment requires a would-be innocent owner to show that he or she contacted a law enforcement officer to file a report about the unauthorized use and agreed to prosecute the driver. Finally, the law clarifies how an innocent owner can demonstrate his or her financial responsibility. To obtain possession of a seized vehicle, an innocent owner must, among other things, prove that he or she has insurance or similar financial responsibility for the vehicle. Problems have arisen with regard to vehicles registered in some other state because the original statute required proof that satisfied North Carolina motor vehicle laws. The amendment makes it clear that an innocent owner may satisfy this requirement by showing financial responsibility in a manner consistent with the laws of the state in which the vehicle is registered.

Civil Revocations

The Safe Roads Act of 1983 allowed an immediate pretrial civil revocation of the driver's license of any person who "flunked" a breath or blood test or who refused to submit to a test. In 1998 the legislature amended that statute. One unintended change was corrected by S.L. 1999-406. Until last year's amendment, a person's license was revoked under this law for a specified period (originally at least ten days and recently increased to thirty). The revocation began immediately when the person was served with a revocation order by the magistrate or clerk. However, the thirty-day period did not begin to run until the person had surrendered his or her driver's license or demonstrated that he or she did not have one. The revocation continued until the license had been surrendered, the thirty-day period had passed, and the person had paid the appropriate court costs. Thus the revocation could last much longer than thirty days if the person revoked either did not

surrender his or her license or did not pay the court costs. The 1998 amendment deleted the license surrender requirement. S.L. 1999-406 restores the law to its pre-1998 status.

Commercial Vehicle Transportation of Alcohol

S.L. 1999-330 also changes the impaired driving statutes. It adds a new offense making it unlawful to drive a commercial motor vehicle on a highway or in a public vehicular area while possessing an alcoholic beverage in the passenger area of the vehicle. The law does not apply to alcohol possessed by passengers in excursion passenger vehicles, for-hire passenger carriers, common carriers of passengers, or motor homes. Unlike other prohibitions on transporting alcohol, this law applies to alcohol in its original, unopened container. Consequently it is an offense to have an unopened liquor or wine bottle or an unopened beer can or bottle in the passenger area of a commercial motor vehicle while it is being driven. Violation of this offense is an infraction, punishable by a penalty of up to $100, pursuant to G.S. 20-176.

Driver's License Law

Graduated Licenses

In 1997 North Carolina enacted and implemented a new "graduated" driver's license system for persons under eighteen years of age. Now three levels of licensing apply to this age group: a limited learner's permit, followed by a limited provisional license, followed by a full provisional license. The stated purpose of this new system, as contained in G.S. 20-11, is to ensure that a person under eighteen years of age has both driving instruction and experience before obtaining a regular driver's license. Any person under age eighteen who desires to obtain a permit or license pursuant to G.S. 20-11 but who does not have a high school diploma or its equivalent must have a driving eligibility certificate signed by the school principal or other proper school official.

S.L. 1999-243 (S 57) adds a new G.S. 20-11(n1) (known as "Lose Control, Lose Your License"), which provides that certain behaviors resulting in disciplinary action require revocation of the driver's license or permit. The following behaviors are listed: possession or sale of an alcoholic beverage or an illegal controlled substance on school property, possession or use on school property of a weapon or firearm, or a physical assault on a teacher or other school personnel on school property. Upon being notified by the proper school authority that a person no longer meets the requirements for a driving eligibility certificate under G.S. 20-11(n), the DMV *must* revoke the permit or license on the tenth calendar day after mailing a revocation notice. G.S. 20-13.2(c1) provides that a revocation because of ineligibility for a driving eligibility certificate under this act is for one year or until the driver's eighteenth birthday. The DMV will restore the driver's permit or license before the person's eighteenth birthday if he or she submits a high school diploma or its equivalent or a driving eligibility certificate as required by G.S. 20-11(n). S.L. 1999-243 applies only to conduct on or after July 1, 2000. This law is discussed in detail in Chapter 9 (Elementary and Secondary Education).

G.S. 20-11 was further amended by S.L. 1999-276 (H 1263) to provide that a person under the age of eighteen who has a license issued by the federal government (and becomes a resident of North Carolina) may obtain a limited provisional license or a full provisional license "if the person has completed a driver education program substantially equivalent to the driver education program that meets the requirements of the State Superintendent of Public Instruction." Prior to this amendment an in-state course was apparently required.

More Revocations

For decades driver's license suspensions and revocations were imposed solely for traffic offenses. However, this started to change a few years ago with the enactment of G.S. 110-142.2,

authorizing revocation for those failing to make timely child support payments. (As noted above, a student's permit or license can now be revoked for certain disruptive behaviors.) S.L. 1999-257 (S 17) adds a new provision to G.S. 20-13.2 and G.S. 20-17 (mandatory revocation of license) to provide that conviction of the following offenses requires license revocation:

1. malicious use of explosive or incendiary device, G.S. 14-49(b)(b1);
2. conspiracy to injure or damage by use of explosive or incendiary device, G.S. 14-50;
3. making a false report concerning a destructive device, G.S. 14-69.1(c);
4. perpetrating a hoax concerning a destructive device in a public building, G.S. 14-69.1(c);
5. possessing or carrying a dynamite cartridge, bomb, grenade, mine, or powerful explosive on educational property, G.S. 14-269.2(b1);
6. causing, encouraging, or aiding a minor to possess or carry a dynamite cartridge, bomb, grenade, mine, or powerful explosive on educational property, G.S. 14-269.2(c1).

While discouraging child support delinquency, misconduct in school, and certain criminal activity is certainly in the public interest, this type of legislation is a sharp departure from the previous North Carolina practice regarding license revocations. However, now that the ice has been broken, more such legislation probably can be expected in the future.

Commercial Vehicles

Somewhat stricter provisions apply to the operators of commercial motor vehicles than to other vehicle drivers. For example, an alcohol concentration of 0.04 constitutes impaired driving in a commercial vehicle, while the same driver might not be guilty of an offense in the family car unless the alcohol concentration reached 0.08. The stricter standards for commercial drivers are enhanced by S.L. 1999-330, which creates a separate and higher schedule of driver's license point values for violations while operating a commercial vehicle, G.S. 20-16(c). The following list shows the points assessed for violations while operating a commercial motor vehicle as compared to other vehicles:

(a) passing a stopped school bus, 8 (5 for noncommercial vehicles);
(b) railway or highway crossing violation, 6 (probably 2);
(c) reckless driving, 5 (4);
(d) hit and run, property damage, 5 (4);
(e) following too close, 5 (4);
(f) driving on wrong side of the road, 5 (4);
(g) illegal passing, 5 (4);
(h) running stop sign, 4 (3);
(i) speeding in excess of 55 mph, 4 (3);
(j) failure to yield right-of-way, 4 (3);
(k) running red light, 4 (3);
(l) no driver's license, 4 (3);
(m) failure to stop for siren, 4 (3);
(n) driving through safety zone, 4 (3);
(o) no liability insurance, 4 (3);
(p) failure to report accident, 4 (3);
(q) speeding in school zone, 4 (3);
(r) possessing alcoholic beverages in vehicle, 4 (2);
(s) all other moving violations, 3 (2);
(t) littering, 1 (1).

This act also adds a new G.S. 20-16A to provide that a commercial driver who commits an offense for which points may be assessed pursuant to the new schedule of point values for commercial vehicles may be assessed double the amount of any fine or penalty authorized by the statute violated. Thus the driver of a commercial vehicle who made an illegal passing movement in violation of G.S. 20-150 might have to pay a penalty of $200 rather than the maximum penalty of $100 authorized for other drivers by G.S. 20-176.

Unlawful Use of License

G.S. 20-30 contains a list of activities that violate the North Carolina driver's license law. S.L. 1999-299 (H 1022) adds a new subdivision (9) to this statute making it unlawful to "present, display, or use a driver's license or learner's permit that contains a false or fictitious name in the commission or attempted commission of a felony." While most driver's license violations are Class 2 misdemeanors under the provisions of G.S. 20-35, a violation of new G.S. 20-30(9) is a Class I felony. This act also amends G.S. 20-37.8, making it a Class I felony to present, display, or use a special identification card that contains a false or fictitious name in the commission or attempted commission of a felony. (This kind of card is usually acquired by a person who does not have a driver's license.)

Motor Vehicle Registration

Special license plates, which were originally intended for vehicles driven by major statewide officeholders, have become an increasingly popular phenomenon in recent years. These plates are now available to many diverse groups, including military retirees, National Guard members, registers of deeds, and members of square dance clubs. Additional special plates were authorized by the 1999 General Assembly. S.L. 1999-450 (H 1246) provides for a new animal lovers plate, which is issued for an additional fee of $20 (over and above the usual cost of a plate), with the proceeds used to create a statewide program promoting the spaying and neutering of dogs and cats. Other new plates include ones for the International Association of Firefighters, University Health Systems of Eastern Carolina, and Kids First. See S.L. 1999-1314 (H 1090), S.L. 1999-403 (S 285), and S.L. 1999-277 (S 235). These special license plate acts all add provisions to G.S. 20-79.4.

S.L. 1999-220 (H 486) rewrites G.S. 20-84, which pertains to permanent registration plates. This statute now specifies that the DMV may issue a permanent registration plate for $6, upon proof of ownership and financial responsibility, to owners of motor vehicles that qualify under the statute. Permanent registration plates are issued primarily to various government agencies, but other entities can qualify also, such as orphanages, civil air patrols, incorporated rescue squads, churches (if vehicle is used to transport individuals to services), and other listed private organizations.

Equipment Violations

Seat Belts

S.L. 1999-183 (S 65) rewrites provisions of G.S. 20-135.2A (seat belt use) and G.S. 20-137.1 (child restraint system) to clarify and enhance statutes that have been law since the 1980s. As amended G.S. 20-135.2A provides that each front seat occupant of a passenger motor vehicle who is age sixteen or older, as well as the driver, must have the seat belt properly fastened when the vehicle is in forward motion on a street or highway. Any driver or passenger violating this provision has committed an infraction punishable by a penalty of $25 but may not be assessed court costs. New G.S. 20-137.1 (child restraints) provides that every driver transporting a passenger under sixteen years of age (formerly twelve) must have the passenger secured in a child passenger restraint system or a seat belt that meets federal standards. However, "a child under five years of age and less than 40 pounds in weight" must be put in a weight-appropriate child passenger restraint system (child car seat). If a vehicle equipped with an active passenger-side air bag has a rear seat, the child must be put in the rear seat. The apparent purpose of this provision is to prevent injuries and deaths to small children caused by air bag deployment. A violation of G.S. 20-137.1 is also punished by a penalty not to exceed $25, even when more than one child under sixteen years of age was not properly secured.

Blue Lights

The only other equipment provision enacted this year was S.L. 1999-249 (S 172), which rewrites G.S. 20-130.1 concerning the use of blue lights on motor vehicles. For many years North Carolina law has restricted the use of blue lights to "vehicles used primarily for law enforcement purposes." Despite this fairly clear language, violations continue to occur. As rewritten G.S. 20-130.1 makes it unlawful for any person to "possess a blue light or to install, activate, or operate a blue light in or on any vehicle in this state except for a publicly owned vehicle used for law enforcement purposes." Unlike most rules of the road violations, which are infractions only, a violation of this provision is a Class 1 misdemeanor.

Rules of the Road

Funeral Processions

North Carolina law traditionally has left the regulation of funeral processions to local governments. G.S. 20-169 expressly states that "local authorities . . . shall have no power or authority to alter any speed limitations . . . or to enact or enforce any rules or regulations contrary to the provisions of this article . . . except that local authorities shall have power . . . to regulate the use of highways by processions or assemblages." The 1999 General Assembly changed this long-standing policy through enactment of S.L. 1999-441 (H 247) to codify the rules of the road with regard to funeral processions.

New G.S. 20-157.1 provides that each vehicle in a funeral procession must be operated with its headlights on and its hazard warning signal lamps illuminated. The operator in the lead vehicle must comply with all traffic control signals, but when the lead vehicle has crossed an intersection in compliance with traffic control signals, then all vehicles in the funeral procession may proceed through the intersection without stopping.

Drivers proceeding in the opposite direction of the procession may yield by reducing speed or by stopping completely off the roadway while meeting the procession. Vehicles proceeding in the same direction as the procession may not pass or attempt to pass the procession unless the street has been marked for two or more lanes proceeding in the same direction as the procession. Also drivers may not knowingly drive between vehicles in a funeral procession. G.S. 20-157.1 has a rather unusual provision that allows local governments to enact ordinances that prevail over the provisions of the state statute. Normally, provisions of the State Motor Vehicle Law prevail over local ordinances.

School Buses

As is the case in other states, school buses in North Carolina are required to stop before crossing a railroad track. S.L. 1999-274 (H 1054) amends G.S. 20-142.3 to extend this requirement to stop to *school activity buses,* which are usually considered to be vehicles that transport students to and from events other than regular classroom work. The stop must take place within fifty feet but not less than fifteen feet from the nearest rail, and the driver must listen and look in both directions along the track before proceeding. School activity buses, as well as school buses, must cross the track in a gear that allows the driver to make the crossing without changing gears, and the driver may not change gears during the crossing.

Transitways

S.L. 1999-350 (H 1085) adds a new G.S. 20-146.2(a1) to authorize the State Department of Transportation (and cities) to designate one or more travel lanes as "transitways." Transitways are reserved for *public transportation vehicles*. Provisions similar in nature have been implemented in some of the country's large metropolitan areas, but this appears to be a first for North Carolina.

Highway Work Zones

S.L. 1999-330 is mostly concerned with commercial vehicle highway safety, as noted above in sections of this chapter dealing with impaired driving and driver's license law. However, it also amends G.S. 20-141(j2), which makes it unlawful to exceed the posted speed limit in a designated highway work zone. The changes include an increased penalty of $250 that will be imposed in addition to other G.S. Chapter 20 penalties. For example, a motorist who drives through a work zone at more than fifteen mph over the limit would be fined both for a work zone speeding violation and a violation of G.S. 20-141(j1). The new law requires that an officer issuing a citation for a work zone violation must indicate the vehicle speed and the posted speed in the work zone, and the clerk of court will forward this information to the Division of Motor Vehicles for the purpose of imposing driver's license points and penalties.

Liability Insurance

The Motor Vehicle Safety and Financial Responsibility Act of 1953 originally required automobile owners to furnish "proof of financial responsibility" in the amount of $5,000 because of bodily injury or death of one person in any one accident, in the amount of $10,000 because of bodily injury to or death of two or more persons, and in the amount of $1,000 because of damage to property. These amounts have been gradually increased over the years, and S.L 1999-228 (S 756) amends G.S. 20-279.1(11) and other sections to increase these amounts to $30,000 because of injury or death to one person, $60,000 because of injury or death to more than one person, and $25,000 for damage to property. The usual method of furnishing financial responsibility is to have an automobile liability insurance policy, but a security deposit is occasionally used as permitted in G.S. 20-279.5. S.L. 1999-228 becomes effective July 1, 2000, and applies to new or renewal policies written to become effective on or after that date.

Other Motor Vehicle Legislation

Two very important enactments concerning motor vehicles are discussed in other chapters of this publication. One of these, S.L. 1999-328 (S 953), concerns a new motor vehicles emissions testing and maintenance program affecting about half the counties of the state. This act is discussed in Chapter 10 (Environment, Natural Resources, and Solid Waste). The other enactment, S.L. 1999-437 (S 830), adds to G.S. Chapter 20 a new article 15B entitled the "North Carolina Motor Vehicle Repair Act." The new repair act is discussed in Chapter 6 (Courts and Civil Procedure).

Bills That Failed to Pass

As is the case in most sessions of the General Assembly, several interesting motor vehicle proposals were not enacted. These failed bills can be significant because they often reappear a session or so later, sometimes with considerably more support. The following are among those that failed to pass in 1999.

1. H 1203 would have amended G.S. 20-140.4 (motorcycle helmets) to exempt from the helmet requirements any motorcycle operator at least twenty-one years of age who has had a motorcycle license endorsement for more than twelve months.
2. H 815 would have amended G.S. 20-158 to allow left turns on a red light if a vehicle on a one-way street was turning at an intersection with another one-way street. The turning vehicle would have to come to a complete stop and yield the right-of-way to pedestrians and other traffic before proceeding into the intersection.

3. H 1190 would have amended G.S. 20-79.4 to authorize the DMV to issue Desert Storm license plates to any veteran of the armed forces who served in Saudi Arabia or Kuwait in 1991, provided he or she was still in the military or had received an honorable discharge. Since dozens of these special plates have been authorized, it is not clear why this particular proposal failed to pass.
4. H 786 would have amended G.S. 20-141.4 to create the new offense of "felony death by commercial motor vehicle." This act would have made felony cases out of what are now misdemeanor death by vehicle cases. For example, it would be a felony if a person were killed while the commercial vehicle was passing a stopped school bus, following too closely, driving on the wrong side of the road, running a stop sign or red light, speeding in a school zone, or numerous other listed offenses. H 786, while it did not pass, represents another move toward stricter requirements for drivers of commercial vehicles than for other drivers.

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19

Public Personnel

The General Assembly's 1999 session produced few substantive changes to North Carolina laws affecting state and local government employees. Among the most notable developments were changes to the state's employment security laws, including a statutory amendment allowing individuals to receive unemployment benefits when they are unable to work because of their inability to arrange for care of a child or an elderly parent. Also of particular interest to state employees was the early approval of the budget bill containing their pay raises.

State Employees

Salary Increases

Pursuant to the 1999 Appropriations Act, S.L. 1999-237 (H 168), state employees received a 3 percent salary increase and a one-time bonus of $125. Consistent with the requirements of the State Personnel Act, the actual allocation of the pay increase was a 2 percent career growth recognition award and a 1 percent cost-of-living adjustment. In accordance with G.S. 126-7(c)(4b), state employees on probation or final written warning were entitled to the cost-of-living increase. Although a bill was introduced in the House (H 923) to amend the State Personnel Act to provide that cost-of-living adjustments are not made to state employees involved in the final stage of the disciplinary procedure, it failed to pass. In addition to their pay increase, state employees enrolled in the state's major medical plan receive enhanced prescription drug benefits effective January 1, 2000.

S.L. 1999-237 also enacts a teacher salary schedule that increases salaries, on average, by 7.5 percent. Like state employees, school central office personnel and other noncertified personnel, such as teachers' assistants, received a more modest 3 percent increase, plus a one-time bonus of $125.

The Governor and the Council of State also received salary increases. The Governor's salary rose from $110,346 to $113,656 annually. The annual salaries for Council of State members were increased from $97,388 to $100,310. Salaries of appointed state agency heads escalated from $95,149 to $98,003. Other executive branch officials also received raises of 3 percent, as did most

judicial branch officials, employees of the General Assembly, Community College system personnel, and EPA nonfaculty employees of The University of North Carolina.

In addition, Section 28.23(a) of the 1999 Appropriations Act amends G.S. 135-5 to provide a 2.3 percent retirement allowance increase for beneficiaries under the state retirement system.

Section 28.18(a) requires an adjustment to the salaries of wildlife enforcement officers so that the average salary in any salary classification level is the same as comparably classed members of the State Highway Patrol.

Firemen, rescue squad workers, and members of the National Guard are allowed to participate in benefits provided by the N.C. Teachers' and State Employees' Comprehensive Major Medical Plan pursuant to an amendment to G.S. 135-40. To participate these persons must not be eligible for any other type of comprehensive group health insurance and must have been without group health insurance for at least six months.

The Ambient Air Quality Improvement Act

Some of the most dramatic changes for state employees could come from an unexpected source, the Ambient Air Quality Improvement Act, S.L. 1999-328 (S 953). Designed to combat ozone pollution, the statute requires the Office of State Personnel, the Department of Administration, the Department of Transportation, and the Department of Environment and Natural Resources to jointly develop a plan to reduce vehicle miles traveled by state employees and vehicle emissions resulting from job-related travel, including commuting to and from work. The Office of State Personnel is required to implement a policy that promotes telecommuting for state employees. The goal is to reduce state employee vehicle miles traveled by 20 percent without reducing total work hours or productivity. By October 1, 2000, the Office of State Personnel must report on its progress in developing and implementing these plans.

State Auditor's Access to Personnel Records

S.L. 1999-188 (S 885) amends G.S. 147-64.7 to clarify that the state auditor or his or her authorized representative has the authority to examine all personnel files of any state agency. Notwithstanding the law related to the privacy of personnel records, the auditor may make these records available to state and federal agencies in order to avoid unnecessary duplication of audit effort.

1999 Studies Provisions

More changes to the laws relating to governmental employees may be forthcoming in the General Assembly's "short" session, as S.L. 1999-395 (H 163) authorizes the Legislative Research Commission to study the following topics related to public personnel:

- defined contribution and pension plans for state employees and teachers,
- the administrative process for state employee grievances,
- a comprehensive compensation system for state employees, and
- state agencies' customer service quality assurance.

State and Local Government Employees

Employment Security Law Changes

S.L. 1999-340 (H 276) makes several meaningful changes to the employment security laws of North Carolina. First, it allows employers to pay their quarterly tax contributions by electronic funds transfer and permits the Employment Security Commission (ESC) to establish policies whereby taxes can be paid by credit card. This law also amends G.S. 96-9(a)(7) to require that,

beginning with the quarter ending September 30, 1999, all employers with 100 or more employees file the portion of the "Employer's Quarterly Tax and Wage Report" that contains the name, social security number, and gross wages of each individual employed. Previously only employers with 250 or more employees were required to submit this report.

S.L. 1999-340 restricts an individual's eligibility for extended benefits by amending G.S. 96-12.01(c) to provide that an employee is not eligible for extended compensation unless that person has had twenty weeks of full-time insured employment or the equivalent in insured wages. As a result of this change, eligibility for federally funded extended unemployment insurance benefits now matches the federal requirements for the program.

The law also amends G.S. 96-15(b)(2) to provide that, for claims filed on or after July 1, 1999, a decision by the adjudicator following an employee protest over benefits shall be considered the final decision of the commission if no written appeal is filed within fifteen days after the date of notification or mailing of the conclusion, whichever is earlier. Previously parties had ten working days to file a written appeal. Further, the law provides that an employer has fifteen days (previously ten working days) to protest claims filed by an employee against the employer's account. In addition it increases the time after which no issue may be raised about an employee's eligibility for benefits from twenty working days to forty-five days following the first day of the first week of claimed benefits.

Under the law, tax information that may be disclosed to the ESC for purposes of the N.C. Works study of the working poor pursuant to G.S. 105-259(b) has been expanded to include the following: (1) the social security number of the taxpayer's spouse, (2) information about the taxpayer's exemption and credit for children, and (3) information concerning the taxpayer's expenses for child and dependent care. Additionally G.S. 96-4(t)(1) is amended to protect the confidentiality of records, reports, and information obtained from units of government pursuant to the employment security laws.

Finally, S.L. 1999-340 amends G.S. 96-12(b)(4) to reduce the multiplier for the average weekly insured wage that an individual must be paid as qualifying wages for second-year benefits from ten to six and requires that the individual be paid wages in at least two quarters of the base period. As a result, individuals applying for a second year of benefits must now meet the same test of monetary eligibility as for their first year of benefits.

In an effort to make the employment security laws more "family friendly," the legislature also enacted S.L. 1999-196 (H 277). Effective July 1, 1999, and applicable to claims filed after that date, this law provides that an individual may not be disqualified for benefits when the person's inability to accept employment during a particular shift would result in an undue family hardship. Likewise an individual will not be disqualified for unemployment compensation if the person's discharge was due solely to an inability to work a certain shift because of an undue family hardship. The law defines *undue family hardship* as the inability to obtain care for a child under fourteen or an aged or disabled parent. In the event of eligibility, benefits will be non-charged against liable employers.

S.L. 1999-421 (H 278) encourages employers to hire Work First participants by amending G.S. 96-9(c)(2)(b) to provide that Work First recipients who must be separated by their employer within the first 100 days of employment because of their inability to do the work may be eligible for non-charged unemployment insurance benefits.

Pursuant to S.L. 1999-321 (H 275), employers with positive experience ratings will get a zero unemployment insurance tax rate. This legislation also temporarily reduces the unemployment insurance tax by 20 percent for most employers and substitutes an equivalent contribution to fund enhanced employment services and worker training programs.

Workers' Compensation

The General Assembly also modified the state's workers' compensation laws. Although some legislation was enacted merely to clarify existing law, other bills made substantive changes. S.L. 1999-418 (S 877) amends G.S. 97-2(2) to clarify that members of the North Carolina State and National Guard are considered employees and are subject to the workers' compensation act only

when on active duty under orders of the Governor. Members are entitled to compensation for injuries arising out of and in the course of the performance of their duties at drill, in camp, or on special duty under order of the Governor.

S.L. 1999-150 (SB 1113) deletes language from G.S. 97-25 requiring that the Industrial Commission adopt rules governing additional methods of oral and written communications between employers and medical care providers. This provision had been added to the law in response to an N.C. Court of Appeals decision [Salaam v. N.C. Department of Transportation, 122 N.C. App. 83, 468 S.E.2d 536 (1996)] that precludes the employer, the insurance carrier, and their attorney from engaging in ex parte communications with the injured employee's treating physician without the employee's consent.

When an employee suffers a compensable injury at the hands of a third-party tortfeasor, a subrogation lien is created for the employer and the workers' compensation insurance carrier against any recovery from the third party. S.L. 1999-194 (H 980) allows judges discretion in determining the subrogation amount of the employer's lien. The law amends G.S. 97-10.2(j) to provide that the judge shall determine the amount of the employer's lien based on either accrued or prospective workers' compensation benefits. In making this determination, the judge shall consider a number of factors, including the anticipated amount of workers' compensation and the employee's net recovery.

S.L. 1999-195 (H 991) rewrites G.S. 20-279.21(e) to provide that uninsured or underinsured motorist coverage need not insure against a loss for which benefits have been paid under workers' compensation laws, except an amount of an employer's lien determined under G.S. 97-10.2(h) or (j), but not to exceed the applicable uninsured or underinsured coverage limits of the motor vehicle policy.

S.L. 1999-158 (S 214) amends G.S. 128-26(1) to provide a means for measuring average final compensation for members of the Teachers' and State Employees' Retirement System and the Local Government Retirement System who purchase creditable service for leaves of absence incurred while receiving workers' compensation payments. When the service purchased is for a period during the four consecutive calendar years that would have produced the highest average annual compensation, the compensation that the individual would have received during the purchased period shall be included in calculating the members' average final compensation.

No action was taken on a bill (S 1166) that proposed to include wages earned in employment other than that in which the employee was injured in the calculation of the average weekly wage. Had this bill passed, the exposure of employers and insurance carriers could have substantially increased.

Workplace Ergonomics Standards

Whether the Occupational Safety and Health Division of the N.C. Department of Labor (NC OSH) could implement and begin enforcement of a workplace ergonomics standard was a hotly contested issue. Ultimately, the legislature included a provision in the studies bill, S.L. 1999-395 (H 163), that precludes NC OSH from implementing and enforcing (but not developing) a workplace ergonomics standard until June/July 2001. The provision also calls for a study of the causes, frequency, costs, and prevention of occupational musculoskeletal disorders. However, prior to the bill's enactment, NC OSH signed and filed with the state's Rules Review Commission the final version of the proposed ergonomics standard that states that it will have an effective date of January 2001. It is likely this issue will be revisited by the legislature during its short session.

Occupational Safety and Health Administration (OSHA) Witness Statements

S.L. 1999-364 (S 370) provides that an employer cited for Occupational Safety and Health Administration (OSHA) violations is entitled to receive a copy of the official inspection report that is the basis for the citations. The law also amends G.S. 95-136(e1) to prevent the disclosure of the

names of witnesses or complainants to the employer and requires that the names be redacted from any copy of the official inspection report provided to the employer or third party. Witness statements in the handwriting of the witness or complainant shall, upon request of and at the expense of the requesting party, be transcribed so that information that would not name or otherwise identify the witness may be released. The Commissioner of Labor is required to make available to the employer ten days prior to a scheduled enforcement hearing unredacted copies of the witness statements the commissioner intends to use at the hearing or the statements of witnesses the commissioner intends to call, provided a written request is received no later than twelve days prior to the hearing. If the request is not timely, the statement shall be made available as soon as is practicable.

Attempt to Standardize Law Enforcement Discipline

A bill that would have standardized the discipline of all law enforcement officers was also introduced in the Senate (S 558) but failed to make the crossover deadline of April 29, 1999. This bill attempted to standardize law enforcement discipline across agencies and units of government by providing that no officer can be discharged, suspended, or demoted for disciplinary reasons without just cause. Each agency or department employing law enforcement officers would have been required to establish due process for disciplinary action.

Public School Employees

In S.L 1999-96 (S 898) the legislature modified the appeal process for public school teachers in a number of ways. First, a school board now has up to ten days (previously five) to hold a teacher dismissal hearing. The law also amends G.S. 115C-325(j)(3) to make it clear that the superintendent may have his or her designee present at the case manager hearing. The superintendent is required to provide the employee with a list of witnesses at least eight (was ten) days before the hearing. Additionally G.S. 115C-325(j1)(1) was amended to require the superintendent to request a transcript from the case manager hearing and, within two days of receipt of the same, to submit a written recommendation regarding the teacher's fate to the school board.

S.L. 1999-300 (S 742) amended Article 26 of Chapter 14 of the General Statutes to make it a felony for certain school personnel, including volunteers, to take indecent liberties with a student.

In addition to the safeguards provided by Title VII of the Civil Rights Act, employees who file written complaints regarding sexual harassment by students, fellow employees, or school board members are protected from retaliation by a new part added to Chapter 115C of the General Statutes pursuant to S.L. 1999-352 (H 1267). Notwithstanding this provision, if the complaining employee knows or has reason to believe that the allegations of sexual harassment are false, he or she may be the subject of disciplinary action.

Certain state employees and public school employees may finally be able to share leave. S.L. 1999-170 (S 756) requires the State Personnel Commission and the State Board of Education to adopt rules to allow a state employee to share leave voluntarily with an immediate family member who is a public school employee and vice versa.

These laws are discussed in detail in Chapter 9 (Elementary and Secondary Education).

Local Government Employees

Asheville Civil Service Board

S.L. 1999-303 (S 532) rewrites the laws related to the Asheville Civil Service Board to require the city manager to consult with representative employees in the police and fire

departments to establish criteria for filling positions and to give the board the authority to approve the criteria. The law also requires that the grievance procedure for an employee who is discharged, suspended, reduced in rank, transferred against his or her will, or denied a promotion or pay raise be concluded within thirty days. If it is not, the employee may file a request for a hearing before the Civil Service Board.

Hickory Firefighters' Supplemental Retirement Fund

S.L. 1999-128 (S 687) amends the supplemental retirement fund for firefighters in the city of Hickory to restrict eligibility to full-time paid firefighters retiring on or after March 1, 1999. Previously both full- and part-time firefighters with the requisite length of service were entitled to the pension.

Charlotte Firefighters' Retirement

S.L. 1999-1000 (S 583) modified several provisions of the Charlotte Firefighters' Retirement System, which provides retirement, disability, and survivor benefits for uniformed employees of the Charlotte Fire Department. Among other things the law amends sections of the plan dealing with the reinstatement credit after a former firefighter returns to the system and relating to the purchase of credit for prior military service. Additionally the law makes changes to provisions regarding benefits paid under the system and administration of the system by the Board of Trustees.

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20

Public Purchasing and Contracting

Technology issues dominated the legislative changes affecting public purchasing and contracting in the 1999 session. Although the General Assembly made no major legislative changes in this area, the trend over the past several years has been toward an increased accommodation in the laws governing public contracting of electronic commerce and other technology-driven innovations in contracting.

Information Technology and Electronic Commerce

State Procurement of Information Technology

The legislature has established within the Department of Commerce a centralized Office of Information Technology Services (ITS) to be headed by a State Chief Information Officer. S.L. 1999-434 (S 222). The new office will be responsible for developing a centralized approach to planning for and investing in information technology, subject to approval by the Information Resources Management Commission. In addition ITS will be responsible for procurement of all information technology for state agencies except The University of North Carolina and its constituent institutions. G.S. 143B-472.51(a)(1). The new law, which becomes effective January 1, 2000, requires ITS to "integrate technological review, cost analysis, and procurement for all information technology needs of . . . State agencies in order to make procurement and implementation of technology more responsive, efficient, and cost effective." G.S. 143B-472.54. Specifically ITS is authorized to procure information technology using the best value procurement method set forth in G.S. 143-135.9. Under this method, a contract is awarded based on evaluation of several factors in addition to price, including total cost of ownership, technical merit of the proposal, and the contractor's past performance and expected future performance in conformity with the proposal. Under the new law, all state agencies will be required to purchase from contracts for information technology established by ITS. G.S. 143B-472.56.

The new law is a bit unclear about the extent to which the competitive bidding requirements in G.S. 143-52 apply to information technology procurement. Although nothing in the new law exempts these purchases from the statutory bidding requirements,[1] one provision authorizes ITS to "purchase or . . . contract for, *by suitable means* in conformity with G.S. 143-135.9, [best value information technology procurements]. . . ." G.S. 143B-472.55(1). Another provision requires contracts that exceed an established benchmark to be approved by the State Board of Award after review and approval by the State Budget Director. The best value evaluation could be considered to be an alternative method of procurement, or it might simply be viewed as the evaluation that is a part of, rather than a substitute for, the otherwise applicable competitive procedures. Given this ambiguity, it is possible that ITS will develop alternative procedures for procurement of information technology under its new authority.

Provisions in the new law also require state agencies to encourage the use of small, minority, physically handicapped, and women contractors in information technology purchases and to report to ITS and to the Department of Administration as required under G.S. 143-48(b). G.S. 143B-472.58. The new law also contains specific prohibitions on financial interests by state officials involved in information technology procurement and requires anticollusion statements by bidders on information technology contracts.

Electronic Payment

The legislature amended several existing laws to specifically authorize public agencies at the state and local levels to receive payments electronically. S.L. 1999-434 (S 222) modifies G.S. 147-86.22(b), which authorized, but did not require, the State Controller to establish policies to allow payment by credit card. As revised, this law now *requires* the controller to establish policies that allow accounts to be paid by electronic payment. *Electronic payment* is defined as "[p]ayment by charge card, credit card, debit card, or by electronic funds transfer. . . ." G.S. 147-86.20(2a). In addition to state agencies, the revised statute makes the new policies applicable to debts owed to a community college; a local school administrative unit; an area mental health, developmental disabilities, and substance abuse authority; and the Administrative Office of the Courts as well as to debts payable to or through the office of a clerk of superior court or a magistrate. The law requires, as it did before this change, that an agency allowing payment by electronic means must receive the full amount of the account receivable that is due. Thus the law authorizes the agency to require the debtor to pay any fee incurred by the agency attributable to the electronic payment process. The law also allows such fees to be paid out of the General Fund and the Highway Fund if this is determined to be economically beneficial to the state.

A parallel provision contained in the same act creates a new statute authorizing local governments, public hospitals, or public authorities to accept electronic payment for any tax, assessment, rate, fee, charge, rent, interest, penalty, or other receivable owed to it. S.L. 1999-434, Section 5; G.S. 159-32.1. The statute authorizes local governments to pay fees associated with the use of electronic payments and to impose a surcharge upon those who make payment electronically. Conforming changes were made in the laws governing tax collection, which already allowed payment by credit card, to allow electronic payment. G.S. 105-357(b).

The use of electronic payment and implementation of any surcharge may be complicated by the fact that the major credit card companies prohibit the merchant from passing along to the customer the fee charged by the credit card company. This issue is discussed further in Chapter 16 (Local Taxes and Tax Collection).

It is interesting to note that several of the agencies listed under G.S. 147-86.22(b) that are subject to the policies and procedures for electronic payment established by the State Controller would also be considered local governments. Arguably local school units and area mental health authorities could use the authorization under G.S. 159-32.1 to establish their own policies and

1. The law does amend G.S. 143-56 to clarify that information technology purchases are not subject to approval by the Department of Administration, but it is unclear whether this also creates an exemption from the bidding procedures themselves.

procedures for accepting electronic payment. The specific inclusion of these units in the state statute, however, suggests that the better interpretation is that they are subject to state procedures.

Finally, the act amends the public records law (G.S. 132-1.2) to require public agencies to protect the confidentiality of account numbers used in electronic payments. S.L. 1999-434, Section 7; G.S. 132-1.2(2).

Best Value Procurement for Local Governments

Last year the General Assembly enacted G.S. 143-135.9 ("Best Value" information technology procurements). This law requires the state to use a "best value" method of evaluating proposals for the purchase of information technology. It also authorizes "government-vendor partnerships" and "solution-based solicitations"—all terms that are defined in the statute.[2] A provision in the technical corrections bill, S.L. 1999-456 (H 162), Section 39, authorizes (but does not require) local governments to use the procurement methods described in G.S. 143-135.9. It does not appear that the methods in G.S. 143-135.9 replace the competitive bidding procedures in G.S. 143-129, nor does the legislation explicitly create an exception to those procedures. The methods described in the best value procurement statute are thus probably best viewed as methods that can be used in addition to or as part of any applicable competitive bidding process for the purchase of information technology.

Electronic Advertisement for State Procurement

State law has previously required the Division of Purchase and Contract to publish a "Purchase Directory" containing information on contracting requirements and opportunities. G.S. 143-345.8. The legislature amended that law in S.L. 1999-417 (S 283) to replace the publication with an electronic advertisement. (The competitive bidding statute, G.S. 143-52, was amended several years ago to authorize advertisement by electronic means.) Printed copies of information contained in the electronic advertisement must be made available upon request.

Other State Purchasing Procedures

The legislature also made several changes in the procedures for purchasing by state agencies and local school units.

Small and Medium-Sized Businesses

S.L. 1999-407 (S 284) amends G.S. 143-48 to require tracking by state agencies and local school units of bids received from small and medium-sized businesses. The act requires the Department of Administration to encourage participation by these businesses in state procurement, to compile information on their participation in state contracts, to study methods of improving participation, and to report to the legislature by April 15, 2000. The act does not define what constitutes a small or medium-sized business.

Board of Award/Bid Protests

The Board of Award (Board) has functioned as the awarding agency for state contracts that are subject to the sealed bid process. The composition and functions of the Board were previously

2. This legislation is summarized in Frayda S. Bluestein, "Public Purchasing and Contracting," Chapter 21 in *North Carolina Legislation 1998* (Chapel Hill, N.C.: Institute of Government, The University of North Carolina at Chapel Hill, 1999).

established by administrative regulation but have now been codified in G.S. 143-52.1. S.L. 1999-434, Section 13 (S 222). The Board is responsible for making recommendations to the Secretary of Administration, for contracts under that department, or to the Secretary of Commerce, for information technology contracts under the Office of Information Technology Services, described earlier. The Board consists of three members appointed by the Advisory Budget Commission and chosen from the membership of the commission and the Council of State.

In 1997 the legislature authorized state agencies to increase up to $25,000 the bid value benchmark in G.S. 143-35.1, which is the threshold at which competitive, sealed bids must be obtained. Universities obtained authority to increase the benchmark up to $250,000, subject to the approval of the Board of Governors under G.S. 116-31.10. In S.L. 1999-400 (S 968) the legislature amended G.S. 143-53(a)(1) to specify that protests on contracts valued at $25,000 or more must be reviewed and decided by the Division of Purchase and Contract. The law also requires the division to adopt rules and criteria for review of and decisions on protests on contracts of less than $25,000 when awarded by another agency.

The state has the authority to waive competitive bidding requirements under G.S. 143-53(a)(5). In S.L. 1999-400 the legislature specifies that requests for waivers of competition are subject to review by the Secretary of the Department of Administration if the expenditure exceeds $10,000. The new provision also authorizes the levy of a fee for review of a waiver application. G.S. 143-57 was also amended to require that for emergency purchases of over $10,000, a report on the circumstances and need for the purchase must be made promptly to the Division of Purchase and Contract.

Procurement Card Pilot Program

States and local governments across the country have increasingly used procurement cards to streamline the purchasing process. In 1997 the legislature established a pilot program to allow certain selected state agencies, local school units, community colleges, and universities to implement a procurement card system. This same provision prohibited the use of procurement cards by agencies, school units, community colleges, and constituent institutions that were *not* selected to participate in the pilot program. Section 24 of the 1999 Appropriations Act, S.L. 1999-237 (H 168), continues the pilot program and extends the limitation on use of procurement cards by nonparticipating agencies to August 1, 2000. The Legislative Research Commission has been authorized to study the pilot program, including its effectiveness and efficiency, costs and benefits, impact on accounting, budgeting, and purchasing records, how to identify "real savings," and the feasibility of statewide implementation of the program. Section 2.1(1)(e), S.L. 1999-395 (H 163).

Cities and counties, many of which have independently established procurement card programs, are not affected by this limitation.

Construction Contracting

Guaranteed Energy Savings Contracts

North Carolina local governments, local school units, and community colleges have authority under Chapter 143, Article 3B, Part 2, to enter into "guaranteed energy savings contracts." Under these agreements, improvements to public facilities may be made and financed based on a commitment by the provider that the energy savings resulting from the improvements will pay for the cost of the improvements over the term of the contract. The statute authorizing these contracts limited the duration of contracts to a term of eight years. In S.L. 1999-235 (S 56) the legislature increased the allowable contract term to twelve years and repealed the sunset provision that would have required the law to expire on June 30, 1999. The new law also modifies the definition of *energy conservation measure* in G.S.143-64.17(1) to include services related to the operation of a facility, and it modifies the language of this section to specify that all measures must provide

anticipated energy savings. The changes are effective for contracts entered into on or after July 1, 1999.

Local Bidding Exemptions for Construction Projects

In the 1999 session the legislature followed a common pattern of authorizing several local modifications allowing exemptions from aspects of the competitive bidding requirements for construction projects. These acts often create exemptions to particular requirements to deal with circumstances affecting particular projects. Examples of such exemptions this year include those for Transylvania County [S.L. 1999-53 (H829), authorizing negotiation instead of competitive bidding for particular project], Dare County [S.L. 1999-40 (H 872)], and Johnston County Schools [S.L. 1999-102 (S 705), authorizing a "Unitary System Approach" model school plan and negotiation rather than competitive bidding for specified projects)]. Increasingly these local acts authorize new methods or approaches to major construction projects. As such they can be viewed as areas of experimentation that, if successful in these limited trials, could become models for wider application.

One example is S.L. 1999-93 (H 880), which modifies G.S. 143-132, the statute that requires three bids on public construction projects. Under the statute, if three bids are not received after the first advertisement, the project must be advertised again. Following the second advertisement, a contract may be awarded even if fewer than three bids are received. Perhaps in response to limited competition for public construction work in some areas of the state, S.L. 1999-93 lowers the requirement on the first round of bidding to *two* bids. If fewer than two are received, the project is readvertised and a contract may be awarded on the second round even if only one bid is received. The provision applies only when the entire cost of construction or repairs is $500,000 or less and only in Alamance, Beaufort, Currituck, Camden, Pasquotank, and Perquimans counties, as well as in the municipalities and local school administrative units within those counties.

A more dramatic modification was approved in S.L. 1999-207 (H 840), which provides authority for Onslow County to seeks bids under *either* the separate-prime or the single-prime contracting system. Current law requires, for projects costing over $500,000, that bids be received on a separate-prime basis or, in the alternative, on both the separate-prime *and* the single-prime system. G.S. 143-128. When bids are received both ways, the law requires that the contract be awarded to the lowest responsible bidder or set of bidders on the entire project. Last year the legislature allowed local school units, when receiving bids both ways, to award a contract to either the separate- or single-prime bidder or bidders, even if the chosen contractors were not the lowest responsible bidders overall. G.S. 143-128(d1). The Onslow County local act allows bidding either way, thus eliminating the requirement to receive bids on a separate-prime basis. It also extends to Onslow County many of the provisions of G.S. 143-128(d1), including the authority, when receiving bids both ways, to choose either the single- or separate-prime contractor for award, regardless of which is the lowest responsible bidder.

A separate component of S.L. 1999-207 authorizes unique procedures applicable only to the Charlotte/Mecklenburg schools. The act authorizes the school system to prequalify a limited number of contractors and to solicit bids only from some or all of those prequalified. G.S. 143-135.8 generally authorizes local governments to prequalify contractors, but this act appears to allow a specific and more restrictive process. The act requires a pool of at least five prequalified contractors, requires the unit to receive at least three bids, and requires readvertisement if fewer than three bids are received on the first round. The act identifies specific factors that may be considered in prequalifying bidders, including experience on the specific type of project, financial strength, and performance on past or current projects. The act requires the governing board to notify a bidder who fails to satisfy the prequalification requirements at least seven days prior to the bid opening.

The Charlotte/Mecklenburg schools act also authorizes use of a construction manager, to be selected in the same manner as an architect or engineer. (See G.S. 143, Article 3D) Although local governments probably have authority generally to hire a construction manager as a consultant to oversee a project, this act authorizes the use of a construction manager who assumes liability for

completion of the project—a very different type of contractual arrangement. The act specifies that if a construction manager is used for a project that is awarded on a separate-prime basis, the Board may combine the lowest responsible bidders for each category of work into a single contract to be administered by the construction manager.

A third alternative construction method, the design-build method, is also permitted under this act. Under a design-build contract, a single contract is awarded for the design and construction of the project. This method is not currently permitted under North Carolina public bidding statutes. The local act requires the Board to prequalify at least five design-build teams to bid on the project and requires that at least three bids be received. The request for proposals must be prepared by an architect and must contain design criteria that define the project scope, including preliminary design and performance specifications that are sufficiently detailed that bidders can respond and proposals may be evaluated and compared. Contracts must be awarded to the "best qualified team" taking into account the time of completion and cost as the major factors.

Finally, the act allows the Charlotte/Mecklenburg school system to "bundle" projects, that is, to award a single contract for multiple facilities and sites. The only limitation is that bundled projects must be for the same grade level (elementary, middle, or high school) unless the projects are part of a single campus.

Several of these alternative contracting methods, specifically construction management and design-build, have been the subjects of proposed statewide legislation in previous sessions.

Highway Projects

The 1999 General Assembly made several changes to the bidding procedures for highway contracts. S.L. 1999-25 (S 51) increases the threshold for formal bidding under G.S. 136-28.1(b) from $500,000 to $800,000. The same act increases the threshold at which the Small Business Enterprise program applies for highway projects from $300,000 to $500,000. Under G.S. 136-28.10(a) competition for particular projects below this threshold may be restricted to Small Business Enterprises.

Frayda S. Bluestein

21

Senior Citizens

Senior citizens and government programs for the elderly were not the primary focus of the General Assembly's 1999 regular session. The General Assembly, however, did enact a number of new statutory provisions intended to improve the quality of long-term care, increase the protection of patients and residents of long-term care facilities, and strengthen regulatory oversight of the long-term care industry. Legislators also considered proposals to expand the current property tax exemption for low-income, elderly, or disabled homeowners, but they were unable to resolve their differing approaches to this issue.

State and Local Government Assistance for Senior Citizens

Medicaid for Elderly and Disabled Persons

Expanded Medicaid Coverage for the Elderly. In North Carolina an individual who is elderly, blind, or disabled may be eligible for Medicaid if (a) his or her income is below North Carolina's medically needy income limit, the income limit for receiving Supplemental Security Income (SSI), or 100 percent of the federal poverty level, and (b) the value of his or her countable assets (excluding his or her home and other specified property) does not exceed $2,000 (or $3,000 for a couple). Section 11.11 of the 1999 Appropriations Act, S.L. 1999-237 (H 168), directs the Department of Health and Human Services (DHHS) to study the feasibility and cost of tripling the Medicaid asset limits for elderly, blind, and disabled persons and to submit a report of its study to the House and Senate Human Resources Appropriations Subcommittees by May 1, 2000.

Medicaid Estate Recovery Policy and Law. The federal Medicaid statute requires states to attempt to recover the costs of Medicaid payments made on behalf of certain elderly or disabled persons by filing claims against their estates after they die. In 1994 North Carolina's General Assembly, in response to this federal requirement, enacted legislation (G.S. 108A-70.5) establishing a state Medicaid Estate Recovery Program. North Carolina's Medicaid Estate Recovery Program is discussed in more detail in John L. Saxon, "Recovering Medicaid Payments from the Estates of Elderly or Disabled Persons," *Elder Law Bulletin* No. 5 (Chapel Hill, N.C.: Institute of Government, The University of North Carolina at Chapel Hill, Aug. 1997).

The Studies Act of 1999, S.L. 1999-395 (H 163), authorizes the Legislative Research Commission to study the current program to determine the feasibility and desirability of enhancing recovery efforts beyond minimum federal requirements. If the commission studies this issue, it must report its findings and recommendations to the General Assembly's regular 2000 legislative session or to the 2001 General Assembly.

State-County Special Assistance Payments for Elderly and Disabled Residents of Adult Care Homes

Increased Maximum Payment. North Carolina's State-County Special Assistance program provides financial assistance to elderly or disabled persons who live in adult care homes and cannot afford to pay the full cost of their care. The cost of Special Assistance payments is divided equally between the state and North Carolina's counties. Effective October 1, 1999, the 1999 Appropriations Act, S.L. 1999-237 (H 168), increases the maximum Special Assistance payment from $956 to $982 per month (except in the case of persons who were receiving Special Assistance payments on August 1, 1995). Effective October 1, 2000, the maximum payment will increase to $1,016 per month.

Medicaid Personal Care Services. The nonfederal share of Medicaid payments for personal care services provided to elderly or disabled adult care home residents who receive Special Assistance payments is divided between the state and counties. Section 11.22 of S.L. 1999-237 revises the formula for allocating this cost between the state and counties. Under the revised formula, the counties' portion of the nonfederal share of these costs will decrease annually, dropping from 50 percent effective January 1, 2000, to 15 percent effective January 1, 2005. The act also authorizes DHHS, effective January 1, 2000, to transfer funds from the State-County Special Assistance program to support expansion of Medicaid personal care services for residents of adult care homes.

S.L. 1999-395 directs the North Carolina Study Commission on Aging to study the rationale and appropriateness of the present approach to sharing nonfederal costs of Medicaid services for persons who receive State-County Special Assistance. The commission is required to report its findings and recommendations to the General Assembly by May 1, 2000.

Personal Needs Allowance. S.L. 1999-237 also increases the personal needs allowance for Special Assistance recipients (money that they may retain from their own incomes to pay personal expenses) from $31 to $36 per month.

Medical and Social Evaluation of Special Assistance Applicants and Recipients. Section 11.22A of S.L. 1999-237 appropriates $631,200 for 1999–2000 and $1,271,200 for 2000–2001 to fund additional positions in DHHS and in county social services departments to evaluate the medical and social needs of elderly and disabled persons requesting or receiving State-County Special Assistance payments for care in adult care homes. The act does not indicate how these funds will be allocated to counties or whether county matching funds are required.

Demonstration Project to Support In-Home Care. Section 11.21 of S.L. 1999-237 authorizes DHHS to provide State-County Special Assistance payments during the 1999–2001 biennium to up to 400 otherwise eligible persons who are living at home rather than in adult care homes. DHHS must make an interim and final report to specified legislative committees with respect to the demonstration project, the cost savings that might result from allowing elderly or disabled persons to remain at home rather than moving to adult care homes, and other specified issues.

Adult Protective Services

Funding for Adult Protective Services Workers. County departments of social services are required to provide adult protective services to disabled (often elderly) adults who are abused, neglected, or exploited. Because the state has not provided earmarked state funding to counties to provide these services, counties have used federal Social Services Block Grant funds or county funding to pay for adult protective services. The 1999 Appropriations Act, S.L. 1999-237 (H 168), appropriates

$1 million in new, recurring state funding for 1999–2000 and $2 million in recurring state funding for 2000–2001 to support additional social worker positions providing adult protective services through county departments of social services. The legislation does not indicate how this funding will be allocated by the state Division of Social Services among the counties or whether matching county funds are required.

Investigation of Adult Protective Services Reports. Section 1.10 of S.L. 1999-334 (S 10) amends G.S. 108A-103 to establish new time frames for the investigation by county departments of social services of certain reports involving the abuse or neglect of disabled adults. Reports alleging life-threatening situations must be investigated immediately. Investigations of complaints alleging the abuse of an adult care home resident must be initiated within twenty-four hours of receipt of the complaint; investigations involving the neglect of an adult care home resident must be initiated within forty-eight hours. All other investigations must be initiated within two weeks of the date the complaint is received. The county social services department must complete all adult protective services investigations within thirty days.

Prescription Drug Program for the Elderly

Section 11.1 of S.L. 1999-237 directs DHHS to develop a proposal for the establishment of a public-private prescription drug assistance program to serve low-income elderly and disabled persons who are not eligible for Medicaid and who need prescription drugs to treat a condition that, if left untreated, could result in their admission to a nursing facility or otherwise qualifying for Medicaid. DHHS must submit its report and proposals for the program to the General Assembly by May 1, 2000.

S.L. 1999-237 also appropriates $500,000 to DHHS for each year of the 1999–2001 biennium to pay for outpatient prescription drugs for the treatment of cardiovascular disease and diabetes for persons who are over the age of sixty-five, are not eligible for full Medicaid benefits, have incomes that do not exceed 150 percent of the federal poverty level, and have been diagnosed with cardiovascular disease or diabetes.

Affordable Housing for the Elderly

Section 12.1 of S.L. 1999-237 directs that $2.5 million of the funds appropriated to the Housing Finance Agency from the Housing Trust Fund for 1999–2000 (and $500,000 for 2000–2001) be used to provide affordable housing for the elderly.

Property Tax Exemption for Elderly or Disabled Homeowners

State law [G.S. 105-277.1(a)] currently exempts from local property taxes the first $20,000 in value of a permanent residence owned and occupied by any North Carolina resident who is at least sixty-five years old (or totally and permanently disabled) and has an annual income of $15,000 or less. The state Department of Revenue reimburses cities and counties for a portion, but not all, of the local property tax revenues lost as a result of this exemption.

In 1999 the House passed legislation (H 1480, which was incorporated into H 168, second edition) that would have increased the amount of the property tax exclusion for elderly or disabled homeowners from $20,000 to $25,000, increased the income eligibility threshold for the exemption from $15,000 to $25,000, and required the state to annually reimburse local governments for the tax revenues lost during 2000 as a result of the revised homestead tax exemption for elderly and disabled homeowners.

The Senate, by contrast, passed legislation (S 286) that, subject to voter approval of an enabling constitutional amendment, would have given the board of county commissioners in each county the option of increasing (without state reimbursement) the amount of the property tax exclusion for elderly or disabled homeowners, the income eligibility threshold for the exemption, or both the amount of the exclusion and the income eligibility threshold.

Unable to resolve the differences between these competing proposals to expand the homestead property tax exemption, the General Assembly included a provision in the 1999 Appropriations Act (S.L. 1999-237, sec. 6.2) directing Senate and House leaders to designate an appropriate legislative committee to study a range of options for providing homestead property tax relief to low-income elderly and disabled homeowners. The options that may be considered by the special study committee include increasing the income eligibility threshold, indexing the exemption amount and income threshold, excluding Social Security benefits from income in determining eligibility for the exemption, and amending the N.C. Constitution to allow increased or expanded homestead property tax relief through local option. The special study committee must report its recommendations, including the estimated fiscal impact on the state and local governments, to the General Assembly by May 1, 2000.

Study Commission on Aging

S.L. 1999-76 (S 40) amends G.S. 120-186.1(a) to increase from six to eight the maximum number of noncommission members that may be appointed to serve on subcommittees of the North Carolina Study Commission on Aging.

Long-Term Care for the Elderly and Disabled

State Long-Term Care System

Section 11.7A of the 1999 Appropriations Act, S.L. 1999-237 (H 168), directs DHHS to "develop a system that provides a continuum of long-term care for elderly and disabled individuals and their families." The system must include a structure for screening, assessment, and care management across settings of care, a process to determine outcome measures for care, and an integrated data system to track expenditures, consumer characteristics, and consumer outcomes. Effective January 1, 2001, the system must implement the initial phase of a comprehensive data system that tracks long-term care expenditures, services, consumer profiles, and consumer preferences and that provides a system of statewide long-term care services coordination and case management to minimize administrative costs, improve access to services, and minimize obstacles to the delivery of long-term care services to people in need.

The legislation further directs DHHS to pursue strategies to provide alternative funding of long-term care services by shifting the balance of the financial responsibility for long-term care services from public to private sources by promoting public-private partnerships and personal responsibility for long-term care through private long-term care insurance, tax credits, reverse mortgages, and changes in Medicaid eligibility rules.

DHHS must submit a report to the General Assembly and specified legislative committees and commissions by April 15, 2000, addressing its progress in developing the long-term care system, proposing a budget and budget management plan for all publicly financed long-term care services available to elderly North Carolinians, and addressing whether a single division of DHHS is an appropriate organizational structure for coordination of all long-term care services for state residents.

Abuse and Neglect of Persons in Long-Term Care Facilities

Criminal Penalties for Abuse and Neglect of Patients or Residents in Long-Term Care Facilities. G.S. 14-32.2 establishes criminal penalties for the abuse of patients of health care facilities (nursing homes and other specified facilities) and residents of residential care facilities (adult care homes). Section 3.15 of S.L. 1999-334, as amended by the 1999 Technical Corrections Act, S.L. 1999-456 (H 162), amends G.S. 14-32.2 by (1) defining *abuse* as the willful or culpably negligent infliction of physical injury or the willful or culpably negligent violation of any law

designed for the health or welfare of a patient or resident, and (2) making it a Class A1 misdemeanor for a person to abuse a patient or resident of a health care facility or residential care facility when the abuse evinces a pattern of conduct that is willful or culpably negligent and proximately causes bodily injury to a patient or resident (other than serious bodily injury or death). The amendments to G.S. 14-32.2 are effective December 1, 1999, and apply to offenses committed on or after that date.

Investigation of Complaints Regarding the Care or Safety of Residents of Nursing and Adult Care Homes. G.S. 131D-26 requires county departments of social services to investigate complaints alleging violations of the Adult Care Home Residents' Bill of Rights. Section 1.8 of S.L. 1999-334 amends G.S. 131D-26 to establish new time frames for the investigation of complaints involving the care or safety of residents. Complaints alleging life-threatening situations must be investigated immediately. Investigations of complaints alleging the abuse of a resident must be initiated within twenty-four hours of receipt of the complaint; investigations involving the neglect of a resident must be initiated within forty-eight hours. All other investigations must be initiated within two weeks of the date the complaint is received. County social services departments must complete all investigations within thirty days.

Section 1.9 of S.L. 1999-334 amends G.S. 131E-124 to establish identical time frames for the investigation by DHHS of alleged violations of the Nursing Home Patients' Bill of Rights involving the care or safety of residents.

Long-Term Care Facilities

Appointment of Temporary Managers for Long-Term Care Facilities. Article 13 of G.S. Chapter 131E establishes procedures under which a court may appoint a temporary manager to ensure the proper operation of a long-term care facility (adult care home or nursing home) when conditions in the facility create a substantial risk of death or serious physical harm to residents or patients or when other specified conditions exist. Section 1.11 of S.L. 1999-334 amends G.S. 131E-234 to add as an additional ground for the appointment of a temporary manager a facility's continued pattern of failing to comply with applicable laws and rules. Due to constitutional concerns, S.L. 1999-334 repeals statutory language authorizing DHHS to finance its temporary management contingency fund from the proceeds of penalties imposed on nursing and adult care homes.

S.L. 1999-334 also amends G.S. 131E-233 to allow the appointment of an emergency temporary manager for a long-term care facility when DHHS petitions the court for emergency intervention and the court finds reasonable cause to believe that (a) conditions in the facility create an immediate substantial risk of death or serious physical harm to residents, or (b) the facility will close before the time in which a hearing ordinarily would be scheduled and adequate arrangements for relocating residents have not been made or quick relocation would not be in the best interest of residents. If the court appoints an emergency temporary manager, he or she may serve only until a hearing is conducted on DHHS's petition to appoint a temporary manager and may make only those changes in administration of the facility that are necessary to protect the health or safety of residents until the emergency is resolved. A court hearing regarding appointment of an emergency temporary manager must be held within three days of service of notice of the petition for emergency intervention and no sooner than twenty-four hours after notice of the hearing. The court, however, may issue an ex parte immediate emergency order if the court finds that grounds exist for the appointment of an emergency temporary manager and a likelihood exists that a resident may suffer irreparable injury or death if the order is delayed. Unless this ex parte order is dissolved by the court for good cause shown, it remains in effect until a hearing is held on DHHS's petition for appointment of an emergency temporary manager.

Use of Long-Term Care Facilities to Provide Temporary Shelter or Services during Disasters and Emergencies. S.L. 1999-307 (S 34) authorizes the temporary waiver of rules governing nursing and adult care homes to the extent necessary to allow these facilities to provide temporary shelter or services to the public during declared disasters or emergencies, unless the DHHS Division of Facility Services determines that waiver of these rules would pose an

unreasonable risk to the health, safety, or welfare of any person in the facility. Waivers may be preapproved as part of a predisaster plan or granted on a case-by-case basis.

Health Care Personnel Registry. S.L. 1999-159 (H 1258) amends G.S. 131E-256 to require health care facilities (including nursing homes, adult care homes, and home care agencies) to check the state Health Care Personnel Registry before hiring health care personnel and to clarify that health care facilities are required to report to the Registry *substantiated* allegations against health care personnel. Section 3.14 of S.L. 1999-334 requires the Joint Legislative Health Care Oversight Committee to study whether the Health Care Personnel Registry is working effectively and to recommend any changes needed to improve its effectiveness. The committee must report its findings and recommendations to the General Assembly by May 1, 2000.

Immunization of Employees and Residents. Part VII of the Studies Act of 1999, S.L. 1999-395 (H 163), directs the North Carolina Study Commission on Aging to study the advisability of annual immunization of residents and employees of nursing homes, adult care homes, and adult day care homes against influenza and immunization of residents every five years against pneumococcal disease. The commission is required to report its findings and recommendations to the General Assembly by May 1, 2000.

Adult Care Homes and Assisted Living Facilities

Rule-Making Authority with Respect to Adult Care Homes. S.L. 1999-334 amends G.S. 143B-153, G.S. 143B-165, and several provisions in G.S. Chapter 131D to transfer from the Social Services Commission to the Medical Care Commission rule-making authority with respect to the licensure, inspection, and operation of adult care homes and personnel requirements for adult care home staff.

Although the General Assembly's intent seems to have been to transfer all rule-making authority with respect to adult care homes from the Social Services Commission to the Medical Care Commission (except when a statute expressly authorizes the Secretary of Health and Human Services to exercise rule-making authority with respect to adult care homes), S.L. 1999-334 failed to amend G.S. 131D-4.3, which authorizes the Social Services Commission to adopt rules with respect to the assessment of adult care home residents, independent case management for adult care home residents, training requirements for personal care aides employed by adult care homes, monitoring and supervision of adult care home residents, oversight of and quality of care in adult care homes, and adult care home staffing requirements.

Under new G.S. 131D-4.5, the Medical Care Commission is required to adopt rules (1) establishing minimum medication administration standards for adult care homes designed to reduce the medication error rate to an acceptable level; (2) establishing minimum staffing and training requirements for medication aides and standards for professional supervision of medication controls; (3) establishing training requirements for adult care home staff in behavioral interventions; (4) establishing minimum training and education qualifications for supervisors in adult care homes; (5) specifying the safety responsibilities of adult care home supervisors; (6) specifying the qualifications of adult care home staff on duty during various portions of the day to ensure safe and quality care for residents; (7) establishing procedures for determining the compliance history of adult care homes' principals and affiliates and criteria for refusing licensure to applicants that have a history of failing to comply with state law or disregarding the health, safety, or welfare of residents; (8) issuing licenses for special care units that provide care for residents with Alzheimer's disease or other dementias; (9) implementing due process and appeal rights regarding the discharge or transfer of adult care home residents; and (10) regarding the issuance of time-limited provisional licenses and extensions for provisional licenses for adult care homes.

Under Section 3.10 of S.L. 1999-334, the Secretary of Health and Human Services is required to adopt temporary rules implementing new G.S. 131D-4.5. Those rules will remain effective until the Medical Care Commission adopts permanent rules.

Study Responsibility for Regulating Adult Care Homes. Section 3.12 of S.L. 1999-334 requires DHHS to recommend, by February 1, 2000, to the North Carolina Study Commission on

Aging a more efficient system of regulatory administration for adult care homes that delineates clear authority and streamlines government functions. The Study Commission on Aging must review DHHS's recommendation and advise the General Assembly by May 1, 2000. S.L. 1999-334 also requires the Study Commission on Aging to study the lack of uniformity, accountability, and central authority in the current regulatory system and their impact on care delivery and quality of life for adult care home residents. The commission must report these findings and recommendations to the General Assembly by May 1, 2000.

Grounds for Denying License. S.L. 1999-113 (S 198) amends G.S. 131D-2 (effective with respect to license applications filed on or after May 28, 1999) to prohibit the issuance of a new adult care home license to an applicant who was the "owner, principal, or affiliate" of an adult care home that had its license revoked, that had its license summarily suspended or downgraded to provisional status as a result of Type A or Type B violations, or that was assessed a penalty for a Type A or Type B violation. If issuance of a license is prohibited under new G.S. 131D-2(b)(1b), the respective periods of disqualification are one year from the date of the prior license revocation, six months from the date of reinstatement of the license or restoration from provisional to full licensure or termination of the provisional license, or until certification of substantial compliance with the correction plan under G.S. 131D-34.

S.L. 1999-113 repeals the provisions of G.S. 131D-2(b)(1) that previously prohibited, for a period of one year from the date of the prior license revocation, the issuance of a new adult care home license to any home whose administrator was the administrator of an adult care home that had its license revoked.

Section 3.8 of S.L. 1999-334 requires DHHS to establish and maintain a provider file to record and monitor compliance histories of nursing and adult care homes and the owners, operators, and affiliates of nursing and adult care homes. Section 1.5 of S.L. 1999-334 enacts a new statute [G.S. 131D-2(b)(6)] requiring DHHS, under rules adopted by the Medical Care Commission, to conduct a compliance history review of an adult care home, and its principals and affiliates, before issuing or renewing a license to operate the adult care home; it also allows DHHS to deny licensure if the compliance history review shows a pattern of noncompliance with state law by the facility, or its principals or affiliates, or otherwise demonstrates disregard for the health, safety, and welfare of residents.

Provisional Licenses. Section 1.7 of S.L. 1999-334 amends G.S. 131D-2(b)(1) to provide that provisional licenses for adult care homes may be issued for a period of not more than ninety days and that DHHS may extend a provisional license for not more than one additional ninety-day period upon a finding that the licensee has made substantial progress toward remedying the licensure deficiencies that caused the license to be reduced to provisional status.

Licensure Compliance. The Studies Act of 1999, S.L. 1999-395 (H 163), authorizes the Legislative Research Commission (LRC) to study alternative methods, such as compliance with state or national accreditation standards, that would better ensure licensure compliance and good quality of care in long-term care facilities. The objective is to free state resources currently used for routine inspections of facilities in order to focus on facilities that have been the subjects of complaints or that have a history of noncompliance with state licensing laws. The Studies Act also authorizes the LRC to study the feasibility of biannual inspection and grading of adult care homes by county social services departments. If the LRC decides to study either or both of these matters, it must report its findings and recommendations to the General Assembly's regular legislative session in 2000 or to the 2001 General Assembly.

Exemption from Licensure. S.L. 1999-193 (H 96) amends G.S. 131D-2(c), effective September 30, 1995, to exempt from the adult care home licensure requirements of G.S. Chapter 131D facilities that (a) are maintained or operated by a unit of government, (b) were established, maintained, or operated by a unit of government on September 30, 1995, and (c) were exempt from licensure on September 30, 1995. The effect of this legislation is to reinstate retroactively the exemption from licensure for Beaufort County's county home for the aged, which was repealed inadvertently by the General Assembly in 1995.

Accreditation of Adult Care Homes. Section 11.20 of the 1999 Appropriations Act, S.L. 1999-237 (H 168), directs DHHS to develop a plan and criteria for accreditation of adult care

homes and for enhanced payments to facilities that meet accreditation criteria. DHHS must submit its findings, recommendations, and proposed plan to the North Carolina Study Commission on Aging and the Joint Legislative Health Care Oversight Committee by April 1, 2000.

Adult Care Home Specialist Fund. S.L. 1999-334 establishes an Adult Care Home Specialist Fund in the DHHS to pay the salaries of adult care home specialists employed by county departments of social services. The law, however, does not indicate how this new fund will be funded, establish a formula for distributing funds to counties, or indicate whether local matching funds will be required.

Special Care Units for Residents with Alzheimer's Disease or Other Dementias. S.L. 1999-334 repeals the provisions of G.S. 143B-181.50 and -181.52, which required the Social Services Commission to adopt rules containing state standards for *special care units* in adult care homes (defined as a separate, closed wing or hallway that is designed especially for residents with Alzheimer's disease or related dementias), and replaces them with new requirements regarding the licensure of special care units in adult care homes and the disclosure of information by adult care homes that advertise, market, promote, or hold themselves out to the public as providing special care units for persons with Alzheimer's disease, other dementias, other mental health disabilities, or other special needs diseases or conditions. The special licensure and disclosure requirements do not apply to adult care homes that do not hold themselves out as providing a special care unit, nor do they prohibit such facilities from admitting as a resident a person with Alzheimer's disease or other dementia, mental health disability, or special needs disease or condition.

Section 1.1. of S.L. 1999-334 enacts a new statute (G.S. 131D-4.6) requiring that special care units in adult care homes be licensed as such and meet additional licensure standards adopted by the Medical Care Commission. The new law defines a *special care unit* as a program, wing, or hallway in an adult care home designated especially for the care of residents with Alzheimer's disease or other dementias, mental health disabilities, or special needs diseases or conditions as determined by the Medical Care Commission.

Section 2.1 of the act enacts a new statutory provision (G.S. 131D-7) requiring adult care homes with special care units to disclose the following information, in writing, to persons seeking placement in a special care unit or the authorized representatives of such persons (before placement in a special care unit), to the Office of State Long-Term Care Ombudsman (annually or more often upon request), and to DHHS (as part of the annual licensure process and when there is any substantial change with respect to required disclosures): (1) the form of care or treatment provided that distinguishes the special care unit as being especially designed for residents with Alzheimer's disease or other dementias, mental health disabilities, or other special needs; (2) the overall philosophy and mission of the facility and how it reflects the special needs of such residents; (3) the process and criteria for placement, transfer, or discharge to or from the special care unit; (4) the process used for assessing such residents and establishing, changing, and implementing plans of care for such residents; (5) staffing ratios and how they meet the residents' needs for increased care and supervision; (6) dementia-specific staff training; (7) physical environment and design facilities that specifically address the needs of residents with Alzheimer's disease and other dementias; (8) frequency and types of programs and activities for residents of the special care unit; (9) involvement of families in resident care and availability of family support programs; and (10) additional costs and fees for special care. DHHS must examine the accuracy of the written disclosures as part of its license renewal procedures and inspection process.

Assessment of Adult Care Home Residents. Section 1.14 of S.L. 1999-334 amends G.S. 131D-2(e) to require that adult care homes conduct an assessment of each resident within seventy-two hours of admitting the resident and annually thereafter. The assessment must use an instrument approved by DHHS upon the advice of the Director of the DHHS Division of Aging. The assessment must include a determination of the resident's cognitive and physical functioning in activities of daily living. Adult care homes must use the assessment to develop appropriate and comprehensive service plans and care plans, to determine the level and type of staff needed to meet the needs of residents, and to determine whether the resident requires referral to the resident's physician or another licensed health care professional or community resource. DHHS must provide ongoing training for adult care home staff in the use of the approved

assessment instrument, ensure that adult care homes conduct these assessments, and review the assessments and related service and care plans of a selected number of residents as part of its process for inspecting and licensing adult care homes. If DHHS determines that an adult care home is not carrying out its responsibilities with respect to the assessment of residents, it must require the facility to implement a corrective action plan and may, in addition to other available administrative penalties, suspend the admission of new residents to the facility until the conditions have been corrected.

Transfer or Discharge of Adult Care Home Residents. Section 1.6 of S.L. 1999-334 adds a new provision to the Adult Care Home Residents' Bill of Rights [G.S. 131D-21(17)] prohibiting the transfer or discharge of a resident from an adult care home except for medical reasons, the welfare of the resident or other residents, nonpayment of the resident's bill for care, or when the transfer is mandated by state or federal law. Residents who are transferred or discharged must be given at least thirty days advance notice (except in cases in which the health or safety of the resident or others might be jeopardized) and must have the right to appeal a proposed transfer or discharge under rules that offer at least the same protections as federal and state rules governing the transfer or discharge of patients in nursing homes.

Patient Care and Safety. Section 1.1 of S.L. 1999-334 enacts a new statutory provision (G.S. 131D-4.4) requiring all adult care homes to provide to each resident the care, safety, and services necessary to enable the resident to attain and maintain the highest practicable level of physical, emotional, and social well-being in accordance with the resident's individual assessment and plan of care and rules and standards relating to quality of care and safety adopted under G.S. Chapter 131D.

Air-Conditioning, Ventilation, and Room Temperature. Section 1.15 of S.L. 1999-334 requires that adult care homes comply with applicable rules regarding air circulation, ventilation, and room temperature in resident living quarters, including requirements for the use of air conditioning or providing at least one fan for each resident bedroom and living and dining areas when temperatures in the main center corridor exceed 80 degrees Fahrenheit.

Adult Care Home Staff. Section 3.9 of S.L. 1999-334 S requires DHHS to continue its demonstration project testing whether the TEACCH model is a viable method for finding and retaining competent staff for adult care homes and nursing homes.

Staffing Grants for Adult Care Homes. Section 11.22(f) of the 1999 Appropriations Act, S.L. 1999-237 (H 168), appropriates $2 million in state funding for state fiscal year (SFY) 1999–2000 (and $500,000 for SFY 2000–2001) for grants to adult care homes that are required to add staff, or that have added staff, to comply with the increased third-shift staffing requirements of G.S. 131D-4.3(a)(5). State funding for these grants must be matched equally by county funding. The criteria and conditions for these grants are the same as those established for the program in 1998. DHHS must incorporate the staffing grants into its State-County Special Assistance payment methodology effective October 1, 2000.

Payment Rates for Family Care Homes. Effective July 1, 1999, Section 3.1 of S.L. 1999-334 S repeals G.S. 131D-4.2(c), which required family care homes to submit annual costs reports to DHHS. Section 3.2 of the act requires that rates for family care homes be based on market rate data.

Moratorium on Construction or Expansion of Adult Care Home Facilities. In 1997 the General Assembly enacted legislation imposing a moratorium on the construction or expansion of adult care home facilities. S.L. 1999-135 (H 944) extends this moratorium from August 26, 1999, until September 30, 2000.

Assisted Living Residence Administrators. Effective January 1, 2000, S.L. 1999-443 (H 512) enacts the Assisted Living Administrators Act as Article 20A of G.S. Chapter 90.

The act applies to all persons who operate, administer, manage, or supervise an adult care home or other assisted living residence as defined in G.S. 131D-2(a)(1d), including for-profit and nonprofit facilities and facilities owned or operated by the federal government, the state, or local governments. Those not included are family care homes, combination homes (as defined in G.S. 131E-101) and hospitals that contain adult care beds, and continuing care facilities if adult care beds are housed in the same facility as nursing home beds.

Effective January 1, 2000, the act requires that all assisted living residence administrators (as defined above) be certified by DHHS. Certification requirements include a satisfactory criminal background report and satisfactory completion of an approved administrator-in-training program. Any individual who has been actively engaged as an assisted living administrator in North Carolina for at least one year may be certified before December 31, 1999, without meeting the act's certification requirements unless a review of his or her record shows a pattern of noncompliance with state law or disregard for the health, safety, and welfare of residents in a facility in which the individual works or has worked as an assisted living administrator.

Studies. Section 3.13 of S.L. 1999-334 requires the Study Commission on Aging to study using licensure fees as a source of revenue for monitoring, staffing, and temporary management of adult care homes; licensure of adult care home administrators; the lack of uniformity, accountability, and central authority in the current system of regulating adult care homes and how this impacts on care delivery and quality of life for adult care home residents; and how to address problems that arise when adult care homes admit persons whose behavior poses a threat to the safety and well-being of other residents. The commission is required to report its findings and recommendations to the General Assembly by May 1, 2000.

Section 3.13A of S.L. 1999-334 requires the Mental Health Study Commission to examine issues related to the appropriate placement of persons with mental health disabilities in adult care homes and whether adequate mental health services are available to residents in adult care homes. The commission must report its findings and recommendations to the General Assembly by May 1, 2000.

Section 3.14 of S.L. 1999-334 requires the Joint Legislative Health Care Oversight Committee to study whether the requirements and procedures for criminal history record checks on applicants for employment in adult care homes should be strengthened, expanded, or changed. The committee must report its findings and recommendations to the General Assembly by May 1, 2000.

Nursing Homes and Continuing Care Retirement Facilities

Special Care Units for Nursing Home Patients with Alzheimer's Disease or Other Dementias. S.L. 1999-334 repeals the provisions of G.S. 143B-181.50 and -181.51, which required the Medical Care Commission to adopt rules containing state standards for *special care units* in nursing homes (defined as a separate, closed wing or hallway that is designed especially for residents with Alzheimer's disease or related dementias).

Requirements regarding the disclosure of information with respect to special care units for nursing home patients with Alzheimer's disease or other dementias (similar to the disclosure requirements for special care units in adult care homes adopted by S.L. 1999-334) were included in H 977 (which passed the House on April 26, 1999) and in S 783 (which passed both the Senate and the House but was not ratified because the Senate refused to concur in additional, unrelated provisions that were added to the bill by the House). Both of these bills are eligible for further consideration during the regular legislative session in 2000.

Nursing Homes' Compliance with Orders of Physicians. Section 1.9 of S.L. 1999-334 amends G.S. 131E-124 to provide that a nursing home is not in violation of any applicable statute or rule for any action taken pursuant to a physician's order when the physician has determined that the action is medically necessary.

Nursing Home Administrators Board. S.L. 1999-217 (S 622) amends the provisions of G.S. 90-280 governing the fees that may be charged by the Nursing Home Administrators Board for application processing, examinations, inactive licensees, temporary licenses, and certification of continuing education course providers.

Property Tax Exemption for Certain Nonprofit Continuing Care Retirement Homes. S.L. 1999-191 (S 325), which makes corrections and conforming changes relating to the taxation of continuing care retirement homes, is discussed in Chapter 16 (Local Taxes and Tax Collection).

Adult Day Care Programs

Adult Day Care Programs Providing Special Care for Persons with Alzheimer's Disease or Other Dementias. Section 2.2. of S.L. 1999-334 amends G.S. 131D-6 to require adult day care programs that promote themselves as providing special care services designed especially for persons with Alzheimer's disease or other dementias, mental health disabilities, or special needs diseases or conditions (as determined by the Medical Care Commission) to disclose the following information in writing to persons seeking adult day care program special care services and to DHHS: (1) the overall philosophy and mission of the program and how it reflects the special needs of such participants; (2) the process and criteria for providing and discontinuing special care services; (3) the process used for assessing such participants and establishing, changing, and implementing plans of care for such participants; (4) staffing ratios and how they meet the participants' needs for increased care and supervision; (5) dementia-specific staff training; (6) physical environment and design features that specifically address the needs of participants with Alzheimer's disease or other dementias; (7) frequency and types of activities for such participants; (8) involvement of families in special care and availability of family support programs; and (9) additional costs and fees for special care. DHHS must examine the accuracy of the written disclosures as part of its certification renewal procedures and inspection process. The act does not prohibit an adult day care program from providing special care services for persons with Alzheimer's disease or other dementias or require the disclosure of information regarding special care services if the program does not advertise, market, or otherwise promote itself as providing special care services.

Other Legislation of Interest to Senior Citizens

Gifts by Guardians

Gifts for Governmental or Charitable Purposes. North Carolina's statutes regarding guardianship of incompetent persons allow a superior court judge to approve gifts by the guardian of the estate of an incompetent person from the incompetent person's income or principal for religious, charitable, medical, or educational purposes or to certain governmental agencies. G.S. 35A-1335 and -1340. S.L. 1999-270 (S 1003) imposes three new requirements with respect to these types of gifts: (1) the proposed gift must be of a nature that the incompetent person would have approved before being declared incompetent; (2) in the case of an incompetent person who has executed a will before being declared incompetent, the gift must not jeopardize nondiscretionary distributions under a revocable trust executed by the incompetent person before he or she was declared incompetent, and beneficiaries under the revocable trust must approve the gift; (3) in the case of the gift of a nonprobate asset, all persons who would share the nonprobate asset if the incompetent person were dead must be given notice and an opportunity to object to the gift.

Gifts to Individuals. S.L. 1999-270 also enacts new statutory provisions (G.S. 35A-1336.1 and -1341.1) allowing a judge to approve gifts from an incompetent person's income or principal to certain individuals, including the incompetent person's spouse, parents, or descendants; persons who were named as beneficiaries under a trust or will executed by the incompetent person before he or she was declared incompetent; and other specified relatives or individuals. The judge may not approve gifts to individuals unless the incompetent person's remaining income or principal is sufficient to support the incompetent person and persons for whom the incompetent person has a duty to provide support. In the case of gifts to individuals from an incompetent person's principal, approval of the gift is subject to additional conditions similar to those that apply to gifts from an incompetent person's principal for governmental or charitable purposes.

Transfer of Assets to Revocable Trusts. S.L. 1999-270 amends G.S. 35A-1251 to authorize the guardian of the estate of an incompetent person to petition the court for approval of a transfer of the ward's assets to a revocable trust executed by the ward before he or she was declared

incompetent if (a) the ward also executed a valid will directing that the transferred assets be distributed to the trust at the ward's death or (b) the trust has the same dispositive provisions as the ward's will or provides that the trust assets are to be distributed to the ward's estate upon the ward's death. If the court approves the transfer of assets to the trust, the guardian may, upon thirty days notice to the trustee, withdraw the transferred assets (or the proceeds from the sale of the transferred assets) from the trust unless the assets have been distributed or disposed of by the trustee pursuant to the terms of the trust before he or she receives notice from the guardian.

Gifts by Attorneys-in-Fact

G.S. 32-2(15) allows the attorney-in-fact under a power of attorney to make a gift from the principal's income or property to himself or herself if the power of attorney executed by the principal allows the attorney-in-fact to do so. S.L. 1999-385 (H 604) amends G.S. 32-2(15) (effective with respect to powers of attorney executed on or after October 1, 1999) to authorize such gifts only to the extent that they are also in accordance with the principal's personal history of making or joining in the making of lifetime gifts.

Unemployment Benefits for Workers with Elder Care Responsibilities

S.L. 1999-196 (H 277) amends North Carolina's unemployment compensation laws to provide that an unemployed worker may not be disqualified for unemployment compensation benefits when the individual's inability to accept bona fide permanent employment during a particular shift would result in an "undue family hardship" or when the individual's discharge is solely due to an inability to accept work during a particular shift as the result of an "undue family hardship." "Undue family hardship" includes an individual's inability to accept a particular shift because he or she is unable to obtain elder care during that shift for his or her aged or disabled parent. The provisions of S.L. 1999-196 expire on June 30, 2001.

State and Local Government Retirement Benefits

Part XXVIII of the 1999 Appropriations Act, S.L. 1999-237 (H 168), provides cost-of-living increases for members of the Teachers' and State Employees' Retirement System (TSERS) (2.3 percent for TSERS), the Consolidated Judicial Retirement System (CJRS), the Legislative Retirement System, and the Local Governmental Employees' Retirement System (LGERS). It enacts provisions allowing the transfer, under certain conditions, of retirement contributions and service from TSERS and LGERS to CJRS and adjusting the CJRS retirement benefit formula based on transferred TSERS and LGERS service credits. It also repeals G.S. 135-72, which prohibited the payment of CJRS retirement benefits to retirees serving as active judicial officers in the United States courts.

Legal Rights of Grandparents to Visit Grandchildren

Legislation (H 639) to amend North Carolina's laws regarding the authority of courts to enter orders granting grandparents the legal right to visit with their grandchildren was introduced in the House but defeated on April 28, 1999.

John L. Saxon

22

Sentencing, Corrections, Prisons, and Jails

This chapter summarizes legislation enacted by the 1999 General Assembly affecting the sentencing of persons convicted of crimes, the state Department of Correction (DOC), state prisons, adult probation and parole, county jails, and other correctional programs, including compensation to crime victims.

Sentencing, Punishment, and Related Matters

Misdemeanor Sentencing

Under the Structured Sentencing Act (SSA), the judge's sentencing choices depend on the seriousness of the offense of conviction and the offender's prior criminal record. In sentencing for a felony, the prior record level depends on a point score computed from the number and type of prior convictions. S.L. 1999-408 (H 328), Section 3, clarifies G.S. 15A-1340.14(b), concerning how points are assigned for certain previous offenses. The amendment makes clear that one point is assigned for each prior conviction for a Class A1 or Class 1 nontraffic misdemeanor as well as for each prior conviction of impaired driving (G.S. 20-138.1), impaired driving in a commercial vehicle (G.S. 20-138.2), and misdemeanor death by vehicle [G.S. 20-141.4(a2)]. No points are assigned for any other misdemeanor traffic offenses under G.S. Chapter 20. The existing sub-section said the same thing but not as clearly.

Enhancement for Wearing Bulletproof Vest

S.L. 1999-263 (S 1011) adds new G.S. 15A-1340.16C to provide that if a person is convicted of a felony and the court finds that the person, at the time of the felony, was wearing, or had in his

or her immediate possession, a bulletproof vest, then the person is guilty of a felony one class higher than the class the crime would have been in otherwise. This provision does not apply if the evidence that the person possessed a bulletproof vest was needed to prove an element of the felony of which the person was convicted; nor does it apply to law enforcement officers. The legislation is effective December 1, 1999, and applies to offenses committed on or after that date.

Under a recent decision by the United States Supreme Court, *Jones v. United States,* 526 U.S. 227, 119 S. Ct. 1215, 143 L. Ed. 2d 311 (1999), possession of a bulletproof vest may have to be treated as an element of the offense, to be pleaded and proven at trial, rather than as a sentencing enhancement, to be found by the court after conviction. For more on this issue see Chapter 7 (Criminal Law and Procedure).

Drug Treatment Court

A substantial proportion of persons charged with criminal offenses are using illegal drugs, and arguably in some cases drug dependency causes the criminal behavior. Drug Treatment Court, which began in 1995 under G.S. Chapter 7A, Article 62 (G.S. 7A-790 through 7A-801), is a program directed by the Administrative Office of the Courts (AOC) to encourage the treatment of criminal defendants and convicted offenders for drug abuse. The key feature of the program is that trial judges are actively involved in the treatment. They refer offenders to treatment programs and oversee their progress, commending them when they are doing well and imposing sanctions when they are not.

S.L. 1999-298 (S 852) concerns Drug Treatment Court's function as both a pretrial and a postconviction option for the courts. It adds G.S. 15A-1341(a2) to provide for a deferred prosecution arrangement in which the prosecutor and the defendant agree that the defendant will participate in and successfully complete the Drug Treatment Court program. If the defendant does so, the prosecutor dismisses the charges. If the court having jurisdiction of the case finds that this type of deferred prosecution agreement has been signed, the court may order the defendant placed on probation (presumably with supervision by a probation officer) for this limited purpose. The legislation also amends G.S. 15A-1343(b1) to allow participation in and completion of Drug Treatment Court to be a condition of probation imposed after conviction of a crime.

Even without S.L. 1999-298, existing law [G.S. 15A-1341(a1) and 15A-1343(a)] probably would have allowed the use of Drug Treatment Court in deferred prosecution arrangements and in probation sentences. The legislation, however, makes it clear that these are legitimate uses of the program.

Delivery of Prison Commitment Orders to Sheriff

S.L. 1999-237 (H 168), Section 18.10, adds new G.S. 7A-109.3 to set deadlines for a court to give the local sheriff a signed order of commitment of a convicted defendant to state prison. The clerk of court must provide the order within forty-eight hours if the district court has imposed the prison sentence and within seventy-two hours if the superior court has imposed it.

Expunction of Conviction Records

North Carolina law allows expunction (destruction) of records concerning criminal prosecution and conviction in three situations: when an offender was under a certain age at conviction; when the charges against a person of any age are dismissed or the person is acquitted; and when an offender has successfully completed "probation without conviction" under G.S. 90-96. S.L. 1999-406 (H 1135), Section 8, amends G.S. 15A-145 to allow expunction of records of a conviction of misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1) if the offender was under twenty-one years of age at the time of conviction of this offense and was not previously convicted of any felony or nontraffic misdemeanor. The change applies only to offenses committed on or after December 1, 1999.

Section 9 of S.L. 1999-358 amends G.S. 15A-146(a) to make the provision for expunction of the record of prosecution for possession of alcoholic beverages by a person nineteen or twenty years of age, pursuant to G.S. 18B-302(i), if the charge was dismissed or the person was acquitted, applicable only to offenses that occurred before December 1, 1999. This change is to conform to Section 7 of the legislation, which makes this offense a Class 3 misdemeanor effective on that date.

Sentencing Services Program (Formerly Community Penalties)

Primarily to stem the growth of the state's prison population, the Community Penalties Program was established in 1983 under what is now G.S. Chapter 7A, Article 61. The statewide program has involved a number of local programs, mostly private nonprofit organizations, that operate under contracts with the AOC. Currently the program serves all counties. The program's services are provided by private nonprofit corporations in eighty counties, by local or regional government agencies in four counties, and by AOC–staffed offices in sixteen counties.

The function of local community penalties programs has been to perform investigations of defendants before conviction to determine their prospects for remaining in the community instead of going to prison. The programs select defendants to receive this service on the basis of their likelihood of receiving substantial prison time without the service. The local programs explore options, such as restitution to the crime victim, community service, and various kinds of treatment and supervision for the offender, and prepare a report with recommendations that may be considered by the sentencing judge. The judge may or may not accept the recommendations in the report. In practice the local programs have been defense-oriented, working with defense attorneys rather than directly for judges. Defense attorneys have been free to present or not to present the agencies' investigative reports in court.

The 1999 session brought a major restructuring of the Community Penalties Program. S.L. 1999-306 (H 331) renames the program the Sentencing Services Program and makes it responsive directly to the sentencing court rather than to the defendant's attorney. The legislation amends G.S. Chapter 7A, Article 61 (G.S. 7A-770 through 7A-777), to establish a statewide program "that can provide judges and other court officials with information about local correctional programs that are appropriate for offenders who require a comprehensive sentencing plan that combines punishment, control, and rehabilitation services." The local programs will continue to prepare investigative reports, known as sentencing plans. The new legislation emphasizes investigating the defendant's criminal record in addition to determining the defendant's need for rehabilitative services. If the defendant is sentenced in accord with a sentencing plan, the local program must arrange for necessary services through contracts with other agencies and assist sentenced offenders in obtaining the services called for by the sentence.

As under former law, the AOC Director may establish local sentencing services programs and appoint staff. The staff may be state employees or may be hired on a contractual basis.

The legislation makes each local sentencing services program responsible for targeting for its services offenders who:

- are charged with, or are offered a guilty plea by the state for, a felony for which the law authorizes, but does not require, a sentence of active imprisonment;
- are likely to commit future crimes unless appropriate sanctions are imposed and services provided; and
- would benefit from the types of plans provided by the program.

The local program is also required to prepare sentencing plans requested pursuant to new G.S. 7A-773.1. The presiding judge in a case in which the defendant meets the targeting criteria listed in the previous paragraph may request the local program to prepare a sentencing plan. Also the judge may request a plan for a defendant who does not meet the targeting criteria if the defendant is charged with a Class A1 or Class 1 misdemeanor and has a Level III prior conviction level (meaning five or more prior convictions) and the judge finds that preparing a plan is in the interest

of justice. In addition to the judge, the prosecutor or defendant may request a plan if the defendant meets the targeting criteria.

The defendant may decline to participate in the preparation of a sentencing plan within a reasonable time after someone has requested a plan. If the defendant declines, no plan may be prepared or presented before adjudication of guilt. The defendant's decision to turn down a plan must be in writing and filed with the court.

Perhaps the most important change in the program, in new G.S. 7A-773.1(b), is that *once a sentencing plan has been prepared, it must be presented to the court*, as well as to the defendant and the prosecution, in an appropriate manner. Formerly, plans could be withheld from the court if the defense so desired. However, no information obtained in preparing a plan may be used by the prosecution to establish guilt.

New G.S. 7A-773.1(c) allows the sentencing plan to include recommendations for use of any treatment or correctional resources available, unless the sentencing judge instructs otherwise. If the plan calls for education, treatment, control, or other services for the offender, the plan must, to the extent feasible, identify the resources to provide those services. Furthermore the plan may report that, under the circumstances of the case, no intermediate punishment is appropriate for the offender. Under the SSA, G.S. 15A-1340.11(6), an intermediate punishment is probation with additional conditions, such as intensive supervision, electronic monitoring, or participation in a day reporting center.

Each local sentencing services program must prepare a plan for its own operation, under G.S. 7A-774 as amended. The operational plan must state the program's goals, specify what kinds of offenders the program will investigate, propose procedures to identify eligible offenders, and present ways of insuring that judges will use the program's services where appropriate. The operational plan must be updated annually and be approved by the senior resident superior court judge in the court district. If the senior resident judge does not approve the operational plan, amendments to G.S. 7A-772 require the AOC Director to take that fact into consideration; however, the director may award grants to the program despite the absence of judicial approval.

As in the past, the local programs will continue to have boards of directors, now to be known as sentencing services boards, which may be organized as nonprofit corporations. The boards are responsible for annual preparation of operational plans, as described in the previous paragraph, as well as for submission of the plans to the senior resident judge and the AOC Director. If the sentencing services program is part of a local or state government agency, as some existing community penalties programs are, its board may not make budgeting and personnel decisions.

The legislation amends G.S. 15A-1340.11(6) to delete the provision that made a sentence to supervised probation qualify as an intermediate punishment under the SSA if it was imposed pursuant to a community penalties plan.

The portion of S.L. 1999-306 amending G.S. 15A-1340.11 applies only to offenses committed on or after January 1, 2000. The rest of the legislation becomes effective January 1, 2000, except that community penalties sentencing plans requested for offenders before that date will continue to be governed by the law in effect at the time of the request.

Capital Punishment

S.L. 1999-358 (S 365) amends G.S. 15-194 to provide that the Secretary of Correction must schedule a date for the execution of a death sentence not less than thirty days nor more than sixty days (formerly the limit was forty-five days) from the date of receiving written notice from the Attorney General that legal proceedings have ended (for example, because the United States Supreme Court has upheld the sentence).

Prisons

Costs of Housing Prison Inmates

S.L. 1999-237, Section 18.12, requires DOC to make a progress report by April 1, 2000, to the Joint Legislative Commission on Governmental Operations, the chairs of the Senate and House Appropriations Committees, and the chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety concerning its implementation of recommendations by the Office of State Budget and Management on provision of food and health care to state prison inmates, pursuant to the study directed by S.L. 1998-212, Section 17.8. This report must identify areas in which more efficient services can reduce costs.

Work Release

Work release is the release of a sentenced prisoner to work at a paid job for a private employer outside the prison. Usually this work is done on weekdays, with the prisoner returning to prison at nights and on weekends. DOC selects prisoners for work release who are legally eligible under G.S. 148-33.1, if suitable employment can be found and the prisoner meets its risk criteria. Some county jails have work release programs as well. Prisoners on work release must contribute from their earnings to the cost of their confinement as well as pay other court-imposed obligations, such as restitution to the crime victim.

Under legislation enacted in 1998 (S.L. 1998-212, sec. 17.25), DOC has conducted a pilot program involving the placement of all inmates in two prisons, the Alamance Correctional Center and the Union Correctional Center, on work release. S.L. 1999-237, Section 18.17, requires DOC to report its progress with this pilot project by June 30, 2000, to the chairs of the Senate and House Appropriations Committees and the chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety. DOC's final report on the project, to these same committees, will be due March 1, 2001.

Private Prisons

Private prisons are confinement facilities operated by private firms or organizations under contract with state or local government. Legislation enacted in 1997, S.L. 1997-443, Section 19.17(b), required DOC to establish standards for private prisons that confine inmates sentenced by a state other than North Carolina or by the federal courts or inmates sentenced to a county jail (some counties contract for some of their jail needs). S.L. 1999-237, Section 18.19, requires DOC to report its progress on these standards to the Joint Legislative Commission on Governmental Operations by November 1, 1999. DOC must make a final report by March 15, 2000, to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Corrections and Crime Control Oversight Committee, and the chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety.

Lease-Purchase of Prison Space

S.L. 1999-237, Section 18.20, amends G.S. 148-37 to allow the Secretary of Correction to enter into contracts with private firms to build three close-security prisons with a total capacity of up to 3,000 cells to be operated by DOC pursuant to a lease that contains a schedule for purchase of the facilities over a period of twenty years. DOC must report to the Joint Legislative Commission on Governmental Operations by May 1, 2000, on its progress in developing requests for proposals to build these prisons and its procedures for choosing a contractor. After the contract has been awarded, DOC must continue to report to the commission by May 1 of each year on its progress.

Probation, Parole, and Post-Release Supervision

Post-Release Supervision and Parole Commission

Parole is early release from prison, under supervision of a parole officer, that is granted in the discretion of a state agency. In North Carolina this agency was formerly known as the Parole Commission and is now called the Post-Release Supervision and Parole Commission. The Structured Sentencing Act abolished parole for most crimes occurring on or after October 1, 1994. The commission has continued to review prison inmates who are eligible for parole consideration under former law, as well as the limited number eligible for supervised release under the SSA, but the commission's workload is dwindling. As a consequence, S.L. 1999-237, Section 18.2, amends G.S. 143B-267 to reduce the commission's members from five to three, effective August 1, 1999. By that date the Governor must appoint three members to serve four-year, staggered terms. The amendment also requires that the commission make decisions regarding parole, work release, or other matters in its jurisdiction by majority vote of its full membership.

Section 18.1 of S.L. 1999-237 requires the commission to report by March 1, 2000, to the chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety on its plan for reducing staff through the 2002–2003 fiscal year. The plan must include at least a 10 percent reduction in staff positions in 2000–2001 as compared with 1999–2000.

Probation and Parole Caseloads

Probation is a criminal sanction in which the convicted offender receives a suspended sentence to a term of imprisonment subject to certain conditions. The conditions usually include supervision by a probation officer employed by DOC's Division of Community Correction (also known as the Division of Adult Probation and Parole). The Structured Sentencing Act (SSA), effective in 1994, introduced, in effect, two levels of probation: community punishment, which is ordinary probation supervision; and intermediate punishment, which is probation accompanied with other treatments and restrictions. Some examples of intermediate punishment conditions are intensive supervision (by teams of two officers with a small caseload); electronic monitoring; and participation in a day treatment center, a residential treatment program, or the Intensive Motivational Program of Alternative Correctional Treatment (IMPACT) "boot camp" program. The SSA contemplated the use of intermediate punishments for nonviolent offenders who formerly would have gone to prison.

Offenders under probation supervision vary in the risks they present to the public and in their needs for rehabilitative services; thus they require varying degrees and types of supervision. DOC recently introduced a reclassification of its probation officers (as well as parole officers) into three levels: probation parole officer I, probation parole officer II, and probation parole officer III. Probation parole officers I are not armed and specialize in supervising low-risk probationers who receive community punishments. Probation parole officers II supervise high-risk offenders, including those who receive intermediate punishments under the SSA, and these officers are armed while on the job. Probation parole officers III also supervise high-risk offenders and are armed, and they specialize in intensive probation, working in teams of two with caseloads of twenty-five. This division of functions is expected to allocate the division's resources more efficiently to the tasks of supervising and rehabilitating offenders.

S.L. 1999-237, Section 18.18, requires DOC to report by March 1, 2000, to the chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety and the Joint Legislative Corrections and Crime Control Oversight Committee concerning the average caseload size for these three new levels of officers. The report must include analysis of the optimal caseloads for officers in these new classifications and the expected impact of the new classifications on the division's expenditures. Finally, it must assess the role of surveillance officers, who serve on two-officer intensive probation teams and specialize in close supervision of high-risk offenders.

Other Correctional Programs

Criminal Justice Partnership Program

DOC's Criminal Justice Partnership Program (CJPP) originated in companion legislation to the Structured Sentencing Act, effective in 1994. CJPP's purpose is to encourage local communities, by means of technical assistance and grant funds, to develop programs such as residential treatment and day reporting centers to which criminal offenders can be sentenced if they qualify for an intermediate punishment under the act. The grant funds are provided mainly as block (formula) grants, under G.S. 143B-273.15, and currently total $9.6 million annually.

S.L. 1999-237, Section 18, requires DOC to report by February 1, 2000, to the chairs of the Senate and House Appropriations Committees, Senate and House Appropriations Subcommittees on Justice and Public Safety, and the Joint Legislative Corrections and Crime Control Oversight Committee on the status of CJPP. The report must include an analysis of offender participation in CJPP–sponsored programs during 1999–2000.

Crime Victims' Compensation

The Crime Victims' Compensation Act, G.S. Chapter 15B, enacted in 1983, created a Crime Victim's Compensation Commission that, under certain circumstances, may compensate crime victims for economic loss caused by the crime. S.L. 1999-269 (H 290) amends G.S. 15B-3(a) to increase the commission from five to seven members by adding two members appointed by the Secretary of Crime Control and Public Safety. It amends G.S. 15B-10 to allow the director of the commission to decide the compensation award if the claim does not exceed $7,500 (formerly this limit was $5,000). When the claim exceeds $7,500, the director recommends the award amount, and the commission makes the final decision. This change applies to all claims filed on or after July 1, 1999.

S.L. 1999-269 amends G.S. 15B-11(b) to allow but not require denial of a claim if the victim was participating in a nontraffic misdemeanor at the time the victim's injury occurred or if the claimant or a victim through whom the claimant is making the claim engaged in contributory misconduct. The commission may use its discretion in deciding whether to deny a claim on these grounds, and in doing so it may consider whether or not any proximate cause exists between the misdemeanor or contributory misconduct and the injury. Formerly, G.S. 15B-11(a)(6) allowed no discretion in this situation. Thus the commission was compelled to deny claims in which the victim was participating in a nontraffic misdemeanor of any type at the time of the injury. For example, because cohabitation (living with a person of the opposite sex as if married) is a misdemeanor under G.S. 14-184, this former provision was interpreted to require denial of a claim in which a victim was assaulted or murdered by a person with whom he or she was cohabiting at the time. The legislation leaves unchanged the provision in G.S. 15B-11(a)(6) requiring denial of a claim if the victim was participating in a *felony* at the time of the injury.

The change regarding victims engaged in misdemeanors or other misconduct applies to claims filed or pending on or after July 1, 1999. For claims denied before that date on the basis that the victim was participating in a nontraffic misdemeanor at the time of the injury, the commission must reconsider the claims upon written request by the claimant. This written request must be received within two years of the crime on which the claim is based.

S.L. 1999-237, Section 20.2, amends G.S. 15B-21, which already requires annual reporting by the Victims' Compensation Commission to the Governor and the General Assembly, to make this report due by March 15 each year. The report must cover the commission's activities in the prior fiscal year as well as the current fiscal year to date. It also must include the current balance of the Crime Victims' Compensation Fund; the amount carried over from the previous year; the amount of funds received in the previous year from DOC and from the compensation fund established by the (federal) Victims' Crime Act of 1984 [42 U.S.C. § 10601 *et seq*.]; and the amount received and expected from these sources for the current fiscal year.

Jails

Reimbursement to Counties for "Jail Backlog"

When convicted criminals are sentenced to state prison (the Division of Prisons within DOC), or are committed to state prison because of revocation of their probation, parole, or supervised release, a temporary shortage of prison space sometimes results and they are held in county jails until space becomes available. The "jail backlog" refers to the number of such offenders held in county jails. Several years ago the jail backlog at times numbered in the hundreds, but as more new prison space has become available, the backlog has diminished. According to DOC, from December 15, 1998, through late August 1999 there was no jail backlog. However, a backlog could reappear if, for example, prison admissions were unusually high or prison facilities had to be closed temporarily for repair or remodeling.

S.L. 1999-237, Section 18.10, continues the responsibility of DOC to reimburse counties at the per diem reimbursement rate of $40 for housing offenders in the jail backlog, as provided by G.S. 148-29, as well as for these offenders' medical costs. Effective October 1, 1999, the measure amends G.S. 148-29 concerning the time period covered by reimbursement: Reimbursement begins on the day after the sheriff has notified DOC's Division of Prisons that a prisoner is ready to be transferred to state prison and the division has informed the sheriff that no bed space is available for that prisoner. If the division determines that no space is available after the sheriff has notified the division that the prisoner is ready, reimbursement must begin on the day after the sheriff notified the division. Formerly, reimbursement began on the sixth day rather than the next day.

Stevens H. Clarke

23

Social Services

In addition to approving the state Work First plan and allocating federal Temporary Assistance for Needy Families (TANF) Block Grant funds, the General Assembly made several significant changes in the state's Work First program. These include increasing the length of time a family can qualify for transitional Medicaid, increasing opportunities for Work First recipients to continue their educations, and mandating the review of families' cases as they approach their time limits for receiving benefits. Other changes affected the structure for providing funds to counties and the maintenance of effort requirements that apply to counties. In other areas, the General Assembly appropriated funds for the expansion of the Smart Start program to all one hundred counties, made numerous changes relating to child support enforcement, and clarified the role of county social services departments in responding to reports of abuse or neglect of children in institutions.

Work First (Temporary Assistance for Needy Families)

Approval of State Work First Plan

North Carolina's Temporary Assistance for Needy Families (TANF) program, known as Work First, replaced the Aid to Families with Dependent Children (AFDC) program in 1996. The Work First program is established and governed by Article 2 of Chapter 108A of the General Statutes; however, the state Work First plan sets out program details regarding eligibility, types of assistance provided, and administration. The state plan provides the basis for the state's receipt of funding through the federal TANF block grant. The 1999 Appropriations Act, S.L. 1999-237 (H 168), approves North Carolina's revised 1998 state Work First plan (as amended by legislation enacted during the 1999 legislative session) and makes it effective through September 30, 2001.

Funding for Work First

Federal TANF Block Grant. North Carolina receives approximately $364.1 million annually from the federal government through the state's TANF block grant. These funds are subject to appropriation by the General Assembly and may be used by the state to provide temporary

assistance for needy families in accordance with the restrictions and requirements contained in the federal TANF statute.

The 1999 Appropriations Act, S.L. 1999-237 (H 168), as amended by S.L. 1999-359 (S 1134), appropriates $133.4 million of North Carolina's federal TANF block grant for Work First cash assistance for families in counties that operate the standard Work First program, $38.3 million to "electing" counties for Work First cash assistance, and $62.1 million for Work First block grants to counties to provide Work First services. Most counties administer the "standard" Work First program. Twenty-one counties have been designated as "electing" counties and have greater flexibility to design and administer their own county Work First programs. S.L. 1999-237 also allocates approximately $43 million for other Work First program activities and services (including $15 million for child care subsidies for Work First recipients, $5.4 million for pilot programs, $4.1 million for employment assistance, $3.5 million for substance abuse screening and testing, and $3.6 million for teenaged pregnancy prevention and reduction of out-of-wedlock births). The act also transfers approximately $87.6 million in TANF funds to the Social Services Block Grant (SSBG) and the Child Care Development Fund Block Grant (CCDFBG) for child care subsidies and social services for needy families.

Federal and State Funding for Work First. As a condition of receiving federal TANF funds, North Carolina must provide financial support (through state and local funding) for its Work First program and other programs for needy families at a level that is at least 80 percent of the amount of state and local funding for the state's former AFDC program. This is known as TANF's "maintenance of effort" (MOE) requirement. State law currently provides that state funding for Work First and other services for needy families will be maintained at 100 percent of the amount of the state's certified budget for AFDC in state fiscal year (SFY) 1996–97.

S.L. 1999-359 authorizes the state Department of Health and Human Services (DHHS) to "realign [Work First] funds if the realignment will assure that maintenance of effort requirements are met while maximizing federal revenues." S.L. 1999-359 also amends G.S. 108A-27.12 to allow DHHS to reallocate any federal or state Work First (TANF) block grant funding that has been released by a standard county that reduces its Work First "maintenance of effort" level or that is not spent by a standard county. The legislation indicates that Work First funding reallocated to other counties must be matched by county funding, but it does not specify the amount of the county match that is required or prescribe guidelines or formulas for the reallocation of these funds.

Electing counties receive federal TANF funds from the state through a Work First block grant that may be used to provide cash assistance and services to Work First families. G.S. 108A-27.11(c) provides that the block grants to electing counties for Work First cash assistance are computed based on the amount of AFDC cash assistance paid to county residents in SFY 1995–96, expressed as a percentage of statewide AFDC expenditures for cash assistance, multiplied by the amount of federal and state funding budgeted for Work First cash assistance. Once these block grant funds are paid to electing counties, they do not revert. Because the number of families receiving Work First cash assistance has declined dramatically in recent years, electing counties have received several million dollars more in Work First block grants than they need to provide assistance to Work First families. S.L. 1999-359 does not change the funding formula in G.S. 108A-27.11 for Work First block grants for electing counties, but it does appropriate a specific amount of federal TANF funding for Work First cash assistance for electing counties that is approximately $5.4 million less than they otherwise would have received (but still more than adequate to cover their projected costs for Work First cash assistance).

County Funding for Work First. North Carolina's Work First program is administered jointly by the DHHS Division of Social Services and North Carolina counties (generally through county departments of social services). In order to meet its TANF MOE requirement, North Carolina requires that all counties provide local funding for the Work First program and other services for needy families. S.L. 1999-359 makes several changes with respect to the MOE requirements for counties.

The 1999 legislation directs DHHS to work with counties to allow flexibility in the spending of federal, state, and county Work First funds to maximize the use of financial resources while

ensuring that federal TANF MOE requirements are met. It also directs DHHS to work with counties, area mental health authorities, and other public and private agencies to identify services for needy families that meet federal MOE requirements. The legislation requires DHHS to report quarterly to the General Assembly's Fiscal Research Division, the Joint Legislative Public Assistance Committee, and the Senate and House Human Resources Appropriations Subcommittees on the extent to which the state and counties are meeting federal MOE requirements.

The legislation modifies the Work First MOE requirements for standard counties in two respects. First, it redefines the MOE requirement for standard counties as 100 percent of each county's funding for AFDC emergency assistance (cash and services), AFDC administration, and JOBS employment and training in SFY 1996–97. Second, it allows a standard county to request that its MOE (and its Work First block grant funding) be reduced if the county can demonstrate that it is meeting all of the needs of its clients for child protection, employment services, and related supportive services, such as child care, without spending all of its block grant funds.

S.L. 1999-359 also revises the MOE requirements for electing counties that failed to achieve all of their Work First goals in SFY 1998–99. During SFY 1999–2000 these electing counties must maintain their financial support for Work First and other services at a level that is at least 90 percent of the amount they budgeted for the AFDC program during SFY 1996–97. If an electing county achieves all of its Work First goals during SFY 1999–2000, then for SFY 2000–2001 and subsequent years the county may reduce its MOE to 80 percent of the amount the county budgeted for the AFDC program during SFY 1996–97.

S.L. 1999-359 also authorizes the imposition of additional sanctions if a county fails to meet its MOE requirement. Under the new law, if a county fails to meet both its Work First MOE requirement and the performance indicators that would justify reducing its MOE, DHHS may

1. require the county to submit a corrective action plan pursuant to G.S. 108A-27.14 (which allows DHHS to intervene with respect to a county's administration of the Work First program when the county fails to meet acceptable levels of performance and does not correct its failure),
2. reduce the county's Work First funding, or
3. use the county's Work First block grant allocation to secure needed services for clients in the county as well as withhold other state funding for public assistance and social services under G.S. 108A-93.

Work First Reserve Fund. In 1997 the General Assembly established a Work First Reserve (G.S. 143-15.3C) to provide additional funding for the Work First program if estimated spending for the program exceeds available funding. Section 6 of S.L. 1999-237 repeals G.S. 108A-27.16, which authorized the Governor to use funds from the Work First Reserve if certain conditions were met. It amends G.S. 143-15.3C to provide instead that Work First Reserve funds may be expended only through an appropriation by the General Assembly and to delete requirements for the annual transfer of one-quarter of the state's unexpended Work First funds to the Work First Reserve. Section 6 of S.L. 1999-237 also withdraws all of the funds from the Work First Reserve for current spending for Work First and other social services programs.

Welfare-to-Work Block Grant. The 1999 Appropriations Act, S.L. 1999-237 (H 168), appropriates North Carolina's $23.7 million federal Welfare-to-Work block grant to the Department of Commerce to administer the state's welfare-to-work program. This program, which is separate from the state's Work First program, provides grants to local governments and community organizations to fund community service or work experience programs, job creation through public or private employment wage subsidies, on-the-job training, job placement, job readiness, job retention, and employment support services (including child care) targeted to Work First recipients who experience significant barriers to employment and to noncustodial parents of needy children. The legislation directs the Department of Commerce to identify available state and local funding that may be used to meet the federally required 25 percent state-local match.

Review and Approval of County Work First Plans

Submission of County Work First Plans. The state's welfare reform law requires each county to submit a biennial county Work First plan to DHHS. The 1999 Appropriations Act, S.L. 1999-237 (H 168), amends the law to require that county Work First plans be submitted to DHHS by January 15 (for counties operating a "standard" Work First program) or February 1 (for counties requesting permission to administer the Work First program as an "electing" county) of each odd-numbered year (rather than in even-numbered years).

Approval and Review of "Electing" County Work First Programs. In 1998 the General Assembly designated twenty-one North Carolina counties as "electing" counties, which have increased authority to develop and implement their own county Work First programs. S.L. 1999-237 provides that the General Assembly's 1998 designation of electing counties will be for the period through September 30, 2001. Designated electing counties may request redesignation as standard counties, and standard counties may request redesignation as electing counties at least six months before the effective date of the next biennial state TANF plan (Oct. 1, 2001).

Under the 1997 welfare reform law, DHHS is required to make recommendations to the General Assembly with respect to the designation of electing counties, but the General Assembly retains the authority to determine how many counties may be designated electing counties (currently, no more than 15.5 percent of the state's total Work First caseload) and which counties will be designated as electing counties. S.L. 1999-359 amends North Carolina's welfare reform law to require DHHS to review the county Work First program of each previously designated electing county and make a recommendation to the General Assembly with respect to whether the county should be redesignated as an electing county. DHHS's review must consider, among other things, whether each electing county's Work First program and policies are unique and innovative compared to other standard and electing Work First programs and whether the county's Work First program requires the county's redesignation as an electing county or could be implemented under the standard Work First program.

Pilot Programs to Assist Needy Families. S.L. 1999-359 authorizes DHHS to use up to $5.4 million in federal TANF funds to make grants to state or local government agencies or non-profit, tax-exempt organizations to address the problems of families with significant employment barriers to economic self-sufficiency and to reduce or prevent intergenerational poverty. Pilot programs must focus on one or more of eight specified outcomes; be developed in collaboration with the Employment Security Commission, business entities, faith communities, educational institutions, law enforcement agencies, community organizations, and other human services agencies; and meet guidelines established by DHHS in consultation with the Employment Security Commission, the Department of Public Instruction, the Office of Juvenile Justice, county departments of social services, advocacy organizations, and other human services agencies.

Work First Assistance and Services for Needy Families

Eligibility for Work First Cash Assistance. S.L. 1999-359 directs DHHS to amend the state's Work First (TANF) plan to require that eligibility for Work First cash assistance be determined based on the AFDC "standard of need" that was in effect for SFY 1997–98 ($544 per month for a family of three) rather than the former AFDC "payment level" ($272 per month for a family of three). This provision has the effects of making more needy families eligible for cash assistance under the Work First program and increasing the amount of cash assistance paid to Work First families who have other income, such as earnings from employment. A similar provision is included in Section 11.12(d) of S.L. 1999-237. The DHHS Division of Social Services has interpreted these provisions to apply to both electing counties and the standard Work First program.

Emergency Assistance for Needy Families. S.L. 1999-359 requires every county, whether standard or electing, to establish an emergency assistance program for families using a county-established income eligibility standard that does not exceed 200 percent of the federal poverty level.

Time Limits on Assistance. North Carolina's Work First law (G.S. 108A-27.1) generally prohibits a family from receiving Work First assistance for more than twenty-four months and provides that after a family reaches the twenty-four month time limit, it may not receive Work First assistance for a period of thirty-six consecutive months. (The federal welfare reform law imposes a sixty-month lifetime limit on the receipt of federally funded TANF assistance.)

S.L. 1999-359 makes two changes with respect to North Carolina's Work First time limits. First, the new law requires every county to review each Work First case at least three months before the family's twenty-four-month time limit expires to ensure that

- the time limit has been computed correctly,
- the family has been informed of other assistance and services that are available after cash assistance is no longer available, and
- the time limit is extended if the family qualifies for an extension.

Second, the new law provides that, in counties operating a standard Work First program, a family's twenty-four-month time limit must be extended for up to three years if a Work First recipient is enrolled at least part-time in a postsecondary education program and maintains a 2.5 grade point average.

Work Requirements. S.L. 1999-359 provides that part-time or full-time enrollment in a post-secondary education program is an authorized work activity for up to 20 percent of the state's Work First recipients.

Assistance for Two-Parent Families. S.L. 1999-359 requires both standard and electing counties to provide at least three months of cash assistance to eligible two-parent families before they are subjected to "pay-after-performance" requirements regarding employment and work-related activities.

Eligibility for Work First Support Services. S.L. 1999-359 provides that Work First support services (including work-related support services for noncustodial parents but *not* cash assistance) must be made available to families with incomes that do not exceed 200 percent of the federal poverty level. The former income eligibility limit for Work First support services was 150 percent of the federal poverty level.

Transportation for Work First Recipients. S.L. 1999-359 requires DHHS and the Department of Transportation jointly to develop strategies for assisting low-wage workers who receive Work First assistance to obtain dependable transportation to and from work, child care services, and educational activities. These agencies must report jointly on the development and implementation of these strategies to the Senate and House Human Resources Appropriations Subcommittees and to the Joint Legislative Public Assistance Committee by May 1, 2000.

Unemployment Benefits for Work First Recipients

S.L. 1999-421 (H 278) amends G.S. 96-9(c)(2)b to provide that unemployment compensation benefits paid to a current or former Work First recipient will not be charged to the account of the employer for whom the recipient or former recipient worked at the time of his or her separation from employment if the recipient or former recipient

1. was separated from employment due solely to his or her inability to do the work for which he or she was hired,
2. was employed for fewer than 101 days, and
3. was a recipient of Work First assistance in the last calendar quarter preceding the quarter in which he or she was paid wages by the employer.

Other Public Assistance Programs

Medicaid

Extended Medicaid Coverage for Former Work First Families. Under prior law, families who otherwise would have lost Medicaid coverage when they lost their eligibility for Work First cash assistance due to increased earnings or hours of employment were eligible for an additional twelve months of "transitional" Medicaid coverage following termination of their Work First assistance. The 1999 Appropriations Act, S.L. 1999-237 (H 168), now allows these families to receive "transitional" Medicaid benefits for twenty-four, rather than twelve, months.

Study Expanded Medicaid Eligibility for the Elderly and Disabled. In North Carolina an individual who is elderly, blind, or disabled may be eligible for Medicaid if (a) his or her income is below North Carolina's medically needy income limit, the Supplemental Security Income (SSI) income limit, or 100 percent of the federal poverty level *and* (b) the value of his or her countable assets (excluding the home and other specified property) does not exceed $2,000 ($3,000 for a couple). S.L. 1999-237 directs DHHS to study the feasibility and cost of tripling the Medicaid asset limits for elderly, blind, and disabled persons and to submit a report of its study to the House and Senate Human Resources Appropriations Subcommittees by May 1, 2000.

Medicaid Fraud Incentive Payments to Counties. S.L. 1999-237 authorizes, but does not require, the DHHS Division of Medical Assistance to provide financial incentives (sharing recovered state funds) to counties that successfully recover fraudulent Medicaid payments.

Study Medicaid Estate Recovery Policy and Law. The federal Medicaid statute requires states to attempt to recover the cost of Medicaid payments made on behalf of certain elderly or disabled persons by filing claims against the estates of these deceased Medicaid recipients. In 1994 North Carolina's General Assembly, in response to this federal requirement, enacted legislation (G.S. 108A-70.5) establishing a state Medicaid Estate Recovery Program. [North Carolina's Medicaid Estate Recovery Program is discussed in more detail in John L. Saxon, "Recovering Medicaid Payments from the Estates of Elderly or Disabled Persons," *Elder Law Bulletin* No. 5 (Chapel Hill, N.C.: Institute of Government, The University of North Carolina at Chapel Hill, Aug. 1997).]

The Studies Act of 1999, S.L. 1999-395 (H 163), authorizes the Legislative Research Commission to conduct a comprehensive study of North Carolina's current Medicaid estate recovery policies and law to determine the feasibility and desirability of enhancing recovery efforts beyond minimum federal requirements. If the commission studies this issue, it must report its findings and recommendations to the General Assembly's regular 2000 legislative session or to the 2001 General Assembly.

State-County Special Assistance for Adult Care Home Residents

Increased Maximum Payment. North Carolina's State-County Special Assistance program provides financial assistance to elderly or disabled persons who live in adult care homes and cannot afford to pay the full cost of their care. The cost of Special Assistance payments is divided equally between the state and North Carolina's counties. Effective October 1, 1999, the 1999 Appropriations Act, S.L. 1999-237 (H 168), increases the maximum Special Assistance payment from $956 to $982 per month (except in the case of "grandfathered" Special Assistance recipients). Effective October 1, 2000, the maximum payment will increase to $1,016 per month.

Medicaid Personal Care Services. The nonfederal share of Medicaid payments for personal care services provided to elderly or disabled adult care home residents who receive Special Assistance payments is divided between the state and counties. Section 11.22 of S.L. 1999-237 revises the formula for allocating this cost between the state and counties. Under the revised formula, the counties' portion of the nonfederal share of these costs will decrease annually from 50 percent to 15 percent between January 1, 2000, and January 1, 2005. The act also authorizes DHHS, effective January 1, 2000, to transfer funds from the State-County Special Assistance

program to support expansion of Medicaid personal care services for residents of adult care homes.

The Studies Act of 1999, S.L. 1999-395 (H 163), directs the North Carolina Study Commission on Aging to study the rationale and appropriateness of present cost-sharing of nonfederal costs of Medicaid services for all State-County Special Assistance recipients. The commission is required to report its findings and recommendations to the General Assembly by May 1, 2000.

Personal Needs Allowance. The 1999 Appropriations Act, S.L. 1999-237 (H 168), increases from $31 to $36 per month the personal needs allowance for Special Assistance recipients—money recipients may retain from their own income to pay personal expenses.

Medical and Social Evaluation of Special Assistance Applicants and Recipients. Section 11.22A of S.L. 1999-237 appropriates $631,200 for 1999–2000 and $1,271,200 for 2000–2001 to fund additional positions in DHHS and in county social services departments to evaluate the medical and social needs of elderly and disabled persons requesting or receiving State-County Special Assistance payments for care in adult care homes. The act does not indicate how these funds will be allocated to counties or whether county matching funds are required.

Demonstration Project to Support In-Home Care. Section 11.21 of S.L. 1999-237 authorizes DHHS to provide State-County Special Assistance payments during the 1999–2001 biennium to up to 400 otherwise eligible persons who are living at home rather than in adult care homes. DHHS must make interim and final reports to specified legislative committees with respect to the demonstration project, the cost savings that might result from allowing elderly or disabled persons to remain at home rather than moving to adult care homes, and other specified issues.

Child Welfare Services

Abuse, Neglect, Dependency: Children in Institutions

Section 1 of S.L. 1999-190 (H 262) amends the Juvenile Code's definition of *caretaker* in G.S. 7B-101(3) to specify that a "person responsible for a juvenile's health and welfare [in a residential setting]" includes "any employee or volunteer of a division, institution, or school operated by the Department of Health and Human Services."

Section 2 of the act amends G.S. 7B-302(b) to address the responsibility of a county department of social services when it receives a report of suspected abuse, neglect, dependency, or death from maltreatment relating to a juvenile in an institutional setting, such as a residential child care or educational facility. In those cases the department must ascertain immediately whether other juveniles remain in the facility subject to the alleged perpetrator's care or supervision and, if so, assess the circumstances of those juveniles to determine whether they require protective services or whether their immediate removal from the facility is necessary for their protection.

Foster Care and Adoption Assistance Payments

Section 3 of S.L. 1999-190 (H 262) amends G.S. 108A-49, effective June 18, 1999, to (1) require that county departments of social services pay, at a minimum, the monthly graduated foster care assistance payments and adoption assistance payments for eligible children as set by the General Assembly and (2) clarify that counties may make higher payments.

Sections 11.23 and 11.24 of S.L. 1999-237 establish the mandated minimum rates (which also are the maximum rates for which state participation is available) at the following amounts per child, per month:

- $315 for children from birth through age five
- $365 for children aged six through twelve
- $415 for children aged thirteen through eighteen

Section 11.25 of S.L. 1999-237 establishes the following monthly rates for human immunodeficiency virus (HIV) foster care and adoption assistance:

- $800 per child with indeterminate HIV status
- $1,000 per child confirmed HIV-infected, asymptomatic
- $1,200 per child confirmed HIV-infected, symptomatic
- $1,600 per child terminally ill with complex care needs

The section also provides that in addition to providing board payments to foster and adoptive families of HIV-infected children, any additional funds appropriated for that purpose and remaining shall be used to provide medical training in avoiding HIV transmission in the home.

Interstate Compact on Adoption and Medical Assistance

Section 5 of S.L. 1999-190 adds the Interstate Compact on Adoption and Medical Assistance as a new Article 39 of G.S. Chapter 7B, the Juvenile Code. It authorizes the Secretary of Health and Human Services to enter into interstate agreements with agencies of other states to protect children for whom adoption assistance is being provided by DHHS and to provide procedures for interstate adoption assistance payments, including payments for medical services. Acting on behalf of the state, the Secretary may develop, participate in the development of, negotiate, and enter into interstate compacts that will have the "full force and effect of law."

Mandatory Provisions. Any compact under the new article *must* contain all of the following:

1. a provision making it available for joinder by all states;
2. a provision for withdrawal from the compact on written notice to the parties, with a period of at least one year between the date of the notice and the effective date of the withdrawal;
3. a requirement that protections afforded under the compact continue in force for the duration of the adoption assistance and apply to all children and their adoptive parents who, on the effective date of the withdrawal, are receiving adoption assistance from a party state other than the state in which they are residents and have their principal place of abode;
4. a requirement that each instance of adoption assistance to which the compact applies be covered by a written adoption assistance agreement between the adoptive parents and the state child welfare agency of the state that undertakes to provide the adoption assistance and that the agreement be expressly for the benefit of the adopted child and enforceable by the adoptive parents and the state child welfare agency providing the adoption assistance;
5. any other provisions appropriate to implement the proper administration of the compact.

Permissive Provisions. A compact under the new article *may* establish procedures for and entitlement to medical and other necessary social services for the child in accordance with applicable laws, even though the child and adoptive parents are in a state other than the one responsible for or providing the services or funds to defray the cost. A compact also may contain any other provisions appropriate or incidental to the proper administration of the compact.

Medical Assistance. A child with special needs who is a resident of North Carolina and who is the subject of an adoption assistance agreement with another state must be accepted as being entitled to receive medical assistance certification from North Carolina upon the filing with the department of social services in the county in which the child resides of a certified copy of the adoption assistance agreement obtained from the other state. The Division of Medical Assistance must consider the holder of a medical assistance certification under this provision to be entitled to the same medical benefits under the laws of North Carolina as any other holder of a medical assistance certification. These provisions apply only to medical assistance for children under adoption assistance agreements from states that have entered into a compact under which the other state provides medical assistance to children with special needs under adoption assistance agreements made by North Carolina.

Federal Participation. DHHS must include the provision of adoption assistance and medical assistance for which the federal government pays some or all of the cost in any state plan made

pursuant to the Adoption Assistance and Child Welfare Act of 1980, Titles IV(E) and XIX of the Social Security Act, and any other applicable federal laws.

Compact Administrator. The Secretary of Health and Human Services may appoint a Compact Administrator to be the general coordinator of activities under this compact in this state. Acting jointly with like officers of other party states, the administrator may promulgate rules to carry out the terms and provisions of this compact.

Funding

Child welfare–related appropriations made in Section 5 of S.L. 1999-237 to DHHS for 1999–2000 include (1) $2 million for a revised Intensive Family Preservation Services Program, to be developed and implemented on a regional basis in areas of high foster care placements as compared to the numbers of children substantiated for abuse, neglect, or dependency; (2) $1 million for grants to Boys and Girls Clubs across the state for approved programs; (3) $2.8 million for the Special Children Adoption Fund; and (4) $2 million for teen pregnancy prevention.

Other Legislation Relating to Child Welfare

Dual Response Pilot. Section 11.27 of S.L. 1999-237 continues provisions relating to a pilot dual response system of child protection.

Reports on Child Fatality Review and System Changes. Section 11.28(a) of S.L. 1999-237 requires the DHHS Division of Social Services to report semiannually on the activities of the State Child Fatality Review Team and to make a final report, including recommendations for changes in the statewide child protection system, to House and Senate appropriations subcommittees no later than April 1, 2000.

Child Welfare Worker Training Exception. Section 11.28(b) of S.L. 1999-237 authorizes the Division of Social Services to grant a total or partial exception from the requirement that child welfare workers have at least seventy-two hours of preservice training to child welfare workers who satisfactorily complete or are enrolled in a master's or bachelor's degree program after July 1, 1999. The program must be at an accredited North Carolina social work program, and the curricula must cover the training requirements established by the division.

Juvenile Code Changes. The General Assembly made several important changes in Juvenile Code provisions relating to abuse, neglect, and dependency. These are discussed in Chapter 4 (Children and Families).

Child Support Enforcement (IV-D) Services

State and Local Child Support Enforcement Agencies

S.L. 1999-419 (H 660) amends G.S. 58-70-15 to clarify that state and local child support enforcement agencies are not considered "collection agencies" subject to licensure and regulation by the Department of Insurance under Chapter 58 of the General Statutes.

Automated Administrative Child Support Enforcement

S.L. 1999-293 (H 302) enacts a new statute, G.S. 110-139.3, requiring DHHS to use high-volume, automated administrative child support enforcement methods to collect child support in interstate child support enforcement cases.

Other Legislation Affecting Child Support and Paternity

S.L. 1999-293 makes a number of changes intended to improve North Carolina's child support laws. These legislative changes are discussed in Chapter 4 (Children and Families).

Child Care Programs and Assistance

Allocation of Child Care Funds to Counties

The 1999 Appropriations Act, S.L. 1999-237 (H 168), directs DHHS to use the following formula to allocate all noncategorical federal and state funds for child care for needy families:

- one-third based on each county's population in relation to the state's total population,
- one-third based on each county's proportionate number of children under the age of six living in families with incomes under the federal poverty level, and
- one-third based on each county's proportionate number of working mothers with children under the age of six.

A county's initial child care allocation, however, may not be less than the county's total expenditures for child care (including child care under the Family Support Act and other programs) in SFY 1995–96. DHHS retains the authority to reallocate child care subsidy funds in order to meet the child care needs of low-income families.

Child Care Subsidy Fraud: Criminal Penalties and Incentive Payments

S.L. 1999-279 (H 304) enacts a new statute, G.S. 110-107, establishing criminal penalties with respect to the fraudulent receipt of child care subsidy payments. Under the new law, parents (or other beneficiaries of child care subsidies) and child care providers are guilty of fraud if they obtain, attempt to obtain, or assist another person in obtaining or attempting to obtain a child care subsidy payment by making a false statement or failing to disclose a material fact with the intent to deceive. The offense is a Class 1 misdemeanor if the amount of the subsidy is $1,000 or less and a Class I felony if the amount is more than $1,000. These criminal penalties apply with respect to offenses committed on or after December 1, 1999.

S.L. 1999-279 also enacts G.S. 110-108, which allow a local purchasing agency (including a county agency administering child care subsidy funding) to retain all fraud and overpayment claims collected by the agency, to use 75 percent of these funds to provide additional child care subsidies, and to use 25 percent of the funds to improve program integrity.

Smart Start (Early Childhood Development Initiatives)

The General Assembly appropriated to the DHHS Division of Child Development $58 million for 1999–2000 and almost $80 million for 2000–2001 for Smart Start administration and services in all one hundred counties.

Section 11.48 of S.L. 1999-237 amends G.S. 143B-168.12(a)(1) to add an exemption to the requirement that the North Carolina Partnership's policy on membership of local boards require members to be residents of the county or the partnership region they are representing when a member is appointed because of a position the person holds. It also amends G.S. 143B-168.15(g) to require local partnerships to give priority to augmenting the state's supplemental subsidy payment rate per child per month for licensed child care centers and homes that earn a rated license that exceeds the minimum licensing standards.

Other Legislation Relating to Child Care

Child Care Commission Authority. G.S. 110-88 describes the powers and duties of the state Child Care Commission. S.L. 1999-130 (H 287) amends the section to provide that the

commission and the DHHS Division of Child Development may not require the standards, policies, or curriculum of any single accrediting child care organization. This replaces a provision that prohibited them from promoting or from requiring the use of training materials, curriculum, or policies developed or provided by the National Association for the Education of Young Children or the National Institute for Early Childhood Professional Development. The act also amends the section to make clear that the commission may require inspections by and satisfactory written reports from local or state building inspection agencies before issuance of an initial license.

Religious-Sponsored Child Care. In relation to religious-sponsored child care facilities, S.L. 1999-130

1. amends G.S. 110-91(8) to specify that the staff qualification requirements of that subdivision do not apply to religious-sponsored child care facilities;
2. amends G.S. 110-99(b) to exclude drop-in or short-term child care provided in churches from the requirements that otherwise apply to drop-in or short-term child care; and
3. adds a new section, G.S. 110-88.1, providing that nothing in Article 7 of G.S. Chapter 110 shall be interpreted to allow the state to determine the training or curriculum offered in any religious-sponsored child care facility, as defined in G.S. 110-106(a).

Repeal of Sunset. S.L. 1999-130 repeals Section 4(b) of S.L. 1997-506, a sunset provision that provided for the enhanced program standards adopted by the Child Care Commission pursuant to G.S. 110-88(7) to expire July 1, 1999.

Child Care Subsidy Study. Section 2.1 of S.L. 1999-395 authorizes the Legislative Research Commission to study child care subsidy issues, including state implementation of federally mandated biennial market-rate surveys and provider reimbursement formulas, under the new five-star rated license, for the child care subsidy program. If the commission chooses to undertake this study, it may report to the General Assembly in the 2000 session or to the 2001 General Assembly.

Unemployment Benefits for Workers with Child Care Responsibilities. S.L. 1999-196 (H 277) prevents certain people who are unemployed due to hardships relating to child care and other family responsibilities from being disqualified for unemployment benefits. This legislation is discussed in Chapter 4 (Children and Families).

Other Social Services Programs

Adult Protective Services

The 1999 Appropriations Act, S.L. 1999-237 (H 168), appropriates $1 million in new, recurring state funding for 1999–2000, and $2 million in recurring state funding for 2000–2001, to support additional social worker positions providing adult protective services through county departments of social services.

Section 1.10 of S.L. 1999-334 (S 10) amends G.S. 108A-103 to establish new time frames for county social services department investigations of certain reports involving the abuse or neglect of disabled adults. This provision is discussed in more detail in Chapter 21 (Senior Citizens).

Health Insurance Program for Uninsured Children

Legislation affecting North Carolina's "Health Choice" program for uninsured children is discussed in Chapter 11 (Health).

Other Legislation Affecting Social Services Agencies

Certification and Licensure of Social Workers

S.L. 1999-313 (H 1069) amends G.S. Chapter 90B (the Social Worker Certification and Licensure Act) to require the licensure, rather than certification, of clinical social workers; to revise the fees that may be charged with respect to the certification and licensure of social workers; to revise the qualifications for certification as a "certified social worker;" to revise the requirements with respect to certification and licensure of social workers who are certified or licensed in other jurisdictions; and to expand the disciplinary remedies that may be imposed by the North Carolina Social Work Certification and Licensure Board.

The provisions of G.S. 90B-10(b)(3)a, which exempted from the act's certification and licensure requirements clinical social workers employed by the state, political subdivisions of the state, or local governments (including clinical social workers employed by state or county social services or human services agencies), expired on January 1, 1999. Employees of state or local governments who are engaged in clinical social work, therefore, must be licensed under G.S. Chapter 90B unless they are otherwise exempt from licensure under that chapter.

Housing for Low- and Moderate-Income Persons

S.L. 1999-366 (S 708) amends G.S. 153A-149(c) to add, as one of the authorized uses of county tax dollars, housing programs for low- and moderate-income persons. That authority is described more specifically in a new section, G.S. 153A-378. The act also amends G.S. 159-48(c) to authorize counties to borrow money and issue bonds to finance the cost of providing housing projects for low- and moderate-income persons, including

- the construction or acquisition of projects to be owned by a county, a redevelopment commission, or a housing authority; and
- the provision of loans, grants, interest supplements, and other programs of financial assistance to persons of low or moderate income.

Under this provision, a housing project may provide housing for persons who do not have low or moderate incomes if at least 40 percent of the units in the project are reserved exclusively for persons who do. The act prohibits the use of bond proceeds to pay rent subsidies.

No Legal Immunity for County Social Workers

Legislation (H 1092) that would have provided immunity in civil and criminal proceedings for actions taken by social workers providing adult protective services, child protective services, or child foster care services through county social services departments was introduced in the House of Representatives. The bill was not brought to the floor for consideration during the 1999 legislative session, however, and it is not eligible for consideration during the regular 2000 legislative session.

Janet Mason

John L. Saxon

24

State Government

This chapter summarizes legislation enacted by the 1999 General Assembly with respect to the organization, structure, and functions of North Carolina's state government as well as changes to the North Carolina Administrative Procedure Act (APA).

New State Agencies

Butner Advisory Council

S.L. 1999-140 (H 105) adds a new Article 6, Part 1B, to Chapter 122C of the General Statutes to create the Butner Advisory Council. The council will consist of seven members, to be elected by the residents of the territorial jurisdiction established by G.S. 122C-408(a), at a nonpartisan election administered by the Granville County Board of Elections. The council is to advise the Secretary of Health and Human Services, through resolutions adopted by the council, on the operations of the Camp Butner reservation and the concerns of the residents of Camp Butner. The act also clarifies the relationship between the Secretary of Health and Human Services and the Butner Town Manager.

Commission to Address Smart Growth, Growth Management, and Development Issues

The 1999 Appropriations Act, S.L. 1999-237 (H 168), creates the Commission to Address Smart Growth, Growth Management, and Development Issues and allocated funds from the Department of Commerce to support it. There are to be thirty-seven members of the Commission from a wide variety of backgrounds, as set forth in the act. The Commission is to study growth management and recommend initiatives to promote comprehensive and coordinated local, regional, and state planning. This commission is discussed in detail in Chapter 14 (Land Use Regulation, Planning, Code Enforcement, and Transportation).

Commission on Workforce Development

The appropriations act adds a new Chapter 143B, Article 10, Part 3B, to create the Commission on Workforce Development within the Department of Commerce. The statute provides that the commission is to develop strategies to produce a skilled, competitive workforce that meets the needs of the state's changing economy. The commission is to consist of thirty-eight members, as specified in the act.

Select Joint Committee on Information Technology

The appropriations act also creates the Joint Select Committee on Information Technology, as set forth in a new Chapter 120, Article 26. The committee is to consist of fourteen members, as specified in the act, and is to be charged with developing electronic commerce in the state and with coordinating the use of information by state agencies in a manner that assures that citizens receive quality services from those agencies and that the needs of the citizens are met in an efficient and effective manner.

Domestic Violence Commission

The appropriations act adds a new Chapter 143B, Article 9, Part 10C, to create the Domestic Violence Commission. The commission is to consist of thirty-nine members, as specified in the act, and is to have three purposes: (1) to assess statewide needs related to domestic violence; (2) to assure that necessary services, policies, and programs are provided to those in need; and (3) to coordinate and collaborate with the North Carolina Council for Women in strengthening the existing domestic violence programs established pursuant to G.S. 50B-9. This commission is discussed in more detail in Chapter 4 (Children and Families).

Blue Ribbon Transportation Finance Study Commission

The appropriations act creates the Blue Ribbon Transportation Finance Study Commission, to consist of fifteen members, as specified in the act. The commission is to study seven listed transportation policy issues and submit a final report to the Joint Legislative Transportation Oversight Committee by March 1, 2001. This commission is discussed in detail in Chapter 14 (Land Use Regulation, Planning, Code Enforcement, and Transportation).

Changes to Existing State Agencies

Board of Directors of the Roanoke Island Historical Association

S.L. 1999-32 (H 652) amends G.S. 143-200 to add two members to the Board of Directors of the Roanoke Island Historical Association: the Superintendent of Public Instruction and the Chair of the Dare County Board of Commissioners.

State Board of Community Colleges

S.L. 1999-61 (H 244) amends G.S. 115D-2.1(b) to add a student as an ex officio member to the State Board of Community Colleges. The student member will be the president of the North Carolina Comprehensive Community College Student Government Association or, if the president is unable to serve, the vice president.

Study Commission on the Future of Electric Service in North Carolina

S.L. 1999-122 (H 778) adds six members to the Study Commission on the Future of Electric Service in North Carolina, which was created in 1997. The commission now has twenty-nine members, with three additional members each to be appointed by the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

Textbook Commission

S.L. 1999-237 amends G.S. 115C-87 to expand membership on the Textbook Commission from fourteen to twenty-three members. The amended statute also sets forth membership requirements by category.

North Carolina Progress Board

Membership in the North Carolina Progress Board, as set forth in G.S. 143B-372.1, is expanded from fourteen to twenty-one members by S.L. 1999-237. The board is to track, evaluate, and make recommendations to the General Assembly on eight issues listed in G.S. 143B-372.2.

Crime Victims Compensation Commission

S.L. 1999-269 (H 290) amends G.S. 15B-3(a) to add two members to the Crime Victims Compensation Commission, bringing the total number of members to seven.

Division of Information Technology Services

S.L. 1999-347 (H 253) amends G.S. 143B-472.44 to change the name of the State Information Processing Services to the Division of Information Technology Services.

Administrative Procedure Act

Proposed Final Decision Authority for Administrative Law Judges

H 968, which passed the House and awaits Senate action in the next session, would give administrative law judges in the Office of Administrative Hearings (OAH) the authority to make final decisions in contested cases under the Administrative Procedure Act (APA). Under the current APA structure, administrative law judges make recommended decisions to agencies, which in turn make the final decision. Those decisions may, in turn, be appealed to the courts. If H 968 is enacted into law and signed by the Governor, it will represent a significant shift in power from state agencies to OAH and a substantial revision of the APA.

Stephen Allred

25

State Taxation

The 1999 General Assembly enacted several new laws providing tax incentives for economic development. These include a number of new incentives for new businesses and community development activities as well as for historic preservation and commercialization of new technologies developed in universities. The legislature substantially revised laws providing tax credits for renewable energy investments. The General Assembly reduced unemployment taxes for additional employers and adopted measures to simplify and improve collection of use taxes.

Legislation affecting local tax collection is covered in Chapter 16 (Local Taxes and Tax Collection). Other finance matters are covered in Chapter 13 (Land Records and Registers of Deeds), Chapter 15 (Local Government and Local Finance), and Chapter 26 (Utilities and Energy).

Tax Incentives: Economic Development and Historic Preservation

Bill Lee Act Amendments and Other Tax Incentives

S.L. 1999-360 (S 1115) amends various tax laws to expand existing tax incentives for businesses, add new tax incentives and tax reductions for specific businesses, and make related changes. The provisions of the act are listed below, along with an estimate of the fiscal impact on future state revenues that will result from the change. Many of these amendments are to the William S. Lee Quality Jobs and Business Expansion Act (the Bill Lee Act). These amendments, each of which is discussed in more detail below, include the following:

- Extend sunset on the Bill Lee Act from 2002 to 2006 and require the Department of Commerce to continue studying the impact of Bill Lee Act incentives. The extension of the sunset will result in a loss of revenue to the General Fund of approximately $13.1 million in the 2002–2003 fiscal year. The loss is expected to increase to as much as $38.1 million by fiscal year 2005–2006.
- Add passenger air carrier training centers to the Bill Lee Act credits. This change will have an insignificant impact on General Fund revenues.

- Allow an interstate passenger air carrier a sales tax exemption for aircraft parts and accessories purchased for use at its hub in this state. This change will reduce General Fund revenues by approximately $1.2 million a year. It will also reduce local sales tax revenues.
- Reduce sales tax from 6 percent to 1 percent with an $80 cap for aircraft flight crew training simulators purchased by an interstate passenger air carrier for use at its hub in this state. This change will reduce General Fund revenues by approximately $400,000 a year. It will also reduce local sales tax revenues.
- Allow certain nonprofit insurance companies an eight-year sales tax refund for taxes paid on building materials and fixtures and a four-year sales tax refund for taxes paid on capitalized computer equipment. These changes will reduce General Fund revenues by approximately $600,000 in fiscal year 2000–2001, by $1.2 million in fiscal years 2001–2002 and 2002–2003, and by approximately $100,000 in fiscal year 2003–2004.
- Extend Bill Lee Act credits to electronic mail-order houses that create at least 250 jobs in tiers one and two, effective January 1, 2000. This change will reduce General Fund revenues by approximately $2.7 million beginning in fiscal year 2001—2002. The loss in revenues is expected to grow to $5.8 million in fiscal year 2004–2005 and to decline slightly in fiscal year 2005–2006 to approximately $4.4 million.
- Extend Bill Lee Act credits to customer service centers in tiers one and two, effective January 1, 2000. This change will reduce General Fund revenues by approximately $600,000 a year in fiscal year 2001–2002. The loss in revenues is expected to grow to an annual loss of $2.4 million by fiscal year 2005–2006.
- Allow annual refund of 6 percent sales taxes paid on capitalized machinery and equipment sold to businesses eligible for Bill Lee Act credits and located in tiers one and two, effective January 1, 2000. This change will reduce General Fund revenues by approximately $100,000 a year beginning in fiscal year 2000–2001. The annual loss is expected to increase to $1 million by fiscal year 2005–2006.
- Give a more favorable tier designation to small counties, effective January 1, 2000. This change is expected to have an insignificant impact on General Fund revenues.
- Close loopholes in definition of development zones. This change is expected to increase General Fund revenues by $100,000 a year in fiscal years 2000–2001 and 2001–2002, by $600,000 a year in fiscal year 2002–2003, and by $300,000 a year in fiscal year 2003–2004.
- Allow a 25 percent credit for contributions to nonprofits for capital projects within development zones, effective January 1, 2000. This change is expected to reduce General Fund revenues by $2.5 million in fiscal year 2001–2002 and by $4 million for each year thereafter.
- Allow a credit for rehabilitating or constructing affordable housing, effective for new projects beginning January 1, 2000, with the credit to expire January 1, 2006. This change is expected to reduce General Fund revenues by $1.5 million a year in fiscal year 2001–2002 and by as much as $10.1 million a year by fiscal year 2005–2006.
- Allow all Bill Lee Act credits to be taken against insurance premiums tax. This change is not expected to significantly affect General Fund revenues.
- Require businesses to provide health insurance and meet environmental, safety, and health standards in order to qualify for Bill Lee Act credits, effective January 1, 2000. This change is not expected to significantly affect General Fund revenues.
- Eliminate the $75 application fee for Bill Lee Act credits in tiers one and two and increase the fee to $500 per credit in other tiers, with a cap of $1,500 per applicant. This change is not expected to significantly affect General Fund revenues.
- Require applicants for Bill Lee Act credits to provide additional information to enable the Department of Commerce to evaluate the effectiveness of the credits in providing employment to residents of development zones.

- Require taxpayers to include with their tax returns the information that they must generate under current law to establish eligibility for the Bill Lee Act credits, effective January 1, 2000.
- Clarify definitions of industries covered by the Bill Lee Act and clarify sales tax refunds for sales of fuel to interstate air carriers.
- Provide that research and development credit will not expire when the corresponding federal credit expires. This change is not expected to significantly affect General Fund revenues.
- Require projects to obtain an environmental certification in order to qualify for funding from the Industrial Development Fund (Building Renovation Fund).
- Require the Department of Commerce to support reasonable efforts to reduce interstate competition in luring businesses from one state to another.
- Increase fees paid to the Department of Environment, Health, and Natural Resources for brownfields agreements. This change is not expected to significantly impact General Fund revenues.

Extend Sunset on Bill Lee Act Credits. The William S. Lee Quality Jobs and Business Expansion Act was enacted in 1996, effective beginning with the 1996 tax year, with a sunset effective in 2002. The act required the Department of Commerce to report annually on the credits allowed by the act. In 1997 the General Assembly added specific issues that the Department of Commerce was required to study and report back on in 1999. Before 1996 North Carolina had made little use of tax incentives to lure businesses to the state, but even without incentives North Carolina was consistently one of the top states in attracting industry. The array of credits authorized by the Bill Lee Act was viewed as an experiment, to be evaluated in five years to determine whether the incentives were cost effective and actually affected behavior or merely provided tax reductions to businesses that would have located or expanded in any case. This act extends the 2002 sunset for an additional four years, to 2006, and it renews the requirement that the Department of Commerce study the effect and effectiveness of the Bill Lee Act incentives and report the results of its study to the 2001 General Assembly.

Incentives for Interstate Passenger Air Carrier Hubs. The act provides three incentives for interstate passenger air carriers with hubs in this state. A *hub* is defined as the airport where the carrier has allocated at least 60 percent of its aircraft property tax value and at which the majority of its boarding passengers are connecting from other airports, not originating at that airport. U.S. Airways, whose hub is in Charlotte, qualifies for the credit. Midway Airlines, whose hub is at Raleigh-Durham, should qualify for the credit by the end of 1999.

The first incentive for passenger air carriers provides that the Bill Lee Act definition of *central administrative offices* includes centralized training offices at an air carrier's hub, effective beginning with the 1999 tax year. This change allows the air carrier to qualify for the central administrative office credit (described below) as well as for the existing Bill Lee Act credits for creating jobs, for investing in machinery and equipment, for research and development, and for worker training. These credits can be taken with respect to the training center only.

The central administrative office credit is allowed for the purchase or lease of real property that is to be used as central administrative office property where forty or more persons are employed. The amount of the credit is equal to 7 percent of the eligible investment amount and may not exceed $500,000. The credit is taken in seven equal installments over the seven years following the taxable year in which the property is first used as a central administrative office.

The second incentive for passenger air carriers is a sales tax exemption for the carrier's purchases of aircraft lubricants, parts, and accessories for use at its hub, effective May 1, 1999. These purchases would otherwise be subject to sales tax at 6 percent, but interstate air carriers are allowed a partial refund of the tax under G.S. 105-164.14(a). In 1998 the General Assembly enacted a similar exemption for air couriers (such as Federal Express), effective January 1, 2001.

The third incentive for passenger air carriers is a sales tax reduction from 6 percent to 1 percent with an $80 cap for purchases of aircraft simulators for flight crew training at the hub, effective May 1, 1999. The tax reduction would also apply to interstate air couriers. U.S. Airways

plans to establish a flight crew training center at its Charlotte hub, where it would use aircraft simulators.

Incentives for Nonprofit Insurance Companies. The act provides a sales tax refund to certain nonprofit insurance companies for state and local taxes they pay on building materials, supplies, fixtures, and equipment that become a part of their real property and on capitalized computer systems hardware and software. The refund is effective beginning with taxes paid on May 1, 1999. The computer equipment refund expires for taxes paid on or after January 1, 2004, and the building materials refund expires for taxes paid on or after January 1, 2008. To qualify for these refunds, the insurance company must operate for the exclusive purpose of providing insurance products to nonprofit charitable organizations and their employees. In addition the Secretary of Commerce must have certified that the insurance company will invest at least $20 million in this state. Teachers Insurance Annuity Association (TIAA), which has announced plans to build an office in Mecklenburg County, fits this description.[1] If TIAA fails to make the $20 million investment within five years after it first receives a refund, it forfeits all refunds it received as a result of this incentive.

Incentives for Enterprise Tiers One and Two. The act provides three incentives for development in enterprise tier one and two counties, which are the counties considered most in need of economic development based on high unemployment, low per capita income, and low population growth.[2] The first incentive extends all of the Bill Lee Act credits to electronic mail-order houses that create at least 250 jobs in an enterprise tier one or two county. The second incentive extends all of the Bill Lee Act credits to certain customer service centers in an enterprise tier one or two county. An eligible customer service center is a subdivision of a telecommunications or financial services company that provides support services to the company's customers by telephone to support the company's products and services. For a center to qualify, at least 60 percent of the center's calls must be incoming. This requirement will prevent telemarketing operations from qualifying. The credits allowed under the Bill Lee Act, which the new act extends to these electronic mail-order houses and customer service centers effective January 1, 2000, are the credits for creating jobs, for investing in machinery and equipment, for research and development, for worker training, and for investing in central administrative office property.

The third incentive allows an annual sales tax refund on taxes paid at 6 percent (6.5 percent in Mecklenburg County) on capitalized machinery and equipment, sold to a taxpayer engaged in one of the businesses eligible for Bill Lee Act credits, for use in an enterprise tier one or two county. This provision will become effective for taxes paid on or after January 1, 2000. In addition to tier one and two customer service centers and electronic mail-order houses discussed above, the following businesses are eligible for Bill Lee Act credits: air courier services, central administrative offices (with at least forty new jobs), data processing, manufacturing, warehousing, and wholesale trade.

Incentives for Small Counties. The act allows certain counties to qualify for a lower enterprise tier designation, effective January 1, 2000. Under the Bill Lee Act all counties are divided into five enterprise tiers, ranked by economic distress as measured by a formula that combines unemployment, per capita income, and population growth. Those counties in lower-numbered tiers receive more favorable incentives than those in higher tiers. First, this act changes the rules for assigning enterprise tier designations to provide that the tier number that would otherwise be assigned by the formula is reduced by one for counties that have a population of less than 50,000 and also have more than 18 percent of their residents below the federal poverty level. Under this provision Alleghany, Ashe, Beaufort, Cherokee, Perquimans, Scotland, Vance, and Yancey counties move from tier two to tier one; Bladen, Hoke, Jones, Madison, Pamlico, and

1. One or more other nonprofit insurance companies could qualify, but only if they make a $20 million investment.

2. The following thirteen counties are in tier one for 1999: Bertie, Edgecombe, Graham, Halifax, Hertford, Hyde, Martin, Northampton, Richmond, Swain, Tyrrell, Warren, and Washington. The following fifteen counties are in tier two for 1999: Alleghany, Anson, Ashe, Beaufort, Cherokee, Columbus, Mitchell, Montgomery, Onslow, Perquimans, Robeson, Rutherford, Scotland, Vance, and Yancey.

Pasquotank counties move from tier three to tier two; and Duplin, Greene, and Watauga counties move from tier four to tier three.

Second, the act provides that a county that has a population of less than 25,000 cannot be designated higher than tier three. Under this provision, Polk and Currituck counties move from tier five to tier three.

Third, the act provides that a county is designated as tier one if it has a population of less than 10,000 and also has more than 16 percent of its residents below the federal poverty level. Under this provision Camden, Clay, and Jones counties become tier one counties.

Close Development Zone Loopholes. In 1998 the General Assembly amended the Bill Lee Act to provide additional incentives for businesses that locate or expand in development zones, which are economically distressed areas located within cities. The statutory conditions for qualifying as a development zone were designed to target only these relatively small, economically distressed areas. The statutory conditions contained loopholes, however, that allowed large areas outside of cities to qualify, even if they were not economically distressed throughout. The act closes those loopholes, effective for development zone designations made on or after January 1, 2000.

The 1998 legislation defined a *development zone* as an area that meets all of the following conditions: (1) consists of one or more contiguous census tracts, block groups, or both; (2) has a population of 1,000 or more, at least 20 percent of whom are below the poverty level; and (3) is located at least partly in a city with a population over 5,000. The new act closes the loopholes in this definition by requiring that:

- Every census tract and census block group in the zone must be located in whole or in part within the primary corporate limits of the city.
- Every census tract and census block group in the zone must have more than 10 percent of its population below the poverty level, or must be immediately adjacent to a tract or group that has more than 20 percent of its population below the poverty level.
- None of the census tracts or census block groups may be located in another development zone.

The act also shortens the period during which designation as a development zone is effective, from four years to two years, and requires zone applicants to notify every city in which part of the proposed zone would be located.

The following enhanced incentives apply in development zones. If a business locates in a development zone, the wage standard it has to meet is the same as for tier one counties, which is slightly lower than the standard for other counties. In addition, if a business locates in a development zone, its maximum worker training credit is $1,000 rather than $500, it receives an additional $4,000 per job on its jobs tax credit, and it has no threshold for the credit for investing in machinery and equipment.

Credit for Development Zone Projects. The act creates a new tax credit for taxpayers that contribute cash or property to certain nonprofit agencies to be used for an improvement project in a development zone. An *improvement project* is a project to construct or improve real property for community development purposes or to acquire real property and convert it for community development purposes. The new credit becomes effective beginning with the 2000 tax year.

The credit allowed is 25 percent of the amount contributed by the taxpayer. The total amount of credits that may be allowed in a taxable year is capped at $4 million, and taxpayers are required to apply to the Secretary of Revenue for these credits. If the total amount applied for in a year exceeds $4 million, the Secretary will reduce each applicant's credit proportionally.

The credit is allowed for contributions to a *development zone agency*, defined as a community action agency, a community-based development organization, a community development corporation, a community development financial institution, a community housing development organization, or a local housing authority. To qualify for the credit, all of the following conditions must be met:

- The agency must contract in writing to use the contribution for an improvement project in a development zone and to repay the taxpayer with interest if the contribution is not so used.
- The Department of Commerce must certify that the agency will undertake an improvement project in a development zone.[3] To support this certification, the agency must provide the department with documentation establishing the identity of the agency, the nature of the project, and that the project is for a community development purpose in a development zone.
- The taxpayer must be unrelated to the agency and must not control, be controlled by, or be under common control with the agency.
- The taxpayer must not receive anything of value for the contribution.

A taxpayer forfeits the tax credit for a contribution to the extent the development zone agency uses the contribution for anything other than an improvement project in a zone. Development zone agencies are required to file with the Department of Commerce annual, audited financial statements. If the Department of Commerce finds that any part of a contribution was used for a purpose other than an improvement project, it must notify the Department of Revenue of the resulting forfeiture.

Affordable Housing Tax Credit. The act creates a new tax credit for rehabilitating or constructing low-income housing, effective for buildings allocated federal credits on or after January 1, 2000. The credit expires for buildings allocated federal credits on or after January 1, 2006. The credit is equal to a percentage of the amount of the taxpayer's federal credit for low-income housing with respect to eligible North Carolina low-income housing. The credit is 75 percent for buildings located in tier one or two and 25 percent for buildings located in other tiers. North Carolina low-income housing is eligible if it meets one of the following conditions:

- It is located in a tier one or tier two enterprise area.
- It is located in a tier three or tier four enterprise area and at least 40 percent of its residential units are rent-restricted and occupied by individuals whose income is 50 percent or less of the area median gross income.
- It is located in a tier five enterprise area and at least 40 percent of its residential units are rent-restricted and are occupied by individuals whose income is 35 percent or less of the area median gross income.

The credit is not taken in one year but is spread out over five years, beginning when the federal credit is first claimed for the building. The federal credit is first claimed either when the building is placed in service or the next year, at the taxpayer's election. The federal credit is taken over eleven years.

The federal credit requires that either (1) at least 20 percent of the residential units are rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income or (2) at least 40 percent of the residential units are rent-restricted and occupied by individuals whose income is 60 percent or less of area gross income. By providing a higher credit for tier one and two projects and by limiting the state credit to projects that are either in tier one or two or serve lower-income residents, the act is designed to steer investments toward these projects.

The federal credit requires that the low-income housing be used for that purpose for at least thirty years. If this requirement is not met, all or part of the taxpayer's credit is recaptured. Under the state credit, if federal recapture is required, the taxpayer forfeits the North Carolina credit to the same extent. In addition, if the taxpayer no longer qualifies for the federal credit during one of the five years a state installment could otherwise be claimed, the taxpayer is no longer eligible for the state credit. This situation could occur if the taxpayer sold its interest in the low-income housing.

3. The Secretary of Commerce may not certify a development zone agency if it, any of its officers or directors, or any partner of the agency has ever used part of an improvement project contribution for any purpose other than the improvement project.

Under federal law a limited amount of credit is allowed to each state each year, and these credits are allocated among applicants based on selection criteria designed to reward projects that will serve the lowest income tenants for the longest periods. At least 10 percent of the credits each year must be set aside for projects sponsored by nonprofits. The amount of federal credit allocated to North Carolina will be $9.2 million for the 2000 through 2002 tax years and is expected to increase to $13 million for the 2003 and 2004 tax years. By limiting the state credit to a percentage of the federal credit, the act automatically caps the potential revenue loss to the state.

Extend Bill Lee Act Credits to Insurance Company Administrative Offices. The act allows all the Bill Lee Act credits to be taken against gross premiums tax, effective beginning in the 1999 tax year. Currently only the real property credit for central administrative offices may be taken against gross premiums tax.

In 1997 the General Assembly (1) extended the Bill Lee Act credits to central administrative offices that created at least forty new jobs and (2) created a new tax credit for taxpayers who purchase or lease real property to be used as central administrative office property. In 1998 the General Assembly allowed the real property credit for central administrative offices to be taken against the gross premiums tax as well as against the income tax and the corporate franchise tax. Insurance companies pay gross premiums tax in lieu of income tax. The 1998 legislation did not change the rule that the other Bill Lee Act credits could be taken against only income tax and corporate franchise tax. The 1998 change created a situation in which insurance companies were treated differently from other businesses with respect to central administrative offices. A business, other than an insurance company, that builds a central administrative office can take against income tax not only the real property credit for that office but also the jobs credit, the investment tax credit, and the worker training credit. An insurance company can take against gross premiums tax only the real property credit but not the jobs credit, the investment tax credit, or the worker training credit. By extending the other Bill Lee Act credits to gross premiums tax, the act provides uniform treatment for insurance companies and other businesses that build central administrative offices.

Quality Jobs Assurance. The purpose of the original Bill Lee Act was to provide incentives for "high quality jobs." Accordingly only certain industries qualify for the Bill Lee Act credits, and a taxpayer must meet a wage standard with respect to the jobs at the locations for which it claims a credit. This act adds three additional standards to assure that credits are allowed only with respect to high quality jobs. These standards become effective for new credits beginning January 1, 2000. First, the taxpayer must pay at least 50 percent of basic health insurance coverage for the full-time positions for which it takes a credit. Second, the taxpayer must certify that the business location with respect to which it claims a credit has not had a significant environmental violation in the last five years and has no pending enforcement actions for significant environmental violations. Third, the taxpayer must certify that the business location with respect to which it claims a credit has no outstanding or unresolved Occupational Safety and Health Administration (OSHA) citations and has had no serious violation within the last three years. The Department of Environment and Natural Resources and the Department of Labor are authorized to audit the environmental and OSHA certifications respectively and report to the Department of Revenue if they determine that a certification was inaccurate.

Application, Fee, and Information Changes. A taxpayer that wishes to claim a Bill Lee Act credit must apply to the Department of Commerce for certification that it meets the eligibility requirements for the credit. The application must include information to enable the Department of Commerce to determine the applicant's eligibility and be accompanied by a $75 fee to defray part of the costs of administering the program. The act requires applicants to include information necessary to enable the Department of Commerce to provide data required in its periodic reports to the General Assembly. This data will assist the General Assembly in evaluating the cost effectiveness of the Bill Lee Act credits.

The act also eliminates the $75 fee for credits claimed with respect to enterprise tier one and two counties. For other credits the fee is increased to $500 per credit claimed, not to exceed $1,500 per taxpayer. The Department of Commerce will retain one-fourth of the fee proceeds for the costs of administering the program and remit the remaining proceeds to the Department of Revenue for its use in administering and auditing the Bill Lee Act credits.

The Bill Lee Act incentives recommended by the Department of Commerce over the last four years have contained many conditions and standards a taxpayer must meet to be eligible for the incentives. The incentives also contain what are known as "claw-back" provisions, which require a taxpayer to forfeit a targeted incentive if it turns out the taxpayer did not meet the conditions for qualifying for the incentive and to lose future installments of a tax credit if the job or investment on which the credit was based does not remain in place. The act requires taxpayers that claim Bill Lee Act credits to include with their tax returns information about whether the jobs and investments have remained in place and whether other conditions have been met. The act allows the Department of Revenue to share this information with the Employment Security Commission (ESC) and the Department of Commerce, and this sharing should enable the Department of Commerce to evaluate whether the incentives are accomplishing their purpose of creating high-quality jobs throughout the state.

Clarify Business Definitions and Refunds. The act clarifies the statutory definitions of the types of businesses that are eligible for the Bill Lee Act credits. In 1998 the General Assembly changed the statutory references from the Standard Industrial Classifications (SIC) to the North American Industrial Classification System (NAICS) to conform to the federal system adopted effective January 1, 1999. This system is used to classify most of the data available about industries or kinds of businesses in the economy. Upon review of the NAICS, North Carolina administrators discovered that further terminology changes were needed to the Bill Lee Act definitions to assure that the credits would be available to the types of businesses covered by the prior law's definitions.

The act clarifies that interstate air carriers are allowed a partial refund of sales taxes paid on fuel. This clarification will not change the way the law is currently administered.

Research and Development Credit. The act modifies the research and development credit so that it will not automatically expire if the corresponding federal credit expires. The credit for research and development is allowed only to taxpayers that claim one of the federal research and development credits. In past years the federal credit has expired and then been renewed retroactively, creating uncertainty for taxpayers. This act amends the state credit so that it is based on the federal credit as of January 1, 1999. Expiration of the federal credit will not affect the state credit. If the federal credit is later modified, the General Assembly can consider whether to update its cross-reference to adopt the federal modifications.

Industrial Development Fund Environmental Certification. The act requires, as a condition for funding from the Industrial Development Fund (Building Renovation Fund), that a project receive certification from the Department of Environment and Natural Resources that it will not have a significant adverse effect on the environment.

Department of Commerce to Pursue Interstate Cooperative Efforts. The act requires the Department of Commerce to encourage reasonable interstate agreements and federal legislation to control the use of excessive incentives in interstate competition in luring businesses from one state to another. The department is to report on these efforts by March 1, 2000, and March 1, 2001.

Brownfields Property Fee Changes. The act makes changes related to the fees collected by the Department of Environment and Natural Resources in connection with brownfields agreements. These changes increase the application fee from $1,000 to $2,000 and increase the agreement fee from $500 to the actual cost to the state of all activities relating to the brownfields agreement. The $2,000 application fee is a credit against the agreement fee. These sections provide that interest on fees accrues to the department's Brownfields Account rather than to the General Fund, that unpaid fees are a lien on all of the developer's property as well as on the brownfields property, and that the department may contract for services necessary to implement the brownfields property law.

Brownfields property is abandoned, idle, or underused property at which expansion or redevelopment is hindered by actual or possible environmental contamination and that is or may be subject to cleanup requirements under state or federal law. Under current law the Department of Environment and Natural Resources can enter into a brownfields agreement with the owner of brownfields property under which the owner is allowed to clean up the property to a level that will allow the property to be used for specified purposes but would not meet current cleanup standards. The owner agrees to clean up the property as specified in the agreement and to limit future uses of the property to those specified in the agreement, that is, uses that are safe given the less than complete cleanup of the property. This agreement benefits the state by causing a contaminated property to be at least partially cleaned up and put to productive use in place of having a "greenfield" pristine site developed. Under the agreement the owner is relieved of liability for further cleanup of the property.

Renewable Energy Tax Credits

S.L. 1999-342 (H 1472) repeals nine corporate and individual income tax credits relating to energy saving devices and replaces them with a tax credit for investing in renewable energy property. The act becomes effective beginning with the 2000 taxable year. The effect of this act on General Fund revenues cannot be estimated.

The General Assembly enacted several individual and corporate income tax credits in the 1980s to encourage the following energy saving investments:

- solar energy equipment
- conversion of industrial boilers to wood fuel
- peat facility
- olivine brick facility
- methane gas facility
- wind energy device
- hydroelectric generator.

Of these credits, no evidence indicates that the ones for peat, wind energy, olivine bricks, or methane have ever been used. This act repeals nine income tax credits for these types of property and substitutes a general credit for investing in renewable energy property. The new credit applies to a broader category of property and is generally more generous than the prior law credits. The act intends that the broader category of renewable energy property will reflect technological advances in renewable energy and that the more generous credit percentages, caps, and carry-forwards will encourage more investment in renewable energy property.

The credit percentage for the prior law credits ranged from 10 percent to 40 percent of the taxpayer's investment; the new credit percentage is 35 percent of the investment. Most of the prior law credits were capped at between $1,000 and $25,000 per installation. The renewable energy credit is capped at between $1,400 and $10,500 for residential installations and at $250,000 per installation for nonresidential installations (although the credit must be taken in five annual installments unless it is for a single-family dwelling installation). The prior law credits were allowed against income tax only; the renewable energy credit is allowed against either income or franchise tax but may not exceed 50 percent of the taxpayer's tax liability for a taxable year. Only about half of the prior law credits allowed carryforwards; the renewable energy credit may be carried forward for five years.

The act defines *renewable energy property* as any of the following machinery and equipment or real property:

- biomass equipment that uses renewable biomass resources for biofuel production of ethanol, methanol, and biodiesel (renewable biomass resources are organic matters produced by terrestrial and aquatic plants and animals, such as standing vegetation, forestry and agricultural residues, landfill wastes, and animal wastes);

- hydroelectric generators;
- solar energy equipment;
- wind equipment.

The credit is patterned after the business tax credit and is codified in the same article. Like the business tax credit, the renewable energy tax credit has the following limitations and conditions:

- The renewable energy tax credit may not exceed 50 percent of the tax against which it is claimed for the taxable year. Any unused portion of the credit may be carried forward for the succeeding five years.
- A taxpayer that claims any other credit allowed with respect to renewable energy property may not take the renewable energy tax credit with respect to the same property.
- A taxpayer may not take the renewable energy tax credit if the taxpayer leases the property from another person, unless the taxpayer obtains the lessor's written certification that the lessor will not claim a credit with respect to this property.

The Department of Revenue must report each year on the number of taxpayers claiming the credits, the cost of the property for which the credits were claimed, and the total cost to the General Fund of the credits claimed.

The business tax credit is repealed effective January 1, 2002, while the remainder of the article is repealed effective January 1, 2006. Consequently the renewable energy tax credit is set to sunset on January 1, 2006.

Incentives for Commercial Use of University Technology

S.L. 1999-305 (S 1110) adds a new investment tax credit, the technology commercialization credit, to the William S. Lee Quality Jobs and Business Expansion Act, effective for taxable years beginning on or after January 1, 2000. Beginning with the 2000–2001 fiscal year, the maximum annual General Fund revenue loss is expected to be $2.1 million per year.

The new investment tax credit is an alternative to the existing 7 percent tax credit for investing in machinery and equipment. The technology commercialization credit applies only to investments in machinery and equipment used in production based on technology licensed from a research university. In addition, to qualify the machinery and equipment must be located in a tier one, two, or three enterprise area. Finally, the taxpayer's investment must equal at least $10 million during the taxable year and must total at least $100 million over a five-year period. If the investment totals between $100 million and $150 million over five years, the technology commercialization credit is equal to 15 percent of the amount invested. If the investment equals or exceeds $150 million over five years, the technology commercialization credit is equal to 20 percent of the amount invested. The technology commercialization credit remains available for ten years of investments at a single location. The taxpayer's eligibility for the technology commercialization credit is based on the Secretary of Commerce's certification that the taxpayer will invest either $100 million or $150 million over five years. If the taxpayer does not achieve the certified level of investment, the credit is forfeited. As for the existing investment tax credit, forfeiture of the credit triggers forfeiture of any worker training credit taken for training workers to operate the new machinery and equipment.

The technology commercialization credit is more generous than the existing investment tax credit under the Bill Lee Act in the following ways:

- The existing investment tax credit is 7 percent of the amount invested. The technology commercialization credit is 15 percent or 20 percent of the amount invested, depending upon the size of the investment.
- The existing investment tax credit must be taken in seven annual installments, beginning the year after the year the investment is placed in service. The technology commercialization credit may be taken in the year the investment is placed in service.
- The existing investment tax credit applies only to the extent that the new investment is not offset by the amount of machinery and equipment the taxpayer either sold or took out of service in the three-year period before the new investment was placed in service. This

restriction limits the existing credit to net increases in North Carolina investment and disallows it for investments that, in effect, are a replacement or relocation of preexisting machinery and equipment. The technology commercialization credit is not required to be offset by machinery and equipment sold to another taxpayer if the new owner keeps the machinery and equipment in service in North Carolina. In addition this new investment tax credit is not required to be offset by machinery and equipment the taxpayer takes out of service if it was in service at a separate location and was used in a business that is not competitive with the technology commercialization business.

- The existing investment tax credit, like all other Bill Lee Act credits, may be taken against the taxpayer's income tax or franchise tax, but not both. The technology commercialization credit may be taken against both income tax and franchise tax. The taxpayer must determine what percentage of the credit will be taken against each tax and must maintain the same percentage for the purpose of carryforwards. If new investment is made in a second or subsequent tax year, the taxpayer may elect a different percentage with respect to the credit for each tax year. The election is binding.
- The existing investment tax credit, like all other William S. Lee Act credits, may be carried forward for five years unless the investment amount exceeds $150 million over a two-year period, in which case it may be carried forward for twenty years. The technology commercialization credit may be carried forward for twenty years.

Historic Properties

S.L. 1999-389 (S 251) modifies the tax credit for rehabilitating income-producing historic property, effective for taxable years beginning on or after January 1, 1999. The fiscal impact of the tax credit changes is unclear. This act modifies the tax credit for rehabilitating income-producing historic property in two substantive ways and one technical way:

- It allows a pass-through entity, such as a Subchapter S corporation, to allocate the credit among any of the entity's owners as long as the credit does not exceed the owner's adjusted basis in the pass-through entity. The credit amount may be allocated among any of the pass-through entity's owners, in the entity's discretion. The allocation provision sunsets in three years. Under prior law, the credits were allocated in the same proportion as other income items allocated to the owners under the code.
- It adds provisions to recapture the credit if the taxpayer is required to recapture the credit under the code or if a partner or owner disposes of its interest in the pass-through entity.
- It consolidates the credits for rehabilitating a historic property into one tax article. The credits had been duplicated in two separate statutes in the individual and corporate parts of the income tax article in Chapter 105.

Taxpayers are allowed an income tax credit of 20 percent of the expenses of rehabilitating an income-producing historic structure and a credit of 30 percent of the expenses of rehabilitating a historic structure that is not income-producing. The credit for income-producing structures is lower because federal law also allows a 20 percent credit for those expenses, yielding a combined credit of 40 percent. The 20 percent credit is allowed only if the taxpayer qualifies for the federal credit, and the 30 percent credit is allowed only if the taxpayer does not qualify for the federal credit. 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.

A pass-through entity may qualify for the rehabilitation credits and pass the credits on to its owners. 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 whose income, losses, and credits are reported by the owners on their state income tax returns.

Under the code, tax credits are allocated among S corporation shareholders in accordance with their pro rata shares of the corporation, which are determined on the basis of stock ownership, and tax credits are allocated among partners in a partnership in accordance with the partnership agreement. The allocation made by the partnership agreement must have a substantial economic effect, which means that the allocation agreement must reflect the economic interests of the partners in the partnership and cannot be based solely on tax consequences. Therefore the allocation agreement of partners cannot give one partner 100 percent of the income, loss, or credits of the partnership. Under prior North Carolina law the pass-through entity was required to allocate a tax credit among its owners in the same proportions that other items, such as the federal rehabilitation credit, were allocated under the code. This meant that if foreign investors were involved in a qualifying rehabilitation project, their tax credits could not be redistributed to North Carolina investors with state income tax liability.

In putting together an investment group for an income-producing historic rehabilitation project, the project sponsors may find some investors that can benefit from only the federal credit because they have little or no North Carolina tax liability and other investors that can benefit from both the federal and the North Carolina credit because they have both types of tax liability. This act changes the allocation of the credit to allow the maximum tax credit available for each of the project investors. It allows a pass-through entity to allocate the credit for rehabilitating an income-producing historic structure among any of its owners, as long as the amount of the allocated credit does not exceed the owner's adjusted basis in the entity as determined under the code. The adjusted basis is determined at the end of the taxable year in which the historic structure is placed in service. Each year 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. G.S. 105-131.8 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. 105-269.15 provides that the tax credit allowed a partner is based on the partnership agreement, which must have substantial economic effect.

The act also requires forfeiture of all or part of the credit for an income-producing historic structure when the following occurs:

- Forfeiture for Disposition. When a taxpayer is required by the code to recapture part or all of the federal credit, the taxpayer must forfeit the corresponding part of the state credit. Under the code the recapture does not apply if the property is disposed of because of the death of the taxpayer, a mere change in the form of doing business, or a transfer between spouses or incident to a divorce.
- Forfeiture for Change in Ownership. If an owner of a pass-through entity that qualified for the credit disposes of all or a portion of the owner's interest in the pass-through entity within five years after the date the structure was placed in service so that the owner's interest is reduced to less than two-thirds of its interest at the time the structure was placed in service, the owner must forfeit a portion of the credit. This recapture does not apply if the change in ownership is due to the death of the owner or to a merger or consolidation requiring the approval of the members of the taxpayer pass-through entity to the extent the entity does not receive cash or property.

If a taxpayer or owner of a pass-through entity forfeits the credit, the taxpayer or owner is liable for all past taxes avoided plus interest. The past taxes and interest are due thirty days after the credit is forfeited.

Unemployment Tax

Zero Rate/Funding Worker Training

S.L. 1999-321 (H 275) makes two changes to unemployment insurance taxes. First, it changes the minimum credit ratio of employers who are granted a zero tax rate from 5 percent to 4 percent. Second, it temporarily reduces unemployment insurance taxes for most employers by 20 percent and levies a corresponding contribution to be used for enhanced reemployment services and worker-training programs, effective January 1, 2000 (this change will sunset in two years). The rate of contribution is the lesser of 20 percent or a percentage that yields an amount that, when combined with the employer's unemployment insurance taxes, is no greater than the amount of tax the employer would have paid under existing law.

In 1995 the General Assembly set a zero unemployment insurance tax rate for employers with credit ratios of 5 percent or greater. This act allows more employers to have a zero unemployment tax rate by lowering the threshold from 5 percent to 4 percent. As of April 30, 1999, the balance in the Unemployment Insurance Trust Fund stood at $1.22 billion. In addition, a reserve fund contains an additional $200 million, due to the fund's solvency and North Carolina's low unemployment rate. The ESC estimates this change will affect over 10,000 employers, giving them tax savings of over $1 million in the first year. With an additional 6,400 employers reaching the 4 percent credit ratio each year, the ESC estimates that 38,000 employers will benefit from this zero tax rate by 2004.

The act also reduces the unemployment insurance taxes employers pay to the ESC. The reduction is 20 percent for most employers, slightly less for new employers, and less for roughly 3,400 employers with a high debit ratio. Those employers who pay at a zero tax rate are not affected by this change. The act levies a new tax, called a "training and reemployment contribution," equal to a percentage of each employer's unemployment insurance tax. These changes become effective January 1, 2000, and sunset January 1, 2002.

It is estimated that the new contribution will generate $22.9 million in state fiscal year (SFY) 1999–2000 and $60.8 million in SFY 2000–2001. The new contribution will be credited to a nonreverting account, called the "Employment Security Commission Training and Employment Account," subject to appropriation by the General Assembly. The act states as the General Assembly's intent that four-fifths of the proceeds will be appropriated annually from the account to the Department of Community Colleges for nonrecurring expenditures for various worker-training programs. The act amends the Current Operations and Capital Improvements Appropriations Act of 1999 to appropriate from the Employment Security Commission Training and Employment Account to the Community Colleges System Office $18 million for the 1999–2000 fiscal year and $48.5 million for the 2000–2001 fiscal year. The act states as the General Assembly's intent that the remaining one-fifth of the proceeds will be appropriated annually from the account to the ESC for the costs of collecting and administering the new contribution and for nonrecurring expenditures for enhanced reemployment services. The act amends the budget bill to appropriate from the account to the ESC $4.5 million for the 1999–2000 fiscal year and $12.1 million for the 2000-2001 fiscal year.

Other Amendments

S.L. 1999-340 (H 276) contains a number of changes recommended by the ESC. In addition to technical and conforming changes, it includes the following tax law changes:

- Section 1 authorizes electronic funds transfers and credit card payments for unemployment insurance taxes.
- Section 2 extends the requirement for automated filing of employee information in the Employer's Quarterly Tax and Wage Report to employers with 100 or more employees.
- Section 8 authorizes the Department of Revenue to share with the ESC additional taxpayer information for use in the N.C. WORKS study. G.S. 108A-29(r) requires each county's Job Service Employer Committee or Workforce Development Board to study

the working poor in that county and report annually to various oversight committees of the General Assembly. This report is called the N.C. WORKS report. Section 10 prohibits the ESC from disclosing this information.

Sales, Use, and Motor Fuels Taxes

Miscellaneous Sales and Use Tax Amendments

S.L. 1999-438 (S 1112) makes a variety of tax law changes. Taken as a whole, the act is expected to increase General Fund revenues by less than $1 million a year the first three years it is in effect and then to reduce General Fund revenues by less then $1 million a year the next two years it is in effect.

Privilege Tax on Loan Agencies. Under prior law, loan agencies were subject to an annual privilege tax of $750. Section 2 of S.L. 1999-438 reduces the tax to $250 a year and expands its scope to apply to pawnbrokers and check cashers. This change is expected to reduce General Fund revenues by less than $300,000 a year. Pawnbrokers and check cashers are engaged in a business similar to loan agencies, and the intent of the act is that similar taxpayers should be treated similarly. Earlier versions of the bill would have retained the tax at $750, but the tax was reduced in response to complaints from pawnbrokers. The privilege tax statute caps at $100 the local privilege tax that counties and towns may levy on these businesses. Under former law counties and towns were authorized to levy a local privilege tax of up to $275 on pawnbrokers.

Repeal Sales Tax Registration Fee. Under prior law retailers and wholesalers were required to pay a fee of $15 when registering with the Department of Revenue for sales and use tax purposes. Registration is a one-time requirement before a merchant can begin a business that is subject to sales or use tax. Sections 1 and 1.1 of S.L. 1999-438 repeal the $15 fee effective January 1, 2000. Eliminating the fee will enable the Department of Revenue to handle registrations electronically. This change is expected to reduce General Fund revenues by approximately $540,000 a year.

Sales Tax on Medical Equipment and Sundries. Section 5 of S.L. 1999-438 exempts from sales tax durable medical equipment and medical sundries that are eligible for coverage under Medicare and Medicaid. This change is expected to reduce General Fund revenues by approximately $700,000 a year. The new exemption applies only to items purchased on prescription or by a certificate of medical necessity. While the item must be eligible under Medicare or Medicaid, the exemption applies whether or not it is purchased by a beneficiary under those programs. Durable medical equipment includes a variety of medical items, such as wheelchairs, intravenous (IV) bag holders, and cane stands. Medical sundries are items that are easily and frequently disposed of, like latex gloves, gauze, medical tape, and syringes.

Sales Tax on Prescription Drugs. Sections 6 and 7 of S.L. 1999-438 exempt from sales tax all prescription drugs. This change is expected to reduce General Fund revenues by approximately $2 million a year. Under prior law most prescription drugs were already either exempt from state and local sales and use taxes or refundable. The prior exemptions for prescription drugs applied to drugs purchased with a prescription [G.S. 105-164.13(13)], prescription drugs distributed free of charge by the manufacturer of the drugs [G.S. 105-164.13(13b)], and prescription drugs purchased for use in the commercial production of animals [G.S. 105-164.13(2a)]. Prescription drugs distributed free of charge by the manufacturer include samples given to physicians to give to patients and drugs donated to groups such as the American Red Cross.

Most hospitals receive refunds of state and local sales and use taxes paid on prescription drugs they acquire. G.S. 105-164.14(b) allows all nonprofit hospitals, except those operated by the state, and all for-profit hospitals to receive refunds of state and local sales and use taxes paid on prescription drugs. G.S. 105-164.14(c) allows The University of North Carolina (UNC) Hospitals at Chapel Hill to receive refunds of state and local sales and use taxes paid on prescription drugs

acquired for use by the hospital. The state General Fund receives a refund of local sales and use taxes paid by the other state hospitals on prescription drugs.

Thus after combining the exemptions and refunds for prescription drugs, the only entities that were paying tax on prescription drugs were physicians and other medical professionals who buy the drugs to administer to patients in the course of their practices and state hospitals other than the UNC Hospitals. The exemptions and refunds for prescription drugs had evolved over the years in a piecemeal fashion, leaving this small segment subject to the taxes.

In addition to the UNC Hospitals, the state operates four psychiatric hospitals: Dorothea Dix Hospital, Broughton Hospital, Cherry Hospital, and John Umstead Hospital. The state also operates various alcohol and drug treatment centers and mental retardation centers, which are in-patient facilities similar to hospitals. State agencies generally do not receive a refund of state sales and use taxes. These agencies receive an appropriation from the state that includes the amount needed to pay sales and use taxes.

Repeal Sales Tax Exemption for Traded-in Items. Section 8 of S.L. 1999-438 simplifies the sales tax treatment of traded-in items by repealing the exemption for certain traded-in items. This change is expected to increase General Fund revenues by approximately $1.2 million a year. Under prior law, if a used item were traded-in on the purchase of a new item, the used item would not be subject to sales tax when it was resold if the person who traded it in paid the full amount of sales tax on the new item purchased. This law created problems for retailers, who were required to retain the tax records on the new item with the used item to determine the sales tax treatment of the used item when it was resold. If the items in question were subject to a reduced tax rate, as farm equipment is, then upon resale the traded-in item would be subject to local but not state sales tax, an added complication for retailers. Under this section traded-in items will be subject to full state and local sales tax, as are other used items.

Unconstitutional Sales Tax Provisions. Sections 9 and 10 of S.L. 1999-438 address two sales tax provisions that are probably unconstitutional. Under prior law, certain nonprofit corporations were not required to collect sales taxes on items sold as part of an annual fund-raiser. To qualify for the exemption, the corporation was required to have been chartered in North Carolina for two years. This classification does not have a rational basis and thus probably violated the uniformity requirements of the constitution. Section 9 of this act repeals the requirement that the corporation be chartered in North Carolina. This change is expected to have a negligible impact on General Fund revenues.

Prior law granted a sales tax exemption for sales of paper, ink, and other tangible personal property to commercial printers and publishers for use as component parts in free circulation publications that contained advertising of a general nature. The exemption applied to general shoppers guides but not to more specialized guides, such as real estate guides. The First Amendment to the United States Constitution does not allow a state to discriminate between publications based on their content. The prior law exemption clearly violated this rule by exempting guides with general content but not those with narrower content. Section 10 of this act repeals the exemption so that supplies sold for all free publications will be subject to tax on a uniform basis. This change is expected to increase General Fund revenues by approximately $2.5 million a year.

Airport Authority Sales Tax Refunds. Under prior law, a local airport authority created by a local act of the General Assembly was entitled to an annual refund of sales and use taxes it paid if the local act creating it gave it all the rights of a municipality, declared it to be a municipality, or specifically authorized it to receive sales tax refunds. Section 14 of S.L. 1999-438 expands the refunds to all local airport authorities created by the General Assembly. This change is expected to reduce General Fund revenues by between $4,000 and $18,000 a year.

Tax Penalty and Assessment Changes. Sections 15, 16, 17, and 19 of S.L. 1999-438 make changes in tax penalties and tax assessment rules. No estimate is available regarding the impact these changes will have on General Fund revenues.

Under prior law, the Secretary of Revenue was permitted to waive all tax penalties except the penalty for bad checks. The exception had been made at the request of the Department of Revenue to reduce the administrative burden of having to consider and act on waiver requests with respect

to bad checks. Sections 15 and 17 repeal the exception for the bad check penalty, so that all tax penalties will be subject to the same waiver authority. This change is not expected to have a significant impact on General Fund revenues. The penalty for bad checks is 10 percent of the amount of the check, with a minimum of $1 and a maximum of $1,000.

Under prior law, there were three general categories of negligence penalties: a general negligence penalty of 10 percent and two large tax deficiency penalties of 25 percent. The large negligence penalty applied to income tax only if the taxpayer understated taxable income by an amount equal to one-fourth or more of its gross income. The large negligence penalty applied to other taxes if the taxpayer understated tax liability by one quarter or more. The large deficiency test for income taxes is more forgiving than the stricter large deficiency test for other taxes. Section 16 of this act, requested by the Department of Revenue, limits the more forgiving large deficiency test to individual income taxes and moves corporate income taxes to the stricter large deficiency test that applies to other taxes.

The authority of the Department of Revenue to assess taxes and to make refunds of taxes is subject to statutory time limitations. Under prior law, a taxpayer who is under investigation by the Department of Revenue could voluntarily waive the time limit for assessments in order to allow time for the investigation to be completed properly. The time limit for making refunds could not be extended, however. Thus, if the additional investigation to which the taxpayer agreed showed that a refund, rather than an assessment, was appropriate, the refund could not be made. Section 19 of this act, requested by the Department of Revenue, modifies the tax refund time limitations to state that the taxpayer's extension of the assessment time limits automatically extends the time in which the taxpayer can request a refund.

Special Mobile Equipment Changes. Sections 22, 24, and 27 through 29 of S.L. 1999-438 make changes related to special mobile equipment. *Special mobile equipment* is a vehicle that has a permanently attached crane, mill, ditch-digging apparatus, or similar attachment. The vehicle is driven on the highway only to get to and from a nonhighway job, and it is not designed or used primarily for the transportation of persons or property.

Sections 22, 24, and 27 address a problem relating to motor fuel tax. The motor fuel tax is designed to apply only to fuel used for highway purposes. Motor fuel used for nonhighway purposes is instead subject to sales tax. Thus special mobile equipment should not have to pay motor fuel tax on the fuel it uses for nonhighway purposes. However, under prior law, it could not use dyed (untaxed) diesel fuel and was not authorized to receive a refund of motor fuel tax paid on clear (taxed) diesel fuel. Section 22 provides that dyed (untaxed) diesel fuel may be used in special mobile equipment. Section 24 allows a quarterly refund for tax paid on motor fuel used to operate special mobile equipment off-highway, effective for taxes paid on or after January 1, 1999. As a result of these changes, the motor fuel used in special mobile equipment will be subject to sales tax rather than motor fuel tax. This change will result in a small but unknown reduction in Highway Fund revenues and a corresponding increase in General Fund revenues. Section 27 of this act increases the registration fee for special mobile equipment from $20 to $40, effective January 1, 2000. This increase should generate about $40,000 or more in annual Highway Fund revenues to offset the decrease that will result from the motor fuel tax changes in sections 22 and 24.

Section 28 of this act expands the maximum width of special mobile equipment from 96 inches to 102 inches. Section 29 provides that vehicles being towed by special mobile equipment may carry property that does not exceed the weight of the towed vehicle. These sections conform the law to reflect prevailing practices with regard to special mobile equipment.

Vehicle Rental Tax and Motor Fuel Tax Information

S.L. 1999-452 (H 280) makes numerous changes to the motor vehicle laws and two changes to the tax laws. The tax law changes are (1) an expansion of the scope of the transit authority vehicle rental tax to include more types of vehicles and (2) an expansion of the Department of Revenue's authority to share motor fuel tax information to help in collecting motor fuel taxes.

Sections 26 through 28 of this act broaden the scope of the transit authority vehicle leasing tax to include certain property-hauling vehicles. A regional transit authority may levy a gross receipts tax on a retailer who leases or rents vehicles. The tax rate may not exceed 5 percent of the gross receipts derived from the short-term (less than 365 continuous days) lease or rental of the vehicles. This tax is added to the lease or rental price and is paid by the lessee. This act broadens the scope of the leasing tax from its current scope ("U-drive-it" passenger vehicles and motorcycles) to include U-drive-it property-hauling vehicles as well. A *U-drive-it vehicle* is defined in G.S. 20-4.01 as any of the following rented to a person who will operate it: a motorcycle, a property hauling vehicle under 7,000 pounds rented for a term of less than one year (and not hauling products for hire), and a private passenger vehicle rented for a term of less than one year (and not rented to public schools for driver training instruction).

The affected regional transit authorities are the Triangle Transit Authority and Piedmont Authority for Regional Transportation.

The tax secrecy law authorizes the Department of Revenue to exchange taxpayer information with the Division of Motor Vehicles to the extent necessary for these agencies to fulfill their duties. Section 28.1 of the act amends this provision to allow the Department of Revenue to exchange information with the International Fuel Tax Association, Inc. The International Fuel Tax Association is a nonprofit, membership organization whose mission is to provide oversight, planning, and coordination of activities necessary to promote uniform administration of the International Fuel Tax Agreement (IFTA). The IFTA is an agreement between member taxing jurisdictions to assist each other in the collection and administration of taxes paid by interstate motor carriers on their use of motor fuel.

Other Taxes and Fees

Newsprint Recycling Tax

S.L. 1999-346 (H 1479) modifies the excise tax on virgin newsprint by postponing the increase in the percentage of recycled content required and by expanding the credit for recycling. The act is expected to reduce revenues in the Solid Waste Management Trust Fund by less than $1,000 a year.

A publisher must pay a privilege license tax of $15 for each ton of newsprint it consumes that does not have a minimum recycled content. The General Assembly enacted this excise tax on newsprint in 1991 to encourage the use of recycled newsprint. The minimum amount of recycled paper required has been phased up since 1991 from 12 percent to 35 percent and was set to increase to 40 percent in 2001. This act delays the increase in the minimum recycled content percentage until 2005.

Publishers who develop and operate, or who contract for the operation of, a newspaper recycling program are eligible for a credit that can be used toward the recycled content percentage goals. Under prior law, a publisher could receive a one-half ton credit toward its total recycled content tonnage for each ton of newsprint it recycled. This act increases the credit from one-half ton to one ton and expands it to include recycling of magazines as well as newsprint.

The proceeds of the tax, which generates less than $2,000 a year in revenue, are earmarked for the Solid Waste Management Trust Fund. The tax does not apply if the producer cannot meet the recycled content goal because of an inability to obtain newsprint made from recycled paper at a price or quality comparable to other newsprint, to acquire an amount needed for a publication, or to acquire the amount needed in a reasonable amount of time.

Administration and Enforcement of State Tax Laws

Payment by Electronic Funds Transfer

S.L. 1999-389 (S 251) requires corporations that are required to pay federal income tax estimated payments by electronic funds transfer (EFT) to pay state income tax estimated payments by EFT, effective for taxable years beginning on or after January 1, 2000. The Department of Revenue estimates an annual gain of $334,662 to the General Fund from the EFT requirement.

This change in the law will eliminate thousands of returns, not payments, each year. It will enable the state to receive tax payments more quickly and thus gain three to five days of interest on the payments.

For federal purposes a corporation whose depository taxes exceed $200,000 in a twelve-month period must pay its corporate income tax estimated payments by EFT. The federal regulations list the different types of depository taxes. Examples of depository taxes include social security taxes, withheld income taxes, and corporate estimated income taxes. The Internal Revenue Service raised the threshold from $50,000 to $200,000 in July 1999. The higher threshold will limit the EFT requirement to the largest 9 percent of taxpayers, but other taxpayers are expected to use EFT voluntarily.

Use Tax Collection

S.L. 1999-341 (H 1433) simplifies use tax collection and seeks to improve tax collection in several ways:

- It provides that an individual who owes use tax to the state on nonbusiness purchases can pay the tax with the individual's income tax return.
- It promotes the electronic filing of semimonthly sales tax reports.
- It directs the Secretary of Revenue to contract for the collection of delinquent tax debts owed by nonresidents and foreign entities.
- It directs the Department of Revenue and the State Controller to study the feasibility of a central collection operation.
- It prohibits state agencies from contracting with a vendor who is required under G.S. 105-164.8(b) to collect state sales and use tax but refuses to do so.

The act is expected to increase General Fund revenues by $1.67 million in fiscal year 1999–2000, $1.75 million in fiscal year 2000–2001, $1.84 million in fiscal year 2001–2002, $1.93 million in fiscal year 2002–2003, and $2.03 million in fiscal year 2003–2004.

North Carolina has a state and local sales and use tax at the combined rate of 6 percent. The combined rate is 6.5 percent in Mecklenburg County. The sales tax is paid on purchases made in this state, is collected by the retailer, and is 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. Like the sales tax, the use tax is imposed on the purchaser. Unlike the sales tax, the responsibility for remitting the use tax to the Department of Revenue is also on the purchaser.

The 1997 General Assembly enacted S.L. 1997-77, which 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 need to file either monthly or quarterly returns.

The act further simplifies use tax collection by providing that the use tax will be paid on the taxpayers' income tax returns, effective for taxable years beginning on or after January 1, 1999. An individual who owes use tax on nonbusiness purchases and who must remit a state income tax return must pay the use tax owed with the income tax return. The income tax return will have space on it to indicate the amount of use tax owed. It is hoped that by placing the use tax on the individual income tax return, as opposed to sending a separate use return with the income tax return, that taxpayer awareness of the responsibility to pay the tax will increase, as every taxpayer must affirm that the information on the income tax return is true and complete by signing the return. The Secretary of Revenue is required to provide information on the individual income tax

form and instructions to explain a person's obligation to pay use tax on items purchased from mail-order, Internet, or other sellers that do not collect state sales tax on those items. The Secretary must also provide a method to help a person determine the amount of use tax owed. This method must list categories of items that are commonly sold by mail-order or Internet businesses and must include a table that gives the average amounts of use tax payable by taxpayers in various income ranges.

The act allows the Department of Revenue to use some of the additional use tax revenue collected to promote tax collections. The department may use $150,000 to pay for the costs of programming, form revision, and resources for taxpayer assistance in connection with the new use tax collection method. The department may use $500,000 to implement a program to allow semimonthly sales and use taxpayers to file their returns electronically.

The department may use some of the revenue to contract for the collection of delinquent tax debts owed by nonresidents and foreign entities. A delinquent tax debt is the amount of tax due as stated in a final notice of assessment issued to the taxpayer when the taxpayer no longer has the right to contest the debt. The department must report on its collections pursuant to this contract to the Revenue Laws Study Committee.

The department may use up to $50,000 to conduct a study, in cooperation with the State Controller, to identify and evaluate proposals for more efficient collection of taxes. The department must report its findings, recommendations, and estimated revenue gains to the Revenue Laws Study Committee by May 1, 2000.

The state is prohibited from contracting with a vendor for goods or services if the vendor is required by G.S. 105-164.8(b) to collect use tax for the state but refuses to do so. G.S. 105-164.8 requires a retailer that is engaged in business in this state to collect use tax on a mail-order sale. Subsection (b) of this statute provides that a retailer that makes a mail-order sale is engaged in business in this state if the retailer meets one or more of the following conditions:

- is a corporation engaged in business under the laws of this state;
- maintains offices in this state;
- has representatives in this state who solicit business or transact business on behalf of the retailer;
- is purposefully or systematically exploiting the market in this state by any media-assisted, media-facilitated, or media-solicited means, including direct-mail advertising, distribution of catalogs, computer-assisted shopping, and so forth;
- resides in a jurisdiction that has a compact or reciprocity with North Carolina to support North Carolina's taxing power;
- consents to the imposition of the collection of the tax.

The act also amends the tax secrecy provisions to allow the Secretary of Revenue to make two disclosures. The Secretary may provide the Secretary of Administration with a list of vendors who refuse to collect the state's use tax even though they are required to do so under G.S. 105-164.8. The Secretary may provide the public with access to a database containing the names and account numbers of taxpayers who are not required to pay sales and use tax because of an exemption or because they are authorized to pay the tax directly to the department.

Tax Withholding

S.L. 1999-414 (H 1466) requires a person paying pensions, annuities, and deferred compensation to withhold North Carolina individual income tax from the payments unless the recipient elects not to have the tax withheld, effective January 1, 2001. Income that is exempt from tax is exempt from this withholding requirement. The act does not apply to federal, state, and local retirement benefits paid to retirees with five years of creditable service as of August 12, 1989, because this retirement income is exempt from state income tax due to a court decision in the *Bailey/Emory/Patton* lawsuits. The impacts of this litigation on the state budget is discussed in Chapter 2 (The State Budget).

Under federal law, withholding is required on pensions, annuities, and certain deferred income, including Individual Retirement Accounts (IRAs). Prior to this act, North Carolina had not piggybacked this aspect of federal law. This act provides that a pension payer required to withhold federal income tax on a pension payment to a resident of North Carolina must also withhold state income tax. A recipient may elect to not have tax withheld from the pension payment. The pension payer must notify each recipient of the right to elect not to have tax withheld. An individual who elects not to have tax withheld from the pension payment must estimate his or her income tax liability each year and pay the tax in four installments.

In the case of periodic payments, the pension payer must withhold as if the recipient were a married person with three exemptions, unless the recipient provides an exemption certificate reflecting a different filing status or number of exemptions. For a nonperiodic payment, the pension payer must withhold 4 percent of the payment. A pension payer who fails to withhold or remit the tax that is withheld is liable for the tax.

Currently the Department of Revenue allows voluntary withholding by employers. The holder of an IRA, although not an employer, may also enter into a voluntary withholding agreement. However, if the payer withholds the tax but does not pay it to the Department of Revenue, the taxpayer's only recourse is against the payer. The department cannot credit the taxpayer and pursue the payer. Under this act, effective for taxable years beginning on or after January 1, 2001, the withholding will be mandatory unless the recipient elects not to have the tax withheld.

Other Amendments

S.L. 1999-415 (H 1476) makes several changes relating to tax law.

Update Code Reference. S.L. 1999-415 rewrites the definition of the Internal Revenue Code used in state tax statutes to change the reference date from September 1, 1998, to June 1, 1999. Updating the Internal Revenue Code reference makes recent amendments to the code applicable to the state to the extent that state law previously tracked federal law. This update generally has the greatest effect on state corporate and individual income taxes because these taxes are based on federal taxable income and are therefore closely tied to federal law.

Since the General Assembly updated the state's reference to the Internal Revenue Code to September 1, 1998, Congress has enacted two bills that affect the code. On October 21, 1998, President Bill Clinton signed into law Public Law 105-277, which includes the Tax and Trade Relief Extension Act of 1998. On April 19, 1999, the President signed into law Public Law 106-21, which extends the tax benefits available with respect to services performed in a combat zone to services performed in the Kosovo area. The code update is expected to increase General Fund revenues by $11.55 million in fiscal year 1999–2000, $2.95 million in fiscal year 2000–2001, $1.4 million in fiscal year 2001–2002, $900,000 in fiscal year 2002–2003, and $100,000 in fiscal year 2003–2004.

Conform Criminal Deadline to Federal. S.L. 1999-415 conforms the state statute of limitations, with respect to the willful failure to comply with the state's tax laws, to the federal statute of limitations. Under North Carolina law it is a Class 1 misdemeanor to willfully fail to collect, withhold, or pay over taxes or to willfully fail to file a return or pay the tax due. Under prior law, the state had three years from the date of the violation to prosecute the taxpayer who violated the tax law. Under federal law, the IRS has six years from the date of the prosecution to pursue the violation. Sections 2 and 3 of this act conform the state statute of limitations to the federal statute of limitations by extending the time the state has to pursue a violation of the tax laws from three years to six years. This change is effective December 1, 1999, for cases in which the three-year statute of limitations has not already expired.

Refund Statute of Limitations. S.L. 1999-415 extends the time a taxpayer has to challenge the unconstitutionality of most taxes from one year to three years, effective for taxes paid on or after January 1, 1999. The time limit remains at thirty days for excise taxes on alcoholic beverages, soft drinks, tobacco products, and controlled substances. In North Carolina, if a taxpayer believes a tax is unconstitutional, the taxpayer must pay the tax and contest the tax by requesting a refund after payment is made. This procedure is known as "paying under protest."

Tax Research Positions. Upon recommendation of the Revenue Laws Study Committee, Section 4(a) of S.L. 1999-415 authorizes the Secretary of Revenue to draw funds from the revenues generated by updating the Internal Revenue Code reference to fund four tax research positions in the Department of Revenue, effective January 1, 2000. The Revenue Laws Study Committee determined that there is a need for in-depth tax research that cannot be met by the current three-person staff. Adding four new tax analyst positions will provide a tax research resource capable of serving the needs of the legislative and executive branches for analyses of various tax proposals and of the effects of changes in the economy on the tax base.

Performance Audit. S.L. 1999-415 directs the Office of the State Auditor to conduct a performance audit of the Department of Revenue, addressing the following areas: (i) tax collection and tax auditing activity, with particular attention to the cost, efficiency, and effectiveness of the Integrated Tax Administration System and subsequent automation projects; (ii) current methods of processing tax returns and payments and the ability to employ the latest technology in this processing; (iii) internal organization and management; (iv) budgeting and fiscal management; (v) current and future staffing requirements; and (vi) any other issues the State Auditor considers necessary or desirable. The State Auditor is to submit an interim progress report to the Senate and House Appropriations Subcommittee on General Government and the General Assembly's Fiscal Research Division by May 30, 2000, and a final report to the General Assembly by January 1, 2001. The Secretary of Revenue is directed to draw $100,000 from funds generated by the act to pay for the performance audit.

Cindy Avrette

Martha H. Harris

Martha Walston

26

Utilities and Energy

This chapter reviews 1999 legislation concerning utilities regulation and energy. In an otherwise low-profile year for utilities and energy legislation, the General Assembly refereed a pitched battle among competing business interests over an expansion of the authority of electric membership corporations into for-profit businesses. It also addressed a few routine matters involving electric service, energy, railroads, telecommunications, and the Utilities Commission.

Electricity

Future of Electric Service

S.L. 1999-122 (H 778) expands the Study Commission on the Future of Electric Service in North Carolina by six members, three Senators appointed by the President Pro Tempore of the Senate and three House members appointed by the Speaker of the House. As a result of this change, the twenty-nine members of the commission will include:

- nine Senators appointed by the President Pro Tempore;
- nine House members appointed by the Speaker;
- three other appointees (nonlegislators) each of the President Pro Tempore and the Speaker;
- one appointee (a member of the environmental community) of the Governor;
- the chief executive officers, respectively, of Duke Power Company, Carolina Power and Light Company, ElectriCities of North Carolina, and the North Carolina Electric Membership Corporation.

Electric Membership Corporations

Electric membership corporations (EMCs), commonly known as electric cooperatives or "co-ops," provide electric service to many rural areas in North Carolina and throughout the United States. This session the EMCs were authorized, by S.L. 1999-180 (H 476), to expand their service

into various utility-related for-profit businesses, "ranging from appliance repair to propane sales to Internet service."[1]

H 476, as originally introduced, authorized the EMCs to form, operate, and own business entities engaged in any lawful activities, whether or not within their corporate purposes. In an effort to forestall political opposition, the original bill stipulated that these entities would not be financed by loans from the Rural Utilities Service of the U.S. Department of Agriculture and would be subject to all taxes levied against business entities. Nonetheless, opposition to the bill soon surfaced from a coalition of opponents that ranged from petroleum marketers, propane gas distributors, electrical contractors, convenience stores, and retail merchants to cable telecommunications businesses and other small businesses.

The sponsors of H 476 made a series of concessions that resulted in the addition of the following provisions:

- EMCs must be fully compensated for the use of personal services, equipment, and property in accordance with a prescribed methodology. These charges are subject to review upon complaint by the Utilities Commission.
- The business entities must be organized under either G.S. Chapter 55 or 57C and cannot receive from an EMC any investment, loan, guarantee, or pledge exceeding 10 percent of the EMC's assets.
- An EMC may not organize business entities to engage in the oil distribution business (including liquefied petroleum gas) but may acquire businesses already engaged in these activities.
- No EMC director (or director's spouse) may be employed in or have a financial interest in a business entity formed by an EMC.
- A regulatory fee will be imposed on the North Carolina Electric Membership Corporation beginning with the 1999–2000 fiscal year in order to fund the Utilities Commission's review of transactions involving EMC subsidiaries.

Municipal Electric Service

S.L. 1999-111 (S 658) extends the sunset date when a 1997 statute concerning local electric service would have expired (July 31, 1999) to December 31, 2003. The 1997 statute, S.L. 1997-346, addressed the effect of municipal annexation and incorporation on electric service in areas that the Utilities Commission had assigned to specific suppliers before the annexation or incorporation. It provided that, with the city's written consent, those "secondary" suppliers may be the exclusive providers of electric service in the previously assigned areas. It also allowed an electric membership corporation to vote by proxy on decisions to encumber corporate property or to dissolve the corporation.

S.L. 1999-224 (H 755) adds to the purposes for which municipal service districts may be created "lighting at interstate highway interchange ramps." It applies only to towns with a population of 2,000 to 2,500 persons located in a county with a land area of more than 946 square miles.

Energy

Local Government Energy Savings Contracts

S.L. 1999-235 (S 56) eliminates the statutory sunset date of July 1, 1999, for local governments to enter into energy savings contracts with qualified providers. (This means that this authorization has been made permanent.) It also extends the allowable term of such contracts from eight to twelve years, beginning with the installation and acceptance of the energy conservation

[1] Raleigh *News and Observer*, April 21, 1999, Section 1, page 1.

measures. The law makes clarifying changes in the definitions of energy conservation measures and of energy savings.

Railroads

Crossings

S.L. 1999-274 (H 1054) amends the grade crossing statute to require that activity buses, as well as school buses, must stop at all railroad grade crossings—without exception—within fifteen to fifty feet from the nearest rail.

Railroad Study Commission

Section 27.25 of S.L. 1999-237 (H 168) establishes a study commission to report before May 1, 2000, on the future of the North Carolina Railroad. The Speaker of the House of Representatives and the President Pro Tempore of the Senate are to appoint eight House members and eight Senate members, respectively, to the commission. The study is not to delay ongoing contract negotiations with the Research Triangle Regional Public Transportation Authority or the Norfolk Southern Railway Company.

Telecommunications

Universal Telephone Service

S.L. 1999-112 (S 1008) allows the North Carolina Utilities Commission an additional two years to adopt final rules concerning universal local exchange telephone service by extending the deadline for adoption from July 1, 1999, to July 1, 2001. The rules are to address the provision of universal services in a certified area, the person who shall be the universal service provider, and whether the service shall be funded through interconnection rates or otherwise.

Telecommunications Relay Service for Vision Impaired

S.L. 1999-402 (S 547) directs the Utilities Commission to establish an equipment distribution program for hearing or speech impaired persons who also have vision impairment. The Department of Health and Human Services is to administer the program. (The previous statute required a program for hearing or speech impaired persons without reference to vision impairment.) The commission may allow the department to use up to four cents per access line per month of the current surcharge for this service. The commission and public staff will audit the program, and the department is to report to the Revenue Laws Study Committee on the relay service program.

Utilities Commission

Appointments

The General Assembly confirmed the appointment of Robert Koger to the Utilities Commission to fill the unexpired term of Allyson K. Duncan, ending June 30, 1999. Res. 1999-3 (SJR 32). It then confirmed the appointment of Samuel James Ervin IV for a full eight-year term beginning July 1, 1999, at the expiration of Koger's term, Res. 1999-8 (SJR 975).

Compensation

Section 28.21 of the 1999 Appropriations Act, S.L. 1999-237 (H 168), allows each member of the Utilities Commission who lives at least fifty miles from Raleigh a weekly travel allowance at the state reimbursement rate for each week the member travels from home to Raleigh on commission business. This is in addition to standard reimbursement for travel and subsistence.

Regulatory Fee

G.S. 62-302(b) sets a regulatory fee on public utilities under the commission's jurisdiction to defray the cost of regulation. The amount of the fee is set by the General Assembly. S.L. 1999-413 (H 1289) establishes a rate of 0.09 percent of each public utility's jurisdictional revenues for the 1999–2000 fiscal year. The act also imposes an annual fee of $200,000 for the 1999–2000 fiscal year on the Electric Membership Corporation under G.S. 62-302(b1) as enacted by S.L. 1999-180.

Local Acts

Water Bills; Underground Utilities

S.L. 1999-127 (H 462) adds the towns of Chadbourn and Mount Gilead, and Montgomery County, to the list of local governments authorized to collect water and sewer bills as if they were taxes. It also establishes an enabling framework to allow Dare County to create one or more special utility districts for underground electric utility lines and to levy taxes up to $1 per month for residential customers and $5 per month for commercial and industrial customers within the district. The taxes are to be collected by electric utilities as part of their monthly bills. Municipalities may "annex" themselves to the district with the county's approval.

Milton S. Heath, Jr.

27

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 area of the state rather than in general, statewide laws. Thus in 1999 the General Assembly enacted about twice as many local acts as it did statewide laws. In addition the statewide acts tended to be almost technical in nature, and in fact, few major revisions were even proposed.

Waterfowl Licenses

Hunting migratory waterfowl in North Carolina usually requires a separate license (or permit). G.S. 113-129 defines *migratory waterfowl* as those "migratory birds for which open seasons are prescribed by the United States Department of Interior and belonging to the family Anatidae (wild ducks, geese, brant, and swans)." S.L. 1999-339 (S 323) amends G.S. 113-129 and 113-270.1D to provide that waterfowl can be taken by a person having an "annual sportsman's license" without obtaining the special waterfowl hunting license. In addition this act increases the cost of the waterfowl license from $5 to $10.

Baiting Fields

As a general rule wild animals and birds may not be taken with the use or aid of salt, grain, fruit, and the like. S.L. 1999-120 (H 236) enhances this law (G.S. 113-291.1) somewhat by providing that various forms of wildlife cannot be taken with the named substances or "other bait." G.S. 113-291.1 was amended further to provide that no wild turkey may be taken from an area in which bait has been placed until the expiration of ten days after the bait has been consumed. This act also adds provisions mandating a two-year hunting license suspension for any

person convicted of unlawfully taking, possessing, buying, or selling any bear or bear part in violation of G.S. 113-294(c1).

Personal Watercraft

The use of personal watercraft is a fairly recent development in North Carolina. These devices, which are sometimes referred to as jet skis, are small vessels that will carry only one or two persons and are usually ridden more like a motorcycle than a boat. G.S. 75A-13.3 was amended by S.L. 1999-447 (H 1209) to make North Carolina law conform to recommendations of the National Association of State Boating Law Administrators regarding personal watercraft safety. As amended, this statute provides that no person under age sixteen may operate a personal watercraft except under certain specified conditions. It does, however, allow a person between the ages of twelve and sixteen to operate the watercraft if he or she is accompanied by an adult or possesses a "boater safety certification" card issued by the Wildlife Commission (or has other proof of completion of a boating safety course).

New G.S. 75A-13.3(c1) makes it unlawful to rent personal watercraft unless liability insurance in the amount of at least $300,000 has been secured to protect both the owner and rentee. Provisions were also added to prohibit certain maneuvers, including operating at greater than a "no wake speed" if within 100 feet of an anchored vessel, a dock, a marked swimming area, or other listed places. S.L. 1999-447 provides that local governments and marine commissions may regulate personal watercraft if their regulations are more restrictive than the provisions of state law.

Vessel Registration Agents

The registration of vessels in North Carolina, like the registration of motor vehicles, is handled mostly by agents selected by the state. S.L. 1999-248 (H 237) rewrites provisions of G.S. 75A-5 to provide that the Wildlife Resources Commission may establish administrative guidelines to prescribe qualifications for these agents, their duties, and procedures to ensure accountability for the proceeds of sales. The Wildlife Commission is also authorized to select and appoint agents in areas most convenient to the boating public, to conduct periodic and special audits of agents' accounts, and to require the immediate surrender of all certificates, records, and state funds in the event of the termination of an agency. This act also increases the fees paid to the agents for the issuance of various kinds of registration and certificates. In addition S.L. 1999-248 amends G.S. 75A-11 to increase from over $100 to over $500 the amount of damage from a boat collision necessary to require a report to the Wildlife Commission.

S.L. 1999-392 (S 499) amends G.S. 75A-4 and -5 to increase the fees for registration of boats from $8 for a one-year period and $20 for a three-year period to $10 and $25, respectively. In addition, an amendment to G.S. 75A-3 provides that at least $3 of each one-year vessel registration fee and at least $9 of each three-year vessel registration fee must be used for boating access area acquisition, development, and maintenance. These new fees become effective January 1, 2000.

Local Acts

As is the case in most sessions, more local wildlife and boating bills than public proposals were enacted. The local acts enacted in 1999 are listed below by county (alphabetically insofar as possible).

Beaufort and Hyde Counties

S.L. 1999-86 (H 440) extends the effective dates of S.L. 1997-132 from October 1, 1997–June 1, 1999, to October 1, 1997–June 1, 2001. The amended act eliminates bag limits on the hunting or trapping of foxes and raccoons and authorizes the use of snares when trapping fur-bearing animals.

Brunswick and Other Counties

S.L. 1999-51 (H 371) amends G.S. 14-401.17 by adding several additional counties to its provisions. This statute makes it unlawful to intentionally remove or destroy an electronic collar or other electronic device placed on a dog by its owner for the purpose of maintaining control of the animal. A first conviction for a violation of G.S. 14-401.17 is a Class 3 misdemeanor, and a second or subsequent conviction is a Class 2 misdemeanor. The counties now subject to G.S. 14-401.17 include Alamance, Avery, Beaufort, Brunswick, Buncombe, Burke, Caldwell, Caswell, Cherokee, Clay, Columbus, Craven, Cumberland, Davidson, Graham, Haywood, Henderson, Hyde, Jackson, Macon, Madison, McDowell, Mecklenburg, Mitchell, New Hanover, Orange, Pasquotank, Pitt, Robeson, Rockingham, Swain, Transylvania, Union, Wilkes, and Yancey.

Brunswick County

S.L. 1999-87 (H 650) authorizes Brunswick County to adopt ordinances regulating the operation of personal watercraft in the Atlantic Ocean and other waterways within its territorial jurisdiction. The governing board of any municipality within the county may by resolution permit the county ordinance to be applicable within the city pursuant to G.S. 153A-122.

Brunswick County–Holden Beach

S.L. 1999-92 (H 649) makes it unlawful to operate a vessel at greater than a "no wake speed" in the Intracoastal Waterway within the town of Holden Beach (in Brunswick County) between the island area designated at Rogers Street and the eastern line of the L. S. Holden Subdivision. No wake speed is idle speed or a slow speed creating no appreciable wake. This act is enforceable under G.S. 75A-17 as if it were a provision of the General Statutes, and a violation is a Class 3 misdemeanor.

Currituck County

S.L. 1999-38 (H 637) makes it unlawful to operate a vessel at greater than a no wake speed in the Coinjock Canal Intracoastal Waterway. This act is also enforceable under G.S. 75A-17, and a violation constitutes a Class 3 misdemeanor.

Lee, Rutherford, Chowan, and Moore Counties

S.L. 1999-301 (S 302) makes it unlawful in Lee and Rutherford counties to hunt on the land of another unless the person is a family member or has a paper signed by the landowner or lessee granting him or her permission to hunt. This act also makes it unlawful to hunt with a firearm, bow and arrow, crossbow, or other deadly weapon on, from, or across the right-of-way of any public road, street, highway, or thoroughfare. A violation of any of the above provisions is a Class 3 misdemeanor, punishable by a fine of up to $300. S.L. 1999-301 contains similar provisions applicable to hunting deer in Moore County, except that a violation is punishable by $300 to $500 for a first conviction and $500 to $700 for a second conviction (plus imprisonment for up to sixty days and loss of the defendant's hunting license). This act also makes the provisions of Chapter 128 of the 1989 Session Laws, concerning fox seasons, applicable to Chowan County.

New Hanover County

S.L. 1999-95 (H 772) makes it unlawful to operate a vessel at greater than a no wake speed in the waters of Lee's Cut in New Hanover County. This act is enforceable under G.S. 75A-17, and a violation of its provisions is a Class 3 misdemeanor.

Pasquotank County–Elizabeth City

S.L. 1999-174 (H 615) authorizes Elizabeth City to adopt ordinances to regulate and control the speed of vessels in waterways within its boundary or extraterritorial jurisdiction. If an ordinance is adopted, the city must place and maintain markers in accordance with the Uniform Waterway Marking System. All such markers must be buoys or floating signs placed in the water and must give adequate warning of the speed limit to approaching vessels.

Bills That Failed to Pass

Two interesting proposals that were not enacted may be brought up again.

1. H 353 would have authorized counties to create bird sanctuaries in any area of the county not within the corporate limits of a municipality. Hunting, trapping, or killing birds in any manner would not be allowed in these areas. Cities have had this authority for almost half a century under the provisions of G.S. 160A-188.
2. H 1137 would have amended G.S. 103-2 to allow hunting on Sunday by a landowner on his or her own land or by another person with written permission of the owner. Legislation prohibiting Sunday hunting has been on the books since the 1860s, when most North Carolinians lived on farms and could hunt six days a week if they wished. Now, with society becoming increasingly more urban, many people are unable to hunt except on the weekends. Nevertheless, the proposal to repeal the Sunday hunting prohibition had very little support in the General Assembly, as has been the case in the past.

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